

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA LEAGUE, OF
CONSERVATION VOTERS, INC., *et al.*,
Plaintiffs,

COMMON CAUSE,
Plaintiff-Intervenor,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, *et
al.*,
Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 015426

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Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in
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Standing Committee on Redistricting, *et
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Defendants.

IN THE GENERAL COURT OF JUSTICE
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FILE NO. 21 CVS 500085

JUDGMENT

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INTRODUCTION

These consolidated cases present this Court with the unique challenge of balancing the competing interests of fairness, the role of the judiciary, statutory and constitutional construction, the interpretation of prior court rulings, and good old fashion common sense. Sometimes, courts are required to make decisions that are not popular, but because judges take an oath to uphold the law, those rulings are mandated. And sometimes, redress of a perceived wrong does not lie with the judiciary, but rather, with one of the other co-equal branches of government.

All of Plaintiffs' claims in these lawsuits, in essence, stem from the basic argument that the 2021 redistricting maps passed by the North Carolina General Assembly are unconstitutional under the North Carolina Constitution. We have taken great lengths to examine that document. At the end of the day, after carefully and fully conducting our analysis, it is clear that Plaintiffs' claims must fail. Judges, just like many of the citizens they serve, do not always like the results they reach. That fact notwithstanding, judges have a solemn duty to uphold the law. We have done our best to perform that duty, regardless of the consequences. Our complete ruling is more fully set forth in the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I. Summary of Relevant Procedural History

1. Plaintiffs North Carolina League of Conservation Voters, Inc.; Henry M. Michaux, Jr.; Dandrielle Lewis; Timothy Chartier; Talia Fernos; Katherine Newhall; R. Jason Parsley; Edna Scott; Roberta Scott; Yvette Roberts; Jereann King Johnson; Reverend Reginald Wells; Yarbrough Williams, Jr.; Reverend Deloris L. Jerman; Viola Ryals Figueroa; and Cosmos George (hereinafter "NCLCV Plaintiffs") filed their Complaint (Civil Action No. 21 CVS 015426) contemporaneously with a Motion for Preliminary Injunction pursuant to

Rules 7(b) and 65 of the North Carolina Rules of Civil Procedure on November 16, 2021. The NCLCV Plaintiffs’ Complaint alleges that the 2021 districting plans for Congress, the North Carolina Senate, and the North Carolina House of Representatives violate the North Carolina Constitution by establishing severe partisan gerrymanders in violation of the Free Elections Clause, Art. I, § 10, the Equal Protection Clause, Art. I, § 19, and the Freedom of Speech and Assembly Clauses, Art. I, §§ 12, 14; by engaging in racial vote dilution in violation of the Free Elections Clause, Art. I, § 10, and the Equal Protection Clause, Art. I, § 19; and by violating the Whole County Provisions, Art. II, §§ 3(3), 5(3).

2. Plaintiffs Rebecca Harper; Amy Clare Oseroff; Donald Rumph; John Anthony Balla; Richard R. Crews; Lily Nicole Quick; Gettys Cohen Jr.; Shawn Rush; Mark S. Peters; Kathleen Barnes; Virginia Walters Brien; Eileen Stephens; Barbara Proffitt; Mary Elizabeth Voss; Chenita Barber Johnson; Sarah Taber; Joshua Perry Brown; Laureen Floor; Donald M. MacKinnon; Ron Osborne; Ann Butzner; Sondra Stein; Bobby Jones; Kristiann Herring; and David Dwight Brown (hereinafter “Harper Plaintiffs”) filed their Complaint (Civil Action No. 21 CVS 500085) on November 18, 2021, and a Motion for Preliminary Injunction pursuant to Rule 65 and N.C.G.S. § 1-485 on November 30, 2021. Harper Plaintiffs amended their Complaint on December 13, 2021, and the Harper Plaintiffs’ operative Complaint alleges that the 2021 districting plans for Congress, the North Carolina Senate, and the North Carolina House of Representatives violate the North Carolina Constitution—namely its Free Elections Clause, Art. I, § 10; its Equal Protection Clause, Art. I, § 19; and its Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12, 14.

¹ Plaintiffs Eileen Stephens, Barbara Proffitt, Mary Elizabeth Voss, Chenita Barber Johnson, Sarah Taber, Joshua Perry Brown, Laureen Flood, Donald M. MacKinnon, Ron Osborne, Ann Butzner, Sondra Stein, Bobby Jones, and Kristiann Herring were added as Plaintiffs upon the filing of Harper Plaintiffs’ Amended Complaint.

3. On November 19, 2021, and November 22, 2021, the NCLCV and Harper actions, respectively, were assigned to the undersigned three-judge panel of Superior Court, Wake County, pursuant to N.C.G.S. § 1-267.1.

4. On December 3, 2021, the undersigned consolidated these respective cases pursuant to Rule 42 of the North Carolina Rules of Civil Procedure and heard NCLCV Plaintiffs' and Harper Plaintiffs' Motions for Preliminary Injunction. On December 3, 2021, after considering the extensive briefing and oral arguments on the motions, the undersigned denied NCLCV Plaintiffs' and Harper Plaintiffs' Motions for Preliminary Injunction.

5. NCLCV Plaintiffs and Harper Plaintiffs thereafter filed a notice of appeal with the North Carolina Court of Appeals. After initially partially granting a temporary stay of the candidate filing period for the 2022 elections, the North Carolina Court of Appeals denied the requested temporary stay on December 6, 2021.

6. On December 8, 2021, on NCLCV Plaintiffs' and Harper Plaintiffs' Petitions for Discretionary Review Prior to Determination by the Court of Appeals, Motion to Suspend Appellate Rules to Expedite a Decision, and Motion to Suspend Appellate Rules and Expedite Schedule, the Supreme Court of North Carolina granted a preliminary injunction and temporarily stayed the candidate filing period "until such time as a final judgment on the merits of plaintiffs' claims, including any appeals, is entered and remedy, if any is required, has been ordered." SCONC order on Pls motion p. 3. The Order further directed this Court to hold proceedings on the merits of NCLCV Plaintiffs' and Harper Plaintiffs' claims and provide a written ruling on or before January 11, 2022.

7. In light of our Supreme Court's directive and the history of redistricting litigation in our state courts, including the Common Cause v. Lewis action in 2019 in which a final judgment was not entered until almost a year after the filing of the plaintiffs' complaint and an extensive discovery period culminated in a two-week trial, this Court

entered a scheduling order on December 13, 2021, expediting discovery and scheduling trial to commence on January 3, 2022. This Case Scheduling Order was thereafter supplemented on December 28, 2021, and December 30, 2021.

8. On December 13, 2021, Common Cause moved to intervene in these consolidated cases as a plaintiff, challenging the process undertaken by the General Assembly to create and enact the state legislative and congressional districts as a product of intentional racial discrimination undertaken for the purpose of racial vote dilution and to further the legislature’s partisan gerrymandering goals. On December 15, 2021, this Court granted Common Cause’s motion to intervene as a plaintiff in these consolidated cases, and Plaintiff-Intervenor Common Cause filed its Complaint on December 16, 2021.² Plaintiff Common Cause’s Complaint alleges that the 2021 districting plans for Congress, the North Carolina Senate, and the North Carolina House of Representatives violate the North Carolina Constitution—namely its Equal Protection Clause, Art. I, § 19; its Free Elections Clause, Art. I, § 10; and its Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12, 14—and seeks, among other relief, a declaratory ruling under the Declaratory Judgment Act.

9. The North Carolina Congressional Districts challenged by Plaintiffs collectively include all fourteen enacted Congressional Districts.

10. The North Carolina Senate Districts challenged by Plaintiffs collectively include Senate Districts 1, 2, 13, 14, 15, 16, 17, 18, 19, 21, 26, 27, 28, 31, 32, 37, 38, 39, 40, 41, 42, 46, 47, 49, 50.

11. The North Carolina House of Representatives Districts challenged by Plaintiffs collectively include House Districts 2, 4, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 29, 30, 31,

² Unless specifically designated otherwise in the remainder of this Judgment, “Plaintiffs” collectively refers to NCLCV Plaintiffs, Harper Plaintiffs, and Plaintiff Common Cause.

33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 49, 57, 58, 59, 60, 61, 62, 71, 72, 74, 75, 88, 91, 92, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 112, 114, 115, and 116.

12. On December 15, 2021, this Court entered a Protective Order to govern the production and exchange of the parties' documents, and any testimony at deposition relating to such documents, that reflect the parties' confidential information.

13. On December 17, 2021, Defendants Representative Destin Hall, in his official capacity as Chairman of the House Standing Committee on Redistricting; Senators Ralph E. Hise, Jr., Warren Daniel, Paul Newton, in their official capacities as Co-Chairmen of the Senate Committee on Redistricting and Elections; Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate; Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives (hereinafter "Legislative Defendants") filed their Answer to NCLCV Plaintiffs' Complaint, asserting seventeen affirmative defenses, and Harper Plaintiffs' Amended Complaint, asserting fifteen affirmative defenses.

14. Affirmative defenses raised by Legislative Defendants include inter alia that granting the requested relief will violate the Voting Rights Act and the United States Constitution; that granting the requested relief will violate the rights of Legislative Defendants, Republican voters, and Republican candidates under the United States and North Carolina Constitutions; that the court cannot lawfully prevent the General Assembly from considering partisan advantage and incumbency protection; that Plaintiffs seek to require districts where Democratic candidates are elected where such candidates are not currently elected; that Plaintiffs' claims are barred by the doctrine of laches; that Plaintiffs have failed to state claims upon which relief can be granted; that Plaintiffs seek a theory of liability that will act to impose a judicial amendment to the North Carolina Constitution; that the only limitations on redistricting legislation are found in Article II, Sections 2, 3, 4,

and 5 of the North Carolina Constitution; that Plaintiffs' request for a court-designed redistricting plan violates the separation of powers doctrine; that Plaintiffs' claims are non-justiciable and fail to provide judicially manageable standards; that Plaintiffs lack standing; and, that Plaintiffs have unclean hands and therefore are not entitled to equitable relief.

15. Defendant Ralph E. Hise, Jr. is a Republican member of the North Carolina Senate, representing Senate District 47, and the Chairman of the Senate Standing Committee on Redistricting and Elections. Defendant Hise is sued in his official capacity only. Defendant Hise resides in Senate District 47 in the 2021 districting plan.

16. Defendant Warren Daniel is a Republican member of the North Carolina Senate, representing Senate District 46, and the Chairman of the Senate Standing Committee on Redistricting and Elections. Defendant Daniel is sued in his official capacity only. Defendant Daniel resides in Senate District 46 in the 2021 districting plan.

17. Defendant Paul Newton is a Republican member of the North Carolina Senate, representing Senate District 36, and the Chairman of the Senate Standing Committee on Redistricting and Elections. Defendant Newton is sued in his official capacity only. Defendant Newton resides in Senate District 34 in the 2021 districting plan.

18. Representative Destin Hall is Republican member of the North Carolina House of Representatives, representing House District 87, and the Chairman of the House Standing Committee on Redistricting. Defendant Hall is sued in his official capacity only. Defendant Hall resides in House District 87 in the 2021 districting plan.

19. Defendant Timothy K. Moore is a Republican member and the Speaker of the North Carolina House of Representatives, representing House District 111. Defendant Moore is sued in his official capacity only. Defendant Moore resides in House District 111 in the 2021 districting plan.

20. Defendant Philip E. Berger is a Republican member and the President Pro Tempore of the North Carolina Senate, representing Senate District 30. Defendant Berger is sued in his official capacity only. Defendant Berger resides in Senate District 26 in the 2021 districting plan.

21. On December 17, 2021, Defendants North Carolina State Board of Elections and its members Damon Circosta, in his official capacity as Chairman of the Board of Elections; Stella Anderson, in her official capacity as Secretary of the Board of Elections; and Jeff Carmon III, Stacy Eggers IV, and Tommy Tucker, in their official capacities as Members of the Board of Elections filed their Answer to Harper Plaintiffs' Amended Complaint. Also on December 17, 2021, these same Defendants along with Defendant State of North Carolina and Defendant Karen Brinson Bell, in her official capacity as Executive Director of the North Carolina State Board of Elections filed their Answer to NCLCV Plaintiffs' Complaint.³

22. Legislative Defendants and State Defendants did not file an answer to Plaintiff Common Cause's Complaint. Pursuant to this Court's order granting Common Cause's intervention, however, the allegations and requested relief in Plaintiff Common Cause's Complaint are deemed denied by all Defendants.

23. Throughout the intervening and expedited two-and-a-half-week period reserved for discovery, the parties filed and the Court expeditiously ruled upon over ten discovery-related motions—a number far exceeding the number of such motions filed in *Common Cause v. Lewis*, in which discovery spanned a period of over five months.

24. Pursuant to the Court's Case Scheduling Order, pre-trial submissions began with the exchange and submission of initial expert reports on December 23, 2021. Plaintiffs

³ For simplicity, unless specifically designated otherwise in the remainder of this Judgment, "State Defendants" refers to the State Board of Elections-related Defendants as well as Defendant State of North Carolina.

collectively designated eight individuals as expert witnesses and submitted accompanying reports. Legislative Defendants designated two individuals as expert witnesses and submitted accompanying reports. The initial reports and accompanying materials submitted on behalf of the expert witnesses for all parties exceeded a collective 900 pages of materials.

25. Rebuttal expert reports were exchanged and submitted on December 28, 2021. Plaintiffs collectively submitted five rebuttal reports. Legislative Defendants submitted three rebuttal reports. The rebuttal reports and accompanying materials submitted on behalf of the expert witnesses for all parties exceeded a collective 100 pages of materials.

26. The discovery period closed on December 31, 2021—the date upon which all fact and expert witness depositions were to be conducted pursuant to the Case Scheduling Order. The parties thereafter submitted, in lieu of pre-trial briefs, an initial stipulation of facts and initial proposed findings of fact and conclusions of law. The parties collectively listed approximately 1,200 pre-marked exhibits for trial.

27. Commencing on January 3, 2022, this Court conducted a three-and-one-half day trial, receiving testimony from numerous fact and expert witnesses and receiving approximately 1,000 exhibits into evidence. The following findings of fact are made upon this voluminous record.⁴

II. The Challenged Redistricting Legislation

A. Background on Decennial Redistricting

28. Following each decennial census, the North Carolina General Assembly must redraw the districts for the North Carolina House of Representatives, the North Carolina Senate, and the North Carolina Congressional map.

⁴ Due to the time limitations between the conclusion of trial and the entry of this Final Judgment, and to avoid confusion when reviewing the finalized trial transcript, citations to the trial transcript are only to a specific day on which a witness testified and are denominated as “Trial Tr. [Date of Testimony].”

29. In North Carolina, legislative redistricting is performed exclusively by the General Assembly. The Governor of North Carolina has no power to veto redistricting bills.

30. The State Constitution specifically enumerates four limitations upon the redistricting and reapportionment authority of the General Assembly, including that:

a. Each Senator and Representative shall represent, as nearly as possible, an equal number of inhabitants;

b. Each senate and representative district shall at all times consist of contiguous territory;

c. No county shall be divided in the formation of senator or representative districts (the “Whole County Provision”); and

d. Once established, the senate and representative districts and the apportionment of Senators and Representatives shall remain unaltered until the next decennial census of population taken by order of Congress.

31. Between 1870 and 2010, the Democratic Party at all times controlled one or both houses of the General Assembly.

32. After the 2010 election, for the first time since 1870, Republicans constituted a majority of both the North Carolina House of Representatives and the North Carolina Senate.

33. Republicans have constituted a majority in both the North Carolina House of Representatives and the North Carolina Senate from 2010 to present day and have therefore controlled each of the last two cycles of redistricting in North Carolina.

B. 2020 Census Data for the 2021 Redistricting Process

34. On February 12, 2021, the U.S. Census Bureau announced that its release of P.L. 94-171 redistricting data would be delayed by the COVID-19 pandemic, and would not be released until the fall of 2021, and specifically that it would deliver the Public Law 94-171 redistricting data to all states by September 30, 2021. PX131.

35. On March 15, 2021, the United States Census Bureau announced that it would release a “legacy” format summary redistricting data file to all states by mid-to-late August 2021, in addition to the “tabulated” P.L. 94-171 block-level data released before September 30, 2021, “[i]n recognition of the difficulties this timeline creates for states with redistricting and election deadlines prior to Sept. 30.” PX132.

36. On April 26, 2021, the United States Census Bureau released data indicating that North Carolina’s population increased from 9,535,483 residents in 2010 to 10,439,388 residents in 2020. PX142; PX133; PX143. This 9.5 percent population increase resulted in North Carolina being given an additional Congressional seat following the 2020 Census, resulting in North Carolina’s congressional delegation growing from 13 to 14 members. PX144.

37. On August 12, 2021, the U.S. Census Bureau released the 2020 Census Redistricting Data (Public Law 94-171) Summary File for all states, including North Carolina, in “legacy” format. PX134.

C. Adoption of the 2021 Redistricting Criteria

38. On February 24, 2021, after the U.S. Census Bureau announced that its release of P.L. 94-171 redistricting data would be delayed, the North Carolina State Board of Elections Executive Director Karen Brinson Bell presented recommendations to the House Elections Law and Campaign Finance Reform Committee to move the 2022 primary to a May 3 primary, July 12 second primary, and November 8 general election. PX1402.

39. When Senator Hise received Director Bell’s recommendations, he had “no idea” how long the redistricting process would take. PX146 Hise. Dep. 155:3-18. Nonetheless, he and his co-chairs did not follow the Board’s recommendations to delay the primaries and provide more time for the redistricting cycle. *Id.* at 140:18-25. Senator Hise did, however, co-

sponsor a senate bill that modified the deadline for municipalities similarly impacted by the census delay. *Id.* at 143:1-8.

40. Legislative Defendants were aware that the delay in the release of Census Data would shorten the amount of time available to pass new state Legislative and Congressional maps before relevant deadlines, including the one-year residency deadline that state Legislative candidates would have to meet and the candidate-filing deadline on December 6, 2021, for all 2022 general election candidates. PX146 Hise Dep. 149:23-150:5. Nonetheless, they chose not to convene the Senate and House Redistricting Committees earlier to plan for the process, PX146 Hise Dep. 143:8-22, and chose not to propose or set forth a schedule for the redistricting process that would have allowed the public or their Democratic colleagues to prepare for the steps that would be taken before final enactment of state Legislative and Congressional plans. PX146 Hise Dep. 153:7-13. The Chairs of the Redistricting Committees had the general authority to make such decisions and set forth a predictable schedule but chose not to. PX146 Hise Dep. 143:12-19.

41. On Thursday, August 5, 2021, at 2:00 PM, the Senate Committee on Redistricting and Elections convened a Joint Meeting of the Senate Redistricting and Elections Committee and the House Redistricting Committee to begin discussion on the redistricting process. PX138.

42. Following this meeting, staff member Erika Churchill distributed to the joint committee members the legislative redistricting criteria ordered by the North Carolina Superior Court for Wake County in its September 3, 2019, Judgment in the matter *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56 (the “2019 Criteria”). PX1404. Consistent with state Constitutional requirements, including the Supremacy Clauses in Article I, Sections 3 and 5, the 2019 Criteria set forth by the court in *Common Cause* specifically required that new maps comply with the VRA and other federal

requirements concerning the racial composition of districts, and required the parties to submit briefing and expert analysis on whether VRA districts were required within 14 days of the order, including consideration of whether the minimum Black Voting Age Population (“BVAP”) thresholds were met to implicate the VRA. *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, at *417 (N.C. Super. Ct. Sept. 3, 2019).

43. On Monday, August 9, 2021, the redistricting chairs of the joint committees released the “2021 Joint Redistricting Committee Proposed Criteria.” PX33.

44. The Joint Redistricting Committees received in-person public comment on the Proposed Criteria on Tuesday, August 10, 2021, beginning at 8:30 AM.

45. At that public comment period, Plaintiff Common Cause’s Counsel Allison Riggs urged legislators to change the criterion providing that “Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts in the 2021 Congressional, House and Senate plans,” PX33, stating the following:

It is neither appropriate nor required to draw districts race-blind. As long as redistricting has occurred, it has been a tool used to harm voters of color. Beyond compliance with the Voting Rights Act, it is entirely appropriate to advance race-equity to consider race in the drawing of districts, to ensure that voters of color are not being packed or cracked. Additionally, in *Covington v. North Carolina*, this legislative body tried the same thing with respect to race-blind redistricting. A three-judge panel, including Republican and Democratic appointees, and a unanimous Supreme Court, rejected your race-blind remedial drawing of two Senate districts and two House districts. In fact, there is apparently not a federal judge out there who agrees with this approach, and we urge you to abandon that criteria.

PX1487.

46. On Thursday, August 12, 2021, the Joint Redistricting Committees convened to debate and vote on the 2021 Joint Redistricting Committee Proposed Criteria.

47. At this meeting, Senator Newton, Chair of the Senate Redistricting Committee, made the following statement:

The second question I want to address is the decision to exclude racial data from being used by this committee in the drawing of districts; of course we understand that North Carolina is obligated to comply with Section 2 of the Voting Rights Act when drawing districts in the 2021 Congressional, House, and Senate plans, but during the last decade the Supreme Court told us that there is not sufficient evidence of racially polarized voting in North Carolina to justify the consideration of race when drawing districts. If you have new evidence or new studies of racially polarized voting in North Carolina, we would be willing to examine that evidence, and nothing in this criteria prevents any member from bringing forward such evidence during this process.

PX77 at 10-11 (8/12/2021 Transcript).

48. In response, Senator Dan Blue stated that the Supreme Court of North Carolina held in *Stephenson v. Bartlett* that legislators were first required to determine whether districts are required to comply with the VRA. PX77 at 15 (8/12/2021 Transcript). Senator Blue queried how this would be possible without the use of racial data, stating, “I think that *Stephenson* makes it relatively clear that before you consider clustering or groupings, you have to make that VRA determination.” PX77 at 15 (8/12/2021 Transcript).

49. Senator Newton replied, “The chairs have considered the various options and we will comply with the law and the methodology we used in 2019 [sic] passed muster and we’re going to continue with that methodology.” PX77 at 15 (8/12/2021 Transcript).

50. Senator Warren Daniel then proposed that the Joint Committees add a sentence under the criteria stating, “The Committee will draw districts that comply with the Voting Rights Act.” PX77 at 15 (8/12/2021 Transcript). The amendment was adopted into the final criteria. PX77 at 18-19 (8/12/2021 Transcript).

51. After Senator Daniel proposed his amendment, Senator Blue proposed an amendment titled “Voting Rights Act.” This amendment provided: “As condemned by the United States Supreme Court in *Cooper v. Harris* and *Covington v. State of North Carolina*, African-Americans shall not be packed into any grouping or district to give partisan advantage to any political party.” PX77 at 53-55 (8/12/2021 Transcript); PX73 (proposed

amendment). During debate on this amendment, Senator Blue offered the following comment on the amendment:

The amendment is sort of self-explanatory. I simply say that for the four decades since the 1980s redistricting, starting with *Gingles v. Edmisten*, and through *Shaw v. Reno*, and through the series of cases at the early part of this century, and the cases in the last redistricting cycle, North Carolina has basically been the state with the chin out before the Supreme Court to get our redistricting plans struck down. And we've spent tens of millions of dollars over that time period, from the 80s forward, to have the Supreme Court basically say no to all of those efforts that we've done. So this is an effort to make sure that we make an effort to try and save the taxpayers what now is collectively more than 50 million dollars in efforts and futility, by setting forth that related to Senator Daniel's earlier amendment, that we know what the Voting Rights Act requires, we know what the Supreme Court has said, and this is the language that they have used with respect to, in both *Cooper v. Harris* and *Covington v. North Carolina*, what you've got to do to comply with the Voting Rights Act. I just offer the amendment so that it's constantly before us, so that we don't get tempted to sort of skirt to the edge again and cost the taxpayers another 10 to 20 million dollars defending this thing back up through the Court of Appeals or the Supreme Court, or a three-judge panel and the Supreme Court. So, I move for the adoption of the amendment.

PX77 at 53-55 (8/12/2021 Transcript).

52. During debate on the amendment, Senator Clark raised concerns about how North Carolina could comply with the VRA without considering racial data: "How do we intend to comply with the Voting Rights Act if we don't use the racial data that is required to comply with it?" PX77 at 56 (8/12/2021 Transcript). In response, Defendant Daniel expressed the view that prior case law in North Carolina did not require the use of racial data:

Just as Senator Newton explained at the beginning of the meeting, in the event that evidence is presented to the committee that there's racially polarized voting in North Carolina then that might be something the committee would need to address. At this point, the courts in 2019 and even the Democrats' own expert have said that there is not racially polarized voting in North Carolina, and so that's sort of where we think we're at.

53. PX77 at 56-57 (8/12/2021 Transcript). Senator Clark then responded: "Given that the *Stephenson* requirement is there, that we do VRA districts first, is it not incumbent upon the General Assembly itself to perform racially polarized studies in order to make that

determination that, as we are here today, that there is no racial polarization in North Carolina with regard to voting?” PX77 at 57 (8/12/2021 Transcript). Senator Daniel responded by saying, “We don’t feel that that is necessary at this point at the outset of the map drawing.” PX77 at 57 (8/12/2021 Transcript).

The amendment offered by Senator Blue failed. PX77 at 63 (8/12/2021 Transcript).

In that same meeting, Representative Hall said:

We’re agreeing – or at least we’re proposing in this criteria not to use racial data at all in the drawing of these maps, but as Senator Daniel has said, members of the committee and members of the public are welcome to gather whatever evidence and put forth evidence that might fall under Section 2 of the Voting Rights Act, that that may require some use of racial data. And, of course, that will be up to this body, to this committee, and ultimately two bodies of the two chambers as to whether to consider that and how to do that. But at this point, none of that evidence has been put forth.

PX77 at 86:10-23 (8/12/2021 Joint Committee Transcript).

54. On August 12, 2021, the Joint Redistricting Committees adopted the final redistricting criteria (“Adopted Criteria”), which were as follows:

Equal Population. The Committees will use the 2020 federal decennial census data as the sole basis of population for the establishment of districts in the 2021 Congressional, House, and Senate plans. The number of persons in each legislative district shall be within plus or minus 5% of the ideal district population, as determined under the most recent federal decennial census. The number of persons in each congressional district shall be as nearly as equal as practicable, as determined under the most recent federal decennial census.

Contiguity. No point contiguity shall be permitted in any 2021 Congressional, House, and Senate plan. Congressional, House, and Senate districts shall be compromised of contiguous territory. Contiguity by water is sufficient.

Counties, Groupings, and Traversals. The Committees shall draw legislative districts within county groupings as required by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) (*Stephenson I*), *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*), *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*) and *Dickson v. Rucho*, 368 N.C. 481, 781 S.E. 2d 460 (2015) (*Dickson II*). Within county groupings, county lines shall not be traversed except as authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*.

Division of counties in the 2021 Congressional plan shall only be made for reasons of equalizing population and consideration of double bunking. If a county is of sufficient population size to contain an entire congressional district within the county's boundaries, the Committees shall construct a district entirely within that county.

Racial Data. Data identifying the race of individuals or voters *shall not* be used in the construction or consideration of districts in the 2021 Congressional, House, and Senate plans. The Committees will draw districts that comply with the Voting Rights Act.

VTDs. Voting districts ("VTDs") should be split only when necessary.

Compactness. The Committees shall make reasonable efforts to draw legislative districts in the 2021 Congressional, House and Senate plans that are compact. In doing so, the Committee may use as a guide the minimum Reock ("dispersion") and Polsby-Popper ("permitter") scores identified by Richard H. Pildes and Richard G. Neimi in *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483 (1993).

Municipal Boundaries. The Committees may consider municipal boundaries when drawing districts in the 2021 Congressional, House, and Senate plans.

Election Data. Partisan considerations and election results data *shall not* be used in the drawing of districts in the 2021 Congressional, House, and Senate plans.

Member Residence. Member residence may be considered in the formation of legislative and congressional districts.

Community Consideration. So long as a plan complies with the foregoing criteria, local knowledge of the character of communities and connections between communities may be considered in the formation of legislative and congressional districts.

PX34; LDTX15.

D. Establishing the District Lines in the 2021 Enacted Plans

55. On Wednesday, September 1, 2021, the Joint Redistricting Committees announced a Joint Public Hearing Schedule, that would consist of 13 public hearings held from September 8, 2021, through September 30, 2021.⁵; PX86.

56. The 13 public hearings listed in the Joint Public Hearing Schedule were as follows:

- a. 6:00 PM on Wednesday, September 8, 2021, at Caldwell Community College and Technical Institute;
- b. 4:00 PM on Tuesday, September 14, 2021, at Forsyth Technical Community College;
- c. 5:00 PM on Tuesday, September 14, 2021, at Elizabeth City State University;
- d. 6:00 PM on Wednesday, September 15, 2021, at Durham Technical Community College;
- e. 5:00 PM on Wednesday, September 15, 2021, at Nash Community College;
- f. 5:00 PM on Thursday, September 16, 2021, at Alamance Community College;
- g. 3:00 PM on Thursday, September 16, 2021, at Pitt Community College;
- h. 5:00 PM on Tuesday, September 21, 2021, at Western Carolina University;
- i. 3:00 PM on Wednesday, September 22, 2021, at Central Piedmont Community College;
- j. 3:00 PM on Thursday, September 23, 2021, at Mitchell Community College, Iredell County Campus;
- k. 4:00 PM on Tuesday, September 28, 2021, at UNC Pembroke;
- l. 5:00 PM on Wednesday, September 29, 2021, at UNC Wilmington; and
- m. 6:00 PM on Thursday, September 30, 2021, at Fayetteville Technical Community College.

PX86.

1. Selection of County Groupings

57. On Tuesday, October 5, 2021, the Senate Committee on Redistricting and Elections and the House Committee on Redistricting each convened separately. The General

⁵ 9.1.21 released Hearing schedule:
<https://www.ncleg.gov/documentsites/committees/House2021-182/2021/Public%20Hearing%20Schedule.pdf>

Assembly's members were tasked with creating State House districts containing between 82,645 and 91,345 people; that is 86,995 plus or minus 5% from the ideal population. PX79 12:25–13:4 (Oct. 5, 2021). Members were tasked with creating Senate districts containing between 198,348 and 219,227 people; that is 208,788 people plus or minus 5% from the ideal population. PX80 6:5–10 (Oct. 5, 2021).

58. In both meetings, the Redistricting Chairs announced utilization of county groupings described in the academic paper *N.C. General Assembly County Clusterings from the 2020 Census* (the “Duke Academic Paper”), published on the Duke University website “Quantifying Gerrymandering.” PX79 at 8:2-4 (10/5/2021 House Redistricting Transcript); PX80 at 1–21 (10/5/2021 Senate Redistricting Transcript); PX70 (Quantifying Gerrymandering). These groupings were then verified by non-partisan staff. PX79 8:4-7 (Oct. 5, 2021).

59. The Duke Academic Paper states that “[t]he one part of *Stephenson v. Bartlett* which this analysis does not reflect is compliance with the Voting Rights Act,” PX70 (Quantifying Gerrymandering), a fact that was known to the Redistricting Chairs and announced publicly in both the House and Senate Redistricting Committee Meetings. PX80 at 18:6-9 (10/5/2021 Senate Redistricting Transcript); PX79 at 9:14-16 (10/5/2021 House Redistricting Transcript).

60. In the meeting of the Senate Committee on Redistricting and Elections, Defendant Hise provided the set of sixteen possible Senate cluster options, based upon the Duke Academic Paper, that constituted the set of options eligible for adoption (the “Duke Senate Clusters”). PX71 (“Duke Senate Groupings Maps 11x17”).

61. In this meeting, Senator Blue asked how leadership had ensured compliance with the VRA, as required under the North Carolina Constitution, in the mandated clusters without any demographic analysis. PX80 at 20-21 (10/5/2021 Senate Redistricting

Transcript). Senator Marcus stated the committee needed to conduct a Racial Polarization Analysis (“RPV”) study to ensure legal compliance. PX80 at 26 (10/5/2021 Senate Redistricting Transcript). Chair Hise confirmed the Chairs’ views that no demographic data was legally required, and that there was no directive to staff to order any RPV analysis or provide racial data to members drawing maps. PX80 at 26-27 (10/5/2021 Senate Redistricting Transcript); PX80 at 24:16-24 (10/5/2021 Senate Redistricting Transcript); PX146 Hise Dep. 185:14-22. Defendant Hise also said “this committee is still open to consider any information that exists on racially polarized voting,” Ex 80 at 31:24-32:2 (10/5/2021 Senate Redistricting Transcript), and that “if information does come forward regarding racially polarized voting, we will consider it.” PX80 at 26:12-15 (10/5/2021 Senate Redistricting Transcript).

62. In the meeting of the House Committee on Redistricting, Defendant Hall provided the set of eight possible House cluster options, based upon the Duke Academic Paper, that constituted the set of options eligible for adoption (the “Duke House Clusters”). PX72 (“Duke House Groupings Maps 11x17”).

63. In this Meeting, Representative Harrison similarly questioned how the committee would comply with the VRA, as the Duke Academic Paper stated its analysis did not reflect compliance with the VRA as required by *Stephenson*. PX79 at 36 (10/5/2021 House Redistricting Transcript). Representative Reives inquired about the obligations under the VRA and how to comply with them. PX79 at 75 (10/5/2021 House Redistricting Transcript). Chair Hall stated the committees made a decision not to use racial data, contrary to redistricting criteria used in the previous two sessions, which Chair Hall alleged to be “the best way” to ensure compliance with the VRA as well as other state and federal law. PX79 at 35 (10/5/2021 House Redistricting Transcript).

64. On Friday, October 8, 2021, Legislative Defendants received a letter from Allison J. Riggs, current counsel for Plaintiff Common Cause, concerning the county

clustering option maps introduced on Tuesday, October 5, 2021. PX1412. Representative Hall chose not to read this letter, and Sen. Hise took no action after receiving this letter. PX146 Hise Dep. 200:23-201:1, PX145 Hall Dep. 249:11-16.

65. On Monday, October 25, 2021, Legislative Defendants received a second letter from Allison J. Riggs, current counsel for Plaintiff Common Cause, concerning draft Senate map, “SST-4,” and its chosen grouping “Duke Senate 02.” PX1413. No action was taken in response to this letter. PX146 Hise Dep. 206:17-20, 211:2-6.

66. Overall, the redistricting chairs unilaterally decided not to undertake or commission any racially polarized voting study for the 2021 redistricting cycle. PX146 Hise Dep. 135:19-25. Plaintiffs evidence, however, fails to sufficiently show that any of the districts were required to be VRA districts and, to the extent *Stephenson* requires this determination at the outset, Plaintiffs do not assert a VRA claim.

2. The Map-Drawing Process

67. At the October 5, 2021, meetings, the House and Senate Chairs of the Redistricting Committees announced in their respective committee meetings that they would make computer stations available to legislators to draw maps, beginning the morning of October 6, 2021. PX1468 Daye Aff. ¶ 6. There would be four stations available to the House in Room 643 of the Legislative Office Building, and there would be four stations available to the Senate in Room 544 of the Legislative Office Building. *Id.* The stations would be open during business hours, and both the rooms and the screens of the station computers would be live streamed while the stations were open. *Id.*

68. Legislative Defendants sought to instill public confidence by requiring legislators to draw and submit maps using software on computer terminals in the redistricting committee hearing rooms. PX79 at 3:1-20 (statement of Rep. Destin Hall, Chairman, H. Comm. on Redistricting) (Oct. 5, 2021, H. Redistricting Comm. Hr’g Tr.). That

software did not include political data, and the House and Senate Committees would only consider maps drawn and submitted on the software. *Id.* at 52:3-8.

69. According to Representative Hall, the Committee and “the House as a whole” would “only consider maps that are drawn in this committee room, on one of the four stations.” PX79 at 4:15-19. “So, if a map is not drawn on one of these four stations, in this committee room, during those committee hours that the committee is open, then those maps will not be considered for a vote by this committee, and of course, will not be considered for a vote by the House.” *Id.* at 4:19-24. Legislators could ensure that was the case, Representative Hall asserted, because “when you put a map into one of these computers, that becomes a matter of public record, and we can tell which were drawn on these computers. It has to be drawn in this committee room.” *Id.* at 4:25-5:4. Representative Hall assured the public that this process would be fundamentally different from “what’s happened in the past,” where “some outside entity, a consultant, goes and they draw the map behind closed doors”; in 2021, we “will literally be drawing on the stations that you see.” *Id.* at 41:23-42:13.

70. The Committees chose this method to draw the maps on their own accord—not because the law required them to. *See, e.g.*, PX79 34:17–35:4 (Oct. 5, 2021). The Committees took “the unprecedented step of being as transparent” as they possible could. PX79. 35:21–24 (Oct. 5, 2021).

71. The Committees chose not to take racial data into account in selecting county groupings because they did not take into account in 2017 and 2019, and courts approved the 2017 and 2019 plans. PX79 37:17–25 (Oct. 5, 2021). This gave them “confidence that, without using racial data, [they would] comply with the Voting Rights Act.” PX79 39:3–5 (Oct. 5, 2021). Further, they took into account the fact plaintiffs’ experts in previous cases “all said that there is no legally significant racially polarized voting in North Carolina.” PX79 37:10-16 (Oct. 5, 2021); *see also* PX80 26:3-15 (Oct. 5, 2021).

72. Representative Hall testified that he personally drew nearly all of the House map enacted as House Bill 976, and that he did so over multiple days at an official computer terminal. PX145 at 110:4-9, 116:11-15, 120:5-24; Trial Tr. 01/05/2022. Representative Hall also testified that, between his sessions at the public terminal, he met with his then-General Counsel, Dylan Reel, and others about the map-drawing in a private room adjacent to the public map-drawing room. *Id.* at 128:2-132:17.

73. While the four computer terminals in the committee hearing room did not themselves have election data loaded onto them, the House and Senate Committees did not actively prevent legislators and their staff from relying on pre-drawn maps created using political data, or even direct consultation of political data. PX79 at 66:11-66:16. Representative Hall and Senator Ralph E. Hise, Jr., one of the Chairs of the Senate Redistricting Committee, confirmed that no restrictions on the use of outside maps were ever implemented or enforced. PX145 at 70:22-71:1 (Hall Dep.); PX 146 at 40:2-6.

3. The 2021 Redistricting Plans are Enacted

74. A placeholder version of the state House Map was filed on Thursday, October 28, 2021, as House Bill 976 (“HB976”) where it passed its first reading. A committee substitute (“HBK-14”) received a favorable review and, after one amendment, passed its second and third readings on the House and its first reading in the Senate on November 2, 2021. It received a favorable report from the Senate Redistricting Committee on November 3, 2021, without alteration and passed its second and third readings on November 4, 2021.

75. HB976 was ratified into law on November 4, 2021, as S.L. 2021-175. S.L. 2021-175 is entitled “AN ACT TO REALIGN NORTH CAROLINA HOUSE OF REPRESENTATIVES DISTRICTS FOLLOWING THE RETURN OF THE 2020 FEDERAL DECENNIAL CENSUS” and re-writes N.C.G.S. § 120-2(a) to divide the State of North Carolina into one-hundred-twenty (120) districts, with each district electing one

Representative, “[f]or the purpose of nominating and electing members of the North Carolina House of Representatives in 2022 and periodically thereafter.” 2021 N.C. Sess. Laws 175, § 1.

76. A proposed version of the state Senate map (“SST-13”) was filed on Friday, October 29, 2021, as Senate Bill 739 (“SB739”) and received its first reading in the Senate that day. It was then referred to the Senate Redistricting Committee on November 1 where the Redistricting Committee adopted a substitute along party lines (“SBK-7”). On November 2, Senator Marcus offered an amendment entitled “SBVAmend-2” to the Senate Redistricting Committee.⁶ Senator Clark also offered an amendment entitled “SCGAmend-3” to the Senate Redistricting Committee.⁷ Both amendments were adopted and included in the final version of SB739. The bill then passed its second and third readings in the Senate on November 3 along party lines and passed all three readings and the House Redistricting Committee without any alteration on November 3 – 4, 2021.

77. SB739 was ratified into law on November 4, 2021, as S.L. 2021-173. S.L. 2021-173 is entitled “AN ACT TO REALIGN THE DISTRICTS OF THE NORTH CAROLINA STATE SENATE FOLLOWING THE RETURN OF THE 2020 FEDERAL DECENNIAL CENSUS” and re-writes N.C.G.S. § 120-1(a) to establish the composition of the fifty (50) senatorial districts in the State of North Carolina, and apportion seats among those districts with each district electing one senator, “[f]or the purpose of nominating and electing members of the Senate in 2022 and periodically thereafter.” 2021 N.C. Sess. Laws 173, § 1.

⁶ <https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/11-02-2021/Adopted%20Amendments/S739-ATU-40.printing.pdf>

⁷ <https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/11-02-2021/Adopted%20Amendments/S739-ABA-40.printing.pdf>

78. A proposed Congressional map (“CST-13”) was filed on October 29, 2021, as Senate Bill 740 (“SB740”) and passed its first reading and received a favorable report from the Senate Redistricting Committee on November 1, 2021. It proceeded unaltered through its second and third readings in the Senate and its first reading in the House on November 2, received a favorable report from the House Redistricting Committee on November 3, and proceeded unaltered through its second and third readings in the House on November 4, 2021.

79. SB740 was ratified into law on November 4, 2021, as S.L. 2021-174. S.L. 2021-174 is entitled “AN ACT TO REALIGN THE CONGRESSIONAL DISTRICTS FOLLOWING THE RETURN OF THE 2020 FEDERAL DECENNIAL CENSUS” and re-writes N.C.G.S. § 163-201(a) to divide the State of North Carolina into fourteen (14) districts “[f]or purposes of nominating and electing members of the House of Representatives of the Congress of the United States in 2022 and periodically thereafter[.]” 2021 N.C. Sess. Laws 174, § 1.

80. The State House, State Senate and Congressional Maps all passed along party lines.

81. The State House map, HB976, passed the House on a strict party line vote, with 67 Republican Representatives in favor and 49 Democratic Representatives opposed. HB976 also passed the Senate on a strict party line vote, with 25 Republican Senators in favor and 21 Democratic Senators opposed.

82. The State Senate map, SB739, passed the Senate on a strict party line vote, with 26 Republican Senators in favor and 19 Democratic Senators opposed. SB739 also passed the House on a strict party line vote, with 65 Republican Representatives in favor and 49 Democratic Representatives opposed.

83. The Congressional map, SB740, passed the Senate on a strict party line vote, with 27 Republican Senators in favor and 22 Democratic Senators opposed. SB740 also

passed the House on a strict party line vote, with 65 Republican Representatives in favor and 49 Democratic Representatives opposed.

84. Plaintiffs challenge the North Carolina Congressional Districts, North Carolina Senate Districts, and North Carolina House of Representatives Districts established, respectively, by acts of our General Assembly ratified on November 4, 2021, in N.C. Sess. Laws 2021-174 (hereinafter “S.L. 2021-174” or “S.B. 740”), N.C. Sess. Laws 2021-173 (hereinafter “S.L. 2021-173” or “S.B. 739”), and N.C. Sess. Laws 2021-174 (hereinafter “S.L. 2021-175” or H.B. 976”) (collectively hereinafter, the “Enacted Plans”).

III. Extreme Partisan Gerrymandering Claims

A. Evidence Showing Partisan Intent, Effects, or a Lack Thereof

1. Direct Evidence

85. There is no express language showing partisan intent within the text of the session laws establishing the Enacted Plans.

86. The Adopted Criteria expressly forbade partisan considerations and election results data from being used in drawing districts in the Enacted Plans.

87. No elections have been conducted under the Enacted Plans to provide direct evidence of partisan effects that could be attributed as a result of the Enacted Plans.

88. The 2021 Congressional Plan was passed on strict party-line votes in the House on November 4 and the Senate on November 2. No member of the Democratic party in either chamber voted for the plan.

89. The General Assembly enacted the 2021 House Plan, on strict party-line votes, on November 4. No member of the Democratic party in either chamber voted for the plan.

90. The General Assembly enacted the 2021 Senate Plan, on strict party-line votes, on November 4. No member of the Democratic party in either chamber voted for the plan.

2. Circumstantial Evidence

a. Recent History of Partisan Redistricting Litigation and Legislation

91. The General Assembly's intentional redistricting for partisan advantage has been subject to judicial review in multiple cases over the past decade.

92. First, in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), the plaintiffs challenged North Carolina's congressional districting maps in federal court as unconstitutional partisan gerrymanders. The well-established record showed that Republican legislators leading the redistricting effort instructed their mapmaker to use political data to draw a map that would produce a congressional delegation of ten republicans and three democrats. *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 807-808 (M.D.N.C. 2018).

93. The federal district court concluded that all but one of the districts in North Carolina's 2016 Congressional Plan violated the Equal Protection Clause by intentionally diluting the voting strength of Democrats. In examining intent, effects, and causation, the concern was that such a degree of vote dilution meant the elected representatives would feel free to ignore the concerns of the supporters of the minority party. *Id.* at 867. The district court also found partisan gerrymandering claims justiciable under the First Amendment. *Id.* at 929. Despite the undisputed findings of partisan intent in drawing the challenged districts, the Supreme Court of the United States held that partisan gerrymandering claims present political questions beyond the reach of the federal courts. 139 S. Ct. at 2506-07.

94. Then, in *Common Cause v. Lewis*, 18 CVS 14001 (N.C. Super. Ct. Sep. 03, 2019), the plaintiffs challenged North Carolina's legislative maps in state court as unconstitutional partisan gerrymanders. After a federal court had struck down certain districts as unconstitutional racial gerrymanders, *Id.* at 13-14, and in 2017, the Senate

Redistricting Committee and the House Select Committee on Redistricting met to enact new plans where leaders stated that they would again employ the same mapmaker to draw these new plans and the adopted criteria allowed for political considerations and the use of election data results, *id.* at 14-16. While Republican legislators did not publicly state that they drew the maps for partisan advantage, there was meaningful dispute that this was the case. *Id.* at 23.

95. Prior to final judicial approval of the 2019 remedial maps, the court in *Common Cause* determined that the 2017 legislative maps at issue were the result of extreme partisan gerrymandering, and ordered those maps to be remedied to the extent necessary to cure that defect—in other words, to redraw the 2017 legislative maps so that the partisan gerrymandering would not be classified as “extreme.” To the extent the 2021 redistricting committees sought to retain the district lines of the 2019 maps, partisan bias, although not “extreme” by the *Common Cause* standard, is present in the Enacted Maps.

96. The three-judge panel concluded that 14 of the House district county groupings and 7 of the Senate district county groupings violated the North Carolina Constitution by operating through vote dilution such that an election would not reflect the will of the people, *Id.* at 302, by seeking to diminish the electoral power of supporters of a disfavored party, *id.* at 307, and by burdening the protected expression and association of voting, banding together in a political party, and spending on elections. *Id.* at 320. Unlike the federal court, however, the three-judge panel found that these claims were justiciable and the standards for evaluating the plaintiffs’ claims were satisfactory and manageable.

97. Finally, in *Harper v. Lewis*, 19 CVS 12667 (N.C. Super. Ct. Oct. 28, 2019), the plaintiffs sought a declaration that the 2016 congressional districts, as challenged in *Rucho v. Common Cause*, violated the rights of Democratic voters in North Carolina under the North

Carolina Constitution’s Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Freedom of Assembly Clauses. *Id.* at 1. The three-judge panel agreed with the ruling in *Common Cause v. Lewis* that extreme partisan gerrymandering is violative of the North Carolina Constitution and presented justiciable issues. *See Harper v. Lewis generally.* Noting that “the 2016 congressional districts have already been the subject of years-long litigation in federal court arising from challenges to the districts on partisan gerrymandering grounds,” the Court found that there was a detailed record of the partisan intent and effects of the 2016 congressional plan. The Court held that the Plaintiffs had shown a likelihood of success on the merits and granted the preliminary injunction, enjoining the use of the 2016 congressional districts in the 2020 election.

98. Redistricting for political gain occurred well before these most recent instances, but it has not been forbidden by the people of North Carolina through a constitutional amendment or legislative act.

99. Since the 2000 Census, there has been several proposed redistricting bills in both the House and Senate of the General Assembly. The most prominent proposed redistricting bill has been related to establishing—by constitutional amendment and statute—an independent redistricting commission.

100. In all the various iterations of proposed bills, this commission would be tasked with either the redistricting process in its entirety, removing this power from the General Assembly, or with introducing plans to the General Assembly. In all these proposed bills, the redistricting plans were to be done without consideration of political affiliation of voters, voting data from previous elections, location of incumbents’ residences, or demographic data outside of that provided by the U.S. Census Bureau. None of these bills passed, or even crossed over. With few exceptions, when Democrats have controlled the House and Senate,

Republicans have introduced these bills; and when Republicans have controlled the House and Senate, Democrats have introduced these bills.

101. From 2001-2010, the Democratic Party had control of the General Assembly. A version of the independent redistricting commission was proposed and, with the exception of the 2005-2006 session where a Democrat was the primary sponsor of the bill, Republican members of the legislature were the primary sponsors of these bills. These bills were introduced at least once during each session. H.B. 318, 2001 Leg., 144th Sess. (N.C. 2001); S.B. 283, 2001 Leg., 144th Sess. (N.C. 2001); S.B. 285, 2001 Leg., 144th Sess. (N.C. 2001); S.B. 1437, 2001 Leg., 144th Sess. (N.C. 2001); H.B. 1060, 2003 Leg., 145th Sess. (N.C. 2003); H.B. 1090, 2003 Leg., 145th Sess. (N.C. 2003); S.B. 650, 2003 Leg., 145th Sess. (N.C. 2003); S.B. 651, 2003 Leg., 145th Sess. (N.C. 2003); H.B. 1425, 2005 Leg., 146th Sess. (N.C. 2005); H.B. 1448, 2005 Leg., 146th Sess. (N.C. 2005); S.B. 430, 2005 Leg., 146th Sess. (N.C. 2005); H.B. 76, 2007 Leg., 147th Sess., (N.C. 2007); S.B. 1122, 2007 Leg., 147th Sess., (N.C. 2007); H.B. 252, 2009 Leg., 148th Sess., (N.C. 2009); S.B. 25, 2009 Leg., 148th Sess., (N.C. 2009); H.B. 894, 2009 Leg., 148th Sess., (N.C. 2009).

102. Similarly, from 2011-present, Republicans have had control over the General Assembly, and a version of this bill has had a Democratic primary sponsor; however, in the 2011-2012, 2013-2014, 2015-2016, 2016 Extra Session 4, and 2017-2018 sessions, at least one Republican was a primary sponsor of these bills. Since Republican control, Democrats have been the prominent sponsor of these bills in both the House and Senate. H.B. 783, 2011 Leg., 149th Sess., (N.C. 2011); S.B. 591, 2011 Leg., 149th Sess., (N.C. 2011); H.B. 824, 2011 Leg., 149th Sess., (N.C. 2011); H.B. 606, 2013 Leg., 150th Sess., (N.C. 2013); H.B. 910, 2013 Leg., 150th Sess., (N.C. 2013); S.B. 155, 2013 Leg., 150th Sess., (N.C. 2013); S.B. 722, 2013 Leg., 150th Sess., (N.C. 2013); H.B. 49, 2015 Leg., 152nd Sess., (N.C. 2015); S.B. 28, 2015 Leg., 152nd Sess., (N.C. 2015); H.B. 92, 2015 Leg., 152nd Sess., (N.C. 2015); H.B. 6, 2015 Leg.,

152nd Sess., (N.C. 2015); H.B. 200, 2017 Leg., 153rd Sess., (N.C. 2017); S.B. 209, 2017 Leg., 153rd Sess., (N.C. 2017); H.B. 674, 2017 Leg., 153rd Sess., (N.C. 2017); S.B. 702, 2017 Leg., 153rd Sess., (N.C. 2017); S.B. 800, 2017 Leg., 153rd Sess., (N.C. 2017); H.B. 69, 2019 Leg., 154th Sess., (N.C. 2019); H.B. 574, 2019 Leg., 154th Sess., (N.C. 2019); S.B. 641, 2019 Leg., 154th Sess., (N.C. 2019); H.B. 648, 2019 Leg., 154th Sess., (N.C. 2019); H.B. 827, 2019 Leg., 154th Sess., (N.C. 2019); S.B. 673, 2019 Leg., 154th Sess., (N.C. 2019); H.B. 436, 2021 Leg., 155th Sess., (N.C. 2021); H.B. 437, 2021 Leg., 155th Sess., (N.C. 2021); H.B. 542, 2021 Leg., 155th Sess., (N.C. 2021); S.B. 716, 2021 Leg., 155th Sess., (N.C. 2021).

b. Stated Redistricting Objectives of the General Assembly in the 2021 Enacted Plans

103. The General Assembly established a detailed record of the stated purposes of the configurations of the 2021 districts.

(i) *The 2021 Congressional Plan*

104. The legislative record shows that stated goals achieved by the 2021 Congressional Plan included the following:

- a. CD1 is anchored in northeastern North Carolina to incorporate suggestions from a public hearing in Pasquotank that this region be maintained as a community of interest. The district was configured to take in the Outer Banks and most of the State's shoreline and to keep the finger counties of northeastern North Carolina together, as well as most of the counties that run along the State's border with Virginia. LDTX78 Senate Tr. 3:7–4:3 (Nov. 1, 2021).
- b. CD2 was configured to contain most of rural northeastern North Carolina, to maintain whole counties (16 of 18 are whole), and to avoid splitting municipalities (none are split). One precinct is split in Pitt County and one in Wayne County for the purpose of equalizing population. LDTX78 Senate Tr. 4:4–15 (Nov. 1, 2021).
- c. CD3 was configured to keep mostly rural counties in southeastern North Carolina near the coast within the same district and to improve the compactness of the prior district. Input from a public hearing in New Hanover was incorporated, including that Cape Fear River Basin be kept in one district, that New Hanover and Brunswick Counties be kept together, and that Bladen and Columbus Counties be maintained in single district. LDTX78 Senate Tr. 4:16–5:11 (Nov. 1, 2021).

- d. CD4 was configured to be a four-county district south of Raleigh. These counties were chosen because they have similar geography, industry, and proximity to population base in the region in Fayetteville and Raleigh. An online comment requested that Cumberland, Harnett, and Sampson Counties be kept together in a congressional district, and this was accomplished by adding population in Johnston and one precinct in Wayne County. The district is highly compact and splits no municipalities. LDTX78 Senate Tr. 5:12–6:7 (Nov. 1, 2021).
- e. CD5 was configured to be based entirely in Wake County, comprising Garner, Knightdale, Raleigh, Rolesville, Wake Forest, Wendell, and Zebulon. These municipalities are viewed as sharing common interests, given that people live and work and commute within these municipalities; no municipalities were split. Any VTDs split were done for the purposes of maintaining municipal boundaries or equalizing population. LDTX78 Senate Tr. 6:8–20 (Nov. 1, 2021).
- f. CD6 was configured to include Durham and Orange Counties and a portion of Wake County that contains Apex, Cary, and Morrisville, which were all viewed as a coherent community of interest, and to match the configuration of this district that has existed in this region, in roughly the same form, for decades. No municipalities were split. LDTX78 Senate Tr. 6:21–7:11 (Nov. 1, 2021).
- g. CD7 runs from the Triangle west through the Central Piedmont region encompassing four whole counties, to include Alamance, Chatham, Lee, and Randolph; parts of Davidson, Guilford, and Harnett Counties and a portion of Wake County to bring together rural areas and smaller cities and towns. VTDs were only split for the purpose of equalizing population or keeping cities together. LDTX78 Senate Tr. 7:12–25 (Nov. 1, 2021).
- h. CD8 is rooted in the Sandhill region of North Carolina including eight whole counties and a portion of Mecklenburg County. The configuration was created in part based on a comment by the Moore County Democratic Chair, who suggested that Sandhills counties including Moore, Scotland, and Hoke to be kept together in a Sandhills district. LDTX78 Senate Tr. 8:3–22 (Nov. 1, 2021).
- i. CD9 constitutes the General Assembly’s effort to keep the City of Charlotte together in one district, given its cohesive community. This was not strictly possible, given that Charlotte is too large for one congressional district, but the adopted configuration succeeded in keeping 83% of Charlotte in one district that, in turn, is 97% composed of Charlotte. LDTX78 Senate Tr. 8:23–9:5 (Nov. 1, 2021).
- j. CD10 is composed of suburban and exurban areas that stretch between the population centers of Charlotte and the Triad region, which constitute a community of interest. The district keeps all of the City of High Point in a single district, based on a comment at a public hearing in Forsyth. There is one split municipality in Greensboro. LDTX78 Senate Tr. 9:6–20 (Nov. 1, 2021).
- k. CD11 is based in the northwest corner of North Carolina, containing eight whole counties and two partial counties. This was done out of a desire to maintain the incumbent in the district. Another key goal was maintaining Greensboro as much

as possible in the district, and the goal was achieved with more than 90% of Greensboro included. LDTX78 Senate Tr. 9:21–10:6 (Nov. 1, 2021).

- l. CD12 was configured to join suburbs outside Charlotte to an area in and around Winston-Salem, which was achieved by incorporating four whole counties and one partial county. No municipalities were split. LDTX78 Senate Tr. 10:7–16 (Nov. 1, 2021).
- m. CD13 contains municipalities and towns to the west and north of Charlotte based on an online comment suggesting that towns in North Mecklenburg, including Cornelius, Huntersville, and Davidson, be joined into a single district. LDTX78 Senate Tr. 10:17–11:5 (Nov. 1, 2021).
- n. Finally, CD14 is anchored in western North Carolina to take in the mountain counties up to the westernmost tip of the State; the General Assembly implemented a comment at a Jackson County public hearing asking that McDowell and Polk Counties be removed from the district and that it be drawn into Watauga County. LDTX78 Senate Tr. 11:6–21 (Nov. 1, 2021).

105. The Committees concluded that the congressional map satisfies the adopted criteria. LDTX78 Senate Tr. 11:22–12:16 (Nov. 1, 2021). All districts were drawn to zero population deviation or to one person less than ideal. There was no point contiguity used in the map and districts are compact. LDTX78 Senate Tr. 11:22–25; 12:10-11 (Nov. 1, 2021). County, VTD, and community of interest divisions were minimized. The 2021 Congressional Plan divided 11 counties solely to equalize population. VTDs were split only when necessary to balance population or keep municipalities whole, and a total of 24 VTDs were split. And there are districts wholly within Mecklenburg and Wake Counties, the only two counties of sufficient population to contain a whole Congressional district. Only two municipalities were split in the entire State, and community consideration was considered to keep cities and towns together. LDTX78 Senate Tr. 11:22–12:16 (Nov. 1, 2021).

106. The Committee concluded that no racial or political data was used in drawing the map. Member residence was considered. LDTX78 Senate Tr. 12:6-7; 12:12-16 (Nov. 1, 2021). Senator Daniel stated that, due to the political geography of the state—with Democrats congregated in the urban areas—the only way to accomplish a roughly equal

Republican-Democratic split is with a partisan gerrymander in favor of Democrats. LDTX78 Senate Tr. 18:11–21 (Nov. 1, 2021). Indeed, the largest counties had to be split to satisfy one-person, one-vote standards. *See, e.g.*, LDTX78 Senate Tr. 24:13–17 (Nov. 1, 2021).

107. One Senator noted that when metropolitan areas are split (as many have to be because of the population size), the metropolitan areas get more representatives in Congress who are able to advocate for the municipality as a whole. LDTX78 Senate Tr. 33:21–34:12 (Nov. 1, 2021). The online portal received over 4,000 comments between when they opened at November 1, 2021. LDTX78 Senate Tr. 39:5–14 (Nov. 1, 2021).

(ii) *The 2021 Senate Plan*

108. The legislative record shows that stated goals achieved by the 2021 Senate Plan included the following:

- a. SD1 was created out of county groupings in the northeastern corner of the State that would need to be comprised of 8 or 10 counties. The district includes 4 of the 5 “Finger Counties” together and combines them with the Northern Outer Banks, a suggestion made by persons at public hearings. About 70% of the counties and 81% of the population are in the Norfolk media market, with the others in the Greenville and Raleigh market. This district does not split VTDs or municipalities within the counties, as it comprises only whole counties. LDTX80 Senate Tr. 3:8–4:5 (Nov. 2, 2021); Trial Tr. 01/05/2022.
- b. SD2 follows the Roanoke River from Warren County to Albemarle Sound in Washington County. This comprises many of the counties on the Sound, including Chowan County, Hyde County, and Pamlico County. Five of the eight included counties are in the Greenville media market, with the others split between the Raleigh and Norfolk media markets. Two-third of the population of the district is within the Greenville media market. This district does not split VTDs or municipalities within the counties, as it is comprised only of whole counties. LDTX80 Senate Tr. 4:7–24 (Nov. 2, 2021).
- c. SD3 was created by the base county grouping map. It includes Beaufort, Craven, and Lenoir Counties. This district does not split VTDs or municipalities within the counties, as it is comprised only of whole counties. LDTX80 Senate Tr. 4:25–5:4 (Nov. 2, 2021).
- d. SD4 was created by the base county grouping map. It includes Green, Wayne, and Wilson Counties. This district does not split VTDs or municipalities within the

- counties, as it is comprised only of whole counties. LDTX80 Senate Tr. 5:5–9 (Nov. 2, 2021).
- e. SD5 was created by the base county grouping map. It includes Edgecombe and Pitt Counties. This district does not split VTDs or municipalities within the counties, as it is comprised only of whole counties. LDTX80 Senate Tr. 5:11–15 (Nov. 2, 2021).
 - f. SD6 is a single-county district containing only Onslow County. It was created by the base county grouping map and, as a single and whole county district, contains no split VTDs or municipalities. LDTX80 Senate Tr. 5:17–20 (Nov. 2, 2021).
 - g. SD7 contains the majority of New Hanover County in the southeast corner of the State. Because New Hanover County’s population was slightly larger than the maximum allowable population in a single district, the Committee carved out three precincts and included them in SD7. These three precincts were selected to keep all municipalities in New Hanover County whole and to keep as much population as possible in SD7. SD7 contains no split VTDs or municipalities. LDTX80 Senate Tr. 5:21–6:13 (Nov. 2, 2021).
 - h. SD8 contains Brunswick and Columbus Counties, in addition to three precincts of New Hanover County. It contains no split VTDs or municipalities. LDTX80 Senate Tr. 6:15–19 (Nov. 2, 2021).
 - i. SD9 and SD12 comprise a two district, seven county cluster created by the base county groupings in the southeastern part of the State. SD9 contains all of Bladen, Jones, Duplin, and Pender Counties, as well as the majority of Sampson County. SD12 contains a small portion of Sampson County, as well as all of Harnett and Lee Counties. The Committee endeavored to keep as much of Sampson County as possible in SD9. The Committee considered moving a single precinct from northern Sampson County into SD12, but that would have split two municipalities and placed more Sampson County residents in SD12 than the chosen route: splitting two precincts, but leaving Spivey’s Corner intact in SD9 and Plainview whole in SD12. Both SD9 and SD12 contain two split VTDs, but no split municipalities. LDTX80 Senate Tr. 6:21–7:24 (Nov. 2, 2021).
 - j. SD10 is a single-county district containing only Johnston County. It was created by the base county grouping map and, as a single and whole county district, contains no split VTDs or municipalities. LDTX80 Senate Tr. 8:1–4 (Nov. 2, 2021).
 - k. SD11 was created by the base county grouping map. It includes Franklin, Nash, and Vance Counties. This district does not split VTDs or municipalities within the counties, as it is comprised only of whole counties. LDTX80 Senate Tr. 8:5–8 (Nov. 2, 2021).
 - l. SD13, SD14, SD15, SD16, SD17, and SD18 were created out of the two-county grouping of Granville and Wake Counties. The Committee attempted to keep municipalities whole, while splitting as few precincts as possible. Some VTDs had to be split, however, to comply with one-person, one-vote standards. Raleigh had

to be split between multiple districts; 98% of Raleigh is within 3 Senate districts, though. Further, Cary and Apex were unable to be contained within a single district due to their populations and geographic constraints. All other municipalities (Fuquay-Varina, Holly Springs, Garner, Knightdale, Morrisville, Rolesville, Wake Forest, Wendell, and Zebulon) were kept whole. All in all, 10 VTDS were split to keep the municipalities whole and to balance out population. LDTX80 Senate Tr. 8:10–9:13 (Nov. 2, 2021), Trial Tr. 01/05/2022.

- a. SD13 contains all of Granville County, unincorporated areas in northern Wake County, as well as Rolesville, Wake Forest, Zebulon, and 2% of the population of Raleigh. LDTX80 Senate Tr. 9:14–23 (Nov. 2, 2021). Granville could be kept whole, so it had to be kept whole. However, it is not large enough to be a district by itself so it needed to be joined with a part of Wake County. Trial Tr. 01/05/2022.
- b. SD14 contains all of Garner, Knightdale, Wendell, and 21% of the population of Raleigh, including portions of southeast and downtown Raleigh. LDTX80 Senate Tr. 10:8–15 (Nov. 2, 2021).
- c. SD15 contains the western part of Raleigh, portions of downtown Raleigh, and portions of east Cary. 36% of the population of Raleigh resides within the district. The majority of the district’s population is from Raleigh (85%), with 12% from Cary. SD15 splits two precincts with other districts to balance population. LDTX80 Senate Tr. 10:24–11:7 (Nov. 2, 2021).
- d. SD16 is centered in Cary and contains western Wake County, including portions of Apex and all of Morrisville. 80% of Cary’s population is in the District, as well as 45% of Apex’s population. 69% of the district’s population is from Cary, 15% from Morrisville, and 13% from Apex. There are two split precincts to balance population. LDTX80 Senate Tr. 11:8–16 (Nov. 2, 2021).
- e. SD17 contains Holly Springs and Fuquay-Varina, as well as most of Apex and a small part of Cary. Three VTDs were split to keep Garner whole in SD 13, and another VTD was split to balance population between SD 16 and SD 17. LDTX80 Senate Tr. 11:20–25 (Nov. 2, 2021).
- m. SD19 and SD21 were created out of Cumberland and Moore Counties. SD19 is contained entirely within Cumberland County and was drawn to encompass as much of Fayetteville as possible, although Fayetteville has an irregular shape and many satellite annexations; indeed, it shares some precincts with other municipalities, such as Hope Mills. Ultimately, the Committee was unable to keep all of Fayetteville together but created a district that includes 88% of Fayetteville’s population and includes nearly 15% of the population of Hope Mills. The district has no split VTDs. SD21 includes all of Moore County and remainder of Cumberland County, including the remainder of Fayetteville and Hope Mills’ population. LDTX80 Senate Tr. 12:11–13:11 (Nov. 2, 2021), Trial Tr. 01/05/2022.
- n. SD20 and SD22 were created out of Chatham and Durham Counties. SD20 includes all of Chatham County, most of incorporated Durham County—including the portions of Chapel Hill in Durham County—and several peripheral Durham City precincts. The bulk of Durham City (70% of its population), which is too large

to comprise its own Senate District, is within SD22. No VTDs were split in either district. LDTX80 Senate Tr. 13:12–14:7 (Nov. 2, 2021).

- o. SD23 was created by the base county grouping map. It includes Caswell, Orange, and Person Counties. This district does not split VTDs or municipalities within the counties, as it is comprised only of whole counties. LDTX80 Senate Tr. 14:9–13 (Nov. 2, 2021).
- p. SD24 was created by the base county grouping map. It includes Hoke, Robinson, and Scotland Counties. This district does not split VTDs or municipalities within the counties, as it is comprised only of whole counties. LDTX80 Senate Tr. 14:15–15:8 (Nov. 2, 2021).
- q. SD25, SD29, SD34, and SD35 were created out of a seven-county grouping in the center of the State, including Alamance, Randolph, Cabarrus, Anson, Montgomery, Richmond, and Union Counties. Due to population disparities, Randolph, Cabarrus, and Union Counties were split between districts; the remainder were left whole. LDTX80, Senate Tr. 14:22–15:7 (Nov. 2, 2021).
 - a. SD25 contains all of Alamance County and eastern Randolph County. Faced with a choice between splitting VTDs and splitting municipalities, the Committee chose the former. One precinct was split, then, to keep all of Randleman in SD25. LDTX80, Senate Tr. 15:8–15:18 (Nov. 2, 2021).
 - b. SD29 includes all of Anson, Montgomery, and Richmond Counties; the remainder of Randolph County, including Asheboro; and the eastern half of Union County. Union County was split so as to keep all precincts whole. LDTX80, Senate Tr. 15:25–16:12 (Nov. 2, 2021).
 - c. SD34 contains most of Cabarrus County, minus the southern precincts which are in SD35. The Committee aimed to keep as much of the population of the county together as possible, which required splitting a precinct to avoid the District having a higher-than-allowable population. Another precinct was split so that all of Midland was kept in the same district. LDTX80, Senate Tr. 16:15-16-23; 17:14–17:19 (Nov. 2, 2021).
 - d. SD35 contains the remaining portions of Cabarrus and Union Counties. LDTX80, Senate Tr. 16:13–16:15 (Nov. 2, 2021).
- r. SD26, SD27, and SD28 are comprised of Guilford and Rockingham Counties. Each contains part of Greensboro, which is itself too large to comprise its own district. SD26 contains all of Rockingham County, as well as some unincorporated portions of Guilford County and some of Greensboro’s bedroom communities. While it does not contain any Greensboro precincts, it includes 4% of the city’s population. SD26 contains one VTD split, to keep the entire population of Kernersville in the district. SD27 includes southern parts of Greensboro, as well as High Point. SD28 contains the northern portion (about 2/3) of Greensboro and the majority (68%) of its population. LDTX80, Senate Tr. 17:20–19:4 (Nov. 2, 2021).
- s. SD30 was created by the base county grouping map. It includes Davie and Davidson Counties. This district does not split VTDs or municipalities within the

counties, as it is comprised only of whole counties. LDTX80, Senate Tr. 19:5–19:9 (Nov. 2, 2021).

- t. SD31 and SD32 are comprised of Stokes and Forsyth Counties. The Committee paired Forsyth with Stokes County, rather than with Yadkin County, because this pairing led to more compact districts and minimized municipality splitting; Germantown and King span the Stokes/Forsyth county line. SD31 includes all of Stokes County as well as suburban municipalities on the outskirts of Winston-Salem, such as Bethania, Clemons, Germantown, Kernersville, King, Lewis, Rural Hall, Tobaccoville, and Walkertown. Given that Winston-Salem is too large for one district, SD31 also contains 16% of the city’s population. SD32 contains the vast majority of the population of Winston-Salem (84%). Neither district contains split VTDs. LDTX80, Senate Tr. 19:11–21:4 (Nov. 2, 2021). Stokes County could be kept whole, so it was. Winston Salem is too populous to be a district by itself. Trial Tr. 01/05/2022.
- u. SD33 was created by the base county grouping map. It includes Rowan and Stanly Counties. This district does not split VTDs or municipalities within the counties, as it is comprised only of whole counties. LDTX80, Senate Tr. 21:19–21:24 (Nov. 2, 2021).
- v. SD36 is made up of Alexander, Surry, and Yadkin Counties and is the remainder of the grouping stemming from the combination of Stokes and Forsyth counties. This district does not split VTDs or municipalities within the counties, as it is comprised only of whole counties. LDTX80, Senate Tr. 21:5–21:18 (Nov. 2, 2021).
- w. SD37, SD38, SD39, SD40, SD41, and SD42 were created out of the two-county grouping of Iredell and Mecklenburg Counties. Naturally, Charlotte—the largest city in the State—is split between 5 of these Mecklenburg-based districts. Senate Tr. 21:25–22:4 (Nov. 2, 2021).
 - a. SD37 includes all of Iredell County and the northmost parts of Mecklenburg County, including Davidson (which spans both counties). SD37 also contains 33% of the population of Cornelius, which is too large to fit in SD37 alone; it is the only split municipality in the district. There are no split VTDs. LDTX80, Senate Tr. 22:5–23:22 (Nov. 2, 2021); Trial Tr. 01/05/2022.
 - b. SD38 includes much of northern Mecklenburg County, including the remainder of Cornelius, Huntersville and 14% of Charlotte. There are no split VTDs. LDTX80, Senate Tr. 23:3–23:14 (Nov. 2, 2021).
 - c. SD39 includes portions of western Mecklenburg County, including unincorporated territory along the Gaston County line and border with South Carolina. It also includes portions of Uptown, Still Creek, and West Charlotte. Indeed 81% of the district’s population is in Charlotte and the district contains 20% of the population of Charlotte. There are no split VTDs in the district. LDTX80, Senate Tr. 23:15–24:4 (Nov. 2, 2021).
 - d. SD40 includes northeastern Charlotte and unincorporated portions of Mecklenburg County running along the border with Cabarrus County. 24%

- of Charlotte's population resides in the district. The district contains no split VTDs. LDTX80, Senate Tr. 24:5–24:13 (Nov. 2, 2021).
- e. SD41 includes south Charlotte, Matthews, and Mint Hill, as well as some unincorporated territory. 18% of Charlotte's population is in this district, comprising about 71% of the district's population. The district contains no split VTDs. LDTX80, Senate Tr. 24:14–24:25 (Nov. 2, 2021). This district encompasses Matthews and Mint Hill. Trial Tr. 01/05/2022.
 - f. SD42 includes portions of Uptown Charlotte, south Charlotte, and east Charlotte. No other portions of Mecklenburg County are included. 25% of Charlotte's population lives in this district no split VTDs. LDTX80, Senate Tr. 25:1–25:18 (Nov. 2, 2021).
- x. SD43 and SD44 include Gaston, Cleveland, and Lincoln Counties. SD43 contains most of Gaston County, although 5 VTDs (in Cherryville, Landers Chapel, and Tryon) were placed in SD44 to even out population. SD44 includes these VTDs, as well as all of Lincoln and Cleveland Counties. LDTX80, Senate Tr. 25:19–26:6 (Nov. 2, 2021).
 - y. SD45, SD47, and SD50 are drawn from a grouping of 17 western North Carolina counties. Given the counties' geographic locations and populations, two of the 17 counties (Caldwell and Haywood) were required to be split. SD45 includes all of Catawba County, as well as the southeast portion of Caldwell County. SD47 contains the remainder of Caldwell County, including Lenoir. (Two VTDs were split between SD45 and SD47 to keep Lenoir whole.) SD47 also contains portions of Haywood County, including Canton, and all of Alleghany, Ashe, Avery, Madison, Mitchell, Watauga, and Yancey Counties. SD50 includes the remainder of Haywood County, and all of Cherokee, Clay, Graham, Jackson, Macon, Swain, and Transylvania Counties. SD50 contains no split precincts or municipalities. LDTX80, Senate Tr. 27:3–28:18 (Nov. 2, 2021).
 - z. SD46 includes all of Burke and McDowell Counties, as well as some unincorporated portions and small towns in Buncombe County. LDTX80, Senate Tr. 26:13–16 (Nov. 2, 2021). One VTD is split with SD49 to keep all of Woodfin within that district. SD49 contains the remainder of Buncombe County, including Asheville, Biltmore Forest, and Weaverville. LDTX80, Senate Tr. 26:21–26:2 (Nov. 2, 2021).
 - aa. There were two options for how the Buncombe grouping could be formed. They opted for the one that formed Burke County, McDowell County, and Buncombe County together because it was the more compact version. The committee determined that Burke and McDowell counties could be kept whole, so they were. SD49 was drawn to include the precincts that make up Asheville. Trial Tr. 01/05/2022.
 - bb. SD48 includes the whole of Henderson, Polk, and Rutherford Counties. LDTX80, Senate Tr. 26:7–26:12 (Nov. 2, 2021).

109. Ultimately, two amendments were accepted in the Senate Committee: (1) An amendment offered by Senator Clark changing the Guilford/Rockingham County grouping (SD26, SD27, and SD28). Senator Hise testified that this amendment was presented at the behest of Senator Robinson, a Democratic member from Guilford, who, under the version presented by the chairs, was double-bunked with Senator Garrett. Trial Tr. 01/05/2022. During debate, Senator Robinson attested in Committee that she understood the amendment complied with the VRA and considered it a fair draw. *Id.*; LDTX80, Senate Tr. 104:3–105:4 (Nov. 2, 2021). (2) An amendment offered by Senator Marcus changing the Durham/Chatham County grouping (SD20 and SD22). Senator Murdock, a Democratic member from Durham, attested in Committee that she understood the amendment complied with the VRA and considered it a fair draw. LDTX80, Senate Tr. 98-100 (Nov. 2, 2021).

110. The Committee concluded that the 2021 Senate Plan complies with the adopted criteria. The Committee determined that the Senate map successfully balances the criteria considered by Senators, including compliance with *Stephenson*, refusal to consider racial and political data, and minimizing the division of municipalities and VTDs. LDTX80, Senate Tr. 72:21–73:15 (Nov. 2, 2021).

(iii) The 2021 House Plan

111. The legislative record shows that stated goals achieved by the 2021 House Plan included the following:

- a. The mapmakers made every effort to keep previous districts intact. LDTX76, House Tr. 9:12–15 (Nov. 1, 2021).
- b. Rural areas lost immense population in the 2010s and, therefore, changes were necessary. For instance, House District 23 previously included only Edgecombe and Martin Counties. But Bertie County had to be added to meet population requirements. LDTX76, House Tr. 8:14–23 (Nov. 1, 2021).
- c. The House Committee Chair endeavored to keep counties whole whenever it was possible. For instance, although Chatham, Lee, and Polk Counties could have been split, they were not. LDTX76, House Tr. 9:20–10:4 (Nov. 1, 2021).

- d. The Chair also sought to minimize the splitting of VTDs. While the 2011 map had hundreds of split VTDs, the proposed map had only 6 VTD splits. LDTX76, House Tr. 10:5–11 (Nov. 1, 2021).
- e. The Chair honored municipal boundaries and made every effort to keep municipalities whole. To the extent splits were necessary, the majority of them were in areas with little to no population. LDTX76, House Tr. 10:12–19 (Nov. 1, 2021).
- f. Every district in the map proposed by the Chair is contiguous. LDTX76, House Tr. 10:20–21 (Nov. 1, 2021).
- g. The bare minimum number of incumbents were “double-bunked” into the same districts. LDTX76, House Tr. 10:22–10:25 (Nov. 1, 2021).

112. Goals for certain House districts in certain counties were as follows:

- a. Because the Wake county grouping added two house districts during this redistricting cycle, Representative Hall was unable to keep the districts similar to the previous redistricting plan. Towns like Wake Forest, Rolesville, and Fuquay-Varina were sought to be kept whole, with Raleigh in as few districts as possible. Trial Tr. 01/05/2022.
- b. Because Mecklenburg County grouping added one House District and an attempt was made to keep it similar to the previous redistricting plan for the county. Mint Hill was unsplit and combined with Matthews because the two communities are similar. Trial Tr. 01/05/2022.
- c. The Guilford County grouping added no seats, and a goal was to change the districts as little as possible considering past litigation of districts in the county. Only a few precincts were moved for population balancing. Trial Tr. 01/05/2022.
- d. Pitt County was previously paired with Lenoir, and therefore its configuration could no longer be kept the same. An attempt was made to not split Greenville and ECU. Trial Tr. 01/05/2022.
- e. In the Buncombe County grouping, Asheville had been divided up and a goal was to keep Asheville entirely within two districts. Trial Tr. 01/05/2022.
- f. Districts in New Hanover County were intended to remain largely the same. Wilmington is kept almost entirely within Districts 18 and 20. Trial Tr. 01/05/2022.
- g. The goal for the Cumberland County grouping was to change the districts as little as possible considering past litigation of districts in the county. A small number of precincts were changed for population purposes. Trial Tr. 01/05/2022.

- h. The Forsyth County cluster districts are largely similar to the districts in the previous map with the biggest difference being that the county is now paired with Stokes county instead of Yadkin county. A goal was to not divide schools, including Wake Forest University. Winston-Salem had to be split because of its population. Trial Tr. 01/05/2022.

113. No simulated redistricting analysis was presented during the 2021 redistricting. None of the innumerable alternative redistricting plans on the record before this Court was presented to the General Assembly during the 2021 redistricting.

114. As shown above, although the redistricting process must start anew at the beginning of each decade, and no prior maps were loaded onto the map-drawing machines for legislators or other maps allowed into the room, Representative Hall sought to draw districts as close as possible to districts used in the past and with potential litigation in mind.

c. Plaintiffs' and Legislative Defendants' Experts Analysis of the Enacted Plans

(i) Harper Plaintiffs' Expert Dr. Jowei Chen

115. Plaintiffs' expert Jowei Chen, Ph.D., is an Associate Professor in the Department of Political Science at the University of Michigan, Ann Arbor. PX482 at 2 ¶2. Dr. Chen is also a Research Associate Professor at the Center for Political Studies of the Institute for Social Research at the University of Michigan and a Research Associate at the Spatial Social Science Laboratory at Stanford University. *Id.*

116. Dr. Chen has extensive experience in redistricting matters. PX482 at 2 ¶4. Dr. Chen has published academic papers on legislative districting and political geography in several political science journals, including *The American Journal of Political Science* and *The American Political Science Review*, and *Election Law Journal*. *Id.* at 2 ¶3. His academic areas of expertise include legislative elections, spatial statistics, geographic information systems (GIS) data, redistricting, racial politics, legislatures, and political geography. *Id.* He also has expertise in the use of computer simulations of legislative districting and in

analyzing political geography, elections, and redistricting. *Id.* Dr. Chen has presented expert testimony regarding his simulation methodology in numerous prior partisan gerrymandering lawsuits, including *Common Cause v. Lewis*.

117. Dr. Chen was qualified and accepted as an expert at trial in the fields of redistricting, political geography, simulation analyses, and geographic information systems. Trial Tr. 01/03/2022.

118. Dr. Chen analyzed the partisan bias of the enacted congressional plan on a statewide and district-by-district basis. PX482 at 3 ¶6. Dr. Chen did not analyze the state legislative districts in the Enacted Plan. Based on his analysis, Dr. Chen concluded that partisan intent predominated over the 2021 Adopted Criteria in drawing the adopted congressional plan, and that the Republican advantage in the enacted plan cannot be explained by North Carolina's political geography or adherence to the Adopted Criteria. PX482 at 49 ¶¶77-78, 98, 100.

119. In his academic research on legislative districting, partisan and racial gerrymandering, and electoral bias, Dr. Chen has developed various computer simulation programming techniques that allow him to produce a large number of nonpartisan districting plans that adhere to traditional districting criteria using U.S. Census geographies as building blocks. PX482 at 4 ¶7. Dr. Chen's simulation process ignores all partisan and racial considerations when drawing districts, and the computer simulations are instead programmed to draw districting plans following various traditional districting goals, such as equalizing population, avoiding county and Voting Tabulation District (VTD) splits, and pursuing geographic compactness. *Id.* By randomly generating a large number of districting plans that closely adhere to these traditional districting criteria, Dr. Chen assesses an enacted plan drawn by a state legislature and determines whether partisan goals motivated the legislature to deviate from these traditional districting criteria. *Id.* Specifically, by

holding constant the application of nonpartisan, traditional districting criteria through the simulations, he is able to determine whether the enacted plan could have been the product of something other than partisan considerations. *Id.*

120. Because Dr. Chen analyzed only the enacted congressional plan, findings based upon his statewide, regional, and district-level analysis are made in more detail below.

(ii) Harper Plaintiffs' Expert Dr. Christopher Cooper

121. Christopher A. Cooper, Ph.D., has been a tenured or tenured-track professor in the field of political science since 2002 and is currently the Robert Lee Madison Distinguished Professor of Political Science and Public Affairs at Western Carolina University. PX425 at 1 (Cooper Rep.). Dr. Cooper was previously accepted as an expert in *Common Cause v. Lewis, et al.*, 18 CVS 014001 (Sept. 3, 2019).

122. Dr. Cooper was qualified and accepted as an expert at trial in the field of political science with a specialty in the political geography and political history of North Carolina. Trial Tr. 01/03/2022.

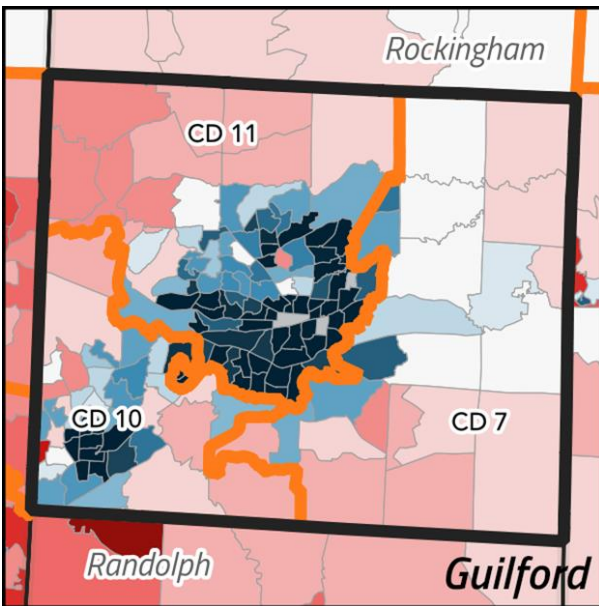
123. Dr. Cooper analyzed the 2021 Congressional Plan the partisan effects of each district's boundaries.

124. Although North Carolina gained an additional congressional seat as a result of population growth that came largely from the Democratic-leaning Triangle (Raleigh-Durham-Chapel Hill) and the Charlotte metropolitan areas, the number of anticipated Democratic seats under the enacted map actually decreases, with only three anticipated Democratic seats, compared with the five seats that Democrats won in the 2020 election. PX425 at 3. Trial Tr. 01/03/2022.

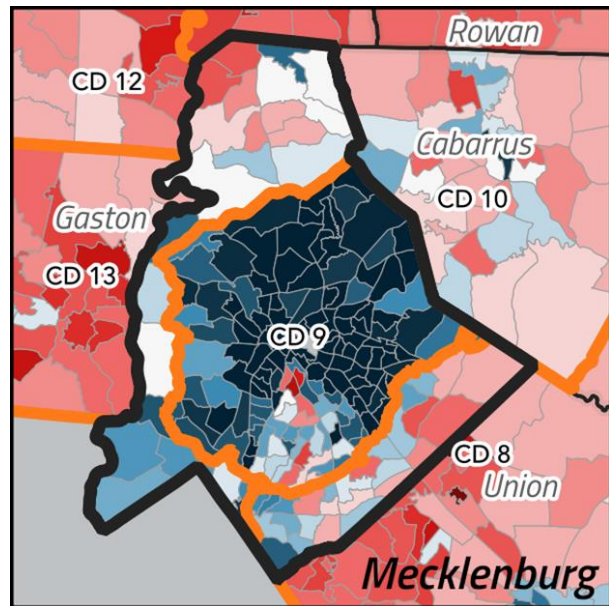
125. The 2021 Congressional Plan reduces the anticipated number of Democratic seats, disadvantaging Democratic voters, by splitting the Democratic-leaning counties of Guilford, Mecklenburg, and Wake among three congressional districts each. PX425 at 3.

There was no population-based reason to divide each of these three Democratic-leaning counties across three districts and in the congressional plan in effect for the 2020 election, Guilford County fell entirely within one district, while Mecklenburg and Wake counties were each divided into only two districts. PX425 at 3; Trial Tr. 01/03/2022.

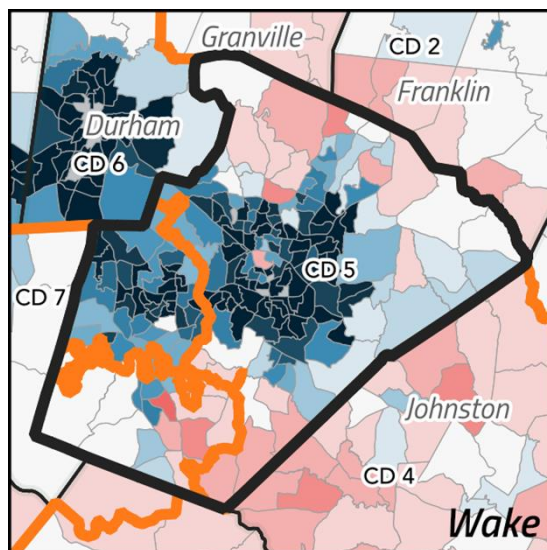
126. Dr. Cooper produced a series of maps showing the congressional district boundaries in Guilford, Mecklenburg, and Wake counties, displaying the congressional district boundaries in yellow, the county boundaries in black, and VTD boundaries in gray. Dr. Cooper also used the combined, two-party vote differential in the results of the 2020 Secretary of Labor and Attorney General elections to measure and display partisanship of the VTDs on these maps. In each map, darker red shading indicates a larger Republican vote margin in the VTD, darker blue shading indicates a larger Democratic vote margin in the VTD, and lighter colors indicate VTDs that were closer to evenly split in Democratic and Republican vote shares in the 2020 Secretary of Labor and Attorney General elections. PX425 at 15.



PX436 (Cooper Map 1)



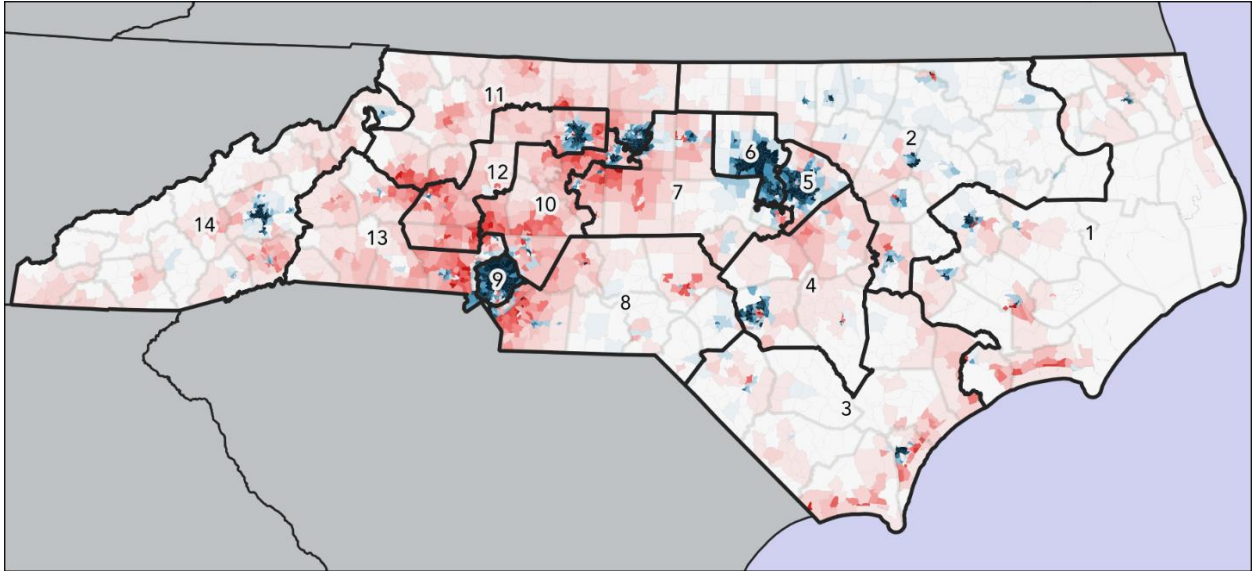
PX437 (Cooper Map 2)



PX438 (Cooper Map 3)

127. The congressional district map is best understood as a single organism given that the boundaries drawn for a particular congressional district in one part of the state will necessarily affect the boundaries drawn for districts elsewhere in the state. PX425 at 15. Trial Tr. 01/03/2022. Thus, the Court finds that the “cracking and packing” of Democratic voters in Guilford, Mecklenburg, and Wake counties has “ripple effects throughout the map.” PX425 at 15.

128. Dr. Cooper produced a map showing the state-wide congressional map with red-and-blue shading of VTDs based on the two-party vote margin in the results of the 2020 Secretary of Labor and Attorney General elections. PX425 at 15.



PX439 (Cooper Map 4)

129. Dr. Cooper calculated the two-party vote margin in the results of the 2020 Secretary of Labor and Attorney General elections for the districts in the 2021 Congressional Plan in order to estimate the partisan lean of each district. By this measure, the Court finds that the 2021 Congressional Plan will result in 10 Republican seats, 3 Democratic seats, and 1 competitive seat. PX425 at 20 & Table 1. Other measures of the partisan lean of each district in the 2021 Congressional Plan, including the Cook Political Report’s Partisan Voter Index (PVI) and the percentage of the electorate that voted for Donald Trump in the 2020 election, are consistent with the two-party vote margin in the results of the 2020 Secretary of Labor and Attorney General elections. PX425 at 20 & Table 1.

130. The 2021 Congressional Plan places the residences of an incumbent Republican representative and an incumbent Democratic representative within a new, overwhelmingly Republican district, NC-11, “virtually guaranteeing” that the Democratic incumbent will lose her seat. PX425 at 4. The 2021 Congressional Plan includes one district where no incumbent congressional representative resides. *Id.* That district, NC-4,

“overwhelmingly favors” the Republican candidate based on the district’s partisan lean. PX425 at 4.

131. The 2021 House and Senate Plans similarly benefit the Republican Party. PX425 at 49. Although certain county groupings were mandated by the *Stephenson* county grouping rule, Legislative Defendants retained discretion over certain county groupings where there were alternate possibilities. *Id.* Specifically, Legislative Defendants chose from between 16 potential different county grouping maps in the Senate and 8 different potential county grouping maps in the House. *Id.* In addition, Legislative Defendants retained discretion over where to draw the district boundaries within each grouping, with the exception of single district county groupings. *Id.*

132. Legislative Defendants’ exercise of this discretion in the Senate and House 2021 Plans resulted in Senate and House district boundaries that enhanced the Republican candidates’ partisan advantage, and this finding is consistent with a finding of partisan intent.

133. Dr. Cooper also explained how partisan redistricting carried out across the State has led to a substantial disconnect between the ideology and policy preferences of North Carolina’s citizenry and their representatives in the General Assembly.

134. Findings based upon Dr. Cooper’s analysis of each district in the 2021 Congressional Plan and State Senate and House Plans are made below.

**(iii) *Harper Plaintiffs’ and Plaintiff Common Cause’s
Expert Dr. Jonathan Mattingly***

135. Jonathan Mattingly, Ph.D., is a North Carolina native, and the James B. Duke Professor of Mathematics at Duke. PX629; PX630. Dr. Mattingly submitted a report for Harper Plaintiffs that demonstrates the extent of partisan redistricting in each of the enacted maps through longstanding statistical methods. PX629. Dr. Mattingly is an expert in applied

mathematics, probability, and statistical science. Dr. Mattingly developed his method of evaluating partisan gerrymandering in his academic research, where he leads a group at Duke University which conducts non-partisan research to understand and quantify gerrymandering. *Id.*; Trial Tr. 01/03/2022. The General Assembly, in fact, used Dr. Mattingly’s publicly-released findings from his nonpartisan research to determine possible county clusters. *Id.* at 6.

136. Dr. Mattingly has testified in two previous cases. In the federal partisan gerrymandering case relating to North Carolina’s congressional districts and in the 2019 *Common Cause* case, in which the court found that “Dr. Mattingly’s simulated maps provide a reliable and statistically accurate baseline against which to compare the 2017 Plans,” that “[b]y comparing Dr. Mattingly’s simulated plans to the enacted plans, the Court can reliably assess whether the characteristics and partisan outcomes under the enacted plans could plausibly have resulted from a nonpartisan process,” and that Dr. Mattingly’s analysis allows the court to “reliably assess whether the enacted plans reflect extreme partisan gerrymanders.” *Common Cause*, 2019 WL 4569584, at *29.

137. Dr. Mattingly was qualified and accepted as an expert at trial in the fields of applied math, statistical science, and probability. Trial Tr. 01/03/2022.

138. Dr. Mattingly used the Metropolis-Hasting Markov Chain Monte Carlo (“MCMC”) Algorithm to create a representative set, or “ensemble,” of 100,000 maps for the state legislative districts and 80,000 maps for congressional districts as benchmarks against which he could compare the enacted maps. PX629 at 10, 72; Trial Tr. 01/03/2022. The algorithm produced maps that accorded with traditional districting criteria. *Id.* at 9, 72; Trial Tr. 01/03/2022. Dr. Mattingly tuned his algorithm to ensure that the nonpartisan qualities of the simulated maps were similar to the nonpartisan qualities of the enacted map with respect to compactness and, for his primary ensembles, municipality splits. *Id.* Dr. Mattingly

also designed the algorithm to develop maps that respected the county clustering requirement for state legislative maps under *Stephenson I. Id.* at 5–6. The algorithm did not incorporate as output requirements any ideas of proportional representation or notions of fairness. *Id.* at 2. The MCMC Algorithm that Dr. Mattingly employed ensured that the collection of maps was a stable, random and representative sample from the distribution of nonpartisan maps that adhere to the redistricting criteria. *Id.* at 72; Trial Tr. 01/03/2022.

139. For Congressional Districts, Dr. Mattingly ensured that the total population of any district was within 1% of the ideal district population; he has verified in his prior work that the small changes necessary to require perfect population balance, which would require splitting VTDS, do not affect the results seen in an ensemble of maps where 1% population deviation is permitted. *Id.* After generating the sample of maps, Dr. Mattingly used votes from multiple prior North Carolina statewide elections reflecting a range of electoral outcomes to compare the partisan performance and characteristics of the 2021 Congressional Plan to the simulated plans. PX629 at 74; Trial Tr. 01/03/2022.

140. The Court finds, based upon Dr. Mattingly’s analysis, that the Congressional map is the product of intentional, pro-Republican partisan redistricting. PX629 at 75. The enacted map sticks at 4 Democrats and 10 Republicans despite large shifts in the statewide vote fraction across a wide variety of elections, in elections where no nonpartisan map would elect as few as 4 Democrats and many would elect 7 or 8. PX629 at 75. The Congressional map is “an extreme outlier” that is “highly non-responsive to the changing opinion of the electorate.” *Id.* at 74-75.

141. For State House and Senate Districts, after generating the sample of maps, Dr. Mattingly used historical elections data to simulate how his nonpartisan maps would perform under a variety of political climates. *Id.* at 10; Trial Tr. 01/03/2022. He considered the following statewide election contest in the years 2016 and 2020: races for Governor,

Lieutenant Governor, Attorney General, United States Senate, Commissioner of Insurance, State Treasurer, Secretary of State, and State Auditor. *Id.*

142. The Court finds, based upon Dr. Mattingly’s analysis, that the State House and Senate plans are extreme outliers that “systematically favor the Republican Party to an extent which is rarely, if ever, seen in the non-partisan collection of maps.” PX629 at 2. The intentional partisan redistricting in both chambers is especially effective in preserving Republican supermajorities in instances in which the majority or the vast majority of plans in Dr. Mattingly’s ensemble would have broken it. *Id.* at 3, 10. The House map is also especially anomalous under elections where a non-partisan map would almost always give Democrats the majority in the House because the enacted map denied Democrats that majority. *Id.* The probability that this partisan bias arose by chance, without an intentional effort by the General Assembly, is “astronomically small.” *Id.* at 3.

143. For the State House Districts, the enacted plan shows a systematic bias toward the Republican party, favoring Republicans in every single one of the 16 elections he considered. PX629 at 11. It is an outlier in its favoring of Republicans in the vast majority of the elections used in Dr. Mattingly’s analysis. *Id.* The only three elections where the enacted map is not an extreme outlier are in elections that have strong Republican vote fractions (Treasurer 2020, Senate 2016, and Lieutenant Governor 2016) where the Republicans do not need to gerrymander to keep a supermajority. PX629 at 12; PX634.

144. The North Carolina House maps show that they are the product of an intentional, pro-Republican partisan redistricting over a wide range of potential election scenarios. *Id.* at 10. Elections that under typical maps would produce a Democratic majority in the North Carolina House give Republicans a majority under the enacted maps. *Id.* Likewise, maps that would normally produce a Republican majority under nonpartisan maps

produce a Republican supermajority under the enacted maps. *Id.* Among every possible election that Dr. Mattingly analyzed, the partisan results were more extreme than what would be seen from nonpartisan maps. *Id.* at 11; Trial Tr. 01/03/2022. In every election scenario, Republicans won more individual seats than they statistically should under nonpartisan maps. *Id.* at 11.

145. The 2021 House Plan's partisan bias creates firewalls protecting the Republican supermajority and majority in the House, and this effect is particularly robust when the Republicans are likely to lose the supermajority: the enacted plan sticks at 48 Democratic seats or fewer, even in situations where virtually all of the plans in the nonpartisan ensemble would elect 49 Democratic seats or more. *Id.* at 11; PX633 (Mattingly Figure 5.1.1).

146. For the State Senate Districts, the results are the same: the enacted plan is an outlier or an extreme outlier in elections where Democrats win a vote share between 47.5% and 50.5%. PX629 at 21. This range is significant because many North Carolina elections have this vote fraction, and this is the range where the non-partisan ensemble shows that Republicans lose the super-majority. *Id.* But the enacted map in multiple elections used in Dr. Mattingly's analysis sticks at less than 21 Democratic seats, preserving a Democratic supermajority. Notably, the enacted map never favors the Democratic party in comparison to the non-partisan ensemble in a single one of the 16 elections that Dr. Mattingly considered.

147. Dr. Mattingly demonstrated the supermajority firewall by plotting the results of the statewide elections using the enacted Senate plan and his nonpartisan simulations in Figure 5.2.1, which is similar to Figure 5.1.1 for the House. PX629 at 22; PX643.

148. Although the effect is not as significant as in the House, the enacted plan elects fewer Democrats in each election than the majority or vast majority of plans in the non-partisan ensemble. *Id.* And in particular, the Senate plan sticks at 20 Democratic seats

across a variety of elections in which the overwhelming majority of non-partisan plans hit 21 and break the supermajority. *Id.*

149. Dr. Mattingly also performed an analysis to determine the extent of “cracking” and “packing” in the enacted maps. *Id.* at 12. In maps that are cracked and packed, it is expect to see that the concentrations of Democratic voters are outliers as compared to nonpartisan maps. *Id.* at 12.

150. For the Congressional maps, Dr. Mattingly ordered the fourteen districts in the congressional plan in his ensemble of nonpartisan plans from lowest to highest based on the Democratic vote fraction in each district, using statewide elections. PX629 at 75, Fig. 9.0.2; *see also id.* at 95-97.

151. The Court finds that cracking Democrats from the more competitive districts and packing them into the most heavily Republican and heavily Democratic districts is the key signature of intentional partisan redistricting and it is responsible for the enacted congressional plan’s non-responsiveness when more voters favor Democratic candidates, as shown in his charts. *Id.* at 75-76; Trial Tr. 01/03/2022. Across his 80,000 simulated nonpartisan plans, not a single one had the same or more Democratic voters packed into the three most Democratic districts – *i.e.*, the districts Democrats would win no matter what – in comparison to the enacted plan. *Id.* And not a single one had the same or more Republican voters in the next seven districts – *i.e.*, the competitive districts – in comparison to the enacted plan. *Id.* That was true across every single statewide election in 2016 and 2020. *Id.*

152. For the House, the enacted maps, as compared to the sample maps, there is an overconcentration of Democratic voters in the least Democratic districts and in the most Democratic districts. *Id.* at 16; PX637. The Court finds that the districts with the highest concentration of Democrats have far more Democratic voters than expected in nonpartisan

maps, and threshold districts have far fewer Democratic voters than expected in nonpartisan maps. *Id.*; Trial Tr. 01/03/2022.

153. In the middle districts—between the 60th most Democratic seat and the 80th most Democratic seat—the Democratic vote fraction in the enacted plan is far below the boxes representing the nonpartisan plans. PX629 at 16. These are the seats that determine the supermajority line and the majority line (if Republicans win the 61st seat, they win the majority, and if they win the 72nd most Democratic seat, they win the supermajority). The Court finds that the systematic depletion of Democratic votes in those districts signals packing, does not exist in the non-partisan ensemble, and is responsible for the map’s partisan outlier behavior. *Id.* Those Democrat votes are instead placed in the 90th to 105th most Democratic district, where they are wasted because those seats are already comfortably Democratic. *Id.*

154. For the Senate, the same structure appears where virtually all of the seats in the middle range that determines majority and supermajority control have abnormally few Democrats. *See* PX629 at 24; PX645.

155. While a redistricting plan’s resiliency to electoral environments is an important indicator of partisan intent, the Court finds that even if a districting plan is the product of an intentional partisan redistricting, a political gerrymander can still be broken in a wave election under the intentionally partisan maps. Trial Tr. 01/03/2022.

156. Dr. Mattingly also conducted a secondary analysis for each chamber in which he only considered plans that preserved the same or fewer incumbents than the enacted plans. The Court finds that this did not affect his results and that “a desire to prevent the pairing of incumbents cannot explain the extreme outlier behavior of the enacted plan.” PX629 at 19, 27.

157. Finally, Dr. Mattingly observed that the enacted Senate plan appeared to split very few municipalities in comparison to what was possible under a nonpartisan ensemble, while the enacted House plan split many more municipalities. PX629 at 10. He explored why the House and Senate plans would have treated municipality splits differently by creating two entirely new ensembles for the House and Senate – in the House, he created a new ensemble that prioritized preserving municipalities (as opposed to matching the enacted plan’s preservation of municipalities), and in the Senate, he created an ensemble that did not prioritize preserving municipalities. *Id.*

158. Dr. Mattingly concluded that the choice to preserve municipalities in the Senate but not in the House appeared to have been a partisan choice. He compared the partisan properties of the new ensembles to his original ensembles and found that, for the Senate plan, relaxing the requirement to preserve municipalities leads to an ensemble that is more favorable to the Democrats, meaning that the enacted plan would be an extreme outlier in more situations. *Compare* Figure 5.2.7 with Figure 5.2.1. Put differently, prioritizing municipality preservation in the Senate plan appears to enable more maps that favor Republicans. By contrast, for the House plan, where the enacted map does not prioritize preserving municipalities, he found that his new ensemble prioritizing municipalities would not have favored the Republican party in comparison. PX629 at 10. The Court finds that the mapmakers focused on municipalities in the state legislature only when doing so advantaged Republicans.

159. The partisan bias that Dr. Mattingly identified by comparing the enacted plans to his nonpartisan ensemble of plans could not be explained by political geography or natural packing. PX629 at 3. Moreover, Dr. Mattingly’s analysis did not rest on any assumption about proportional representation. *Id.*

(iv) Harper Plaintiffs' Expert Dr. Wesley Pegden

160. Wesley Pegden, Ph.D., is Associate Professor in the Department of Mathematical Sciences at Carnegie Mellon University, and testified as an expert in probability. PX523 at 1 (Pegden Report). Dr. Pegden has published numerous papers on discrete mathematics and probability in high-impact, peer-reviewed journals, and has been awarded multiple prestigious grants, fellowships, and awards. *Id.*; PX524 (Pegden CV). He previously served on Pennsylvania's bipartisan Redistricting Reform Commission under appointment by the Governor. PX523 at 1.

161. Dr. Pegden's academic work on redistricting involves Markov Chains. A Markov Chain is "a sequence of random changes." PX523 at 1 (Pegden Report). In 2017, before Dr. Pegden had ever served as an expert in redistricting litigation, he published a peer-reviewed article (PX628) entitled "Assessing Significance in a Markov Chain Without Mixing" in the Proceedings of the National Academy of Sciences—a top-ranked, science-wide journal. PX523 n.1. This article provides a new way to demonstrate that a given object is an outlier compared to a set of possibilities. PX628.

162. Dr. Pegden was qualified and accepted as an expert at trial in probability. Trial Tr. 01/03/2022.

163. Dr. Pegden explained that there are three ways to show that a given object is an outlier. One of these forms of outlier analysis, developed by Dr. Pegden and his co-authors, begins with the object in question, uses a Markov chain to make a series of small, random changes to the object, and then compares the objects generated by making the small changes to the original object. PX628 at 1. Dr. Pegden's article illustrates this methodology using a redistricting plan. *Id.* at 3-5. The article demonstrates that, by using an existing plan as a starting point and then making small random changes to the district boundaries, one can prove the extent to which the existing plan is an outlier compared to all possible maps

meeting certain criteria. *Id.* Dr. Pegden’s article proves mathematical theorems showing that this approach can establish a redistricting plan’s outlier status in a way that is rigorously grounded in mathematics. PX523 at 4 (Pegden Report). In 2020—before this case was filed or the 2021 Plans were enacted—Dr. Pegden and three co-authors (including Dr. Mattingly) published a peer-reviewed article (PX627) titled “Separating Effect from Significance in Markov Chain Tests” in the journal *Statistics and Public Policy*.

164. In this case, Dr. Pegden used his form of outlier analysis to evaluate whether and to what extent the 2021 Plans were drawn with the intentional and extreme use of partisan considerations. To do so, using a computer program, Dr. Pegden began with the enacted plans, made a sequence of small random changes to the maps while respecting certain nonpartisan constraints, and then evaluated the partisan characteristics of the resulting comparison maps. PX523 at 3-11.

165. Dr. Pegden’s analysis proceeded in several steps. He began with the enacted map. His computer program then randomly selected a geographic unit on the boundary line between two districts and attempted to move or “swap” the unit from the district it is in into the neighboring district. PX523 at 8-9. Dr. Pegden’s method uses two different geographic units, VTDs and geounits. PX523 at 8. For the congressional plan, Dr. Pegden’s primary analysis used VTDs, not geounits. *Id.* But to verify that the choice between VTDs and geounits did not affect his results, he also repeated his analyses using geounits, which allows for the splitting of VTDs. *Id.* at 8, 46. Created by a computer program, geounits are compact collections of census blocks that lie entirely within one VTD and one district, containing on average 1000 people. There are roughly four geounits per VTD. *Id.* at 8.

166. When attempting to swap a randomly selected VTD or geounit from one district to another, Dr. Pegden allowed the swap to occur only if certain constraints were satisfied. PX523 at 7 (Pegden Report). These constraints were based on the 2021 Adopted Criteria and

included: contiguity, compact districts, county preservation, municipal preservation, VTD preservation, incumbency protection, and population deviation. *Id.*

167. Dr. Pegden applied these constraints in a “conservative” way, to “avoid second-guessing the mapmakers’ choices in how they implemented the districting criteria.” PX523 at 7. For example, his algorithm generated a comparison map only if it included an equal or lesser number of county splits, municipal splits, and VTD splits as the enacted plan. *Id.* His comparison maps could not double-bunk any incumbents that were not double-bunked in the enacted plan. *Id.* For compactness, comparison maps needed to have a Polsby-Popper score within a 5% margin of the enacted plan. And for population deviation, comparison maps needed to have district populations within 2% of the ideal district population. *Id.*

168. Dr. Pegden ran several “robustness checks” to ensure that implementing the criteria differently would not affect the results of his analysis. PX523 at 39-47. For incumbency, he re-ran his analysis without restricting the double-bunking of incumbents. *Id.* at 41. For compactness, he re-ran his analysis allowing for 0% difference between the compactness of generated maps and the enacted map, and also allowing for a 10% difference. *Id.* at 42-43. He also used a different measure of compactness altogether to ensure that using the Polsby-Popper measure was not affecting his results. *Id.* at 44. For district population, Dr. Pegden re-ran his analysis with a 1% threshold for population deviation and a 0.5% deviation (the latter of which allowed for VTD splits). *Id.* at 10, 45-46. He also ran a version of his analysis using, as his baseline map, a version of the enacted map that split no VTDs. *Id.* at 10, 47. None of these changes affected Dr. Pegden’s conclusion that the congressional map is an extreme partisan outlier and is more carefully crafted to ensure Republican advantage than nearly every possible redistricting plan. *Id.* at 41-47.

169. Because of this conservative implementation of the enacted criteria, Dr. Pegden’s algorithm does not seek to generate maps better than the enacted plan in terms of their adherence to non-partisan criteria like compactness. PX523 at 7. Rather, Dr. Pegden’s approach accepts the decisions the map-maker made and asks whether, “even if we accept that the mapmakers have made appropriate choices with respect to nonpartisan criteria such as compactness, population deviation, municipality preservation, incumbency protection, and so on, does their plan nevertheless stand out with respect to its *partisan* qualities?” *Id.*

170. Once Dr. Pegden’s algorithm made a swap satisfying his constraints, his algorithm evaluated the partisan characteristics of the comparison map that resulted from the swap. PX523 at 5, 9-10. For his main analysis, Dr. Pegden used data from the 2020 Attorney General race to analyze the congressional plan. *Id.* at 39. Dr. Pegden also re-ran his analysis using three additional elections—the 2020 Presidential election, the 2020 Lieutenant Governor election, and the 2020 Governor election. *Id.* at 39-40. Using these different historical elections did not alter Dr. Pegden’s conclusions. *Id.*

171. To evaluate the partisan characteristics of each comparison map, Dr. Pegden’s algorithm calculates the number of seats Democratic candidates would win, on average, if a random uniform swing were repeatedly applied to the historical voting data being used. PX523 at 9-10. This metric captures how a given comparison map would perform over a range of electoral environments centered around the base election being used (*i.e.*, the 2020 Attorney General’s election for Dr. Pegden’s primary analysis). *Id.*

172. Dr. Pegden’s algorithm repeats the foregoing steps billions or trillions of times. The algorithm begins with the enacted map, makes a small random change complying with certain constraints, and uses historical voting data to evaluate the partisan characteristics of the resulting map. PX523 at 5. The algorithm then repeats those steps, each time using the comparison map generated by the previous change as the starting point. *Id.* By repeating

this process many times, Dr. Pegden’s algorithm generates a large number of comparison maps in sequence, each map differing from the previous map only by one small random change. *Id.* at 5, 8.

173. Each sequence of billions or trillions of small changes in Dr. Pegden’s analysis is one “run.” PX523 at 5. For the congressional plan, a run consisted of approximately one trillion small changes. *Id.* His algorithm performs multiple runs for each map being analyzed, with each run beginning with the enacted plan as the starting point. *Id.*

174. The comparison maps generated by Dr. Pegden’s algorithm are not intended to provide a baseline for what neutral, nonpartisan maps of the North Carolina House or Senate should look like. PX523 at 7, 10. Instead, Dr. Pegden’s comparison maps are intended to be *similar* to the enacted map in question with respect their relevant nonpartisan characteristics, in order to assess how carefully created the enacted plan is to maximize partisan advantage. *Id.* Thus, when Dr. Pegden reports the number of Democratic seats expected under a particular set of generated maps, that does not necessarily reflect the number of Democratic seats that would be expected under a representative set of neutral, nonpartisan districting maps. *Id.* at 10. Nor does Dr. Pegden’s method “evaluate the fairness of a districting by whether it produces a ‘small’ or ‘large number of seats for one party.’” *Id.* The number of Democratic seats expected “is merely a metric used to compare one map to another”—*i.e.*, to determine whether “the enacted map is [an] extreme outlier with respect to how optimized for partisanship it is compared to the set of alternative comparison districts of North Carolina satisfying the districting criteria [he] impose[s].” *Id.*

175. As explained in further detail below, Dr. Pegden found, and the Court so finds, that the enacted congressional plan is more favorable to Republicans than 99.9999% of the comparison maps his algorithm generated by making small random changes to the enacted

plans. *Id.* at 13. And based on these results, Dr. Pegden’s theorems prove, and the Court so finds, that the enacted congressional map is more carefully crafted to favor Republicans than at least 99.9999% of all possible maps of North Carolina satisfying the nonpartisan constraints imposed in his algorithm. *Id.*

176. The Court finds that even without using applying the mathematical theories developed in his academic papers, Dr. Pegden’s first-level analysis provides evidence that the 2021 congressional plan was “drawn to optimize partisan advantage in the enacted plan.” PX523 at 5. In every run, the enacted congressional plan was in the most partisan 0.000031% of the approximately one trillion maps generated making tiny random changes to the district’s boundaries. PX523 at 13. “[I]f the districting had not been drawn to carefully optimize its partisan bias, we would expect naturally that making small random changes to the districting would not have such a dramatic and consistent partisan effect.” *Id.* at 5. And the Court also finds that Dr. Pegden’s second-level analysis provides mathematically precise calculations of how carefully crafted the plan is—that is, how precisely the district boundaries align with partisan voting patterns so as to advantage Republicans—when compared not just to the comparison maps generated in each run of his algorithm, but to all possible maps of North Carolina that satisfy his constraints. PX523 at 6-7.

177. Dr. Pegden conducted analyses of the 2021 House and Senate maps using the same method underlying his analysis of the congressional map. PX523 at 14-15. The Court finds, as did Dr. Pegden, that the House and Senate maps are partisan outliers in their partisan bias and the degree to which they are optimized for partisan advantage. *Id.*

178. While Dr. Pegden’s overall method for analyzing the House and Senate maps was the same as for the congressional map, he made certain changes to his criteria to account for differences in how state legislative maps are drawn in North Carolina. In particular, his comparison house and Senate maps used the same county clustering as used in the enacted

maps. PX523 at 7. And his House and Senate comparison maps needed to have district populations within 5% of the ideal district population—the same threshold that the General Assembly permitted in the 2021 Adopted Criteria. *Id.*; see PX34. All other criteria—contiguity, compactness, county traversals, municipality preservation, VTD preservation, and incumbency protection—were the same as for the congressional analysis. PX523 at 7. And Dr. Pegden performed similar robustness checks to ensure that changes to these criteria (for example, using a different compactness threshold) did not affect his results, which they did not. *Id.* at 48-59.

179. For some county groupings, because of Dr. Pegden’s conservative application of his constraints, it was impossible for his algorithm to find a swap that satisfied all of the constraints. PX523 at 8. When this occurred, Dr. Pegden ran a modification of his algorithm allowing multiple swaps in one step. *Id.* at 8-9.

180. Although Dr. Pegden found that the House and Senate maps are extreme partisan outliers on a statewide basis, his primary analysis was inconclusive as to four particular House county clusters—Alamance, Brunswick/New Hanover, Cabarrus/Davie/Rowan/Yadkin, and Cumberland—which are discussed in more detail below. PX523 at 33. For these clusters, Dr. Pegden also re-ran his analysis using a different partisan metric—the “wave threshold”—to determine whether they may have been drawn to achieve “other conceivable partisan goals” besides merely maximizing Republican seat count, “such as facilitating the re-election of particular representatives in particular districts.” *Id.* The wave threshold metric captures, for a given map, the smallest uniform swing in election results that would be required to give the Democrats an additional seat. *Id.* Put differently, this metric captures how large of a Democratic wave election the cluster could withstand without losing any Republican seats. *Id.* For multiple of these groupings discussed further below, the Court finds that the enacted map was an extreme outlier in the degree to which

Democratic election performance would need to increase to produce an additional Democratic seat. *Id.* at 34-36.

181. The Court finds, as Dr. Pegden shows in his first-level analysis, that—in every run—the enacted House map was more favorable to Republicans than 99.99999% of the comparison maps generated by his algorithm making small random changes to the district boundaries. PX523 at 14. The Court also finds that the enacted Senate map was more favorable to Republicans than 99.9% of comparison maps. *Id.* at 15.

182. As with the congressional plan, Dr. Pegden’s second-level analysis provides mathematically precise calculations of how carefully crafted the 2021 House and Senate maps are—that is, how precisely the district boundaries align with partisan voting patterns so as to advantage Republicans—when compared not just to the comparison maps generated in each run of his algorithm, but to all possible maps of North Carolina that satisfy his constraints. For the enacted House map, the Court finds that the enacted map is more carefully crafted for Republican partisan advantage than at least 99.9999% of all possible maps of North Carolina satisfying his constraints. PX523 at 14. The Court also finds that the enacted Senate map is more carefully crafted for Republican partisan advantage than at least 99.9% of all possible maps of North Carolina satisfying Dr. Pegden’s constraints. *Id.* at 15.

183. These results cannot be explained by North Carolina’s political geography. PX523 at 4. Dr. Pegden’s algorithm compares the enacted map to other maps of North Carolina, with the very same political geography. And Dr. Pegden’s theorems do not depend on any aspect of North Carolina’s political geography. *Id.*

(v) NCLCV Plaintiffs' Expert Dr. Moon Duchin

184. Dr. Duchin holds a Ph.D. and an M.S. in Mathematics from the University of Chicago as well as an A.B. in Mathematics and Women's Studies from Harvard University. She is a Professor of Mathematics and a Senior Fellow in the Jonathan M. Tisch College of Civic Life at Tufts University. PX150 at 2.

185. Dr. Duchin's general research areas are geometry, topology, dynamics, and applications of mathematics and computing to the study of elections and voting. Her redistricting-related work has been published in venues such as the Election Law Journal, Political Analysis, Foundations of Data Science, the Notices of the American Mathematical Society, Statistics and Public Policy, the Virginia Policy Review, the Harvard Data Science Review, Foundations of Responsible Computing, and the Yale Law Journal Forum. *Id.*

186. Dr. Duchin was qualified and accepted as an expert at trial in the field of redistricting. Trial Tr. 01/04/2022.

187. Dr. Duchin's analysis seeks to address how a certain quantitative share of the vote should be translated to a quantitative share of the seats in a state legislature or Congressional delegation. *Id.* at 4. Dr. Duchin uses a Close-Votes-Close-Seats principle, which is where "an electoral climate with a roughly 50-50 split in partisan preference should produce a roughly 50-50 representational split." *Id.* Close-Votes-Close-Seats is not tantamount to a requirement for proportionality. Rather, it is closely related to the principle of Majority Rule, which is where "a party or group with more than half of the votes should be able to secure more than half of the seats." Close-Votes-Close-Seats is essentially a corollary (or byproduct) of Majority Rule; it is not practicable to design a map that always attains these properties. *Id.*

188. Dr. Duchin has previously analyzed the impacts of political geography in Massachusetts and found that even though Republicans tended to typically get over one-third

of the statewide vote, it was impossible to draw a single Congressional district with a Republican majority. *Id.* In North Carolina, however, Dr. Duchin’s analysis shows, and the Court so finds, that the political geography of North Carolina today does not lead only to a district map with partisan advantage given to one political party. *Id.* at 4-5.

189. The Enacted Plans behave as though they are built to resiliently safeguard electoral advantage for Republican candidates. Applying a standard technique in the field, Dr. Duchin overlaid each plan onto historical voting patterns from all 52 partisan elections since 2012 in order to show how the Enacted Plans would have performed in actual North Carolina elections. PX150 at 4-5.

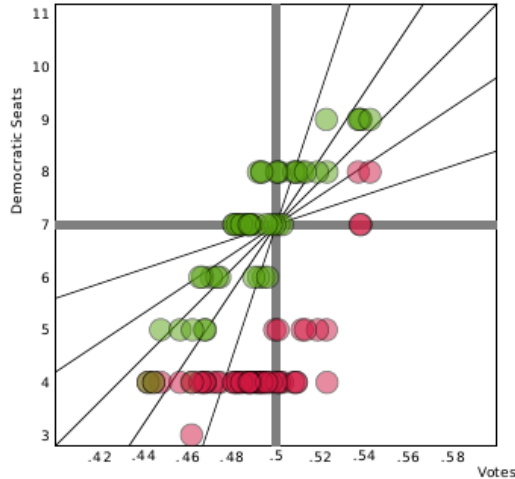
190. The results reveal a partisan skew in close elections. PX150 at 4. For instance, the 2020 vote for Chief Justice of the North Carolina Supreme Court resulted in a virtual tie, with the Republican candidate winning by 401 votes. PX150 at 6. The Enacted Plans would have converted that near tie at the ballot box into a resounding Republican victory in seat share across the board: Republicans would have won 10 (71%) of North Carolina’s congressional districts, 28 (56%) of North Carolina’s Senate districts, and 68 (57%) of North Carolina’s House districts. PX150 at 6 (line labeled JS120). Nor is that election unusual.

191. Under this analysis, the Court finds that in every single one of the 52 elections decided within a 6-point margin, the Enacted Plans give Republicans an outright majority in the state’s congressional delegation, the State House, and the State Senate. PX150 at 5-6. This is true even when Democrats win statewide by clear margins. For example, under this analysis, in the 2020 gubernatorial race, although voters in that election preferred the Democratic candidate by 4.6 percentage points, the Enacted Plans translate that preference into a Republican 10-4 (71%) majority in the state’s congressional delegation, a 27-23 (54%) majority in the state Senate, and a 62-58 (52%) majority in the state House—all when voters clearly prefer the other party. PX150 at 6.

192. The Enacted Plans resiliently safeguard electoral advantage for Republican candidates. PX150 at 5. This skewed result is not an inevitable feature of North Carolina's political geography.

193. The result of Dr. Duchin's "overlay" analysis for the Enacted Congressional Plan is clear: The plan is designed in a way that safeguards Republican majorities in any plausible election outcome, including those where Democrats win more votes by clear margins. The Enacted Congressional Plan will almost always yield 10 Republican seats and 4 Democratic seats. PX150 at 6. This includes Democratic victories as well as close elections. PX150 at 6.

194. The below figure demonstrates the bias the Enacted Congressional Plan creates across all 52 elections that Dr. Duchin studies by comparing Democratic vote share (on the x-axis) with Democratic seat share (on the y-axis) for every election. PX150 at 7. A map that responds to voters' preferences would roughly track one of the diagonal lines crossing at the "(50, 50)" point, where a 50% vote share generates a 50% seat share. Along those lines, as either party wins more votes, it wins more seats. And if either party wins a majority of votes, it wins a majority of seats. But as the figure shows, the Enacted Congressional Plan (red dots) does not come near the diagonal lines or pass anywhere close to the (50, 50) point.



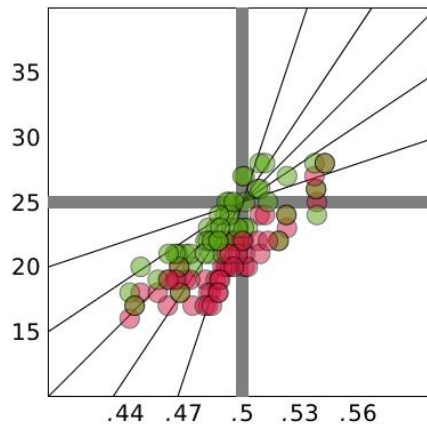
PX153 (Figure 2: Vote Shares and Seat Shares in Enacted & NCLCV Congressional Maps)

195. This shows that, under the Enacted Congressional Plan, more Democratic votes usually do not mean more Democratic seats, reflected in the flat red line near the bottom of the figure. Indeed, the bulk of the red dots are stuck on that line, where Democrats carry only 4 of 14 districts. And in each of the 12 statewide contests where the Democratic candidate won by less than seven percentage points, the winner carried only 4 or 5 of the 14 districts (these are the red dots in the lower-right quadrant, where more than half the votes generated less than half the seats for Democratic candidates). Under the Enacted Congressional Plan, a clear majority of Democratic votes does not translate into a majority of seats. The Court finds that the Enacted Congressional Plan achieves these results by the familiar means of “packing” and “cracking” Democratic voters across the state, as further described below.

196. The Enacted Senate Plan effectuates the same sort of partisan advantage as the Enacted Congressional Plan. The Enacted Senate Plan consistently creates Republican majorities and precludes Democrats from winning a majority in the Senate even when Democrats win more votes. Even in an essentially tied election or a close Democratic victory, the Enacted Senate Plan gives Republicans a Senate majority, and sometimes even a veto-

proof 30-seat majority. PX150 at 6. And that result holds even when Democrats win by larger margins. *Id.*

197. The below figure demonstrates the bias in the Enacted Senate Plan across all 52 recent partisan elections by comparing Democratic vote share (on the x-axis) with Democratic seat share (on the y-axis) across the 52 elections that Dr. Duchin used to analyze the plan. PX150 at 7. A map that responds to voters' preferences would roughly track one of the diagonal lines crossing at the "(50, 50)" point, where a 50% vote share generates a 50% seat share. As with the Enacted Congressional Plan, the Enacted Senate Plan (red dots) does not come near the diagonal lines or pass anywhere close to the (50, 50) point. Instead, the Enacted Plan falls well below all of the lines on the y-axis and crosses the x-axis far to the right of the midpoint, showing a plan that consistently denies Democrats majorities even when voters clearly prefer Democratic candidates.

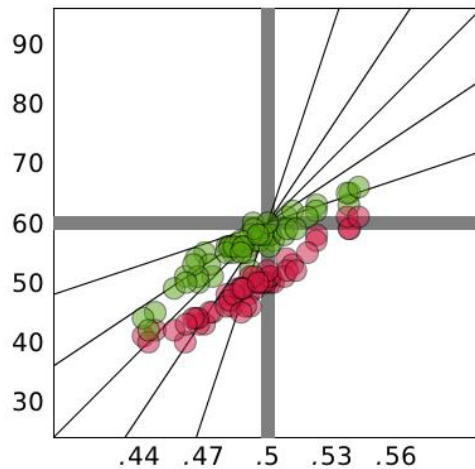


PX153 (Figure 2: Vote Shares and Seat Shares in Enacted & NCLCV Senate Maps)

198. As with the Enacted Congressional Plan, the Court finds that the Enacted Senate Plan achieves its partisan goals by packing Democratic voters into a small number of Senate districts and then cracking the remaining Democratic voters by splitting them across other districts, as further described below.

199. Similarly, the Enacted House Plan is also designed to systematically prevent Democrats from gaining a tie or a majority in the House. In close elections, the Enacted House Plan always gives Republicans a substantial House majority. That Republican majority is resilient and persists even when voters clearly express a preference for Democratic candidates. PX150 at 6.

200. The below figure plots Democratic vote share against Democratic seats across all 52 recent partisan elections studied by Dr. Duchin. Again, the Enacted House Plan (red dots) does not pass anywhere close to the (50, 50) point. Instead, the Enacted Plan falls well below the block trendlines on the y-axis and crosses the x-axis far to the right of the midpoint, showing a plan that consistently denies Democrats majorities or even a tie.



PX153 (Figure 2: Vote Shares and Seat Shares in Enacted & NCLCV House Maps)

201. As with the Enacted Congressional Plan and the Enacted Senate Plan, the Court finds that the Enacted House Plan achieves this resilient pro-Republican bias by the familiar mechanisms of packing and cracking Democratic voters, as further described below.

(vi) Plaintiff Common Cause's Expert Dr. Daniel Magleby

202. Dr. Magleby is a professor at Binghamton University, where he holds a courtesy appointment in the Department of Economics and is the director of the Center for the Analysis of Voting and Elections. PX1483 at 3.

203. Dr. Magleby was qualified and accepted as an expert at trial in the fields of political geography and legislative and congressional elections, mathematical modeling and political phenomena and measurements of gerrymandering. Trial Tr. 01/04/2022.

204. Dr. Magleby used a peer-reviewed algorithm that he developed to generate a set of unbiased maps against which he compared the enacted House, Senate, and congressional maps. PX1483 at 6. He designed this algorithm to prioritize maintaining voting districts and to draw maps that were contiguous and roughly equal in population. *Id.* Dr. Magleby then used this algorithm to develop a set of between 20,000 and 100,000 maps, from which he took a random sample of 1,000 maps that roughly met the North Carolina Legislature's 2021 criteria for drawing districts. *Id.* at 6.

205. Dr. Magleby then aggregated statewide votes from statewide races between 2016 and 2020 to the voting district level in order to determine typical partisan performance in North Carolina state elections (a "seats carried" analysis). *Id.* at 8, 9. In order to match up the vote share to the newly enacted districts, Dr. Magleby determined which simulated district a precinct would fall in and assigned that precinct's vote count to the hypothetical district. *Id.* at 7. If the precinct fell in more than one simulated district, Dr. Magleby assigned to the sample district the proportion of the votes as determined by the precinct's population that fell in the simulated district. *Id.* at 7.

206. The Court finds, as Dr. Magleby found, that the level of partisan bias in seats in the House maps went far beyond expected based on the neutral political geography of North Carolina. *Id.* at 10.

207. In the neutral maps drawn using the Adopted Criteria for drawing maps, Dr. Magleby's analysis found that Democrats most commonly won 52 seats in the North Carolina House of Representatives. *Id.* at 13. In the enacted map, on the other hand, Democrats won only 48 seats. *Id.* at 13. Out of 1,000 possible maps that the algorithm drew, only one map resulted in Democrats winning as few as 48 seats. *Id.* at 13. That amounts to a 0.1% chance that Democrats would win as few as 48 seats absent partisan bias under his analysis.

208. Because an analysis of "seats carried" is not sufficient to identify all partisan redistricting, Dr. Magleby also used median-mean calculations to measure the extent of partisan advantage—specifically, to understand how dramatically Democratic voters were treated from Republican voters and how durable that gerrymander is. *Id.* at 9. To calculate the median-mean difference, Dr. Magleby first calculated the average Democratic vote share in the House districts. *Id.* at 9–10. He then found the median Democratic vote share by lining up the enacted House districts from least Democratic to most Democratic and identifying the districts that fell in the middle. *Id.* at 10. In a nonpartisan map, a low median-mean difference is expected. *Id.*

209. The Court finds, as Dr. Magleby found, that the median-mean bias in the enacted maps was far more extreme than expected in nonpartisan maps. The nonpartisan House maps that Dr. Magleby drew most commonly had a median-mean difference in the Democratic vote share of between 0.0225 and -0.025. *Id.* at 15. The lowest median-mean difference in the generated maps was -0.034, and the highest was -0.005. *Id.* The enacted maps have a median-mean difference in Democratic vote share of -0.04. *Id.* No randomly

generated map had such an extreme median-mean share—meaning that in his analysis, he saw no simulated map that was as extreme and durable in terms of partisan advantage. *Id.*

(vii) Legislative Defendants' Expert Dr. Michael Barber

210. Dr. Barber is an associate professor of political science at Brigham Young University and faculty fellow at the Center for the Study of Elections and Democracy in Provo, Utah. He received his PhD in political science from Princeton University in 2014 with emphases in American politics and quantitative methods and statistical analyses. Dr. Barber teaches undergraduate courses in American politics and quantitative research methods, including classes about political representation, Congressional elections, statistical methods, and research design. LDTX107 at 6. Dr. Barber's research uses advanced statistical methods for the analysis of quantitative data, oftentimes in the context of election- and voting-related topics, and his research has been published numerous times in peer-reviewed journals. LDTX107 at 7.

211. Dr. Barber was qualified and accepted as an expert at trial in the areas of political geography, partisanship statistical analysis, and redistricting. Trial Tr. 01/05/2022.

212. Dr. Barber analyzed the Enacted Plans, as well as NCLCV Plaintiffs' Optimized Maps, in the context of the partisan gerrymandering claims brought by Plaintiffs challenging the North Carolina Senate and North Carolina House of Representatives Districts. LDTX107 at 5.

213. Dr. Barber utilized a publicly-available and peer-reviewed redistricting simulation algorithm to generate 50,000 simulated district maps in each county grouping in which there are multiple districts in both the North Carolina House of Representatives and the North Carolina Senate. LDTX107 at 5. In Dr. Barber's simulations, the model generates plans that adhere to the restrictions included in the North Carolina Constitution as well as the *Stephenson* criteria of roughly equal population, adherence to county cluster boundaries,

minimization of county traversals within clusters, and geographic compactness. LDTX107 at 22-23. Only after the simulated district plans are complete is the partisan lean of each district in each plan computed by utilizing two-party election results from eleven statewide elections from the past ten years; these results are disaggregated to the level of the VTD and then reassembled at the district level to compute the proportion of votes. LDTX107 at 23-24.

214. Dr. Barber's method is not without limitations. Because it is impossible for a redistricting algorithm to account for all non-partisan redistricting goals—which can be idiosyncratic and district-specific—differences between the range of his simulated plans and the 2021 Plans may be the result of non-partisan goals the algorithm failed to account for, rather than of partisan goals. In Dr. Barber's opinion, there is no way, then, to be sure that differences in partisan effects from simulated plans versus legislatively enacted plans result from partisan intent rather than from non-partisan goals the algorithm was not programmed to achieve. This means that the simulation method can be indicative on the question of partisan intent, but not necessarily dispositive, and under Dr. Barber's analysis, it is plausible that the 2021 Plans were prepared without partisan data or considerations.

215. Dr. Barber's definition of a partisan outlier is if the number of Democratic districts generated by the plan falls outside the middle 50% of simulation results, which he considers a conservative definition of an outlier rather than the traditional definition of falling outside the middle 95% or 90% of the comparison distribution. LDTX107 at 29. In the House of Representatives, one county grouping is a partisan outlier under this analysis, and in the Senate, two county groupings are partisan outliers under this analysis. LDTX107 at 5; *id.* at 157 (Guilford House grouping); *id.* at 227 (Granville and Wake Senate grouping); *id.* at 233 (Iredell and Mecklenburg Senate grouping).

216. Supporting Dr. Barber's finding of limited partisan outliers is the spatial distribution of voters throughout the state, which can have an impact on the partisan

outcomes of elections when a state is, by necessity, divided into a number of legislative districts. This is largely the case because Democratic-leaning voters tend to cluster in dense, urban areas while Republican-leaning voters tend to be more equally distributed across the remainder of the state. This pattern holds true in North Carolina. LDTX107 at 10-13.

217. As a result of the spatial distribution of voters throughout the state, under Dr. Barber's analysis there are many more VTDs with efficient Republican majorities than there are VTDs with efficient Democratic majorities. LDTX107 at 14. And therefore, Dr. Barber concludes the advantage between the expected Republican seat share in the state legislature compared to the statewide Republican vote share in the recent past is more due to geography than partisan activity by Republican map drawers. LDTX107 at 15.

(viii) Legislative Defendants' Expert Dr. Andrew Taylor

218. Dr. Taylor is a tenured professor of political science at North Carolina State University and has taught at NC State since receiving his Ph.D. from the University of Connecticut in 1995. He teaches an array of courses in American politics, served as chair of the Department of Political Science from 2006 to 2010, and served as President of the North Carolina Political Science Association in 2012-13. LDTX108 at 2.

219. Dr. Taylor has written four books and published extensively in political science journals, including authoring twenty-eight peer-reviewed articles and other published work. His work utilizes a diverse array of methodologies, including different statistical techniques, and has included research on redistricting and North Carolina politics. *Id.*

220. Dr. Taylor was qualified and accepted as an expert at trial in the areas of political science, political history of North Carolina, and its constitutional provisions, and the comparative laws and Constitutions in other states and jurisdictions. Trial Tr. 01/04/2022.

221. Dr. Taylor analyzed the Enacted Plans deploying his knowledge of North Carolina political history and legislative politics, comparative politics, and American national and state politics and policy. LDTX108 at 2-3.

222. There is no recognized baseline of transparency for legislative redistricting, and the 2021 redistricting was a transparent and participatory process in comparison to North Carolina's past redistricting and that by legislative bodies in other states. TR 01/04/2022.

223. Complaints about unfair district lines as removed from the concepts of free elections, equal protection, and free speech and assembly are different than how those ideas have historically been understood by political scientists. LDTX108 15–25. A free election is not generally understood by political scientists to be one without burdens on the right to vote (since basic regulatory frameworks necessarily place some burden on that right), and a given districting system is not generally understood as essential to the meaning of free elections (since even free elections have limited options in all events). *Id.* at 21–22.

224. Likewise in political science, an election is generally regarded as “equal” so long as “[e]ach person has one vote to elect one legislator who has one vote in the legislature,” and departures even from that ideal are tolerated (as in the case of non-citizens, who are counted towards the baseline of district population even though they are not permitted to vote). *Id.* at 23. In political science, equal outcomes are not generally accepted as a necessary facet of equal elections, administering such a rule would seem to be unworkable, and voting is not a feature of party participation but of individual participation as a citizen. *Id.* In this respect, it makes no sense to refer to citizens as having cast “wasted” votes; it is the parties, not voters, who are properly viewed as wasting votes.” *Id.* at 24.

225. Similarly, purportedly “fair” redistricting plans are not understood in the political-science field as germane to free speech, which can occur regardless of the shapes and sizes of districts. *Id.* at 24–25.

226. For many of these reasons, measuring gerrymanders can be elusive, problematic, and beyond the consensus of political scientists. *See id.* at 25–32. Measuring an alleged gerrymander as one that “produce[s] outcomes in which the share of the legislative body’s seats won by a party is not proportionate with its share of the aggregate statewide vote and/or . . . produce too many districts where there is little meaningful competition” runs into the problem that “proportionality was not an objective of the designers of our electoral system.” *Id.* at 27. Further, the goals of proportionality and competitiveness are often incompatible. *Id.* at 27–29.

227. Prominent political science measures of “fairness” have proven incapable of commanding consensus because they are all deficient in one or more respects. *Id.* at 29–38. Those methods tied to a measure of vote totals and seat totals are too tied into proportionality to present a meaningful notion of fairness, especially given that avoiding this problem would require gerrymandering in favor of the party complaining of unfairness. *Id.* at 34–37. Many measures of fairness are too subjective to be of use to political scientists. *See id.* at 38. All measures require judgment calls like choice of metrics and elections data for measuring partisan effect, which is a fluid concept that changes year to year. *Id.* at 37.

228. The Democratic Party’s message is successful only in limited geographic areas, LDTX108 at 38–41, so any partisan “effect” the Democratic Party or its supporters complain of could be understood as the natural and probable consequences of neutral factors that cannot be considered unfair or adverse as a factual matter. There has been a significant change in North Carolina’s political geography over the past thirty years. *Id.* at 39-40.

Whereas Democrats formerly did well in rural areas, especially in the eastern part of the state, and Republicans were competitive in urban and suburban areas, that is no longer true. “The transformation is not the result of redistricting.” *Id.* at 40. Instead, it is a function of slow social and economic forces, changes in the state’s citizenry, and party ideology. *Id.* at 40-41.

(ix) *Legislative Defendants’ Rebuttal Expert Sean Trende*

229. Sean Trende is currently enrolled as a doctoral candidate in political science at The Ohio State University. His coursework for his Ph.D. and M.A.S. included, among other things, classes on G.I.S. systems, spatial statistics, issues in contemporary redistricting, machine learning, non-parametric hypothesis tests and probability theory. He expects to receive his Ph.D. in May of 2021. His dissertation focuses on applications of spatial statistics to political questions. LDTX106 at 1-2. Mr. Trende is a Senior Elections Analyst with RealClearPolitics, where he’s been since January of 2009 after practicing law for 8 years. He is also a Visiting Scholar at the American Enterprise Institute and has authored or co-authored books analyzing demographic and political trends as well as the dynamics behind elections. He has spoken on these topics as well and has taught classes on American Politics and the Mass Media, Political Participation and Voting Behavior. *Id.* at 2. He sits on the advisory panel for the “States of Change: Demographics and Democracy” project, sponsored by the Hewlett Foundation. The project looks at trends among eligible voters and the overall population to explain the impact of changes on American politics. *Id.* at 4.

230. Mr. Trende has authored expert reports in 15 voting rights cases and currently serves as one of two special masters appointed by the Supreme Court of Virginia to redraw districts that will elect the commonwealth’s representatives to the House of Delegates, state Senate, and U.S. Congress. *Id.* at 7.

231. Mr. Trende was qualified and accepted as an expert at trial in the areas of political science, redistricting, drawing redistricting maps and analyzing redistricting maps. Trial Tr. 01/05/2022.

232. Mr. Trende created images by examining the Complaints filed by the plaintiffs in this action. He examined whether the districts were challenged as either partisan gerrymanders or districts that diluted minority voting power. LDTX106 at 7. He then downloaded the enacted plans from the legislative redistricting website and used R, a statistical programming tool, to color-code the districts by plaintiff group, based upon who challenged which districts. *Id.* In Exhibit 2 to his affidavit, Mr. Trende submitted 8 maps identifying the districts challenged by each Plaintiff group in these consolidated cases. *Id.* He also created color-coded maps showing each county in North Carolina, noting the number of counties in which a majority of voters voted for the Republican presidential candidate in the past decade (between 70 and 76 counties) and whether the Republican candidate performed better in a county than nationally. *Id.* at 8.

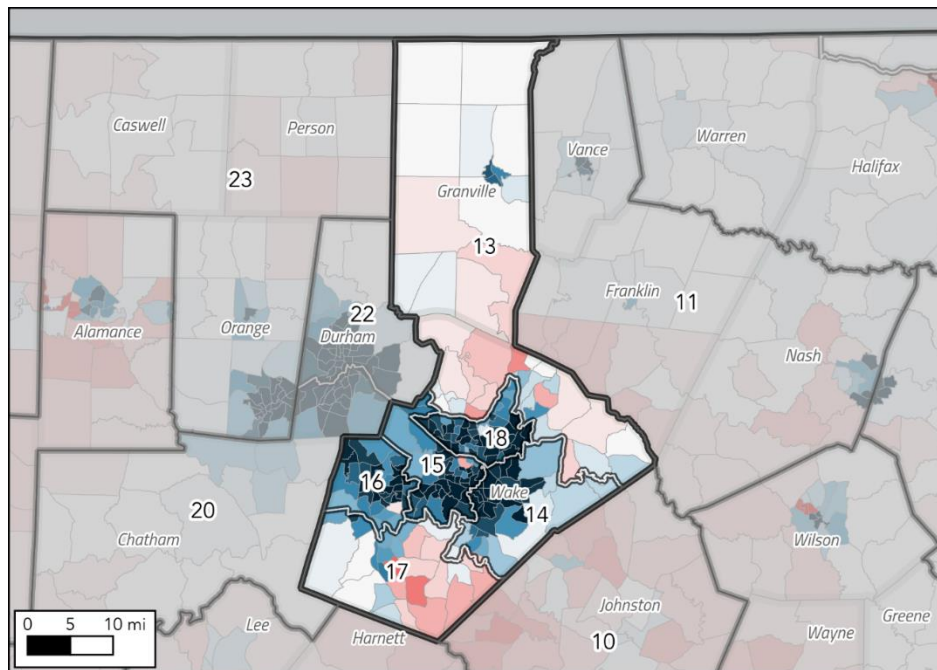
B. District-by-District Analysis

1. North Carolina Senate Districts

233. Plaintiffs' experts analyzed specific county groupings in the enacted Senate plan. Plaintiffs' experts concluded that partisan redistricting and bias in these groupings was responsible for the partisan bias that they found in their statewide analysis of the enacted Senate plan. The results of the analysis conducted by Legislative Defendants' expert Dr. Barber reinforce this conclusion.

a. Granville-Wake Senate County Grouping

234. The Granville-Wake County Grouping contains Senate District 13 (“SD13”), Senate District 14 (“SD14”), Senate District 15 (“SD15”), Senate District 16 (“SD16”), Senate District 17 (“SD17”), and Senate District 18 (“SD18”). SD13 is comprised of Granville County and portions of Wake County. SD14, SD15, SD16, SD17, and SD18 are comprised of portions of only Wake County. Plaintiffs challenge these Senate Districts as the product of unlawful partisan gerrymanders.

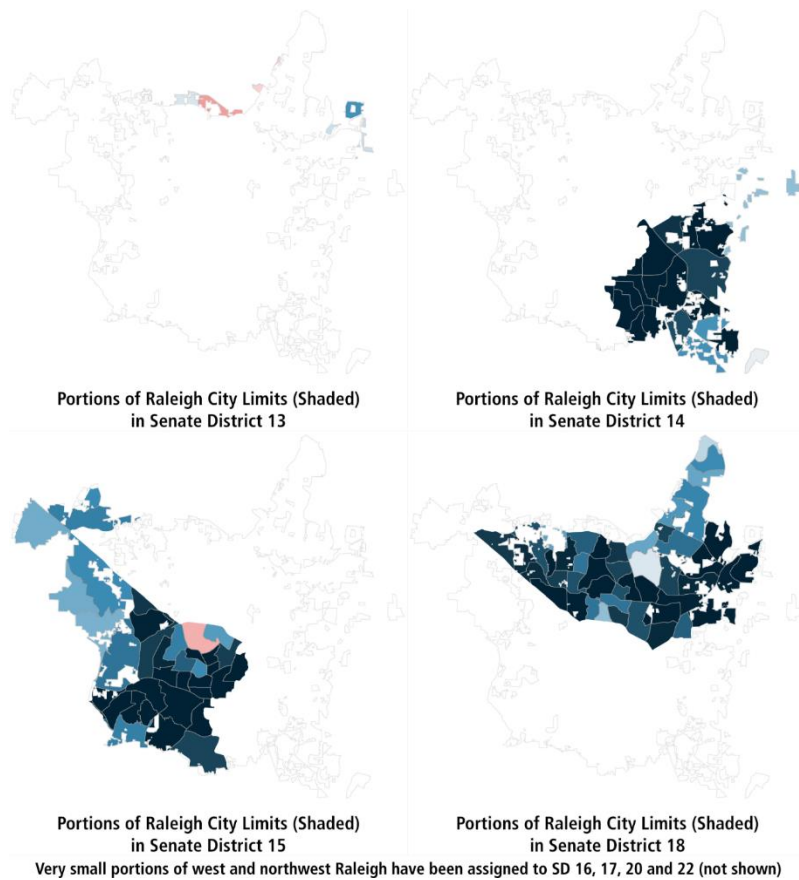


PX454 (Cooper Map 19)

235. Harper Plaintiffs challenge this Senate county grouping. Individual Harper Plaintiff Rebecca Harper resides in SD17. Individual Harper Plaintiff John Anthony Balla resides in SD18. No Individual Plaintiff resides in SD13, SD14, SD15, or SD16. Organizational Plaintiff NCLCV challenges every Senate District in this county grouping. Organizational Plaintiff Common Cause challenges every Senate District in this county grouping except for SD13 and 18.

236. The district lines in this cluster pack Democratic-leaning VTDs into Senate Districts 14, 15, 16, and 18, in order to make Senate District 13, in the north, and Senate District 17, in the south, as competitive as possible for Republican candidates. Senate District 13 pairs all of “purple” Granville County with the Republican-leaning VTDs on the northern and northeastern portions of Wake County, avoiding the Democratic-leaning VTDs in North Raleigh. Some of the Democratic-leaning VTDs in North Raleigh are packed into Senate District 18, leading to a “horn-shaped section” of that district that borders Senate District 13. PX425 at 50.

237. Raleigh is divided into all of the districts in this cluster, with most of Raleigh’s few Republican-leaning VTDs included in Senate District 13, in the north. PX425 at 50; PX455.



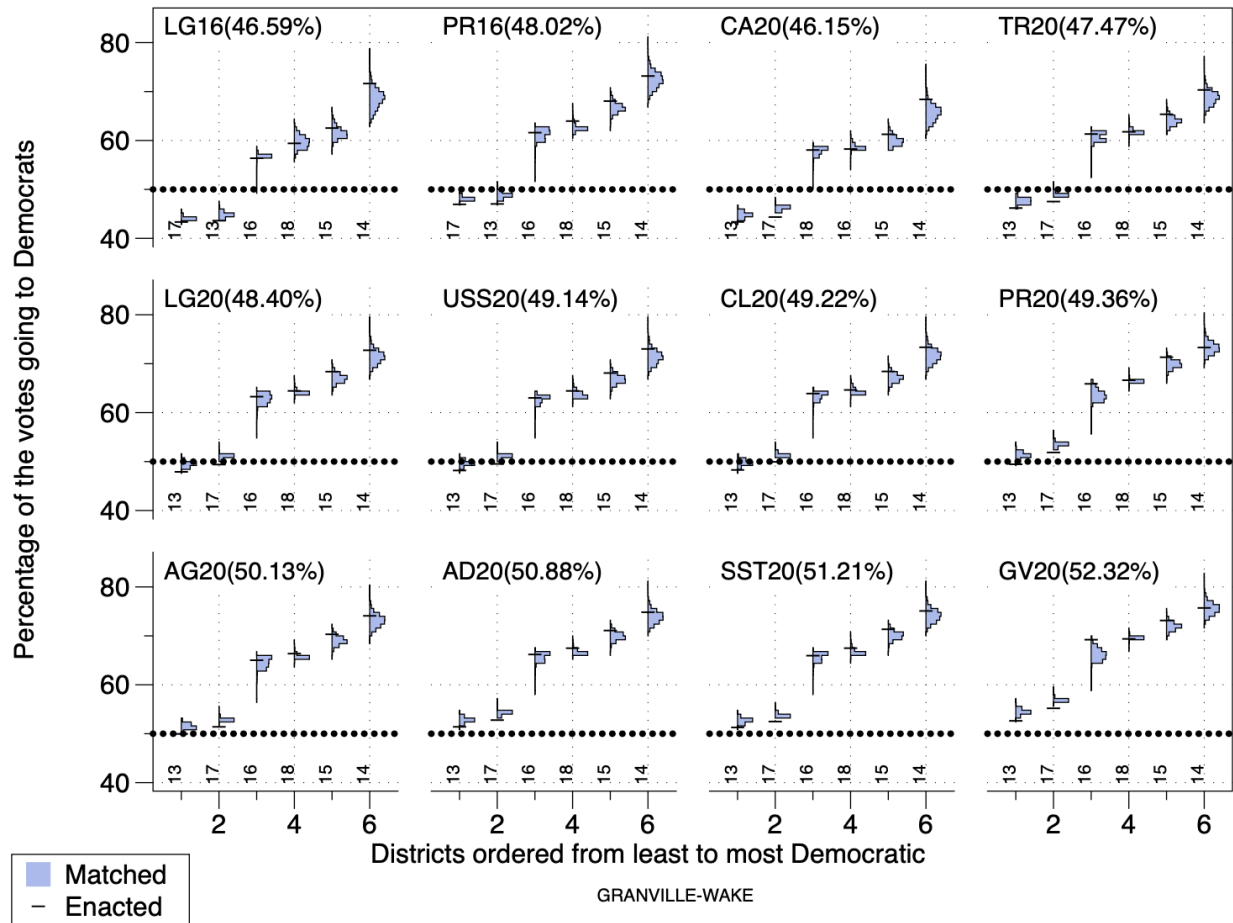
PX455 (Cooper Map 20)

238. The simulations of Drs. Mattingly and Pegden confirm Dr. Cooper’s analysis and independently establish that the Granville-Wake county grouping is an intentional, pro-Republican partisan redistricting.

239. Dr. Mattingly analyzed individual county groupings by plotting the Democratic vote fraction in each district in the grouping, ordered from least to most Democratic. *See* PX629 at 29. He conducted this analysis for the enacted plan (represented by a black line in his county-grouping-level figures) and for his ensemble of nonpartisan plans (represented by the blue histograms), using 12 prior statewide elections in 2020 and 2016. PX629 at 38; PX654. If the black line representing the enacted plan is above the dotted black line at 50%, the Democrats win that district under the enacted plan. *Id.* If all or the bulk of the blue histogram representing the ensemble is above the dotted black line at 50%, the Democrats would expect to win that district under the ensemble. *Id.* Dr. Mattingly labeled the historical election whose statewide vote counts he was using at the top of each plot. Black lines that are at the bottom of the corresponding blue histogram represent districts that Democrats have been cracked out of, because the enacted plan has many fewer Democrats than would be expected in the nonpartisan plans; black lines that are at the top of the corresponding blue histogram represent districts that Democrats have been packed into. *Id.*

240. Figure 6.2.4 shows Dr. Mattingly’s analysis of this grouping.

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PX663 (Mattingly Figure 6.2.4)

241. The Court finds that Democrats were cracked out of the two most Republican districts (District 17 and 13) and packed into the most Democratic districts (Districts 14, 15, 16, and 18). PX629 at 57; PX663. (Page 57 of Dr. Mattingly’s report concerning Granville-Wake contains a typo that he identified at his deposition: he states that Districts 17 and 18 are cracked, when he meant (and the Figure shows) that districts 17 and 13 are packed. He correctly states that “districts 14, 15, 16, and 18” are in fact packed.) The effect is that the Republicans win two out of six districts under the enacted plan in several elections where they never would under the nonpartisan ensemble, such as the Lieutenant Governor 2020 or Senate 2020 election. PX629 at 57; PX663. Dr. Mattingly quantified the cracking of Democrats: Across every election he considered, *none* of the approximately 40,000 plans in

his ensemble had as low a fraction of Democrats in the two most Republican districts in the Granville-Wake cluster as in the enacted plan. *Id.*

242. District 13 and District 17 favor Republicans in nearly all elections in Dr. Duchin's sample as well. PX201 "SL-173" B14:BA19.

243. The Court finds, as Dr. Pegden's findings show, that the Granville-Wake Senate county grouping is the result of intentional, pro-Republican partisan redistricting. In his first-level analysis, Dr. Pegden found that the enacted plan's version of this grouping is more favorable to Republicans than 99.999989% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second-level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.999969% of all possible districting of this county grouping that satisfy the criteria Dr. Pegden used. PX523 at 30.

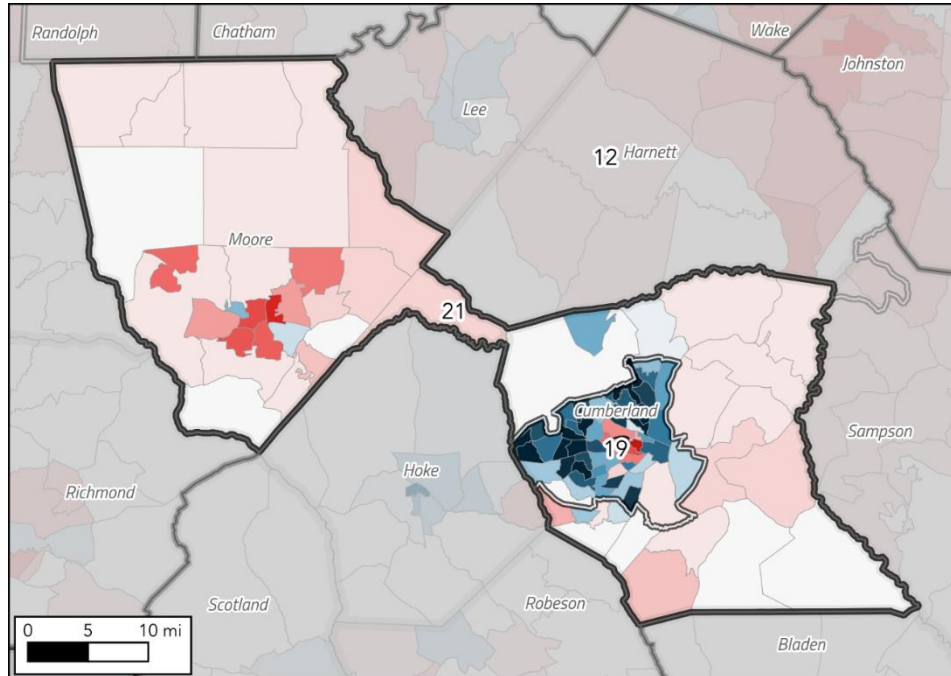
244. Drawing the districts in this manner also reduced compactness: The average Polsby-Popper score of Districts 13, 14, 15, 16, 17, and 18 is 0.31. PX150 at 15. Drawing more compact districts in Wake and Granville Counties would have generated more competitive districts in the cluster.

245. In the Granville-Wake Senate cluster, which Legislative Defendants' expert Dr. Barber refers to as "solidly Democratic" and found to be a partisan outlier, *see* LDTX107 at 221, the enacted map is a partisan outlier under 10 of the 11 elections Dr. Barber analyzed. Under seven of those 11 elections, Democrats win fewer seats under the enacted map that they would under 96-100% of his simulations. *Id.* at 228.

246. The Court finds the districts in the Granville-Wake Senate county grouping, SD13, SD14, SD15, SD16, SD17, and SD18, to be the result of intentional, pro-Republican partisan redistricting.

b. Cumberland-Moore Senate County Grouping

247. The Cumberland-Moore County Grouping contains Senate District 19 (“SD19”) and Senate District 21 (“SD21”). SD19 is comprised of portions of Cumberland County. SD21 is comprised of Moore County and portions of Cumberland County. Plaintiffs challenge these Senate Districts as the product of unlawful partisan gerrymanders.

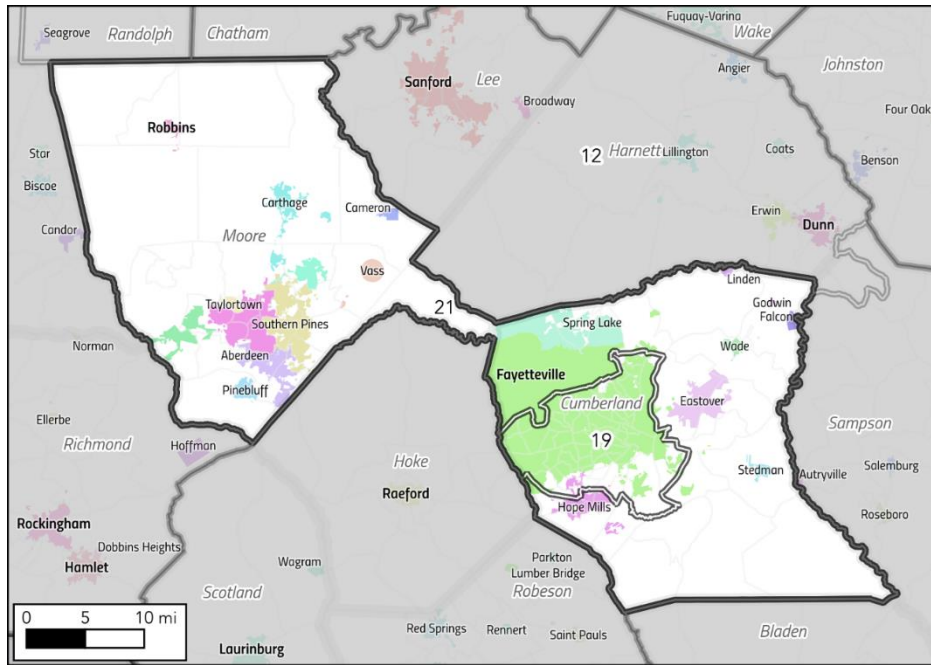


PX459 (Cooper Map 24)

248. Harper Plaintiffs challenge this Senate county grouping. Individual Harper Plaintiff Sarah Taber resides in SD19. No Individual Plaintiff resides in SD21. Organizational Plaintiff Common Cause challenges both Senate Districts in this county grouping.

249. The district lines pack Democratic voters in and around Fayetteville into Senate District 19, leaving Senate District 21 as a Republican-leaning district. PX425 at 59; Trial Tr. 01/03/2022.

250. The district lines split the cities of Fayetteville and Hope Mills across both districts in the cluster, PX460, but the most Democratic-leaning VTDs in those cities are packed into Senate District 19. PX425 at 59; PX459; Trial Tr. 01/03/2022.

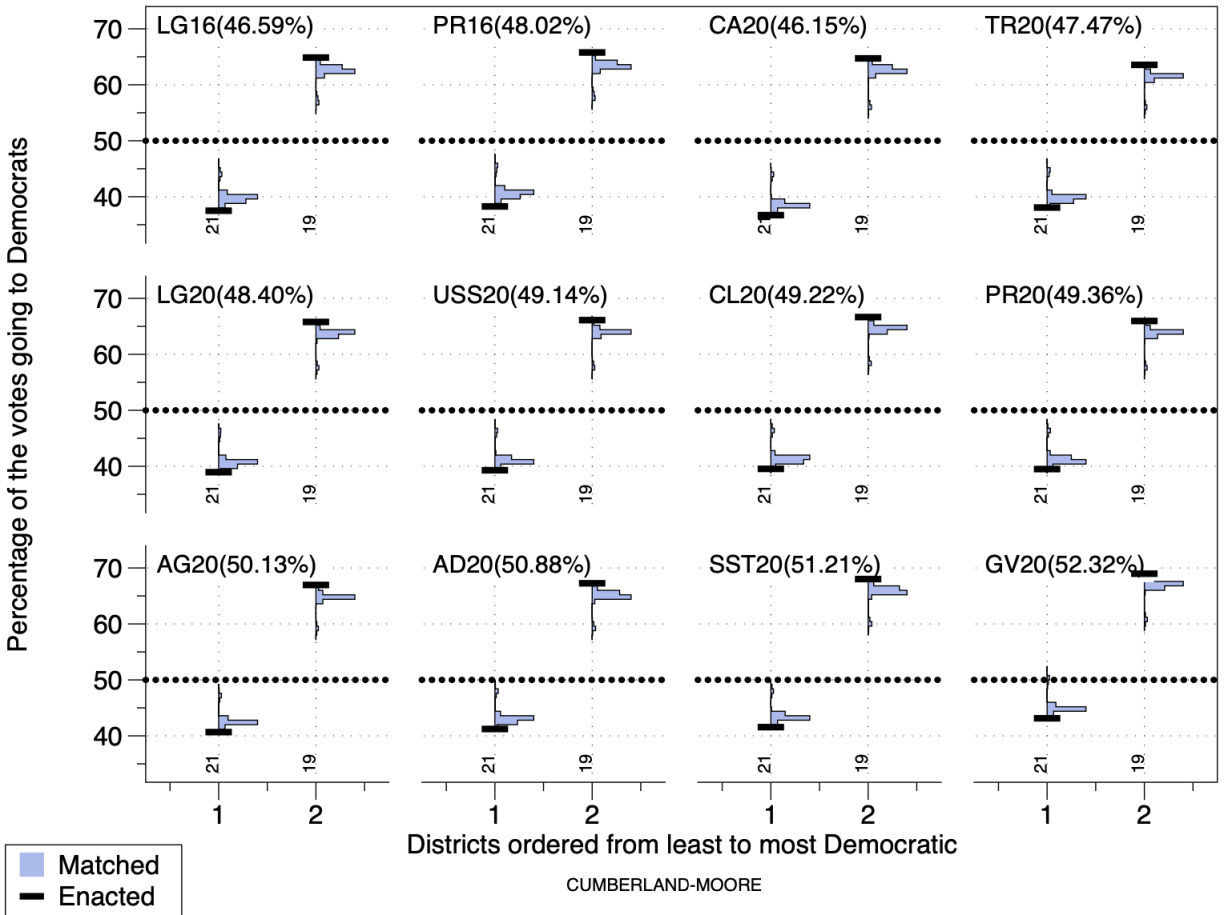


PX460 (Cooper Map 25)

251. The simulations of Drs. Mattingly and Pegden confirm Dr. Cooper’s analysis and independently establish that the Cumberland-Moore county grouping is an intentional, pro-Republican partisan redistricting.

252. Figure 6.2.10 shows Dr. Mattingly’s analysis of this grouping.

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PX665 (Mattingly Figure 6.2.10)

253. The Court finds that Democrats were cracked out of the most Republican district and packed into the most Democratic district to make the map maximally nonresponsive, even though this does not affect the number of seats won in the particular 12 elections that Dr. Mattingly considered. PX629 at 61; PX665.

254. The Court finds, as Dr. Pegden’s findings show, that the Cumberland-Moore Senate county grouping is the result of intentional, pro-Republican partisan redistricting. In his first-level analysis, Dr. Pegden found that the enacted plan’s version of this grouping is more favorable to Republicans than 99.9999949% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second-level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least

99.999984% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. PX523 at 28.

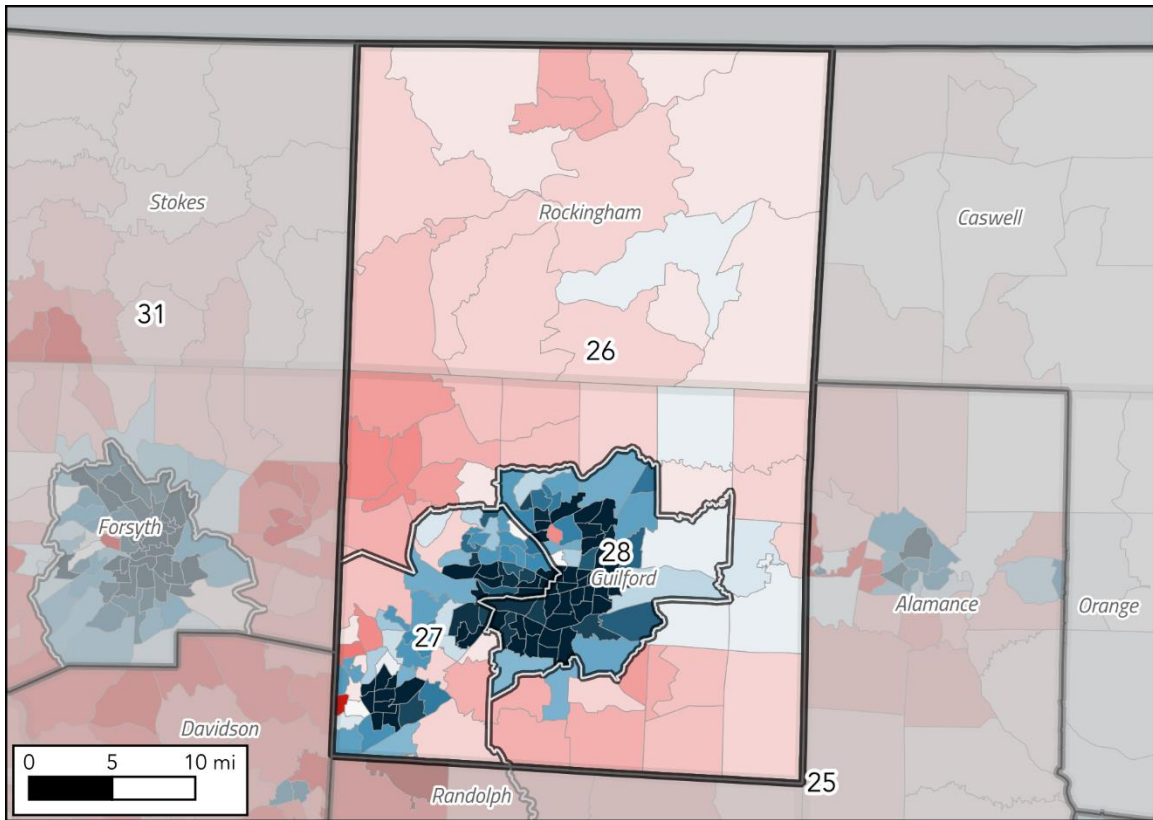
255. In the Cumberland-Moore Senate county grouping, under each of the 11 elections that Legislative Defendants' expert Dr. Barber considered, Democrats win one seat under the enacted map and in 77% of Dr. Barber's simulations, LDTX107 at 184, even though, under one election, Democrats would have won two seats under 93% of Dr. Barber's simulations. *Id.* at 188.

256. The Court finds the districts in the Cumberland-Moore Senate county grouping, SD19 and SD21, to be the result of intentional, pro-Republican partisan redistricting.

c. Guilford-Rockingham Senate County Grouping

257. The Guilford-Rockingham County Grouping contains Senate District 26 ("SD26"), Senate District 27 ("SD27"), and Senate District 28 ("SD28"). SD26 is comprised of Rockingham County and portions of Guilford County. SD27 and SD28 are comprised of portions of only Guilford County. Plaintiffs challenge these Senate Districts as the product of unlawful partisan gerrymanders.

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PX456 (Cooper Map 21)

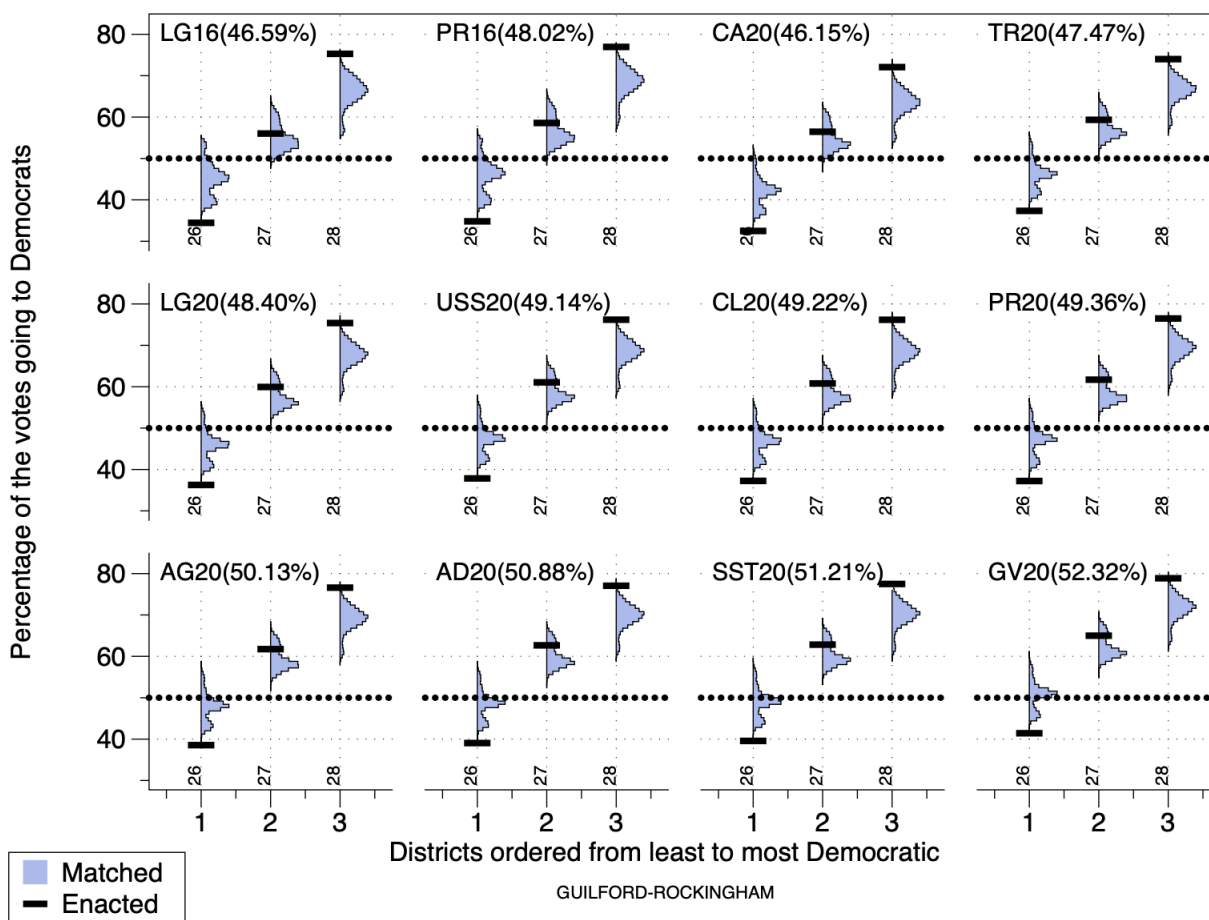
258. Harper Plaintiffs and Individual NCLCV Plaintiffs challenge this Senate county grouping. Individual NCLCV Plaintiffs Dandrielle Lewis and Talia Fernos and Individual Harper Plaintiffs David Dwight Brown, Joshua Perry Brown and Donald M. MacKinnon reside in SD27. Individual Harper Plaintiff Lily Nicole Quick resides in SD28. No Individual Plaintiff resides in SD26. Organizational Plaintiff NCLCV challenges all three Senate Districts in this county grouping. Organizational Plaintiff Common Cause challenges only SD27 and SD28.

259. Guilford County, which includes Greensboro and High Point, is among the most Democratic counties in North Carolina, while Rockingham leans toward the Republicans. The district lines pack Democratic voters into Senate Districts 27 and 28, allowing for a “safe Republican” Senate District 26 to wrap around those other districts in a

“C-shape” that connects the northern and southern boundaries of this cluster. House District 26 extends from Rockingham County into the Republican-leaning VTDs in western Guilford County on one side, and into southern Guilford County on the other, avoiding the most Democratic-leaning VTDs on the district’s inner borders. PX425 at 53.

260. The simulations of Drs. Mattingly and Pegden confirm Dr. Cooper’s analysis and independently establish that the Guilford-Rockingham county grouping is an intentional, pro-Republican partisan redistricting.

261. Figure 6.2.13 shows Dr. Mattingly’s analysis of this grouping.



PX666 (Mattingly Figure 6.2.13)

262. The Court finds that the three districts in the Guilford-Rockingham grouping are constructed to pack an exceptional number of Democrats in the most Democratic district

(District 28) to crack Democrats out of the most Republican district (District 26). PX629 at 63. The effect is to ensure a Republican victory in the district 26, when in some elections in the nonpartisan ensemble that district would go to the Democratic Party. PX629 at 63. None of the plans in Dr. Mattingly's nonpartisan ensemble had fewer Democrats in the most Republican district than the enacted plan – in other words, zero of the plans in his nonpartisan ensemble cracked Democrats as substantially as the enacted plan. *Id.*

263. In the 2020 presidential election, 61% of Senate District 27's major-party voters voted for President Biden. In Senate District 28, that figure was 76%. PX201 "SL-173" AO28:AO29. By wasting these surplus Democratic votes, the Enacted Senate Plan ensures that Senate District 26 will reliably vote for Republican candidates: In the same race, only 37% of District 26's major-party voters cast their ballots for President Biden. PX201 "SL-173" AO27:AO29; PX422 at 53.

264. The Court finds, as Dr. Pegden's findings show, that the Guilford-Rockingham Senate county grouping is the result of intentional, pro-Republican partisan redistricting. In his first-level analysis, Dr. Pegden found that the enacted plan's version of this grouping is more favorable to Republicans than 99.999957% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second-level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.99987% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. PX523 at 31.

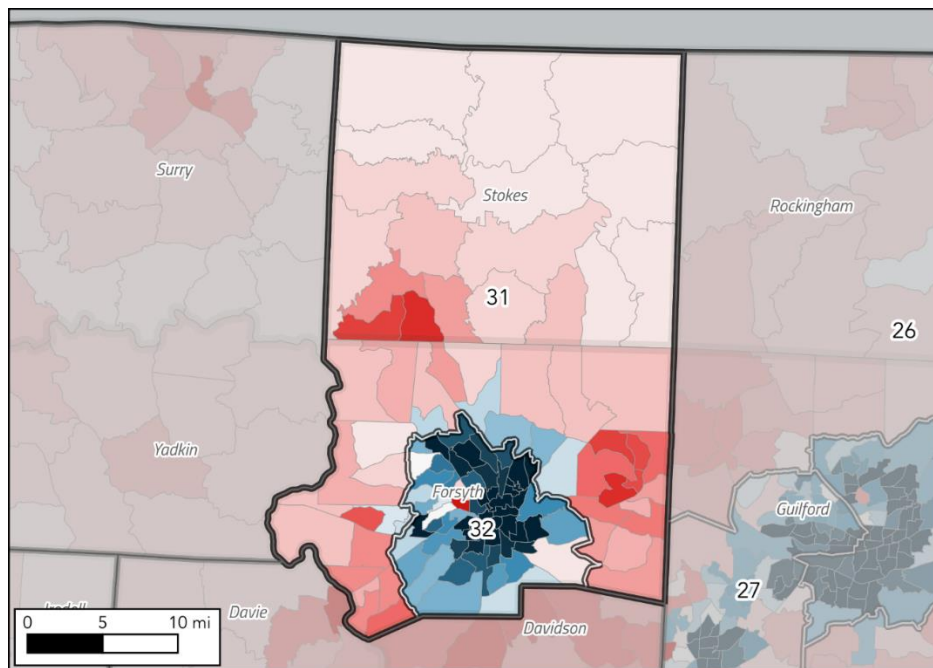
265. This grouping's formation departs from traditional redistricting principles and reduces the compactness of these districts: The average Polsby-Popper score of the three districts is 0.33. PX150 at 15.

266. In the Guilford-Rockingham Senate cluster, which Legislative Defendants’ expert Dr. Barber refers to as “solidly Democratic,” the enacted map is in alignment with Dr. Barber’s simulations by creating two Democratic leaning districts. LDTX107 at 209, 215.

267. The Court finds the districts in the Guilford-Rockingham Senate county grouping, SD26, SD27, and SD28, to be the result of intentional, pro-Republican partisan redistricting.

d. Forsyth-Stokes Senate County Grouping

268. The Forsyth-Stokes County Grouping contains Senate District 31 (“SD31”) and Senate District 32 (“SD32”). SD31 is comprised of Stokes County and portions of Forsyth County. SD32 is comprised of portions of only Forsyth County. Plaintiffs challenge these Senate Districts as the product of unlawful partisan gerrymanders.



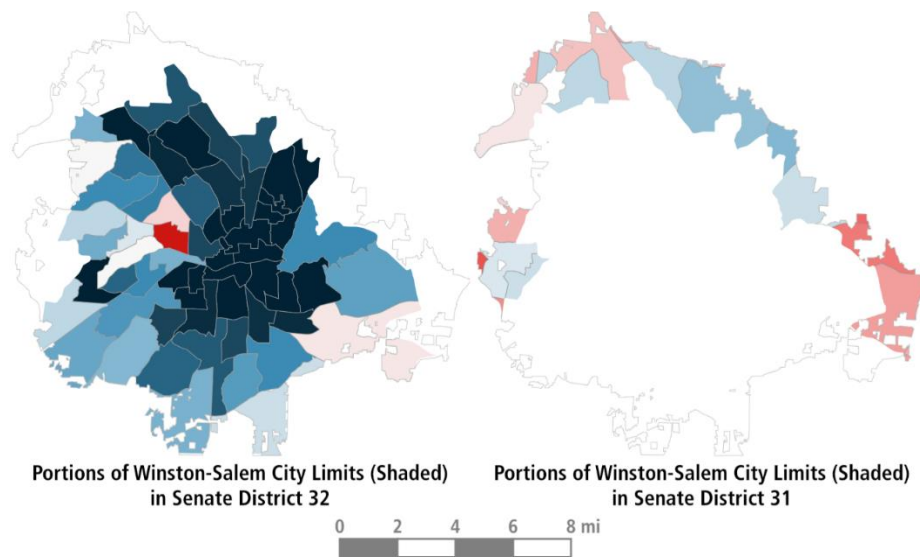
PX461 (Cooper Map 26)

269. Harper Plaintiffs challenge this Senate county grouping. Individual Harper Plaintiff Chenita Barber Johnson reside in SD32. No Individual Plaintiff resides in SD31. Organizational Plaintiff NCLCV challenges both Senate Districts in this county grouping.

270. Legislative Defendants decided to pair Forsyth County with Stokes County in this cluster, rather than pairing Forsyth County with Yadkin County, to the west; since Yadkin County has a lower Republican vote advantage than Stokes County, Legislative Defendants' choice of pairing provided them with a better counter-weight to the heavily-Democratic VTDs in Winston-Salem. PX425 at 62.

271. Within the chosen cluster, Legislative Defendants packed the Democratic VTDs in Winston-Salem into Senate District 32, leaving Senate District 31 to wrap around three sides of the city and remain safely Republican. PX425 at 62-63; PX461.

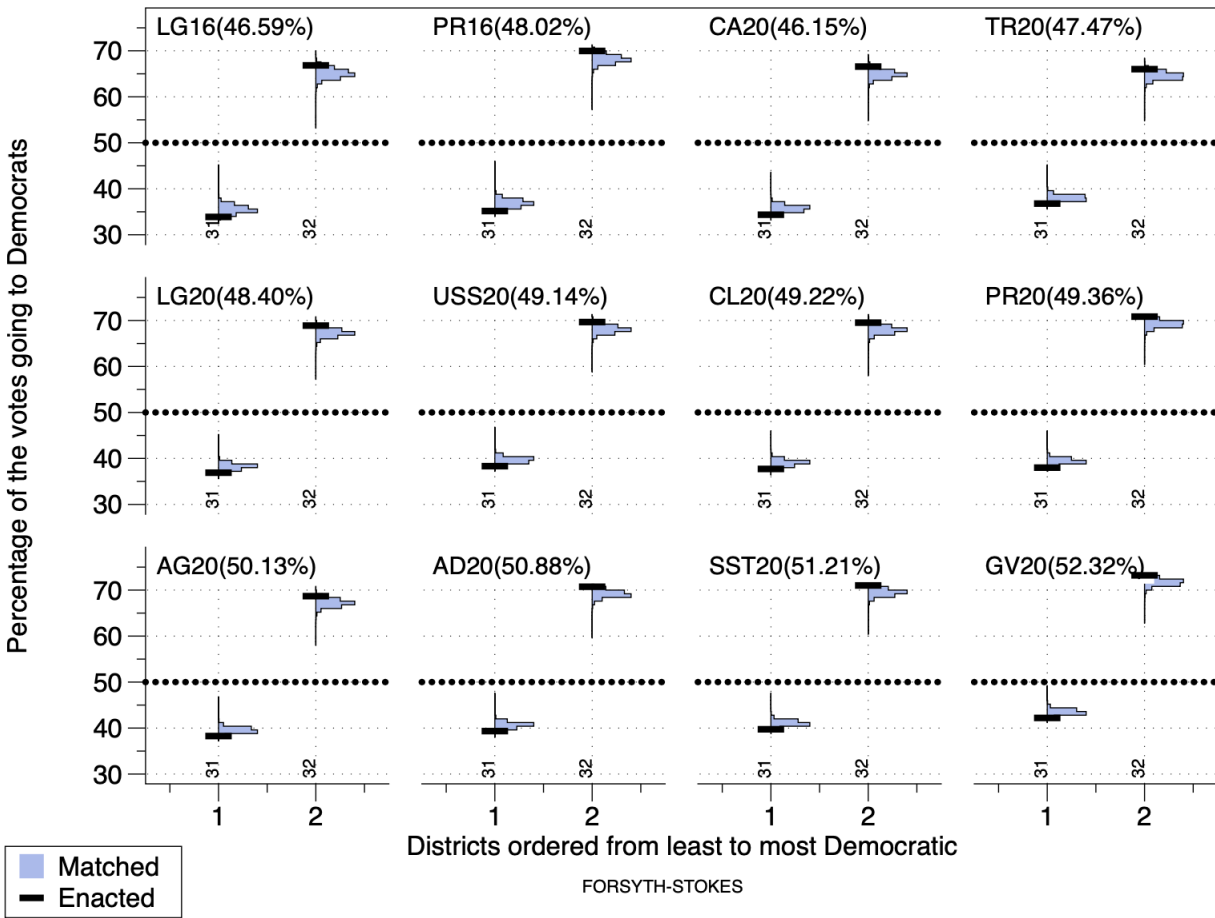
272. While Winston-Salem is split between both districts, a comparison of Dr. Cooper's red-blue map (PX461) and his map showing the municipal boundaries within this cluster (PX462) illustrates how Senate District 31 captures the more Republican VTDs on the city's edges. PX425 at 62.



PX462 (Cooper Map 27)

273. The simulations of Drs. Mattingly and Pegden confirm Dr. Cooper's analysis and independently establish that the Forsyth-Stokes county grouping is an intentional, pro-Republican partisan redistricting.

274. Figure 6.2.7 shows Dr. Mattingly’s analysis of this grouping.



PX664 (Mattingly Figure 6.2.7)

275. The Court finds that, even though this does not affect the number of seats won in the particular elections that Dr. Mattingly considered, the two districts in Forsyth-Stokes maximize the number of Democrats in the most Democratic district and the number of Republicans in the most Republican district in a way that is almost never seen in the enacted map. PX629 at 59; PX664.

276. The Enacted Plan concentrates Forsyth County’s Democratic voters into one district—District 32—where Democratic candidates will win elections by more than 30-point margins. PX201 “SL-173” B33:BA33. District 32’s design foreordains electoral outcomes in

Senate District 31, which is safely Republican and never once elects a Democrat in any of the 52 elections Dr. Duchin studies. PX201 “SL-173” B32:BA32.

277. The Court finds, as Dr. Pegden’s findings show, that the Forsyth-Stokes Senate county grouping is the result of intentional, pro-Republican partisan redistricting. In his first-level analysis, Dr. Pegden found that the enacted plan’s version of this grouping is more favorable to Republicans than 99.9983% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second-level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.9947% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. PX523 at 29.

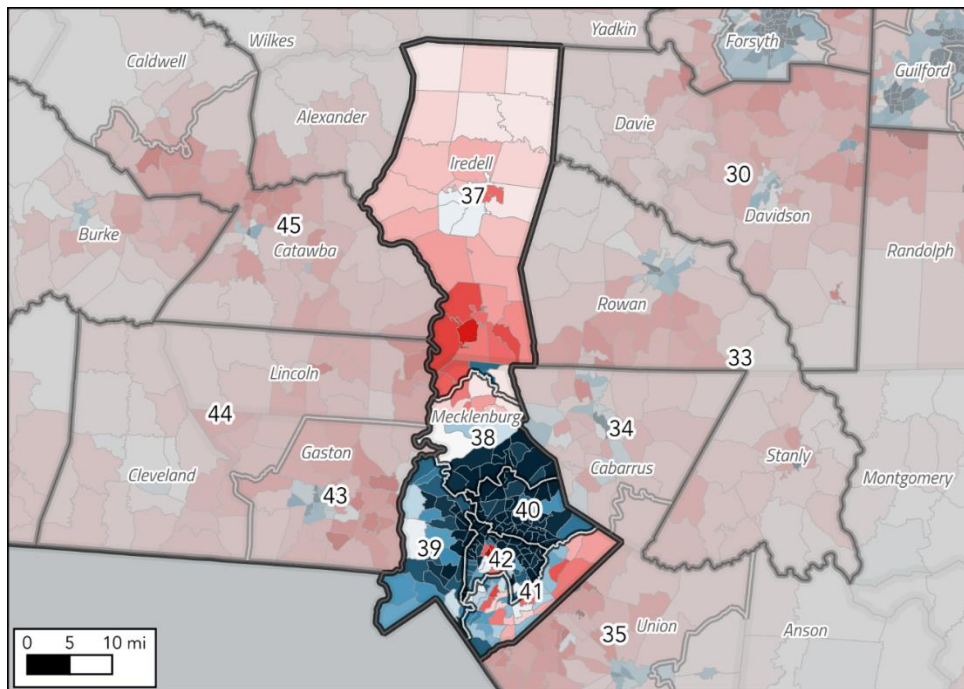
278. The Republican advantage in District 31 was the product of both a clustering decision and a drawing decision. District 32 is drawn to “pack” all of Winston-Salem’s most Democratic areas into one district, but Districts 31 and 32 clearly could have been configured such that Senate District 32 is not “packed” with Democrats.

279. In the Forsyth-Stokes Senate county grouping, a “slightly Democratic” grouping, 100% of Dr. Barber’s simulations, like the enacted maps, produce one Democratic leaning district. LDTX107 at 244. Under each of the 11 elections that Legislative Defendants’ expert Dr. Barber considered, Democrats win one seat under the enacted map, even though, under two of those elections, Democrats would have won two seats under 94% and 98% of Dr. Barber’s simulations, respectively. *Id.* at 248.

280. The Court finds the districts in the Forsyth-Stokes Senate county grouping, SD31 and SD32, to be the result of intentional, pro-Republican partisan redistricting.

e. Iredell-Mecklenburg Senate County Grouping

281. The Guilford-Rockingham County Grouping contains Senate District 37 (“SD37”), Senate District 38 (“SD38”), Senate District 39 (“SD39”), Senate District 40 (“SD40”), Senate District 41 (“SD41”), and Senate District 42 (“SD42”). SD37 is comprised of Iredell County and portions of Mecklenburg County. SD38, SD39, SD40, SD41, and SD42 are comprised of portions of only Mecklenburg County. Plaintiffs challenge these Senate Districts as the product of unlawful partisan gerrymanders.



PX457 (Cooper Map 22)

282. Harper Plaintiffs challenge this Senate county grouping. Individual Harper Plaintiff Virginia Walters Brien resides in SD40. Individual Harper Plaintiff Barbara Proffitt resides in SD41. No Individual Plaintiff resides in SD37, SD38, SD39, or SD42. Organizational Plaintiff NCLCV and Organizational Plaintiff Common Cause challenge all six Senate Districts in this county grouping.

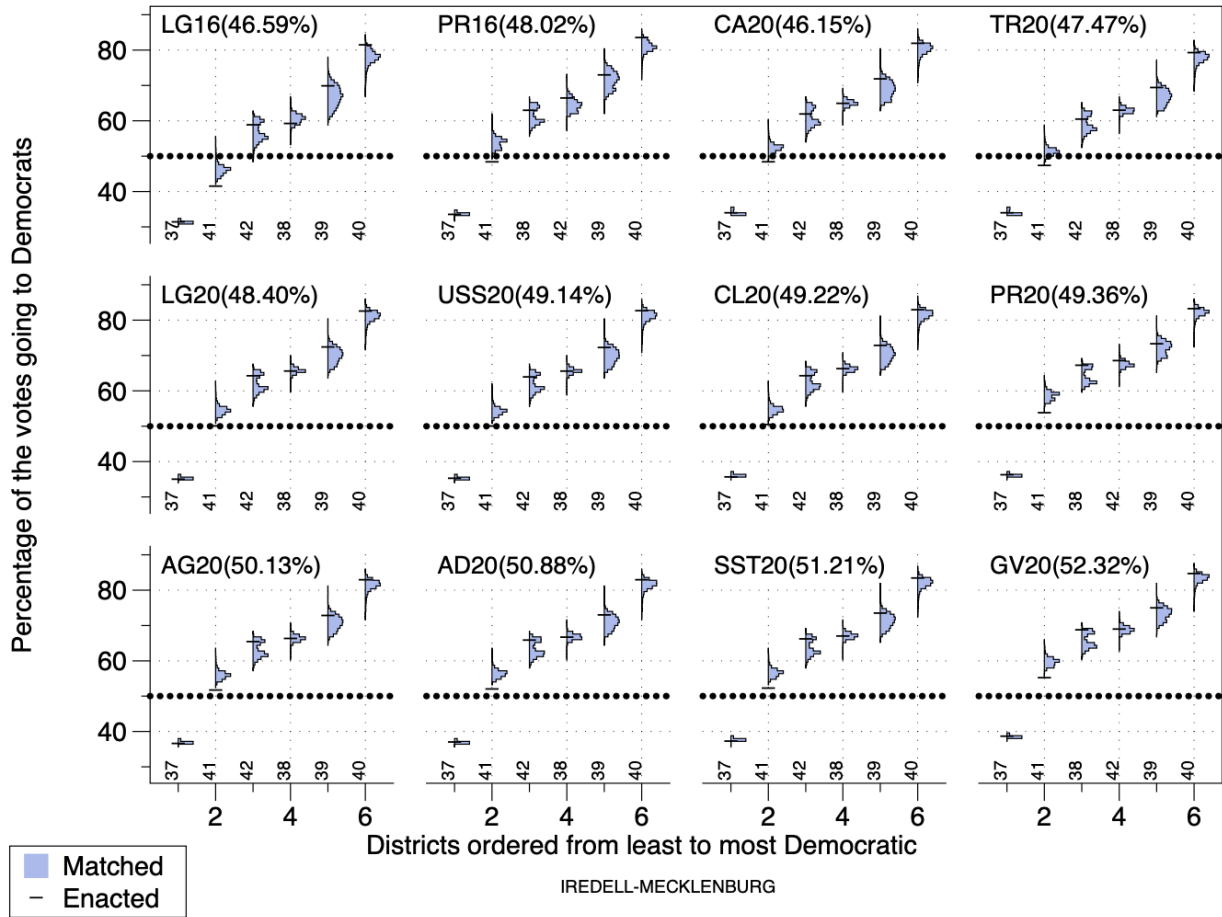
283. Mecklenburg County is the second most populous county in North Carolina and a Democratic stronghold. Every member of the current state legislative delegation from Mecklenburg County is a Democrat, as are all nine of its county commissioners. Democratic candidates also received the plurality of votes in every 2020 county-wide contest in Mecklenburg County. Yet Legislative Defendants drew district lines to create four “safe Democratic” seats, one “safe Republican” seat, and a “toss-up” seat. PX425 at 55.

284. The district lines pack Democratic voters into Senate Districts 38, 39, 40, and 42, allowing for Senate Districts 37 and 41 to be artificially favorable to Republican candidates. PX457. Senate Districts 39 and 40 do not include a single Republican-leaning VTD and almost all Republican-leaning VTDs in Mecklenburg County are included in either Senate District 37, a “safely Republican” seat, or Senate District 41, a “toss-up” seat. PX425 at 55-56.

285. Senate District 37 includes the residence of an incumbent Democrat and incumbent Republican in the same district, effectively eliminating the incumbent Democrat. The Democratic incumbent whose residence Legislative Defendants included in the safely Republican Senate District 37 lives approximately one mile from the Democratic-leaning district to the south, Senate District 38. PX425 at 55.

286. The simulations of Drs. Mattingly and Pegden confirm Dr. Cooper’s analysis and independently establish that the Iredell-Mecklenburg county grouping is an intentional, pro-Republican partisan redistricting.

287. Figure 6.2.1 shows Dr. Mattingly’s analysis of this grouping.



PX662 (Mattingly Figure 6.2.1)

288. The Court finds that Democrats were cracked out of the second most Republican district (District 41), and packed into SD40 and, to a lesser extent, SD39 (the two most Democratic districts). PX629 at 55; Figure 6.2.1. The effect is that the Republicans win two out of six districts under the enacted plan in many elections where the majority or vast majority of plans in the ensemble would elect only one Republican. PX629 at 55. One example is the President 2016 election. Dr. Mattingly quantified the cracking of Democrats: Across every election he considered, *none* of the approximately 80,000 plans in his ensemble had as low a fraction of Democrats in the two most Republican districts as in the enacted plan. *Id.*

289. The Enacted Senate Plan’s packing of Democratic voters in Mecklenburg County, thereby converting District 41 from a swing district into a district that will usually elect Republican candidates, results in a far lower average compactness score of 0.33, PX150 at 15, as well as a significant improvement in Republican performance. Enacted District 41 elected a Democrat in only 13 of the 52 studied elections. PX201 “SL-173” B42:BA42.

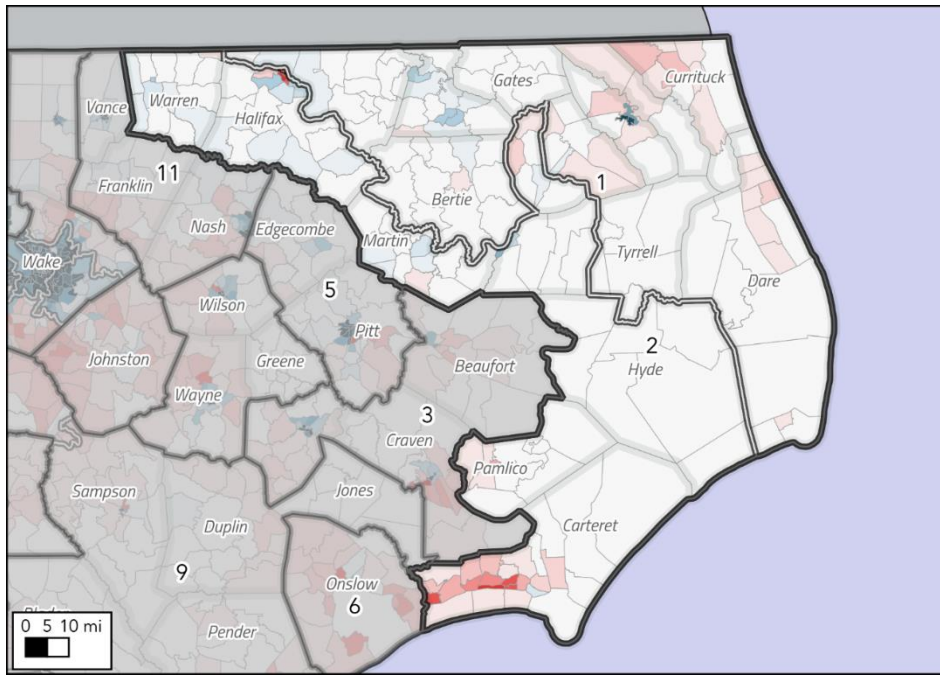
290. Dr. Pegden’s findings show that the Iredell-Mecklenburg Senate county grouping is the result of intentional, pro-Republican partisan redistricting. In his first-level analysis, Dr. Pegden found that the enacted plan’s version of this grouping is more favorable to Republicans than 99.998% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second-level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.9943% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. PX523 at 32.

291. In the Iredell-Mecklenburg Senate cluster, which Legislative Defendants’ expert Dr. Barber found to be a partisan outlier, *see* LDTX107 at 229, under two of the 11 elections Dr. Barber considered, Democrats win four seats under the enacted map, even though Democrats would have won 5 seats under 93% and 95% of Dr. Barber’s simulations, respectively. *Id.* at 234.

292. The Court finds the districts in the Iredell-Mecklenburg Senate county grouping, SD37, SD38, SD39, SD40, SD41, and SD42, to be the result of intentional, pro-Republican partisan redistricting.

f. Northeastern Senate County Grouping

293. The Northeastern County Grouping contains Senate District 1 (“SD1”) and Senate District 2 (“SD2”). SD1 is comprised of Bertie County, Camden County, Currituck County, Dare County, Gates County, Hertford County, Northampton County, Pasquotank County, Perquimans County, and Tyrrell County. SD2 is comprised of Carteret County, Chowan County, Halifax County, Hyde County, Martin County, Pamlico County, Warren County, Washington County. Plaintiffs challenge these Senate Districts as the product of unlawful partisan gerrymanders.

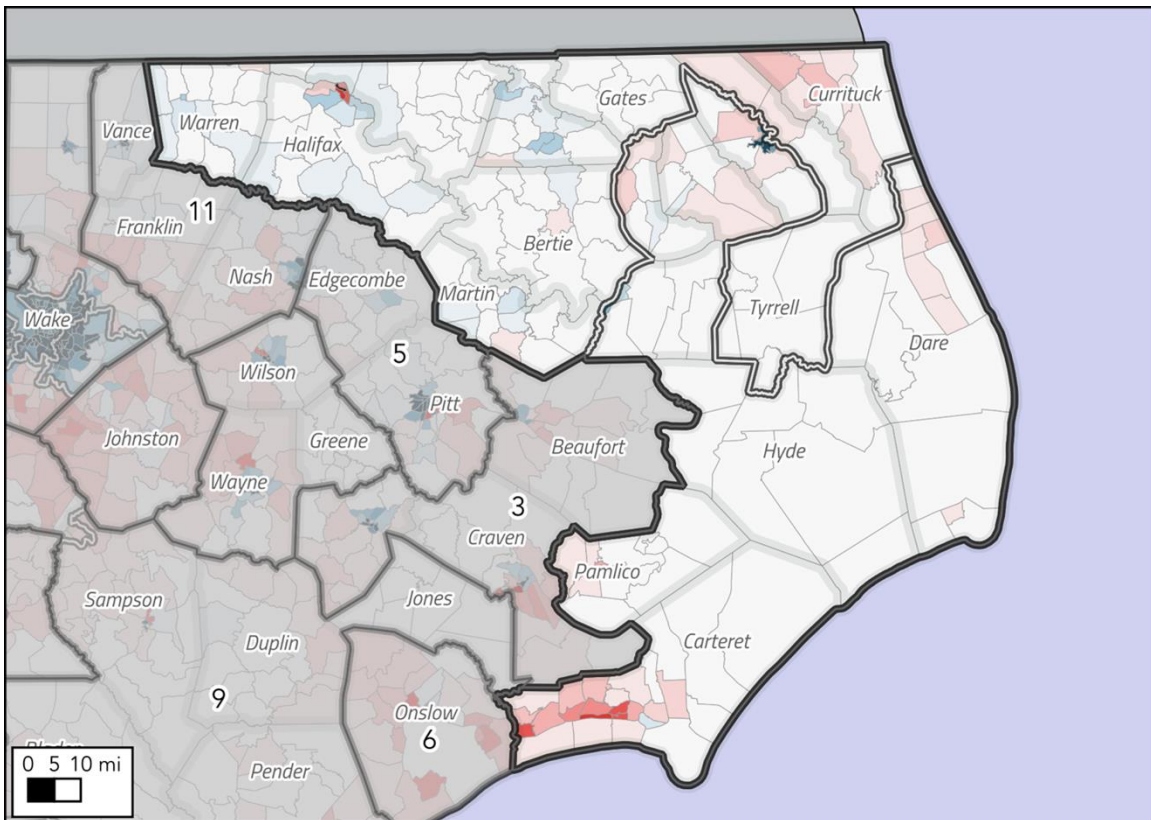


PX463 (Cooper Map 28)

294. Harper Plaintiffs and Individual NCLCV Plaintiffs challenge this Senate county grouping. Individual Harper Plaintiff Lauren Flood resides in SD1. Individual NCLCV Plaintiffs Edna Scott, Roberta Scott, Yvette Roberts, Dr. Cosmos George, Jereann King Johnson, Yarbrough Williams, Jr., and Reverend Dr. Deloris L. Jerman reside in SD2. Organizational Plaintiff NCLCV and Organizational Plaintiff Common Cause challenge both Senate Districts in this county grouping.

295. Legislative Defendants had two potential county grouping options to choose from for the Northeastern counties when drawing the 2021 Senate Plan. The size of the counties in each potential cluster is such that each cluster option is large enough for one Senate district. PX425 at 65.

296. Legislative Defendants' choice of clusters paired more Republican-leaning VTDs together in an arrangement that resulted in two Republican-leaning districts. PX425 at 65. The alternative county cluster groupings, which Legislative Defendants chose against, would have included Carteret, Chowan, Dare, Hyde, Pamlico, Pasquotank, Perquimans, and Washington counties in one district and Bertie, Camden, Currituck, Gates, Halifax, Hertford, Martin, Northampton, Tyrrell, and Warren counties in a second district. PX425 at 65; PX464.



PX464 (Cooper Map 29)

297. The alternative county cluster groupings that Legislative Defendants chose against would have created one district on the northern state border that included many of the more racially diverse counties in the state and that would favor the Democrats, and another district to the south that would favor Republicans. Such an arrangement would have been more representative of the counties included in these clusters, most of which include a large number of competitive VTDs (shown in light, non-colored shading in Dr. Cooper’s maps). PX425 at 65.

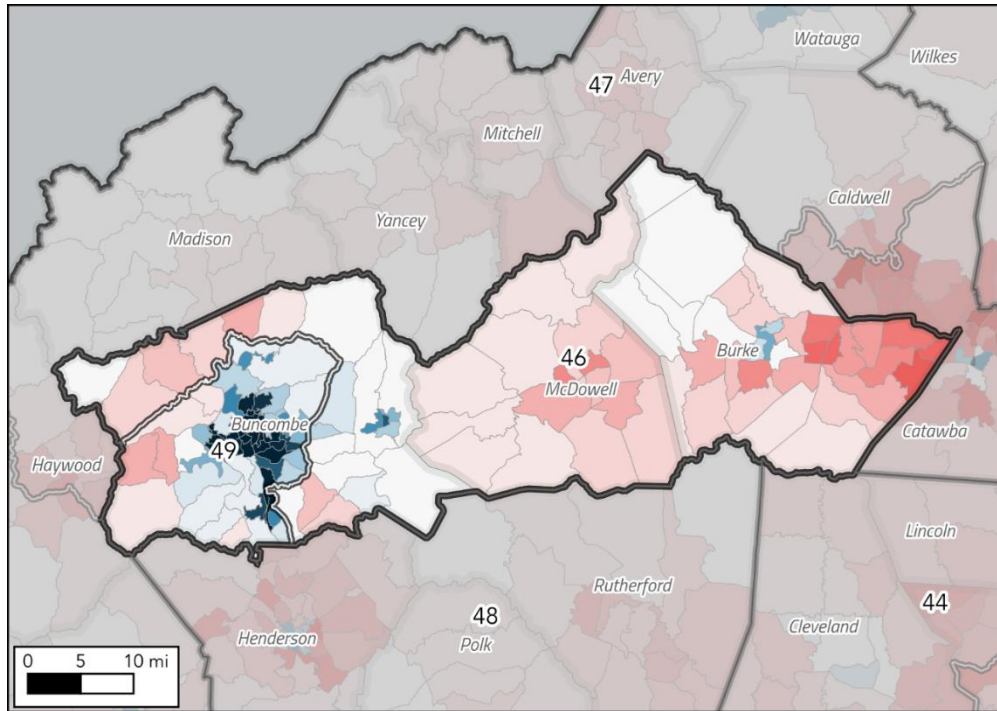
298. The Court finds, as Dr. Mattingly also showed, that their choice significantly advantaged the Republican Party. PX629 at 65. In the alternative cluster choice that the General Assembly rejected, Democrats would have won one seat under the results in every single 2016 and 2020 statewide election. In the cluster choice that the General Assembly rejected, the Republicans win both seats under the results in every single 2016 and 2020 statewide election. *Id.*

299. The enacted district configuration has 24 county traversals. District 2’s Polsby-Popper compactness score is just 0.11, and the average score of both districts is 0.16. PX150 at 15.

300. The Court finds the districts in the Northeastern Senate county grouping, SD1 and SD2, to be the result of intentional, pro-Republican partisan redistricting.

g. Buncombe-Burke-McDowell Senate County Grouping

301. The Buncombe-Burke-McDowell County Grouping contains Senate District 46 (“SD46”) and Senate District 49 (“SD49”). SD46 is comprised of Burke County, McDowell County, and portions of Buncombe County. SD49 is comprised of portions of only Buncombe County. Plaintiffs challenge these Senate Districts as the product of unlawful partisan gerrymanders.



PX458 (Cooper Map 23)

302. Harper Plaintiffs challenge this Senate county grouping. Individual Harper Plaintiff Mark S. Peters resides in SD46. Individual Harper Plaintiff Ann Butzner resides in SD49. Organizational Plaintiff NCLCV challenges both Senate Districts in this county grouping.

303. Legislative Defendants had discretion as to the counties included in this cluster and the adjacent cluster to the south. Rather than pair Buncombe County with Henderson County, which has become a “bedroom community” of Asheville, Legislative Defendants grouped Buncombe County with Burke and McDowell counties, to the east. Burke and McDowell counties include a greater number of heavily-Republican VTDs than does Henderson County, allowing for Legislative Defendants to neutralize the Democratic stronghold in and around Asheville to a greater extent than under the alternate potential grouping.

304. Within this county grouping, the mapmakers maximized Republican advantage by drawing one lopsidedly Democratic district (District 49), leaving the remaining district (District 46) reliably Republican. Notably, District 46 *never* elects a Democrat in any of the 52 elections in Dr. Duchin’s study. PX201 “SL-173” B47:BA47.

305. The Court finds that Legislative Defendants’ chosen county grouping allowed them to draw a map that packed Democratic voters in Senate District 49, leaving Senate District 46 to favor the Republican Party. PX425 at 57-58.

306. Grouping Henderson County with Polk and Rutherford counties in the bordering cluster to the south also allowed for Legislative Defendants to create a single-district cluster there that heavily favors the Republican candidate. PX425 at 57.

307. Dr. Barber’s analysis reflects that in 100% of his simulations, as with the enacted map, there is one Democratic district in this “very slightly Democratic” grouping, LDTX107 at 235, and 100% of his simulations produce 1 Democratic leaning district like the enacted maps under all 11 elections used in his analysis. *Id.* at 239.

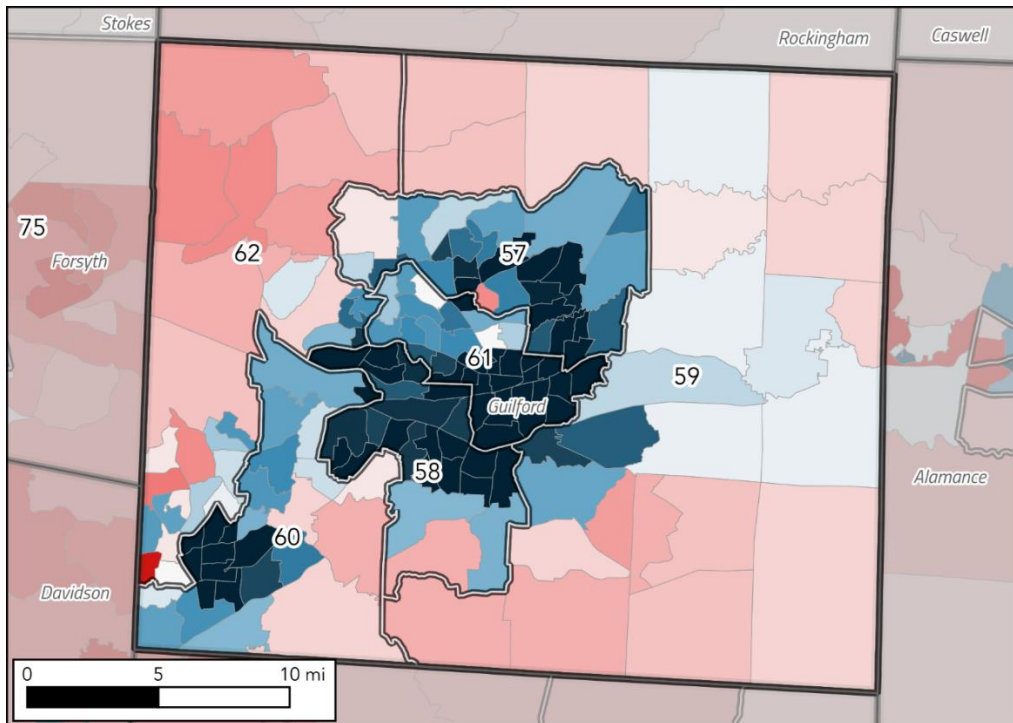
308. The Court finds the districts in the Buncombe-Burke-McDowell Senate county grouping, SD46 and SD49, to be the result of intentional, pro-Republican partisan redistricting.

2. North Carolina House of Representatives Districts

309. Plaintiffs’ experts analyzed specific county groupings in the enacted House plan. Plaintiffs’ experts concluded that partisan redistricting and bias in these groupings were responsible for the partisan bias that they found in their statewide analysis of the enacted House plan. The results of the analysis conducted by Legislative Defendants’ expert Dr. Barber largely reinforce this conclusion.

a. Guilford House County Grouping

310. The Guilford House County Grouping contains House District 57 (“HD57”), House District 58 (“HD58”), House District 59 (“HD59”), House District 60 (“HD60”), House District 61 (“HD61”), and House District 62 (“HD62”). All six House Districts are comprised of portions of only Guilford County. Plaintiffs challenge these House Districts as the product of unlawful partisan gerrymanders.



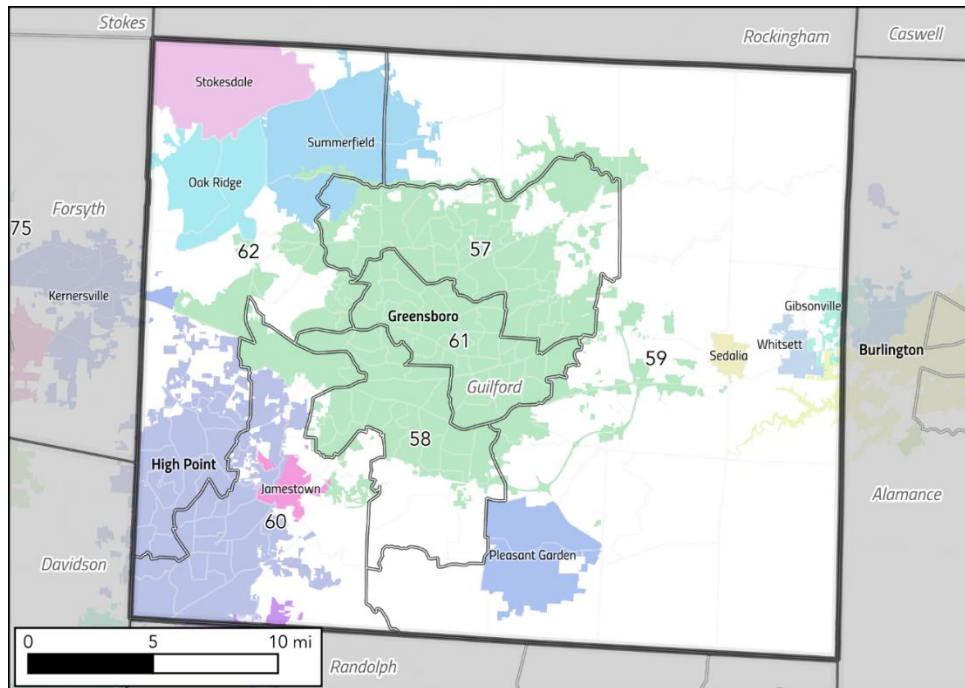
PX470 (Cooper Map 35)

311. Harper Plaintiffs challenge this House county grouping. Individual Harper Plaintiff David Dwight Brown resides in HD58. Individual Harper Plaintiff Lily Nicole Quick resides in HD59. Individual Harper Plaintiff Joshua Perry Brown resides in HD60. Individual Harper Plaintiff Donald M. MacKinnon resides in HD62. Individual NCLCV Plaintiff Talia Fernos resides in HD61. No Individual Plaintiff resides in HD57. Organizational Plaintiff Common Cause challenges every House District in this county

grouping. Organizational Plaintiff NCLCV challenges only HD59 and HD62 in this county grouping.

312. Legislative Defendants packed Democratic-leaning VTDs into House Districts 57, 58, 60, and 61, allowing House Districts 59 and 62 to be artificially favorable to Republican candidates. PX425 at 76; TR 01/03/2022.

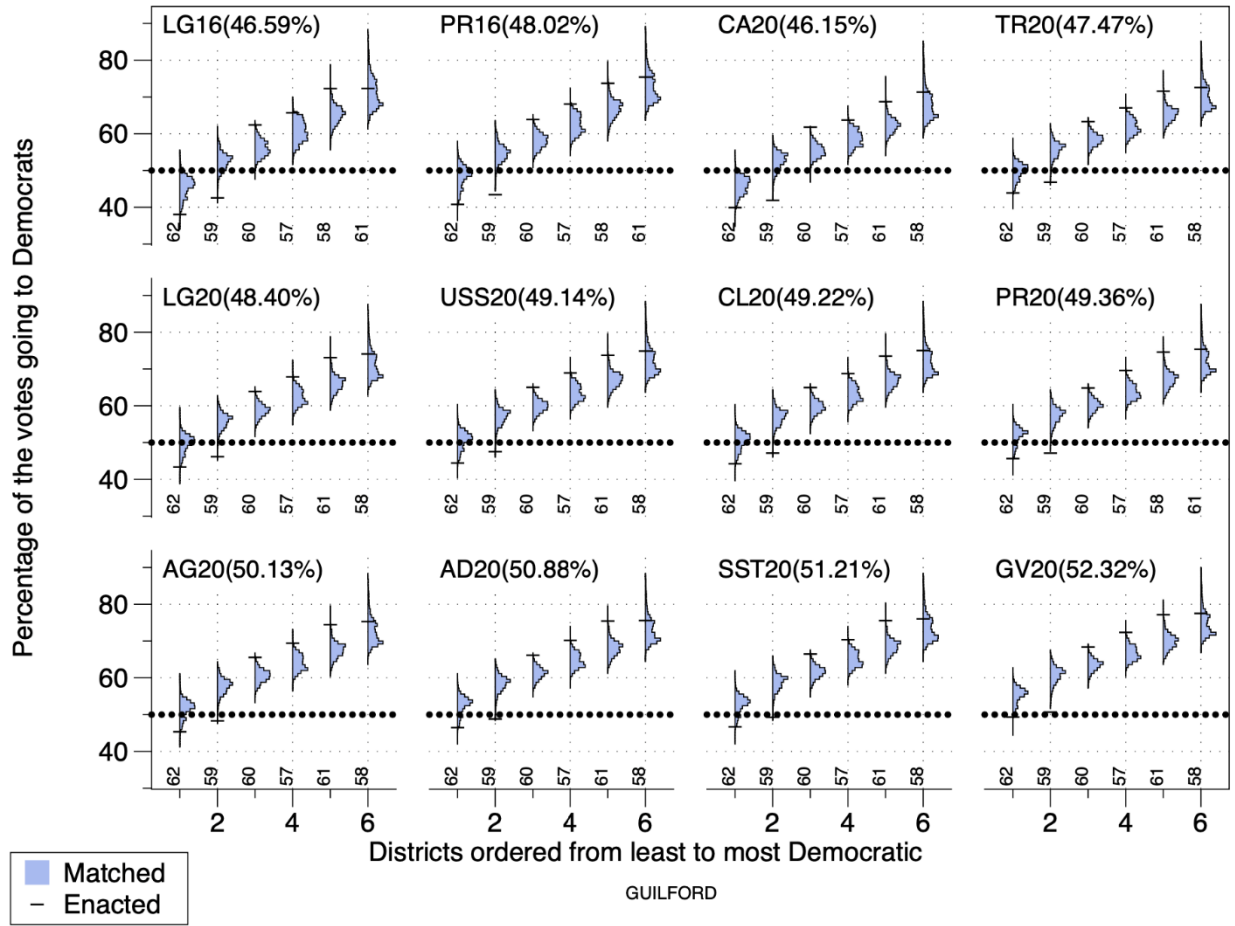
313. A comparison of Dr. Cooper’s red-blue map (PX470) and his map showing the municipal boundaries within this cluster (PX471) illustrates how the district boundaries split Greensboro and High Point in a way that ensures the most Democratic-leaning VTDs in those municipalities are kept out of House Districts 59 and 62. PX425 at 76.



PX471 (Cooper Map 36)

314. The simulations of Drs. Mattingly and Pegden confirm Dr. Cooper’s analysis and independently establish that the Guilford county grouping is an intentional, pro-Republican partisan redistricting.

315. Figure 6.1.10 shows Dr. Mattingly’s analysis of this grouping.



PX653 (Mattingly Figure 6.1.10)

316. The Court finds that Democrats were again cracked out of the two least Democratic (*i.e.*, most-Republican) districts in this grouping (Districts 59 and 62) and packed into heavily Democratic districts (Districts 57, 58, 60, and 61). PX629 at 36; PX653. The effect is that the Republicans regularly win two out of six seats in this cluster even in situations where the Democrats would win all six in the majority or vast majority of plans in the nonpartisan ensemble. This is seen in the Senate 2020, President 2020, and Attorney General 2020 races, among others. PX653. Dr. Mattingly quantified the cracking and packing of Democrats in the Guilford cluster: over all of the elections considered and all of the around 80,000 plans in the ensemble, none of the plans have a higher Democratic fraction in the four most Democratic districts or a lower Democratic fraction in the two most

Republican districts, in comparison to the enacted plan. PX629 at 36. In other words, this grouping shows more cracking and packing of Democrats than every single plan in the nonpartisan ensemble. *Id.*

317. Due to the packing in two districts—Districts 59 and 62—that favor Republican candidates, District 62 never elected a Democrat in Dr. Duchin’s 52-election sample, and District 59 did so only once. PX201 “SL-175” B60:BA60, B53:BA63.

318. The Court finds, as Dr. Pegden’s findings show, that the Guilford House county grouping is the result of intentional, pro-Republican partisan redistricting. In his first-level analysis, Dr. Pegden found that the enacted plan’s version of this grouping is more favorable to Republicans than 99.99997% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second-level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.99991% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. PX523 at 19.

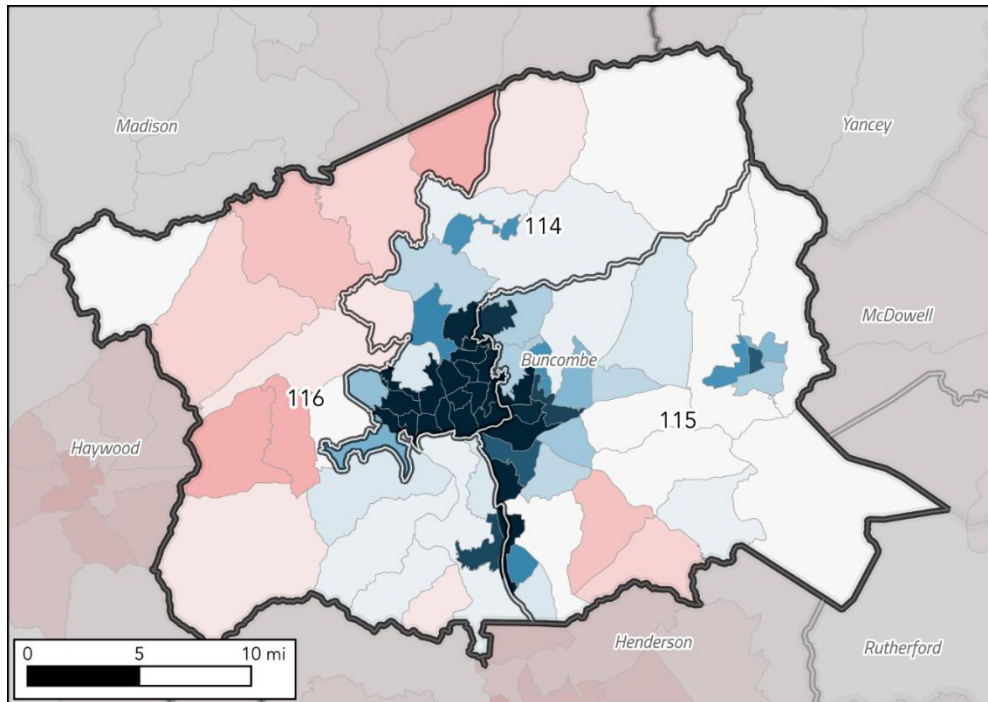
319. The Enacted Plan for this grouping has an average Polsby-Popper score of 0.30. PX150 at 16.

320. In the Guilford House county grouping—which Legislative Defendants’ expert Dr. Barber himself labeled a “partisan outlier,” *see* LDTX107 at 5 (“the Guilford County grouping in the House of Representative . . . is a partisan outlier”)—the enacted map is a partisan outlier under each of the 11 elections he considered. Under nine of those 11 elections, the enacted map produces fewer Democratic districts than 93-100% of his simulations. *Id.* at 158. Under four of those nine elections, the enacted map produces four Democratic districts when 100% of his simulations produce a greater number, and under three more of the nine elections, the enacted map produces four or five Democratic districts when 99% of his simulations produce a greater number. *Id.*

321. The Court finds the districts in the Guilford House county grouping, HD57, HD58, HD59, HD60, HD61, and HD62, to be the result of intentional, pro-Republican partisan redistricting.

b. Buncombe House County Grouping

322. The Buncombe House County Grouping contains House District 114 (“HD114”), House District 115 (“HD115”), and House District 116 (“HD116”). All three House Districts are comprised of portions of only Buncombe County. Plaintiffs challenge these House Districts as the product of unlawful partisan gerrymanders.



PX472 (Cooper Map 37)

323. Harper Plaintiffs challenge this House county grouping. Individual Harper Plaintiff Mark S. Peters and Ann Butzner reside in HD115. No Individual Plaintiff resides in HD114 or HD 116. Organizational Plaintiffs NCLCV and Common Cause challenge the House Districts in this county grouping.

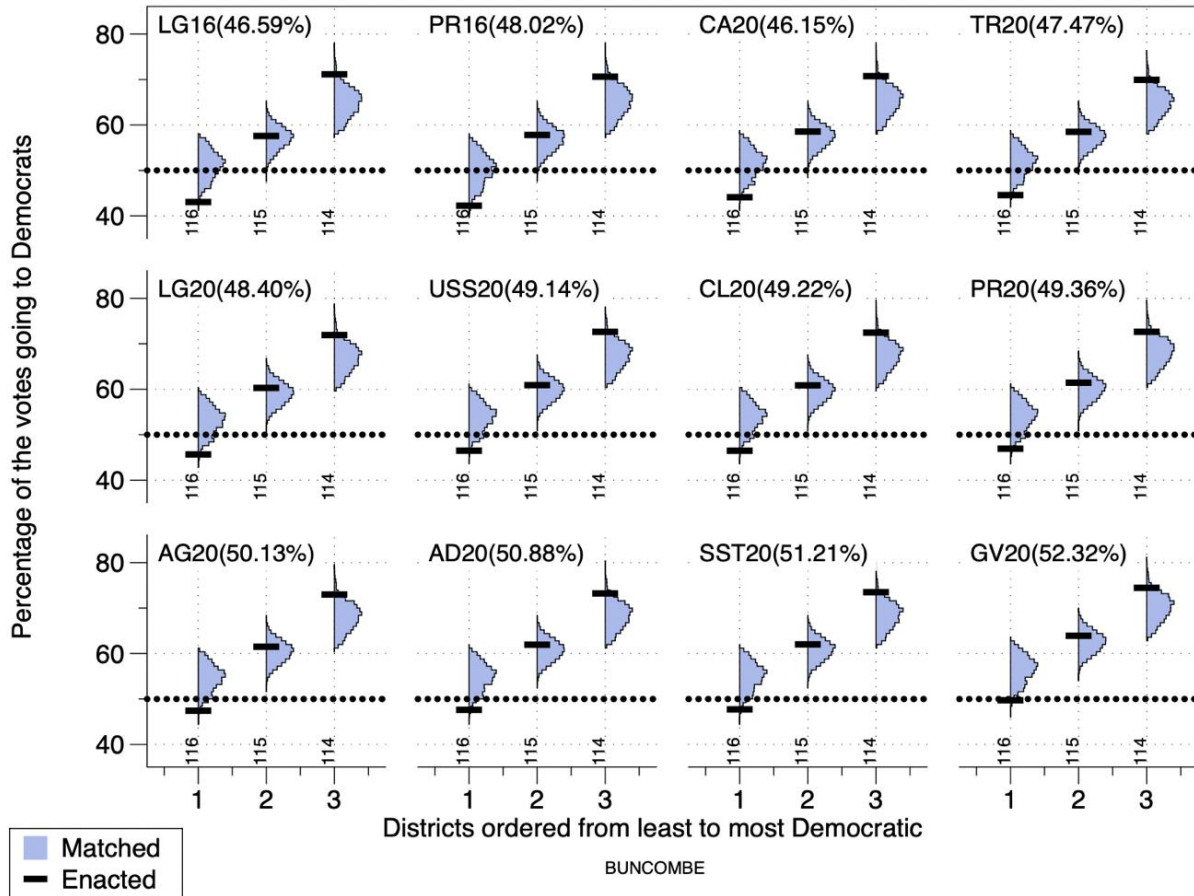
324. Buncombe County is an overwhelmingly Democratic county and has been trending more Democratic each year. PX425 at 79. All three House Districts in Buncombe are currently represented by members of the Democratic Party. *Id.*

325. Legislative Defendants shifted the district lines where they meet in Asheville to pack as many Democratic voters as possible into House District 114, thereby creating a Republican-leaning district in House District 116. Prior to the enactment of these lines in the 2021 House Plan, the district in the western part of Buncombe County that is now House District 116 was considered a safely Democratic district. PX425 at 79.

326. The simulations of Drs. Mattingly and Pegden confirm Dr. Cooper's analysis and independently establish that the Buncombe county grouping is the result of intentional, pro-Republican partisan redistricting.

327. Figure 6.1.13 shows Dr. Mattingly's analysis of the Buncombe House county grouping:

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PX654 (Mattingly Figure 6.1.13)

328. The Court finds that Democrats were packed into the most Democratic leaning district in this grouping (114) and cracked out of the most Republican district (116). PX629 at 38; PX654. In the enacted plan, there is a huge jump in Democratic vote share between the least Democratic district and the middle Democratic district. *Id.* This jump means that elections in the grouping will be nonresponsive to the votes cast and, as the figure above shows, cost Democrats a seat in multiple electoral environments, because the black line for District 116 often falls below the 50% line in elections where the majority or overwhelming majority of the blue histogram rises above it (for example, the Governor 2020, President 2020, and Senate 2020 race, among other examples). *See* PX629 at 38; PX654.

329. Dr. Mattingly mathematically quantified the cracking and packing across all the 2020 and 2016 statewide elections he considered. Specifically, Dr. Mattingly calculated the average Democratic vote share in the two least Democratic districts and the average Democratic vote share in the three most Democratic districts, for both the enacted plans and his ensemble plans. PX629 at 16. He found that, across every election, at most 1.2% of the plans in the nonpartisan ensemble had the same or fewer Democrats in the least Democratic district as the enacted plan (District 116). PX629 at 38. The Court finds that this signifies cracking of Democrats to enable Republicans to win a district they would not win under the nonpartisan ensemble.

330. The Court finds, as Dr. Pegden's findings show, that the Buncombe House county grouping is the result of intentional, pro-Republican partisan redistricting. In his first-level analysis, Dr. Pegden found that the enacted plan's version of this grouping is more favorable to Republicans than 99.979% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second-level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.938% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. PX523 at 16.

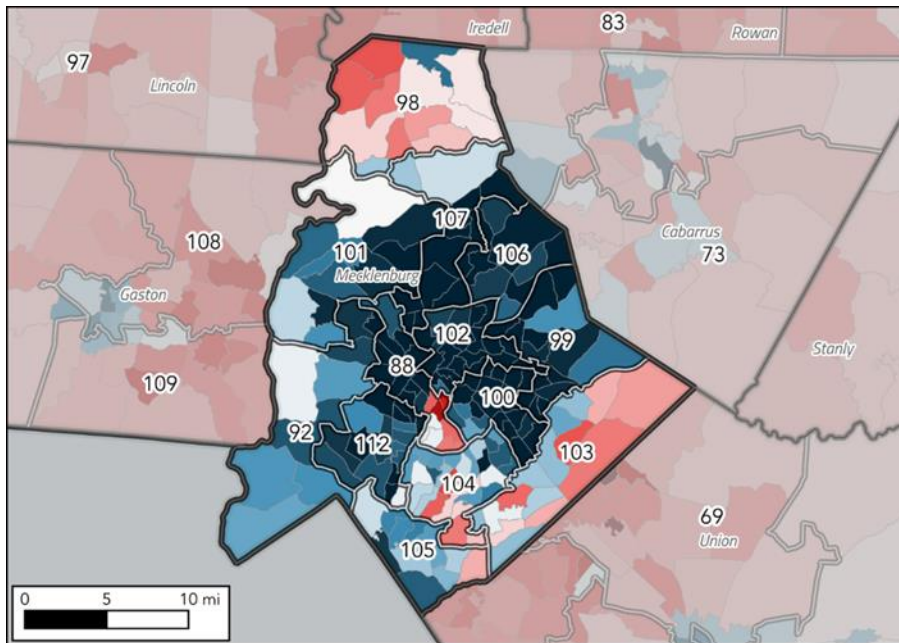
331. HD116 is the least compact district in the entire Enacted House Plan and is designed such that it never elects a Democrat in the entire set of 52 elections compiled by Dr. Duchin. PX150 at 16; PX201 "SL-175" B118:BA118.

332. In the Buncombe House county grouping, under each of the 11 elections that Legislative Defendants' expert Dr. Barber considered, Democrats win two seats under the enacted map, even though, under 10 of those 11 elections, Democrats would have won three districts in the majority of Dr. Barber's simulations, including in 98% of the simulations under the 2020 Governor election. LDTX107 at 98.

333. The Court finds the districts in the Buncombe House county grouping, HD114, HD115, and HD116, to be the result of intentional, pro-Republican partisan redistricting.

c. Mecklenburg House County Grouping

334. The Mecklenburg House County Grouping contains House District 88 (“HD88”), House District 92 (“HD92”), House District 98 (“HD98”), House District 99 (“HD99”), House District 100 (“HD100”), House District 101 (“HD101”), House District 102 (“HD102”), House District 103 (“HD103”), House District 104 (“HD104”), House District 105 (“HD105”), House District 106 (“HD106”), House District 107 (“HD107”), and House District 112 (“HD112”). All thirteen House Districts are comprised of portions of only Mecklenburg County. Plaintiffs challenge these House Districts as the product of unlawful partisan gerrymanders.



PX465 (Cooper Map 30)

335. Harper Plaintiffs challenge this House county grouping. Individual NCLCV Plaintiff Timothy Chartier resides in HD98. Individual Harper Plaintiff Mary Elizabeth Voss resides in HD101. Individual Harper Plaintiff Virginia Walters Brien resides in HD102.

Individual Harper Plaintiff Barbara Proffitt resides in HD103. No Individual Plaintiff resides in HD88, HD92, HD99, HD100, HD104, HD105, HD106, HD107, or HD112. Organizational Plaintiff NCLCV challenges HD98 and HD103 in this county grouping. Organizational Plaintiff Common Cause challenges the House Districts in this county grouping.

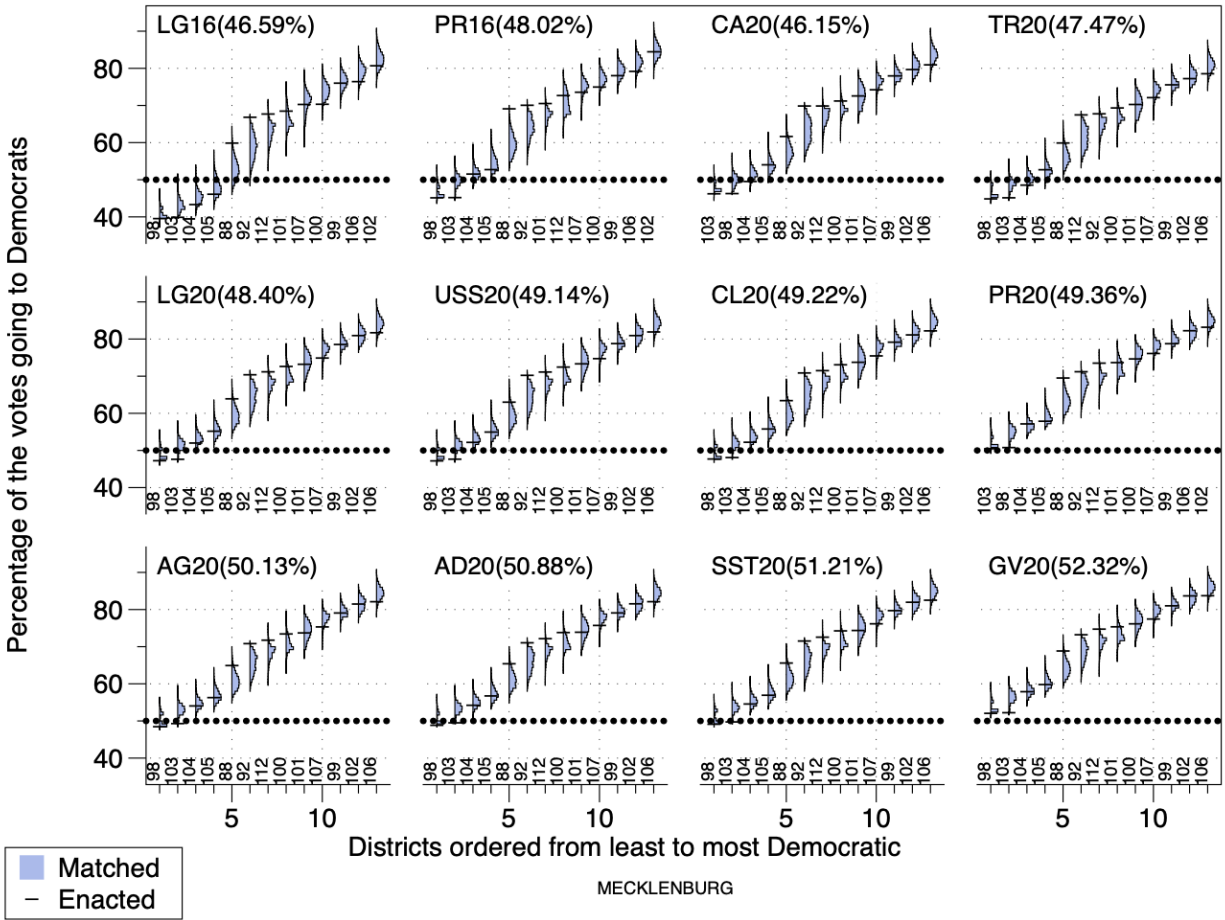
336. Mecklenburg County is the home of Charlotte as well as six other municipalities. Mecklenburg County is dominated by Democratic voters and is becoming even more so as the county continues to grow in population. PX425 at 68.

337. The district boundaries in this grouping place no Republican-leaning VTDs in House Districts 92, 99, 100, 101, 102, 106, 107, and 112, leaving every Republican-leaning VTD in House Districts 88, 103, 104, and 105. House District 98, in the north, and House District 103, in the south, are carved out of the pockets of Republican-leaning VTDs in the north and southeast portions of Mecklenburg County so as to be particularly favorable to Republican candidates. PX425 at 68.

338. The simulations of Drs. Mattingly and Pegden confirm Dr. Cooper's analysis and independently establish that the Mecklenburg county grouping is the result of intentional, pro-Republican partisan redistricting.

339. Figure 6.1.1 shows Dr. Mattingly's analysis of this grouping.

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PX650 (Mattingly Figure 6.1.1)

340. The Court finds that Democrats were again cracked out of the two least Democratic (i.e., most-Republican) districts in this grouping (Districts 98 and 103), and packed into heavily Democratic districts (Districts 100, 112, 92, and 88). PX629 at 29; PX650. The effect is to make those districts competitive, or to turn them into Republican seats, when in the majority of the nonpartisan plans those two seats safely elect Democrats. PX629 at 29. An example is the Attorney General 2020 election. Dr. Mattingly quantified the cracking and packing of Democrats in the Mecklenburg cluster: across every election he considered, the percentage of maps in the ensemble which have more Democrats packed into the most Democratic districts than the enacted plan is always less than 0.11%. PX629 at 29.

341. Although the County is one of the most Democratic in North Carolina, the Enacted House Map carves out at least two districts that Republicans will ordinarily win. PX201 “SL-175” B99:BA99, B104:BA105.

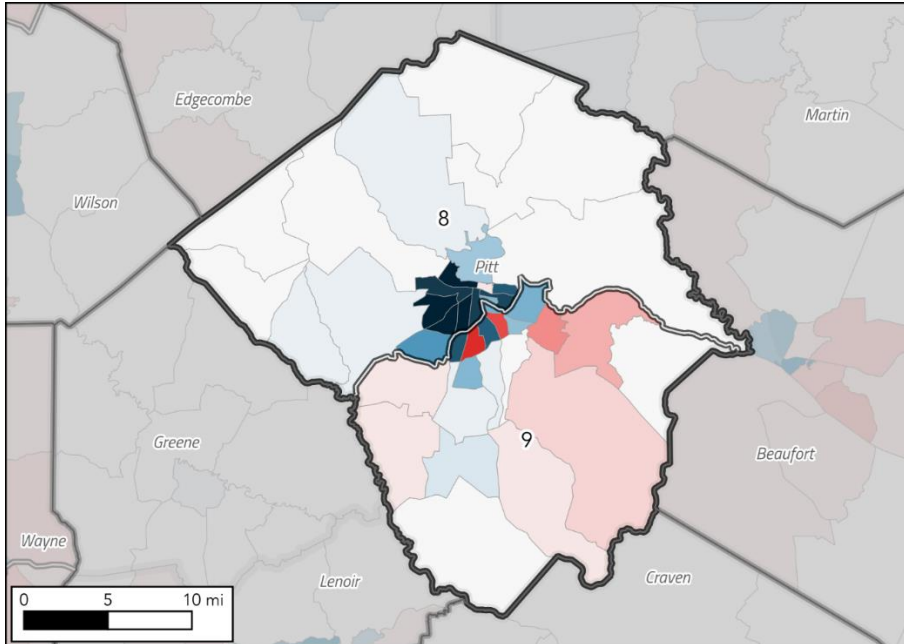
342. The Court finds, as Dr. Pegden’s findings show, that the Mecklenburg House county grouping is the result of intentional, pro-Republican partisan redistricting. In his first-level analysis, Dr. Pegden found that the enacted plan’s version of this grouping is more favorable to Republicans than 98.3% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second-level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 95.0% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. PX523 at 20.

343. In the Mecklenburg House county grouping, under 4 of the 11 elections that Legislative Defendants’ expert Dr. Barber considered, Republicans outperform the majority of Dr. Barber’s simulations, but Democrats never outperform a majority of the simulations. Under the 2020 Attorney General election, Democrats win 11 seats under the enacted map, even though Democrats would have won 12 seats under 91% of Dr. Barber’s simulations. LDTX107 at 168.

344. The Court finds the districts in the Mecklenburg House county grouping, HD88, HD92, HD98, HD99, HD100, HD101, HD102, HD103, HD104, HD105, HD106, HD107, HD112, to be the result of intentional, pro-Republican partisan redistricting.

d. Pitt House County Grouping

345. The Pitt House County Grouping contains House District 8 (“HD8”) and House District 9 (“HD9”). HD8 and HD9 are comprised of portions of only Pitt County. Harper Plaintiffs and NCLCV Plaintiffs challenge these House Districts as the product of unlawful partisan gerrymanders.

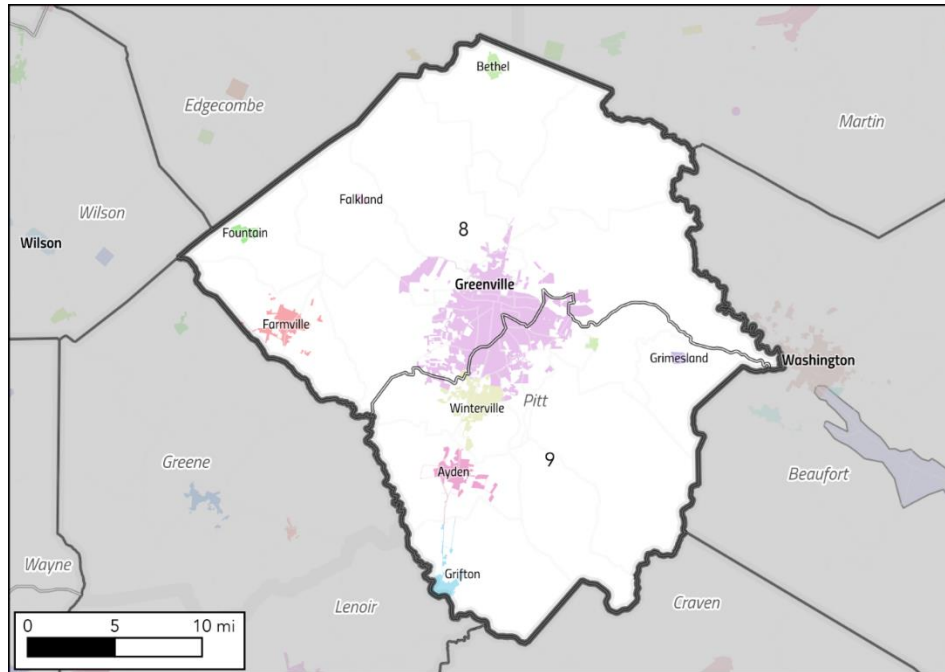


PX473 (Cooper Map 38)

346. Harper Plaintiffs challenge this House county grouping. Individual Harper Plaintiff Amy Clare Oseroff resides in HD8, and Individual Harper Plaintiff Donald Rumph resides in HD9. Organizational Plaintiff NCLCV challenges only HD9 in this county grouping.

347. The two House districts in Pitt County are both currently represented by Democrats and Pitt County gave 55% of its vote share to President Joe Biden in the 2020 election, making it the 19th most Democratic county in the state according to that metric. PX425 at 81. But by splitting Greenville “at a particularly consequential location,” the Legislative Defendants packed the most heavily Democratic VTDs together in House District 8, allowing for House District 9 to lean towards the Republican candidate. *Id.*

348. The split of Greenville, *see* PX474, cannot be explained with reference to communities of interest or natural geography. Some students at East Carolina University will take classes in House District 9, while living in residence halls that are located in House District 8. PX425 at 81.

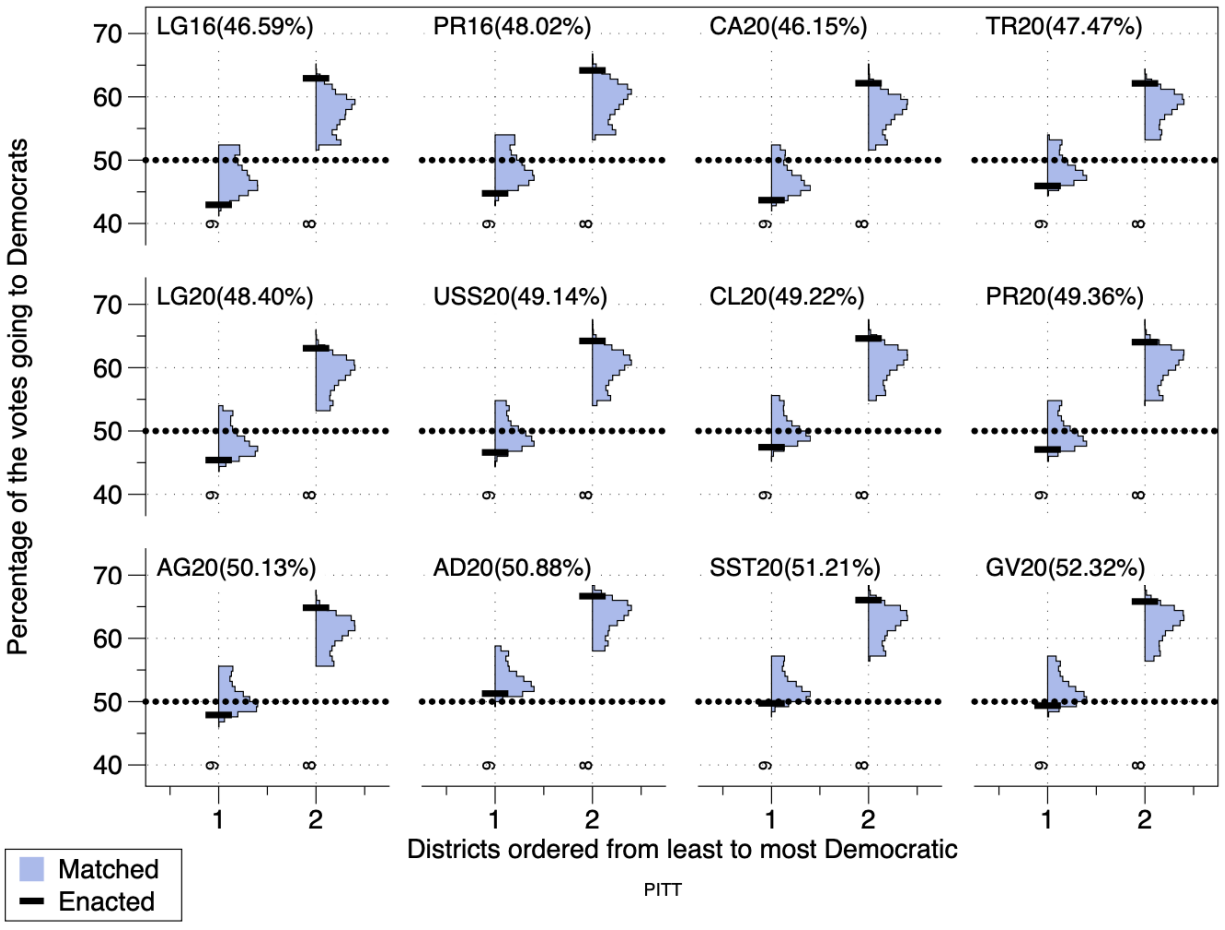


PX474 (Cooper Map 39)

349. The simulations of Drs. Mattingly and Pegden confirm Dr. Cooper's analysis and independently establish that the Pitt county grouping is an intentional, pro-Republican partisan redistricting.

350. Figure 6.1.16 shows Dr. Mattingly's analysis of this grouping.

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PX655 (Mattingly Figure 6.1.16)

351. The Court finds that Democrats were packed into the most Democratic district in Pitt County (District 8) and cracked out of the most Republican district (District 9). PX629 at 40; PX655. The effect is that the Republicans regularly win one of the two seats in situations where in the nonpartisan ensemble plans would not, including in the Attorney General 2020, Governor 2020, and Secretary of State 2020 elections. Dr. Mattingly quantified the cracking and packing of Democrats in Pitt County: over all of the elections considered, the percentage of plans in the non-partisan ensemble that have more Democrats in District 8 than the enacted plan fluctuates between 1.1% and 5.3%. PX629 at 40.

352. The Court finds, as Dr. Pegden’s findings show, that the Pitt House county grouping is the result of intentional, pro-Republican partisan redistricting. In his first-level

analysis, Dr. Pegden found that the enacted plan’s version of this grouping is more favorable to Republicans than 96.3% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second-level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 89.1% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. PX523 at 21.

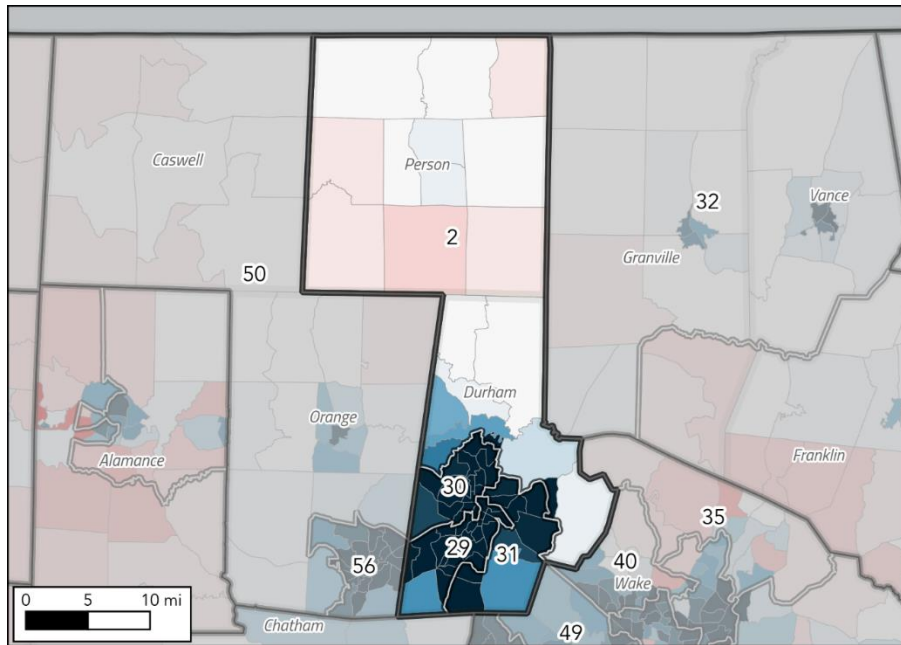
353. In Dr. Barber’s analysis, in 91% of his simulations there is one Democratic leaning district and in the remaining 9% of the simulations there are two Democratic leaning districts. Although the current seats in this county grouping are both held by Democrats, the Enacted Map aligns with the outcome of his simulations and now creates only one Democratic district. LDTX107 at 39, 43.

354. The Court finds the districts in the Pitt House county grouping, HD8 and HD9, to be the result of intentional, pro-Republican partisan redistricting.

e. Durham-Person House County Grouping

355. The Durham-Person House County Grouping contains House District 2 (“HD2”), House District 29 (“HD29”), House District 30 (“HD30”), and House District 31 (“HD31”). HD2 is comprised of Person County and portions of Durham County. HD29, HD30, and HD31 are comprised of portions of only Durham County. Harper Plaintiffs challenge these House Districts as the product of unlawful partisan gerrymanders.

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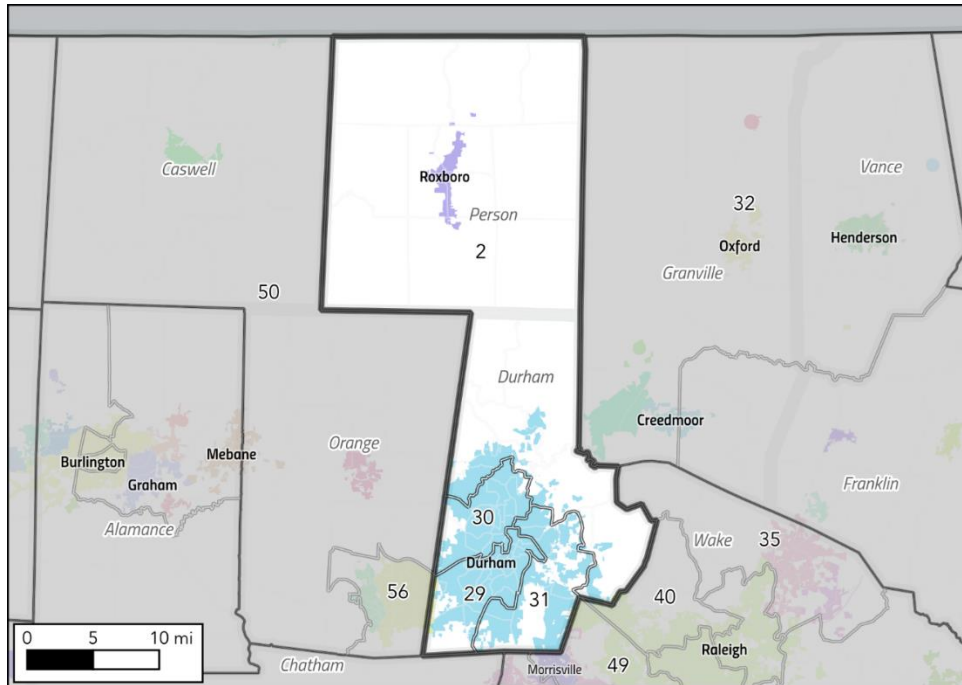


PX475 (Cooper Map 40)

356. Harper Plaintiffs challenge this House county grouping. Individual Harper Plaintiff Sondra Stein resides in HD2. No Individual Plaintiff resides in HD29, HD30, or HD31. No Organizational Plaintiff challenges the House Districts in this county grouping.

357. Durham County is the most Democratic county in North Carolina, having given 81.6% of its two-party vote share to President Biden in the 2020 election and having “voted overwhelmingly Democratic candidates in every 2020 county-wide election.” PX425 at 84. But the enacted district lines create an artificially competitive district in this cluster, HD2, by joining the more competitive VTDs in eastern and northern Durham County with Person County, to the north. *Id.*

358. Although the City of Durham is split across all four House districts in this county grouping, a comparison of Dr. Cooper’s red-blue map (PX475), and his map showing the municipal boundaries within this cluster (PX476), indicates that Legislative Defendants packed the most Democratic portions of the City of Durham into House Districts 29, 30, and 31.

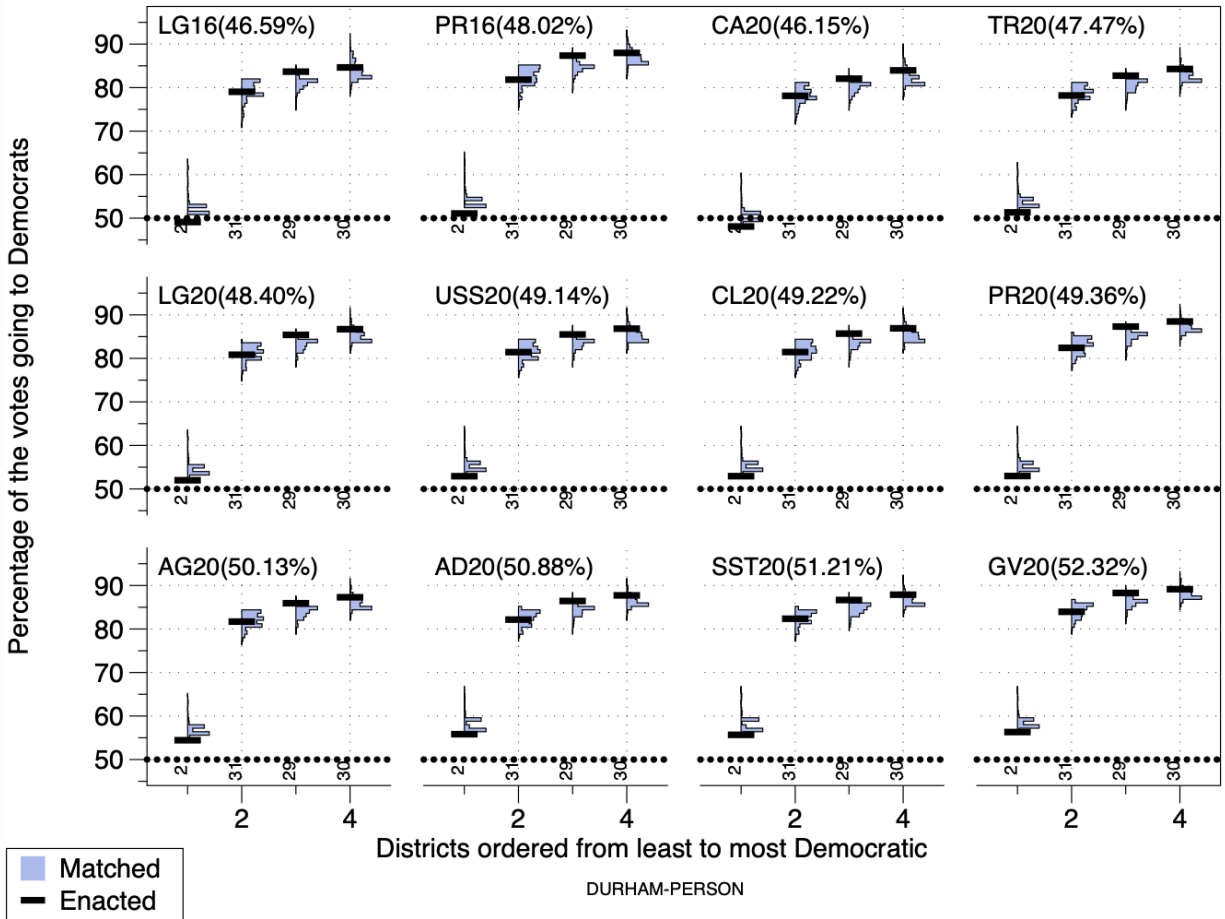


PX476 (Cooper Map 41)

359. The simulations of Drs. Mattingly and Pegden confirm Dr. Cooper’s analysis and independently establish that the Durham-Person county grouping is an intentional, pro-Republican partisan redistricting.

360. Figure 6.1.22 shows Dr. Mattingly’s analysis of this grouping.

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PX657 (Mattingly Figure 6.1.22)

361. The Court finds that Democrats were again cracked out of the most Republican district in the Durham-Person grouping. PX629 at 44; PX657. The nonpartisan ensemble shows that there are typically three highly Democratic districts and one more moderately Democratic district. *Id.* But in the enacted plan, the Democrats are cracked out of the moderately Democratic district, such that in Republican wave elections, the Republicans gain that seat even though they rarely would under the nonpartisan ensemble. In particular, in the Lieutenant Governor 2016 and Commissioner of Agriculture 2020 elections, where the Democrats only get around 46% of the statewide vote fraction, this cracking would be enough to deny a seat to the Democrats even though they would win the seat in a nonpartisan map. Not a single map in the non-partisan ensemble across any of the elections Dr. Mattingly

considered showed a smaller fraction of Democrats in the most Republican district than the enacted plan. PX629 at 44. In other words, this cluster shows more cracking of Democrats than every single plan in the nonpartisan ensemble. *Id.*

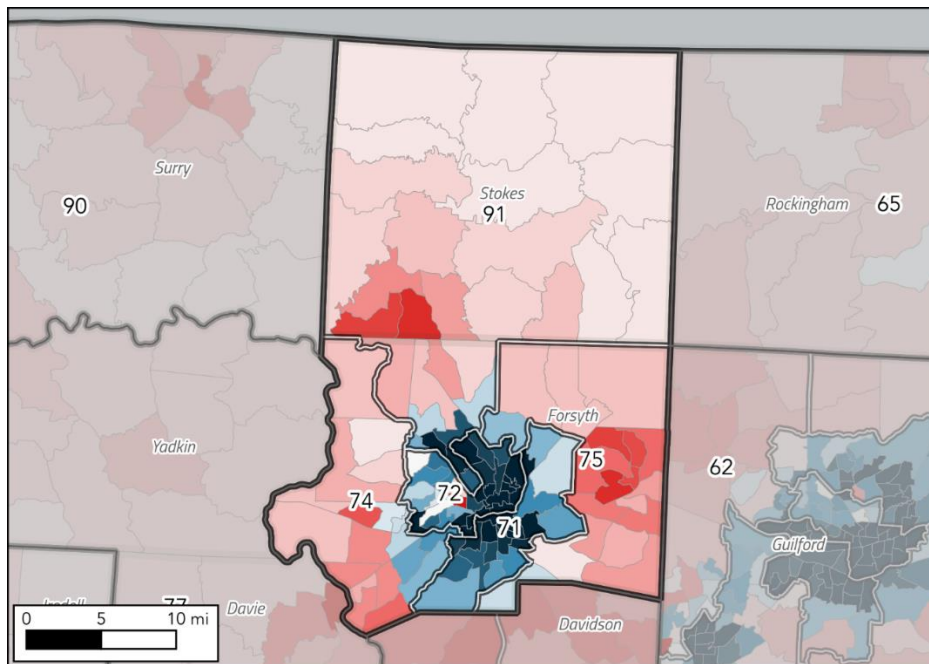
362. The Court finds, as Dr. Pegden’s findings show, that the Durham-Person House county grouping is the result of intentional, pro-Republican partisan redistricting. In his first-level analysis, Dr. Pegden found that the enacted plan’s version of this grouping is more favorable to Republicans than 99.932% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second-level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.79% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. PX523 at 25.

363. In the Durham-Person House county grouping, under each of the 11 elections that Legislative Defendants’ expert Dr. Barber considered, Democrats win four seats under 100% of Dr. Barber’s simulations, but under two of those elections (2016 Senate and 2016 Lt. Governor), Democrats win only three seats under the enacted map—an outcome never once encountered in the 37,800 simulations for this cluster generated by Dr. Barber’s algorithm. LDTX107 at 131.

364. The Court finds the districts in the Durham-Person House county grouping, HD2, HD29, HD30, and HD31, to be the result of intentional, pro-Republican partisan redistricting.

f. Forsyth-Stokes House County Grouping

365. The Forsyth-Stokes House County Grouping contains House District 71 (“HD71”), House District 72 (“HD72”), House District 74 (“HD74”), House District 75 (“HD75”), and House District 91 (“HD91”). HD71, HD72, HD74, and HD75 are comprised of portions of only Forsyth County. HD91 is comprised of Stokes County and portions of Forsyth County. Harper Plaintiffs and Plaintiff Common Cause challenge these House Districts as the product of unlawful partisan gerrymanders.

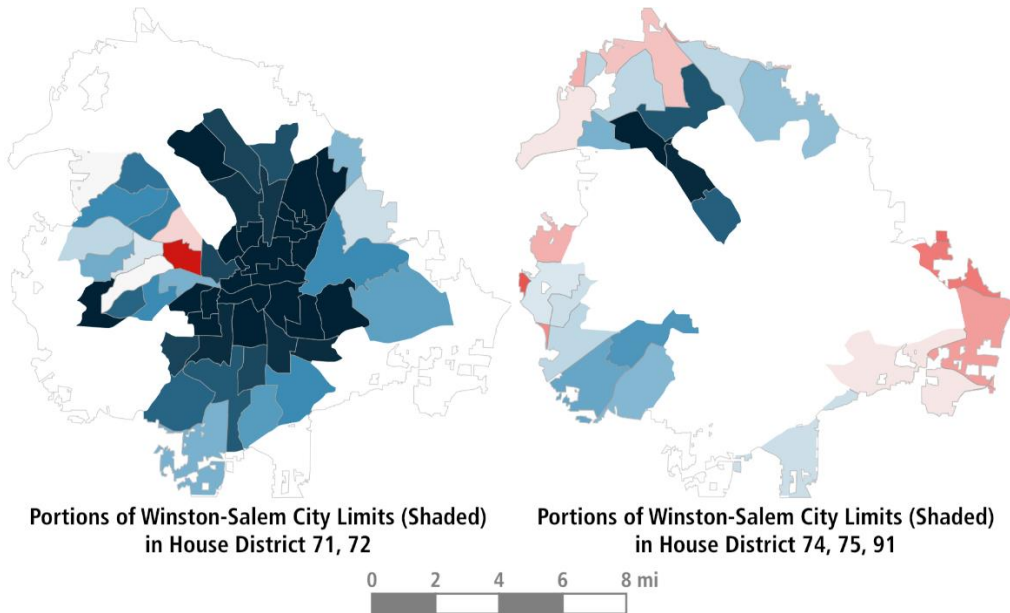


PX468 (Cooper Map 33)

366. Harper Plaintiffs challenge this House county grouping. Individual Harper Plaintiff Chenita Barber Johnson resides in HD72. No Individual Plaintiff resides in HD71, HD74, HD75, or HD91. Organizational Plaintiff Common Cause challenges the House Districts in this county grouping.

367. Legislative Defendants created Republican-leaning districts in House Districts 74, 75, and 91 by packing the Democratic voters in and around Winston-Salem into House Districts 71 and 72. PX425 at 73.

368. While the district boundaries in this grouping split Winston-Salem across all five districts, the district boundaries pack most Democratic voters in Winston-Salem into House Districts 71 and 72. *Id.*

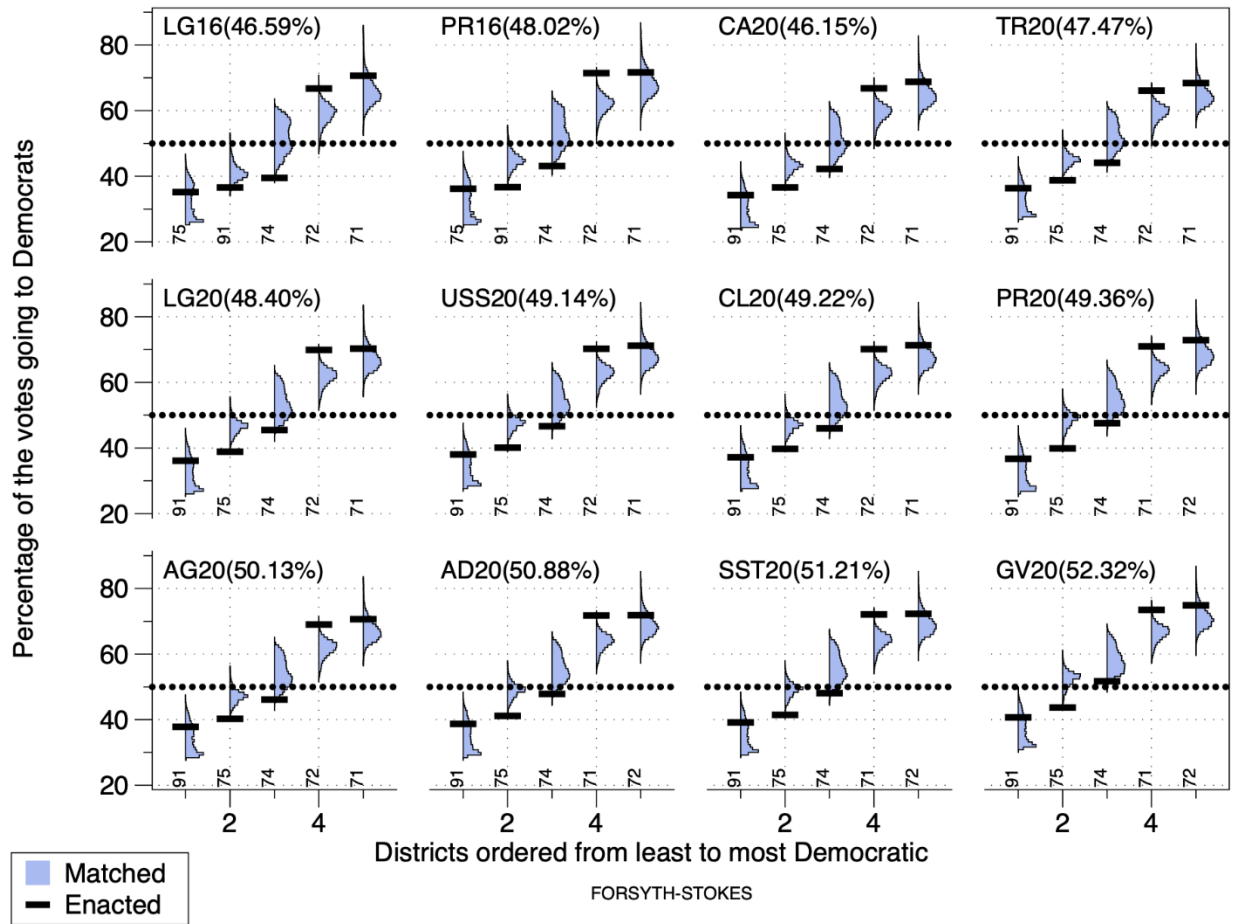


PX469 (Cooper Map 34)

369. The simulations of Drs. Mattingly and Pegden confirm Dr. Cooper's analysis and independently establish that the Forsyth-Stokes county grouping is an intentional, pro-Republican partisan redistricting.

370. Figure 6.1.7 shows Dr. Mattingly's analysis of this grouping.

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PX652 (Mattingly Figure 6.1.7)

371. The Court finds that Democrats were again cracked out of the three least Democratic (*i.e.*, most-Republican) districts in this grouping and packed into heavily Democratic districts (Districts 72 and 71). PX629 at 34; PX652. The effect is that the Republicans regularly win three out of five seats in this cluster even in situations where the Democrats would win three in the vast majority of plans in the nonpartisan ensemble. This is seen in the Senate 2020, President 2020, President 2016, and Attorney General 2020 races, among others. PX629 at 34. Dr. Mattingly quantified the cracking and packing of Democrats in the Forsyth-Stokes cluster: across every election he considered, less than 0.02% of the plans in the ensemble have a lower Democratic fraction in the three most Republican districts than the enacted plan, signaling extreme cracking. *Id.*

372. To preserve District 74’s Republican lean, District 91—which is heavily Republican and at no risk of electing a Democrat—cuts into Winston Salem to pick up those Democratic precincts that cannot be incorporated into Districts 71 and 72. The result is a district line that cuts to the core of Winston-Salem and preserves Republican advantage in District 74. PX201 “SL-175” B75:BA75, B80:BA80. This configuration comes at a cost of compactness; the Enacted House Plan in Forsyth and Stokes Counties has an average Polsby-Popper score of 0.33. PX150 at 16.

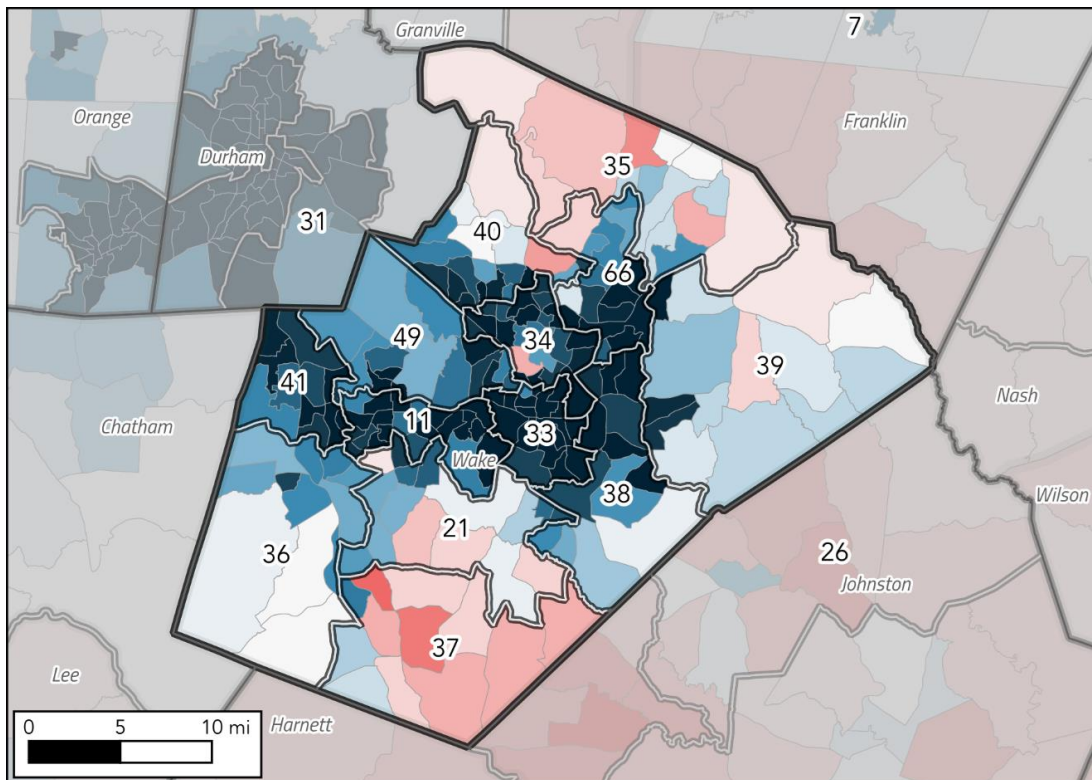
373. The Court finds, as Dr. Pegden’s findings show, that the Forsyth-Stokes House county grouping is the result of intentional, pro-Republican partisan redistricting. In his first-level analysis, Dr. Pegden found that the enacted plan’s version of this grouping is more favorable to Republicans than 99.912% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second-level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.73% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. PX523 at 18.

374. In the Forsyth-Stokes House cluster, the enacted map is a partisan outlier under three of the elections that Legislative Defendants’ expert Dr. Barber considered. Under the 2020 President election, Democrats win only two seats, even though they would have won three seats under 50% of Dr. Barber’s simulations and four seats under 35% of the simulations—a two-seat shift. Under eight of the 11 elections, the enacted map produces fewer Democratic seats than a majority of Dr. Barber’s simulations—a metric Dr. Barber himself has relied upon. LDTX107 at 142.

375. The Court finds the districts in the Forsyth-Stokes House county grouping, HD71, HD72, HD74, HD75, and HD91, to be the result of intentional, pro-Republican partisan redistricting.

g. Wake House County Grouping

376. The Wake House County Grouping contains House District 11 (“HD11”), House District 21 (“HD21”), House District 33 (“HD33”), House District 34 (“HD34”), House District 35 (“HD35”), House District 36 (“HD36”), House District 37 (“HD37”), House District 38 (“HD38”), House District 39 (“HD39”), House District 40 (“HD40”), House District 41 (“HD41”), House District 49 (“HD49”), and House District 66 (“HD66”). All thirteen House Districts are comprised of portions of only Wake County. Plaintiffs challenge these House Districts, with the exception of HD66, as the product of unlawful partisan gerrymanders.



PX466 (Cooper Map 31)

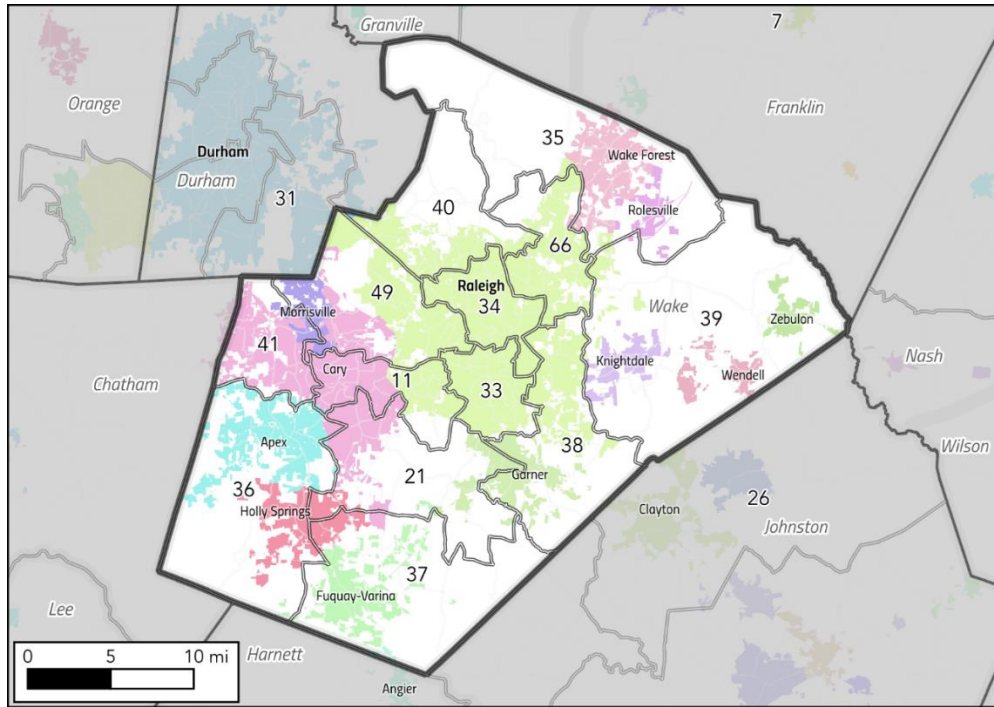
377. Harper Plaintiffs challenge this House county grouping. Individual Harper Plaintiff Rebecca Harper resides in HD21. Individual Harper Plaintiff John Anthony Balla resides in HD40. No Individual Plaintiff resides in HD11, HD33, HD34, HD35, HD36, HD37, HD38, HD39, HD41, or HD49. Organizational Plaintiff NCLCV challenges HD35, HD37, and

HD38 in this county grouping. Organizational Plaintiff Common Cause challenges HD35 in this county grouping.

378. Wake County includes Raleigh and 11 other municipalities. The county is strongly Democratic, LDTX107 at 169, and there are no Republicans on the county commission, PX425 at 70. The district boundaries in this grouping pack Democrats into as few districts as possible, leaving House Districts 11, 33, 36, 38, 41, and 49 without any Republican-leaning VTDs, House Districts 34 and 66 with only one Republican-leaning VTD, and House District 40 with only two Republican-leaning VTDs. Packing the majority of Democratic voters within these districts allows House Districts 35, to the north, and 37, to the southeast, to favor Republican candidates. *Id.*

379. House District 66 includes a “spike” that juts north to include a Democratic-leaning VTD on its boundary, effectively keeping the Democratic voters in that VTD “fenced off” from the House District 35, where they would otherwise make the election more favorable for a Democratic candidate. *Id.*

380. To the extent that Legislative Defendants argue that preserving municipal boundaries was a governing criterion, the district lines in this cluster split a number of cities, including Raleigh (split across 10 of the 12 districts), Cary, Garner, Fuquay-Varina, Apex, Holly Springs, and Morrisville. PX37.

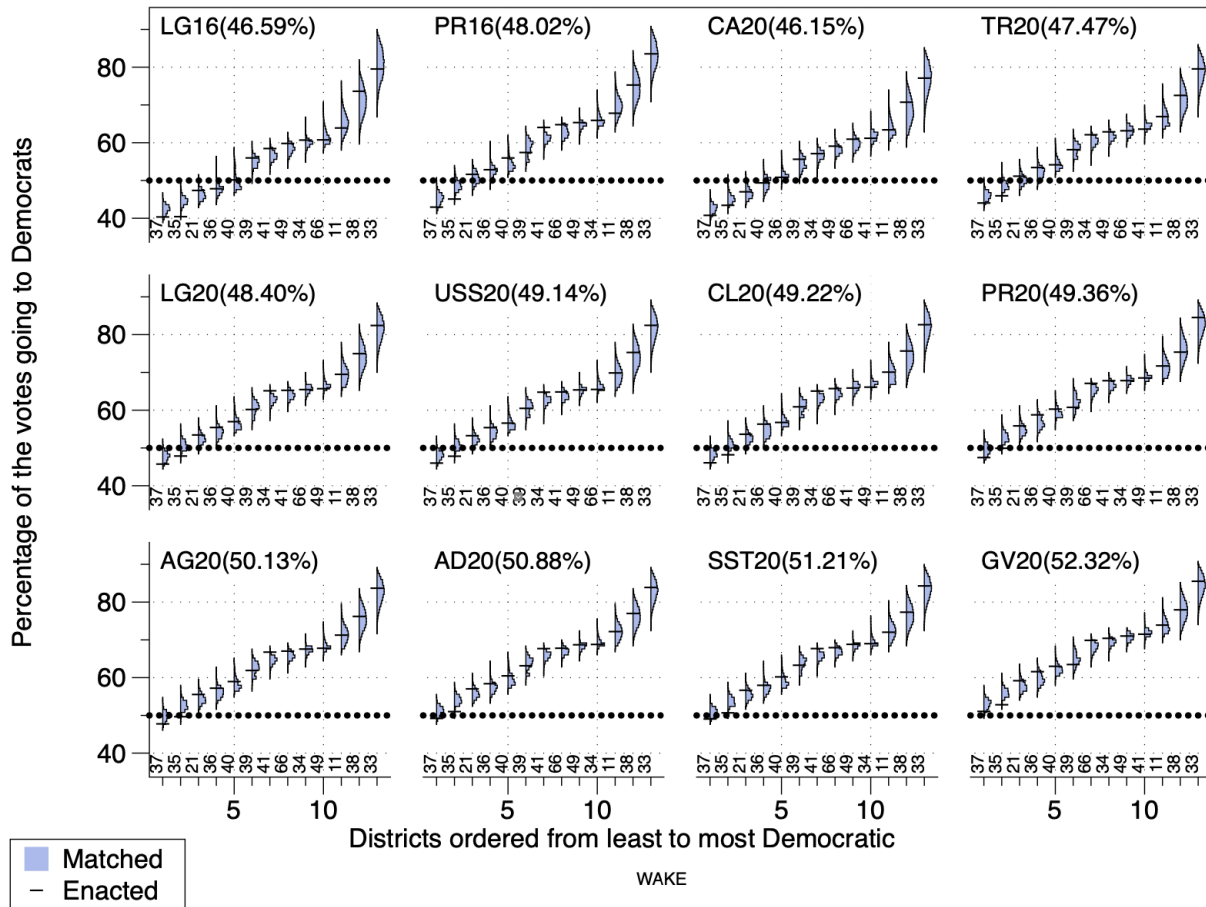


PX467 (Cooper Map 32)

381. The simulations of Drs. Mattingly and Pegden confirm Dr. Cooper’s analysis and independently establish that the Wake county grouping is the result of intentional, pro-Republican partisan redistricting.

382. Figure 6.1.4 shows Dr. Mattingly’s analysis of this grouping.

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PX651 (Mattingly Figure 6.1.4)

383. The Court finds that Democrats were cracked out of the two least Democratic (*i.e.*, most-Republican) districts in this grouping (Districts 37 and 35) and packed into heavily Democratic districts. PX629 at 32; PX651. The effect is to swing the two most Republican districts into play in elections where they would not be under the ensemble. For example, in the Attorney General 2020 election, Republicans win two districts under the enacted plan and Democrats win 11 even though Democrats would always win 12 under the ensemble and often win all 13. Dr. Mattingly quantified the cracking of Democrats out of those two most Republican districts: across every election he considered, the number of maps in the ensemble which have a lower Democratic vote fraction in the two most Republican districts than they do in the enacted plan is less than 0.42%, except for the Commissioner of Agriculture 2020

election, where it is 1.2%. That is, the enacted plan is in the most extreme 0.42% percent of plans in terms of cracking of Democrats. PX629 at 32.

384. The Court finds, as Dr. Pegden’s findings show, that the Wake House county grouping is the result of intentional, pro-Republican partisan redistricting. In his first-level analysis, Dr. Pegden found that the enacted plan’s version of this grouping is more favorable to Republicans than 99.27% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second-level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 97.8% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. PX523 at 22.

385. In the Wake House county grouping, the enacted map is a partisan outlier under four of the elections that Legislative Defendants’ expert Dr. Barber considered. Under three of those elections, the enacted map produces fewer Democratic districts than 90-98% of Dr. Barber’s simulations, and under the fourth election, the enacted map produces fewer Democratic districts than 85% of Dr. Barber’s simulations. LDTX107 at 173.

386. The Court finds the challenged districts in the Wake House county grouping, HD11, HD21, HD33, HD34, HD35, HD36, HD37, HD38, HD39, HD40, HD41, and HD49, to be the result of intentional, pro-Republican partisan redistricting.

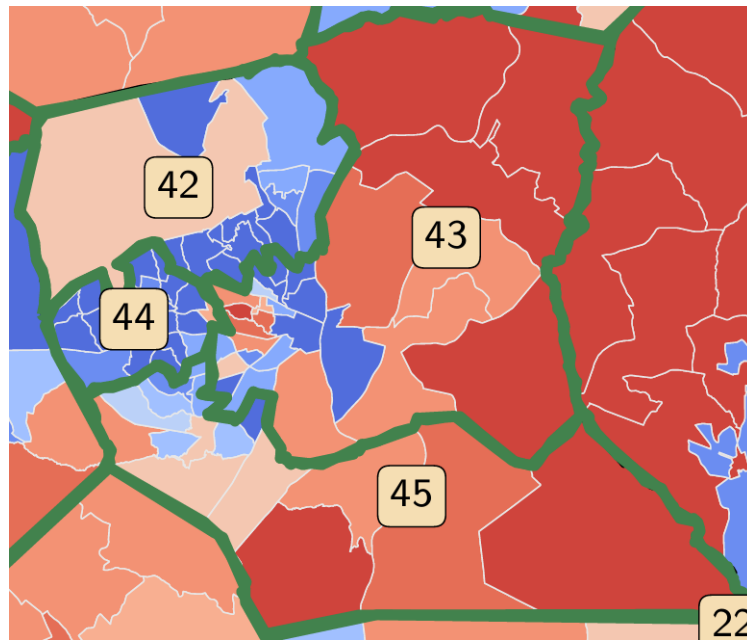
h. Cumberland House County Grouping

387. The Cumberland House County Grouping contains House District 42 (“HD42”), House District 43 (“HD43”), House District 44 (“HD44”), and House District 45 (“HD45”). Each of these four House Districts are comprised of portions of only Cumberland County. The Organizational Plaintiffs challenge these House Districts as the product of unlawful partisan gerrymanders.

388. No Individual NCLCV Plaintiff resides in any House District within this county grouping. Organizational Plaintiff Common Cause challenges every House District in

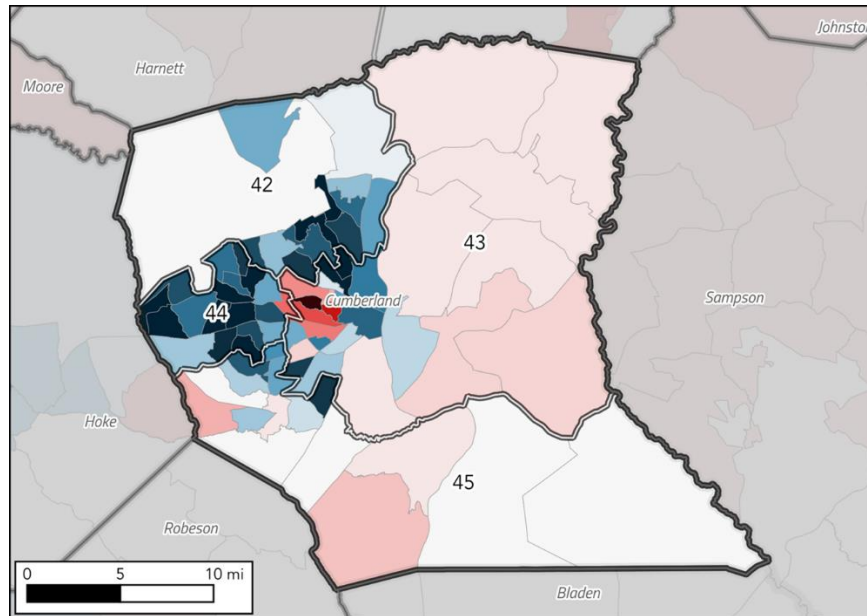
this county grouping. Organizational Plaintiff NCLCV challenges only HD43 and HD45 in this county grouping.

389. The Enacted Plan sacrifices compactness in order to maximize Republican advantage in this grouping. It does so by packing Democrats into two Districts 42 and 44. PX201 “SL-175” AO43, AO45. The result of this packing is that Districts 43 and 45 favor Republicans. 50.5% of District 43’s major-party voters voted for President Trump in the 2020 election; the same figure in District 45 was 50.8%. PX201 “SL175” AO44, AO46. This result came at the cost of lowering the average compactness score of the four districts to 0.34. PX150 at 16.



PX181 (Figure 31: Enacted House Districts 42, 43, 44 & 45)

390. Harper Plaintiffs do not challenge the districts in this county grouping; however, Harper Plaintiffs' experts, as part of their overall analysis in these consolidated cases, analyzed this county grouping as shown below.



PX478 (Cooper Map 43)

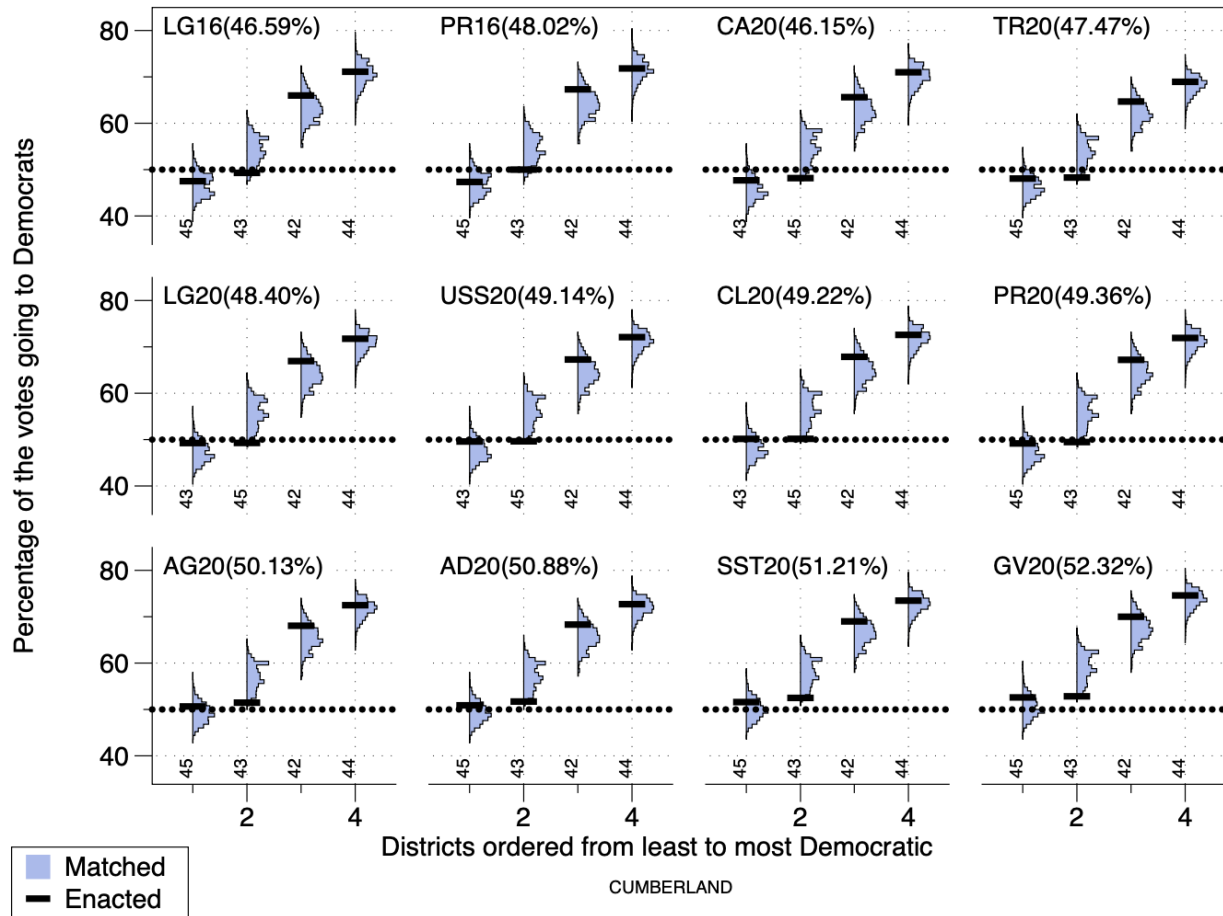
391. Cumberland County is a “heavily Democratic county” that provided 58% of its two-party vote share to Joe Biden in 2020 and that has not provided a plurality of votes to a Republican Presidential candidate since 2004. PX425 at 89.

392. Despite Cumberland County’s strong Democratic tilt, Legislative Defendants drew district lines that created two competitive districts, House District 43 in the east and House District 45 in the south, by packing the most heavily Democratic VTDs in Fayetteville into House Districts 42 and 44. *Id.*; TR 01/03/2022.

393. Fayetteville is split among all four districts in this county House District 43 includes almost all of the few Republican-leaning VTDs within Fayetteville, while House District 45 includes Republican-leaning and more competitive VTDs in the south of the city. PX425 at 89-90; TR 01/03/2022. These district lines allowed House District 43 to be more favorable than it otherwise would be for the first-term incumbent Republican candidate in that district. PX425 at 89.

394. The simulations of Drs. Mattingly and Pegden confirm Dr. Cooper’s analysis and independently establish that the Cumberland county grouping is an intentional, pro-Republican partisan redistricting.

395. Figure 6.1.28 shows Dr. Mattingly’s analysis of this grouping.



PX659 (Mattingly Figure 6.1.28)

396. The Court finds that Cumberland County is a partisan outlier. Democrats have been cracked out of the second most Republican district (District 43), which normally is comfortably Democratic, but under the enacted plan frequently produces a Republican seat. For each of the elections considered, the number of plans in the ensemble with smaller fraction of Democrats in the second most Republican district is typically around 1% with, for a few elections, the percentage reaching as high as 7% or as low as 0.4%. PX629 at 48; PX659.

397. The Court finds, as Dr. Pegden’s findings show, that the Cumberland House county grouping is the result of intentional, pro-Republican partisan redistricting. Dr. Pegden’s first-level analysis determined that the enacted plan’s version of the Cumberland county grouping is more favorable to Republicans than 83.5% of maps that his algorithm encountered by making small changes to the district boundaries. PX523 at 27. This result was not an unusual enough result to enable a statistically significant second-level analysis. *Id.* But Dr. Pegden’s “wave threshold” analysis found the Cumberland county grouping to be a partisan outlier. *Id.* at 36. As explained, the wave threshold metric captures, for a given map, the smallest uniform swing in election results that would be required to give the Democrats an additional seat. Using this alternative analysis allowed Dr. Pegden to assess whether this grouping may have been drawn to achieve “other conceivable partisan goals” besides merely maximizing Republican seat count, “such as facilitating the re-election of particular representatives in particular districts.” *Id.* at 33. Dr. Pegden concluded, and the Court finds, that the enacted plan’s version of this county grouping had a wave threshold more favorable to Republicans than 99.59% of maps that his algorithm encountered by making small changes to the district boundaries. *Id.* at 36.

398. In the Cumberland House county grouping, under six of the individual elections Legislative Defendants’ expert Dr. Barber considered, Democrats win two seats under the enacted map. While Dr. Barber notes that in these cases the enacted plans create one, or occasionally two, competitive districts that could be heavily contested, in each case Democrats would have won more than two seats in 100% of Dr. Barber’s simulations. LDTX107 at 116.

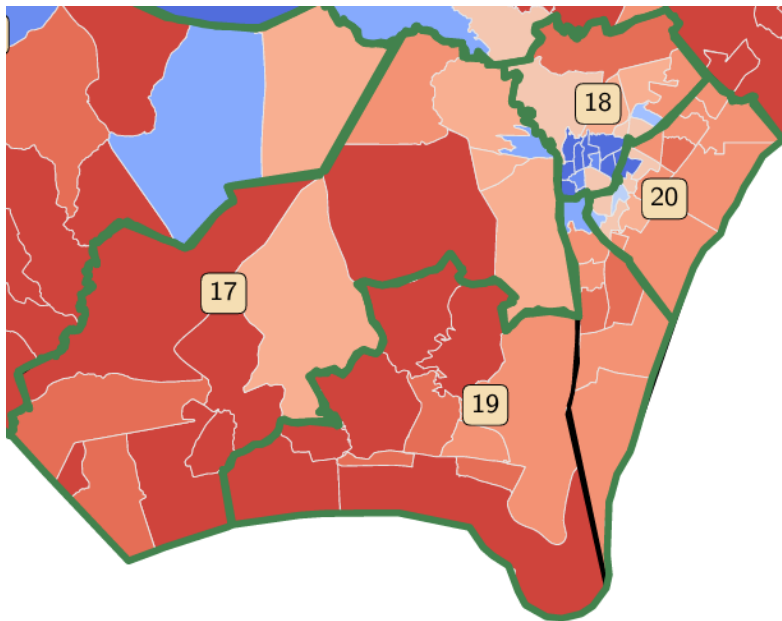
399. The Court finds the districts in the Cumberland House county grouping, HD42, HD43, HD44, and HD45, to be the result of intentional, pro-Republican partisan redistricting.

i. Brunswick-New Hanover House County Grouping

400. The Brunswick-New Hanover House County Grouping contains House District 17 (“HD17”), House District 18 (“HD18”), House District 19 (“HD19”), and House District 20 (“HD20”). HD17 is comprised of portions of only Brunswick County. HD19 is comprised of portions of Brunswick and New Hanover Counties. HD18 and HD20 are comprised of portions of only New Hanover County. NCLCV Plaintiffs challenge this county grouping as the product of an unlawful partisan gerrymander.

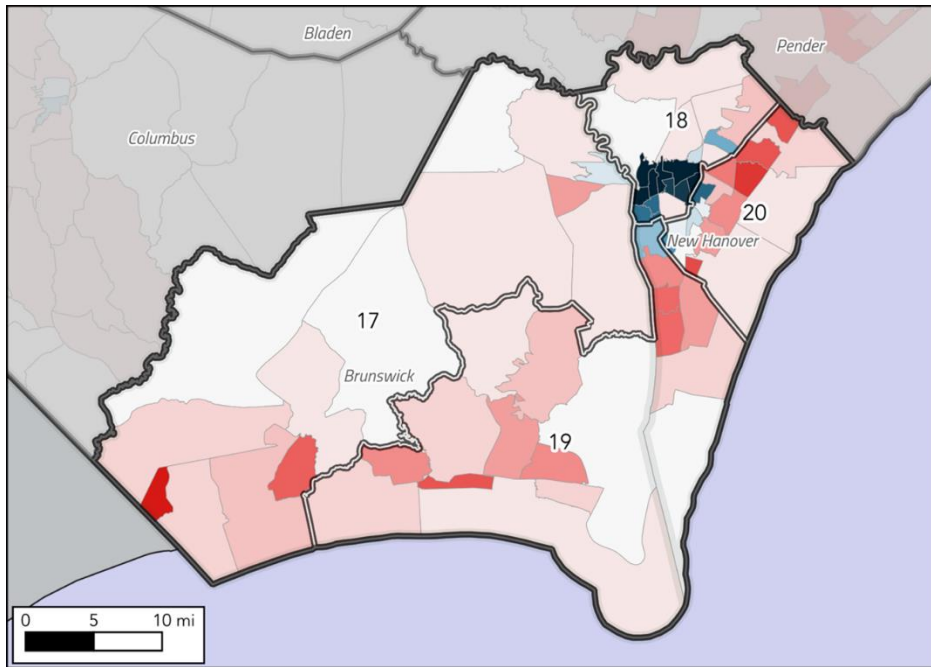
401. NCLCV Plaintiffs challenge this House county grouping. No Individual NCLCV Plaintiff resides in these House Districts. Organizational Plaintiff NCLCV challenges all House districts in this county grouping.

402. The Enacted House Plan creates three Republican districts in this cluster: House Districts 17, 19, and 20. PX425 at 96; PX201 “SL175” B18:BA21.



PX181 (Figure 26: Enacted House Districts 17, 18, 19 & 20)

403. Harper Plaintiffs do not challenge the districts in this county grouping; however, Harper Plaintiffs' experts, as part of their overall analysis in these consolidated cases, analyzed this county grouping as shown below.

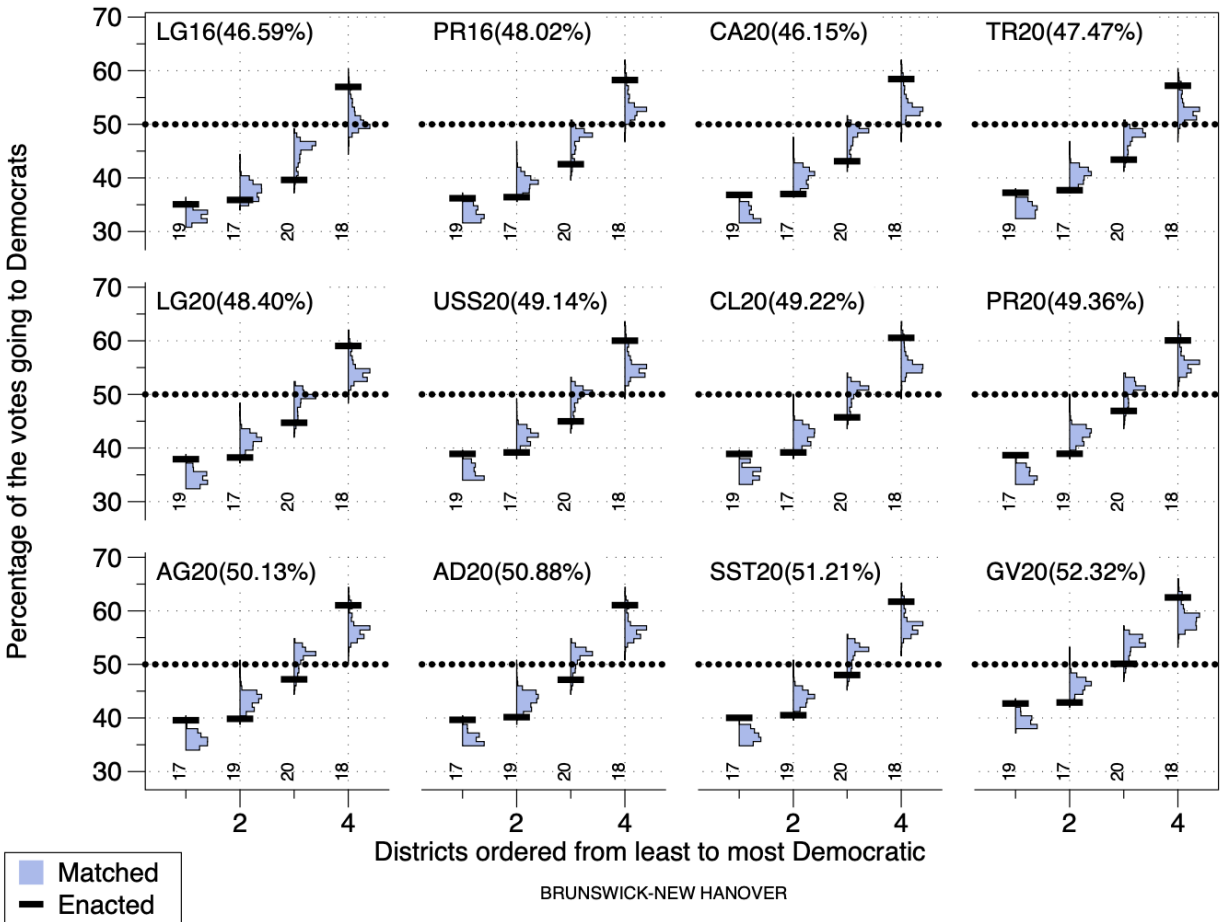


PX481 (Cooper Map 46)

404. This grouping is located in the southeastern corner of the state and includes the heavily Democratic City of Wilmington. The district lines pack Democratic voters in and around Wilmington into House District 18, allowing the other three districts, particularly House District 20, to lean more heavily towards the Republican candidate. PX425 at 95. House District 19 includes a Democratic-leaning VTD south of Wilmington, which has the effect of keeping those Democratic voters out of House District 20, keeping that district safer for the Republican candidate. PX425 at 95.

405. The simulations of Drs. Mattingly and Pegden confirm Dr. Cooper's analysis and independently establish that the Brunswick-New Hanover county grouping is an intentional, pro-Republican partisan redistricting.

406. Figure 6.1.34 shows Dr. Mattingly's analysis of this grouping.



PX661 (Mattingly Figure 6.1.34)

407. The Court finds that Democrats were again packed and cracked in the Brunswick-New Hanover cluster. PX629 at 52; PX661. In particular, they are packed into the most Democratic district (District 18) and cracked out of the middle-most Republican districts. PX661. This enables Republicans to safely win three out of four districts, even in situations where Democrats would almost always win two seats under the nonpartisan ensemble. PX629 at 42. Examples of this are in the Attorney General 2020, State Auditor 2020, and Secretary of State 2020 elections. Over each of the elections considered, the fraction of plans in the nonpartisan ensemble where there are fewer Democratic votes in the second and third most Republican districts than in the enacted plan is always less than 0.5%

and often much smaller. PX629 at 52. In other words, the enacted plan cracks more Democrats in those districts than all but 0.5% of plans in the nonpartisan ensemble.

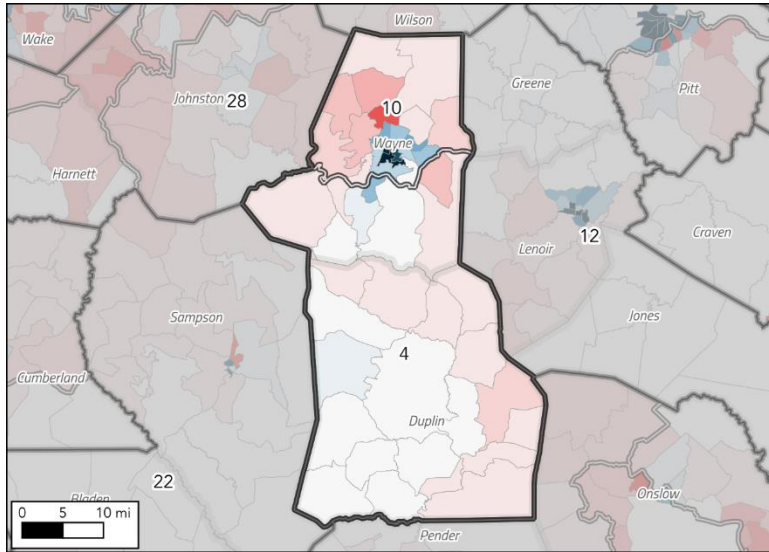
408. The Court finds, as Dr. Pegden’s findings show, that the Brunswick-New Hanover House county grouping is the result of intentional, pro-Republican partisan redistricting. Dr. Pegden’s first-level analysis determined that the enacted plan’s version of the Brunswick-New Hanover county grouping is more favorable to Republicans than 89.4% of maps that his algorithm encountered by making small changes to the district boundaries. PX523 at 24. This result was not an unusual enough result to enable a statistically significant second-level analysis. *Id.* But Dr. Pegden’s “wave threshold” analysis found this county grouping to be a partisan outlier. *Id.* at 34. Dr. Pegden concluded, and the Court finds, that the enacted plan’s version of the Brunswick-New Hanover county grouping had a wave threshold more favorable to Republicans than 99.72% of maps that his algorithm encountered by making small changes to the district boundaries. *Id.* In particular, for the enacted map, Democratic performance could increase by 10.1 percentage points in every district, yet Democrats still would capture only two of the four seats. *Id.*

409. In 100% of Legislative Defendants’ expert Dr. Barber’s simulations, there is one Democratic leaning district in this Republican leaning county cluster. Under Dr. Barber’s analysis, the enacted plans are in alignment with his simulations in creating one Democratic district. LDTX107 at 132, 136.

410. The Court finds the districts in the Brunswick-New Hanover House county grouping, HD17, HD18, HD19, and HD20, to be the result of intentional, pro-Republican partisan redistricting.

j. Duplin-Wayne House County Grouping

411. The Duplin-Wayne House County Grouping contains House District 4 (“HD4”) and House District 10 (“HD10”). HD4 is comprised of Duplin County and portions of Wayne County. HD10 is comprised of portions of only Wayne County. Plaintiffs challenge these House Districts as the product of unlawful partisan gerrymanders.

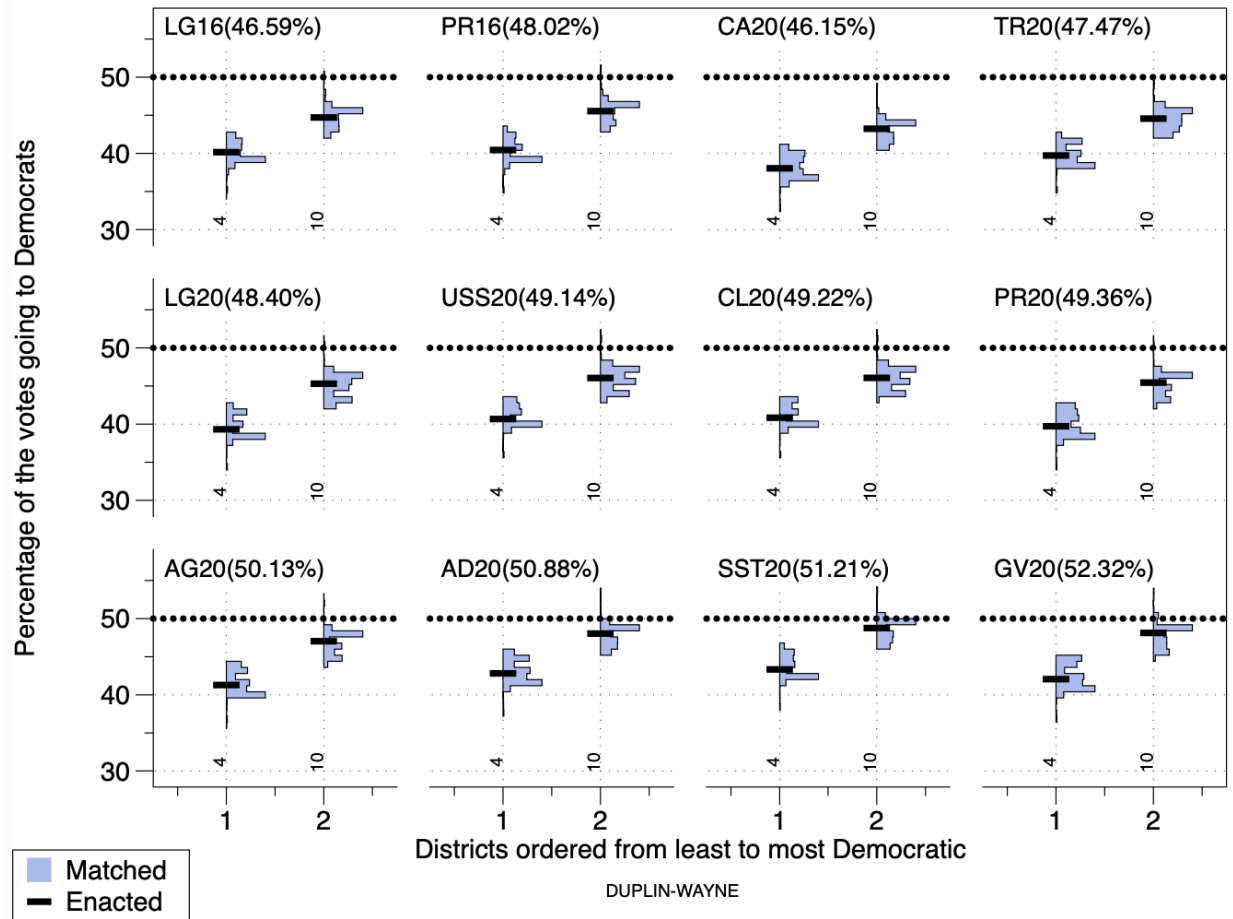


PX477 (Cooper Map 42)

412. Harper Plaintiffs and NCLCV Plaintiffs challenge this House county grouping. Individual Harper Plaintiffs Bobby Jones and Kristiann Herring reside in HD10. No Individual Plaintiff resides in HD4. Organizational Plaintiff NCLCV challenges both House districts in this county grouping.

413. The district boundary that runs through Wayne County ensures that this cluster will contain two safely-Republican districts. PX425 at 87.

414. Figure 6.1.19 shows Dr. Mattingly’s analysis of this grouping.



PX656 (Mattingly Figure 6.1.19)

415. Dr. Mattingly’s analysis did not find that Duplin-Wayne was an outlier, because the black bars representing the enacted plan fall within the middle of the blue histograms representing the nonpartisan ensemble. PX629 at 42.

416. Dr. Pegden was unable to generate any comparison districtings of this House county grouping due to his conservative methodology. PX523 at 17; *see id.* at 11. The fact that his algorithm cannot generate comparison maps does not say one way or the other whether the enacted map of this grouping is the result of intentional, pro-Republican partisan redistricting. *Id.* at 11.

417. Under Legislative Defendants’ expert Dr. Barber’s analysis, this county grouping is moderately Republican and, after discarding simulations for containing more

county traversals or being less compact, zero simulated maps remained for Dr. Barber to analyze. After retaining 2,704 of his simulated maps that have the highest compactness score, the enacted maps match his simulated maps in producing no Democratic leaning districts in this county grouping for all 11 elections. LDTX107 at 58, 63.

418. The Court finds the districts in the Duplin-Wayne House county grouping, HD4 and HD10, to not be the result of intentional, pro-Republican partisan redistricting.

k. Onslow-Pender House County Grouping

419. The Onslow-Pender House County Grouping contains House District 14 (“HD14”), House District 15 (“HD15”), and House District 16 (“HD16”). HD14 and HD15 are each comprised of portions of only Onslow County. HD16 is comprised of Pender County and portions of Onslow County. NCLCV Plaintiffs challenge this county grouping as the product of an unlawful partisan gerrymander.

420. No Individual Plaintiff resides in these House Districts. Organizational Plaintiff NCLCV challenges HD14 and HD15 in this county grouping.

421. Although one of the districts in this cluster—District 15—could have centered around Jacksonville, Legislative Defendants instead split the Jacksonville area’s Democrats between two districts—House Districts 14 and 15—in order to create three heavily Republican districts that prevent Onslow County’s Democratic voters from having any meaningful say in elections. PX201 “SL-175” B15:BA16. This, again, came at the cost of compactness: the average compactness score for Districts 14, 15, and 16 is 0.30. PX150 at 16.

422. The Court finds the districts in the Onslow-Pender House county grouping, HD4 and HD10, to not be the result of intentional, pro-Republican partisan redistricting.

3. North Carolina Congressional Districts

423. The analysis and conclusions of Plaintiffs' experts establishes that the 2021 Congressional Plan is a partisan outlier intentionally and carefully designed to maximize Republican advantage in North Carolina's Congressional delegation. Plaintiffs' experts employed computer simulations to generate alternative Congressional plans to serve as a baseline for comparison to the enacted Congressional plan. Even though these experts employed different methodologies, each expert found that the enacted plan is an outlier that could only have resulted from an intentional effort to secure Republican advantage. Plaintiffs' expert Dr. Christopher Cooper explained how this intentional, pro-Republican partisan redistricting was carried out in each of the 14 congressional districts and has led to a substantial disconnect between the ideology and policy preferences of North Carolina's citizenry and their representatives in the General Assembly. The Court agrees with the findings of each of these experts and finds that the 2021 Congressional Plan is an intentional, and effective, pro-Republican partisan redistricting.

424. Legislative Defendants offered no defense of the 2021 Congressional Plan. No expert witness opined that it was not the product of an intentional partisan redistricting.

a. Harper Plaintiffs' Expert Dr. Chen's Analysis of the Congressional Plans

(i) *Analysis of the Congressional Plan's Adherence to the Adopted Criteria*

425. In his simulation set, Dr. Chen programmed his algorithm to follow the traditional districting principles mandated by the General Assembly's Adopted Criteria. PX482 at 5 ¶8; PX34. This is the same method Dr. Chen employed in *Common Cause v. Lewis*, 2019 WL 4569584, and *Harper v. Lewis*, No. 19 CVS 012667 (N.C. Super. 2019). PX482 at 5 ¶8.

426. Specifically, Dr. Chen programmed the computer algorithm to create 1,000 independent simulated plans adhering to the following seven districting criteria mandated by the 2021 Adopted Criteria: (1) population equality (2) contiguity, (3) minimizing county splits and (4) minimizing VTD splits and prioritizing the other traditional redistricting principles set forth in the Adopted Criteria of (5) compactness, (6) avoiding incumbent pairings, and (7) avoiding splitting municipalities. PX482 at 6-9 ¶11; PX34.

427. The Court finds that Dr. Chen's computer algorithm properly adhered to the Adopted Criteria, as well as traditional redistricting principles. The Court further finds that Dr. Chen's interpretation and application of the Adopted Criteria is fully consistent with General Assembly's requirements and guidance. The Court further finds that Dr. Chen's application of these criteria is consistent with generally accepted redistricting principles and practice.

428. First, Dr. Chen compared the number of counties that the simulated and enacted congressional plans split. The enacted congressional plan splits 14 counties. PX482 at 11-12 ¶17; PX484. Dr. Chen concluded this was one more split than necessary. *Id.* at 12-13 ¶17-18. From this, Dr. Chen concluded that the enacted congressional plan does not comply with the Adopted Criteria's rule against unnecessary division of counties. *Id.* at 13 ¶18. Dr. Chen also found that counties were only split multiple times in 1.8% of his simulations, and that within that small percentage Mecklenburg, Wake, and Guilford were not all split multiple times. *Id.* at 19; PX485.

429. The Court finds that the enacted congressional plan fails to follow and subordinates the Adopted Criteria's requirement that counties be split only for reasons of population equality or for the protection of incumbents. The Court finds that the enacted congressional plan splits more counties than is necessary. The Court also finds that the

enacted congressional plan unnecessarily splits three heavily Democratic counties—Mecklenburg, Wake, and Guilford Counties—into three districts each.

430. Dr. Chen also compared the number of VTDs split in the enacted congressional plan to his 1,000 simulations. Dr. Chen found that, in comparison to his simulations, the enacted congressional plan contains 25 VTD splits, almost double the number of VTDs that are necessary to split to maintain population equality. PX482 at 15 ¶¶21-22. From this, Dr. Chen concluded that the enacted congressional plan violates the Adopted Criteria’s requirement that VTDs “should be split only when necessary.” *Id.* at 15 ¶¶23; PX486.

431. The Court finds that the enacted congressional plan fails to follow, and subordinates, the Adopted Criteria’s requirement of avoiding the unnecessary splitting of VTDs. The Court finds that the enacted congressional plan splits more VTDs than is necessary.

432. Dr. Chen found that the enacted congressional plan is also less compact than almost all of his 1,000 simulations. Dr. Chen employed the measures of compactness set forth in the Adopted Criteria, known as Reock and Polsby-Popper scores. PX482 at 17 ¶¶24. PX34. For both measures, a higher score indicates that a plan’s districts are more compact. PX482 at 17-18 ¶¶26-27.

433. Dr. Chen found that, as measured by Polsby-Popper scores, the enacted congressional plan is far less compact than all 1,000 simulated congressional plans. PX482 at 17 ¶¶26. He further found, as measured by Reock scores, the enacted congressional plan is far less compact than almost all 1,000 simulated congressional plans. *Id.* at 18 ¶¶27. From this, Dr. Chen concluded that the enacted congressional plan is significantly less compact than would have been expected from a districting process adhering to the Adopted Criteria. *Id.* at 17-18 ¶¶26-27; PX487.

434. The Court finds that the enacted congressional plan fails to follow, and subordinates, the Adopted Criteria’s requirement to draw compact districts. The Court finds that the enacted congressional districts are less compact than they would be under a map-drawing process that adhered to the Adopted Criteria and prioritized the traditional districting criteria of compactness.

(ii) Analysis of Whether the Congressional Plan is a Statistical Partisan Outlier

435. To compare the partisanship of his simulated plans to the enacted congressional plan, Dr. Chen used census block-level election results from recent statewide elections in North Carolina. PX482 at 21 ¶¶31-32. For his analysis, Dr. Chen used the following ten elections: 2016 US President, 2016 US Senator, 2016 Governor, 2016 Lieutenant Governor, 2016 Attorney General, 2020 US President, 2020 US Senator, 2020 Governor, 2020 Lieutenant Governor, and 2020 Attorney General. *Id.* at 21 ¶31. Dr. Chen aggregated the results of these elections into a single composite, referred to as the “Statewide Election Composite.” *Id.* at 22 ¶33.

436. Dr. Chen analyzed these elections because they are the same state and federal offices whose election results were used by the General Assembly during its 2017 legislative redistricting process, and the 2017 redistricting process was the most recent one in which the leadership of the General Assembly’s redistricting committees publicly announced how the General Assembly would evaluate the partisanship of its own districting plans. PX482 at 21 ¶31. Additionally, past voting history in federal and statewide elections is a strong predictor of future voting. *Id.* at 20 ¶28.

437. By overlaying these past election results onto the enacted congressional plan, Dr. Chen calculated the Republican share of the votes cast from within each district in the enacted congressional plan and in each simulated plan. PX482 at 20 ¶28. Based on these

calculations, Dr. Chen directly compared the partisanship of the enacted congressional plan and the simulated plans. *Id.* Dr. Chen used these comparisons to determine whether the partisanship of individual enacted districts and the partisan distribution of seats in the enacted congressional plan could reasonably have arisen from a districting process adhering to the Adopted Criteria and its explicit prohibition on partisan considerations. *Id.*

438. The Court finds that the use of statewide elections by Plaintiffs' experts to measure the partisanship of simulated and enacted districts to be a reliable methodology.

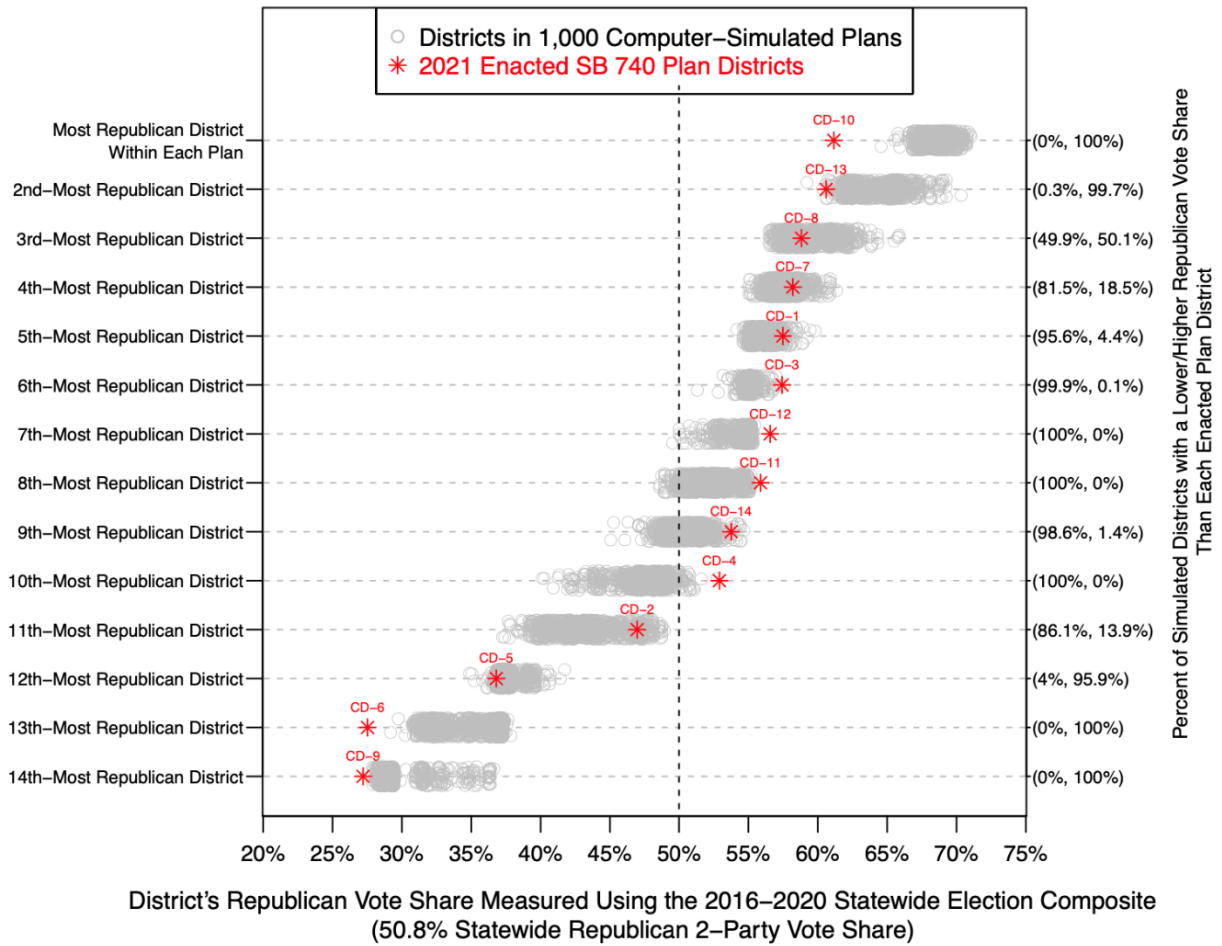
439. To measure the partisanship of his simulated districts and the enacted districts, Dr. Chen obtained precinct-level results for the elections in the ten elections in the Statewide Election Composite and aggregated the census block-level results to the district level. PX482 at 21 ¶32. In other words, using the census blocks that would comprise a particular district in a given simulation and the actual election results from those census blocks, Dr. Chen calculated the percentage total two-party votes in that simulated district for Republican candidates in the 2016-2020 statewide election contests. *Id.* at 21-22 ¶32-33.

440. Figure 4 in Dr. Chen's report compares the partisan distribution of districts in the enacted congressional plan to the partisan distribution of districts in the 1,000 computer-simulated plans:

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Figure 4:

Comparisons of Enacted SB 740 Plan Districts to 1,000 Computer-Simulated Plans' Districts



PX488 (Chen Figure 4)

PX482 at 22 ¶33; *id.* at 23 ¶35.

441. In Figure 4, the enacted congressional plan's districts are ordered from the most to the least-Republican district, as measured by Republican vote share using the Statewide Election Composite. PX482 at 23 ¶35; PX488. The red stars mark enacted districts and are labeled with district numbers, while the gray dots represent the corresponding 1,000 simulated districts. In other words, each row compares one district from the enacted congressional plan to 1,000 computer-simulated districts based on Republican vote share. *Id.* at 23-24 ¶35. The two percentages in parentheses in the right margin of this

Figure report the percentage of these 1,000 simulated districts that are less Republican than, and more Republican than, the enacted congressional plan's district. *Id.* at 26 ¶36.

442. The Court finds, as the bottom row of Figure 4 illustrates, the most-Democratic district in the enacted congressional plan (CD-9) is more heavily Democratic than 100% of the most-Democratic districts in each of the 1,000 computer-simulated plans. PX482 at 26 ¶37; PX488. Every single one of the computer-simulated counterpart districts would have been more politically moderate than CD-9 in terms of partisanship: CD-9 exhibits a Republican vote share of 27.2%, while all 1,000 of the most-Democratic districts in the computer-simulated plans would have exhibited a higher Republican vote share and would therefore have been more politically moderate. *Id.* at 26 ¶36. Based on this, Dr. Chen concluded, and the Court so finds, that CD-9 packs together Democratic voters to a greater extent than the most-Democratic district in 100% of the computer-simulated plans. *Id.* Dr. Chen therefore concluded that CD-9 is an extreme partisan outlier when compared to its 1,000 computer-simulated counterparts, using a standard threshold test of 95% for statistical significance. *Id.* Dr. Chen uses the standard threshold test of 95% for statistical significance throughout his analysis.

443. The Court finds that the same pattern observed for CD-9, exists for CD-6. PX482 at 26-27 ¶38; PX488. Again, CD-6 is more heavily Democratic than 100% of the corresponding second-most-Democratic districts in each of the 1,000 computer-simulated plans. *Id.* Again, every single one of its computer-simulated counterpart districts would have been more politically moderate than CD-6 in terms of partisanship: CD-6 exhibits a Republican vote share of 27.5%, while 100% of the second-most-Democratic districts in the computer-simulated plans would have exhibited a higher Republican vote share and would therefore have been more politically moderate. *Chen Id.* The Court finds, like CD-9, CD-6 packs together Democratic voters to a greater extent than the second-most-Democratic

district in 100% of the computer-simulated plans. *Id.* at 27 ¶38. From these results, Dr. Chen identified CD-6 as an extreme partisan outlier when compared to its 1,000 computer-simulated counterparts, using a standard threshold test of 95% for statistical significance. *Id.*

444. The Court finds that CD-5, the next most Democratic district in the enacted congressional plan, similarly contains more Democratic voters than over 95% of its counterpart simulated plans. PX488.

445. The Court finds that the same partisan skew exists for the two most-Republican districts in the enacted congressional plan. As the top row of Figure 4 illustrates, and the Court so finds, the most-Republican district in the enacted congressional plan (CD-10) is less heavily Republican and more heavily Democratic than 100% of the most-Republican districts in each of the 1,000 computer-simulated plans. PX482 at 27 ¶39; PX488.

446. The Court finds that a similar pattern appears in the second-to-top row of Figure 4, which illustrates that the second most-Republican district in the enacted congressional plan (CD-13) is less heavily Republican and more heavily Democratic than 99.7% of the second-most-Republican districts in each of the 1,000 computer-simulated plans. *Id.*

447. The Court finds that the two most Republican districts (CD-10 and CD-13) and the three most Democratic districts (CD-9, CD-6, and CD-5), which include more Democratic voters than virtually all of their counterpart districts in the 1,000 computer-simulated plans, draw Democratic voters out of the more moderate districts in the enacted congressional plan. PX482 at 27 ¶40. Having fewer Democratic voters in these more moderate districts enhances Republican candidate performance in these districts. *Id.*

448. The Court finds that the middle six rows in Figure 4 confirm this effect. These rows compare the partisanship of districts in the fifth, sixth, seventh, eighth, ninth, and

tenth-most Republican districts (CD-1, 3, 4, 11, 12, and 14) within the enacted congressional plan and the 1,000 computer-simulated plans. For all six districts, the enacted congressional plan district is a partisan outlier; the enacted congressional plan's district is more heavily Republican than over 95% of its counterpart districts in the 1,000 computer-simulated plans, with three being more heavily Republican than 100% of their counterpart districts. PX482 at 28 ¶41; PX488

449. These six enacted congressional plan districts, CD-1, 3, 4, 11, 12, and 14, are more heavily Republican than nearly all of their counterpart computer-simulated plan districts because the five most partisan-extreme districts in the enacted congressional plan, CD-5, 6, 9, 10, and 13, are more heavily Democratic than nearly all of their counterpart districts in the computer-simulated plans. *Id.*

450. Based on these findings, Dr. Chen identified the enacted congressional plan's six most moderate districts, CD-1, 3, 4, 11, 12, and 14 as partisan statistical outliers. PX482 at 28-29 ¶¶42-43. Each of these six districts has a Republican vote share that is higher than over 95% of the computer-simulated districts. *Id.* He also concluded that the four most extreme districts in the enacted congressional plan in terms of partisanship, CD-6, 9, 10, and 13, are partisan statistical outliers. *Id.* Each of these four districts has a Republican vote share that is lower than at least 99.7% of the computer-simulated districts. *Id.* CD-5 likewise is a partisan statistical outlier, containing more Democratic voters than 95.9% of the computer-simulated districts. PX482 at Figure 4. Dr. Chen thus concluded that overall, eleven individual districts in the enacted congressional plan are extreme statistical outliers, exhibiting partisan characteristics that are rarely or never observed in the computer-simulated plan districts. *Id.* at 23 ¶34; *id.* at 29 ¶44.

451. The Court finds that the enacted congressional plan contains 11 districts, CD-1, 3, 4, 5, 6, 9, 10, 11, 12, 13, and 14, that are partisan outliers, which cannot be explained by

adherence to the Adopted Criteria. The Court finds that these enacted congressional districts have partisan compositions that would not have arisen under a map-drawing process that adhered to the Adopted Criteria. The Court finds this to be evidence that the enacted congressional plan was intentionally designed to give Republicans a partisan advantage.

452. The enacted congressional plan's ten most-Republican districts exhibit a significantly narrower range of partisanship than is exhibited by the ten most-Republican districts in each of the computer-simulated plans. PX482 at 30 ¶46. Specifically, the enacted congressional plan's ten most-Republican districts all have Republican vote shares within the narrow range of 52.9% to 61.2%. *Id.* at 29 ¶45. Dr. Chen refers to these districts as "Mid-Range Republican Districts," meaning they favor Republican candidates within this narrow range. *Id.*

453. The creation of ten Mid-Range Republican Districts is an outcome that never occurs in the computer-simulated plans and is therefore an extreme statistical outlier. PX482 at 30 ¶46. Instead, virtually all of the simulated plans contain from two to six Mid-Range Republican Districts, with the most common outcome among the simulations being four such districts. *Id.* Based on this, Dr. Chen concluded that the enacted congressional plan is an extreme partisan outlier in terms of maximizing the number of Mid-Range Republican Districts, and that the enacted congressional plan did so to an extreme degree far beyond any of the 1,000 simulated plans created using a partisan-blind computer algorithm that follows the Adopted Criteria. *Id.*; *see* PX489.

454. The enacted congressional plan's maximization of Mid-Range Republican Districts necessarily results in fewer competitive districts. PX482 at 30 ¶47. The enacted congressional plan contains zero districts in which the Republican vote share is within 5% of the Democratic vote share. *Id.* Dr. Chen labels districts within this range as "Competitive Districts." The enacted congressional plan contains no Competitive Districts as measured

using the Statewide Election Composite. *Id.* at 30 ¶48. Only about 5% of the 1,000 simulated plans fail to have a single Competitive District, and the vast majority of the computer-simulated plans contain two or more such districts. *Id.*; *see* PX490.

455. Dr. Chen's analysis of Mid-Range Republican and Competitive Districts is evidence of the intent and effects of Legislative Defendants' pro-Republican partisan redistricting. Dr. Chen's analysis of Mid-Range Republican and Competitive Districts is evidence that the enacted congressional plan was designed specifically to ensure that Republicans can efficiently and consistently win at least ten congressional seats and that Democrats are packed into the remaining districts. The frequency of Mid-Range Republican and Competitive Districts in the enacted congressional plan would not have occurred under a map-drawing process that adhered to the Adopted Criteria, and the Court finds this to be evidence that the enacted congressional plan was intentionally designed to give Republicans a partisan advantage.

456. Dr. Chen also analyzed the number of total Republican-favoring districts in the enacted congressional plan, which are defined as a district having greater than 50% Republican vote share as measured using the Statewide Election Composite. PX482 at 32 ¶50; Figure 7. While the enacted congressional plan has 10 Republican districts, only 3% of the computer-simulated plans create 10 Republican-favoring districts, and no computer-simulated plan ever creates more than 10 Republican districts. *Id.*

457. Based on these results, in terms of the total number of Republican-favoring districts created by the plan, the enacted congressional plan is a statistical outlier when compared to the 1,000 computer-simulated plans. *Id.* at 32 ¶51. The enacted congressional plan creates the maximum number of Republican districts that ever occurs in any computer-simulated plan, and more Republican districts than 97% of the computer-simulated plans,

which were drawn using a non-partisan districting process adhering to the Adopted Criteria. *Id.*; see PX491.

458. Dr. Chen also measured the number of Republican districts that would exist under his simulated plans and the enacted congressional plan under a variety of electoral environments. PX482 at 34 ¶54; *id.* at 86-95; PX513-522 (Figures B1-B10). The ten individual elections in the Statewide Election Composite showed a range of different electoral outcomes, ranging from a Republican vote share of 47.7% to 53.3%. *Id.* at 86-95, PX513-522. Across this range of electoral environments, the enacted congressional plan always creates a 10-4 distribution of seats in favor of Republican candidates. *Id.* at 34 ¶54. Based on this, the enacted congressional plan's 10-4 distribution is durable across a range of electoral conditions. *Id.*

459. Dr. Chen's analysis of the enacted congressional plan under various electoral outcomes is evidence that the enacted congressional plan was designed specifically to ensure that Democrats cannot win more than four congressional seats under any reasonably foreseeable electoral environment. The number of Republican-leaning districts in the enacted congressional plan would be lower under a map-drawing process that adhered to the Adopted Criteria. The Court finds this to be evidence that the enacted congressional plan was intentionally designed to give Republicans a partisan advantage.

460. Dr. Chen also examined the enacted congressional plan as compared to the simulated plans under a variety of methods redistricting scholars commonly use to compare the relative partisan bias of different districting plans.

461. First, Dr. Chen examined the enacted congressional plan's mean-median difference and compared it to the simulated plans. PX482 at 36 ¶59. A plan's mean-median difference is calculated as the mean district-level Republican vote share, minus the median district-level Republican vote share. *Id.* at 35 ¶57.

462. The mean-median difference analysis confirms that the enacted congressional plan creates an extreme partisan outcome that cannot be explained by North Carolina's political geography or by adherence to Adopted Criteria. PX482 at 37 ¶60; PX492.

463. Second, Dr. Chen analyzed another commonly used measure of a districting plan's partisan bias called the efficiency gap. PX482 at 39 ¶62. The efficiency gap provides a measure of the degree to which more Democratic or Republican votes are wasted across an entire districting plan. *Id.* at 40 ¶63. The efficiency gap is calculated using the total sum of surplus votes in districts a party won and lost votes in districts where that party lost. *Id.* at 39-40 ¶62. Dr. Chen found that the enacted congressional plan exhibits an efficiency gap of 19.5%, indicating that the plan results in far more wasted Democratic votes than wasted Republican votes. PX482 at 40-41 ¶66; PX493.

464. The efficiency gap analysis confirms that the enacted congressional plan creates an extreme partisan outcome that cannot be explained by North Carolina's political geography or the Adopted Criteria. *Id.*

465. Third, Dr. Chen analyzed another commonly used measure of a districting plan's partisan bias called the lopsided margins test. PX482 at 43 ¶67. The basic premise of the lopsided margins measure is that a partisan-motivated map-drawer may attempt to pack the opposing party's voters into a small number of extreme districts that are won by a lopsided margin. *Id.* Dr. Chen compared the enacted congressional plan's lopsided margins measure with the computer simulated plans and found that the simulated plans all have a smaller lopsided margins measure than the enacted congressional plan. PX482 at 44 ¶70; PX494.

466. The enacted congressional plan is an extreme outlier compared to the simulated plans on the lopsided margins measure, and the enacted congressional plan's

packing of Democrats into Democratic-favoring districts was not simply the result of North Carolina's political geography, combined with adherence to the Adopted Criteria. *Id.* at ¶71.

467. Fourth, Dr. Chen analyzed another common measure of partisan bias in a districting plan based on the concept of partisan symmetry. PX482 at 46 ¶72. This analysis, which Dr. Chen calls “partisan symmetry based on uniform swing,” examines what share of seats a party would win under the enacted congressional plan in a hypothetical tied election. *Id.*

468. Based on the results of this analysis, the enacted congressional plan creates a durable Republican majority for North Carolina's congressional delegation, such that even when Democrats win 50% of the statewide vote, Republicans will still be favored in 10 out of 14 (71.4%) of the congressional districts, while Democrats will only be favored in 4 out of the 14 (28.6%) districts. *Id.* at 47 ¶76; PX495.

469. Based on Dr. Chen's overall statewide conclusions based on his computer simulations, the Court adopts these conclusions and finds that the enacted congressional plan subordinates the Adopted Criteria and traditional redistricting criteria for partisan advantage.

(iii) Analysis of Whether the Congressional Plan is a Statistical Partisan Outlier at the Regional Level

470. In addition to the above statewide analyses, Dr. Chen also examined the extent to which partisan bias affected the map-drawing process within specific cities and regions of the state. PX482 at 50 ¶79. Dr. Chen found, and the Court so finds, that the enacted congressional plan's districts in each region examined exhibit political bias when compared to the computer-simulated districts in the same regions. *Id.*

471. Dr. Chen first examined the Piedmont Triad area. The enacted congressional plan splits Guilford County into three different districts: CD-7, 10, and 11. PX482 at 50 ¶80.

These three fragments of Guilford County voted solidly Democratic in recent statewide elections but were each combined with more Republican areas in surrounding counties across the Piedmont Triad area. *Id.* This splitting results in CD-7, 10, and 11 being safely Republican, each with a Republican vote share between 55.9% and 61.2%. *Id.*

472. The enacted congressional plan cracked Democratic voters in the region to a greater extent than virtually all of the computer-simulated plans. PX482 at 50 ¶81 - 54 ¶81. The enacted congressional plan achieved this result by creating districts that are significantly less compact than virtually all of the Guilford County districts in the computer-simulated plans. *Id.*; see PX496. The vast majority (75.6%) of simulated plans did not split Guilford County a single time, and if the County was split, it was usually split only once. PX497.

473. The Court finds that the three-way splitting of Guilford County and resulting creation of three safe Republican districts in the Piedmont Triad area could not have resulted naturally from the region's political geography or the districting principles required by the Adopted Criteria.

474. Dr. Chen next conducted similar analyses of the districts in the Research Triangle. PX482 at 56 ¶ 88; PX498. In this area of the state, the enacted congressional plan's Raleigh-based district (CD-5) and Durham-based district (CD-6) are more heavily packed with Democrats than almost 100% of the simulated districts containing Raleigh and Durham. *Id.* CD-5 and CD-6 are also less geographically compact than nearly 100% of the computer-simulated districts containing Raleigh and Durham. PX482 at 56 ¶ 89; PX499.

475. Because the enacted congressional plan packs Democratic voters into CD-5 and CD-6, the surrounding districts are more safely Republican than they would have been in the absence of such packing. PX482 at 56 ¶ 90; PX499. CD-7 is a partisan outlier that was enabled by the packing of Democratic voters in CD-5 (Raleigh) and CD-6 (Durham). *Id.*

476. The Court finds that the enacted congressional plan packs Democrats in its Raleigh-based and Durham-based districts by subordinating geographic compactness in the drawing of CD-5 and CD-6, and this could not have resulted naturally from the region's political geography or the districting principles required by the Adopted Criteria.

477. Finally, Dr. Chen examined Mecklenburg County. PX482 at 60 ¶91; PX500. The enacted congressional plan's CD-9 is more heavily Democratic than 100% of the simulated plans' districts containing the most of Charlotte. *Id.* As a result, the surrounding suburban districts in the enacted congressional plan, including CD-13 in Northern Mecklenburg County and CD-8 in Eastern Mecklenburg County, are more safely Republican than their geographic counterparts in all of the computer-simulated plans. PX482 at 60 ¶92-93.

478. Based on this data, the enacted congressional plan packed Democrats in Mecklenburg County to an extent greater than what naturally occurs as a result of the area's political geography. PX482 at 60 ¶94.

479. The Court finds that the enacted congressional plans created a Charlotte district that is more heavily Democratic than what could be expected from a partisan-blind map-drawing process, and this could not have resulted naturally from the region's political geography or the districting principles required by the Adopted Criteria.

480. The Court finds that the packing and cracking of Democrats in the Piedmont Triad Area, the Research Triangle Area, and Mecklenburg County could not have resulted naturally from the region's political geography or the districting principles required by the Adopted Criteria. The enacted congressional map was therefore designed in order to accomplish the legislature's predominant partisan goals.

(iv) Effect of Political Geography

481. Political geography can create a natural advantage for Republicans in Republican vote share in suburban and rural districts, where for example, Democratic voters are clustered in urban areas because of the common districting principle of drawing geographically compact districts. *Id.* at 63 ¶95. But Dr. Chen programmed a computer algorithm that drew simulated plans using North Carolina’s unique political geography. *Id.* 63, ¶96. As Dr. Chen, explained “the entire premise of conducting districting simulations is to fully account for North Carolina’s unique political geography, its political subdivision boundaries, and its districting criteria, as mandated by the Adopted Criteria.” *Id.* Thus, the simulation analysis allowed Dr. Chen to identify how much of the electoral bias in the enacted congressional plan is caused by North Carolina’s political geography and how much is caused by the map-drawer’s intentional efforts to favor one political party over the other. *Id.* at 63-64 ¶97.

482. The Court finds that the enacted congressional plan’s partisan bias goes beyond any “natural” level of electoral bias caused by North Carolina’s political geography or the political composition of the state’s voters, *Id.* at 64 ¶98, and this additional level of partisan bias in the enacted congressional plan can be directly attributed to the map-drawer’s intentional efforts to favor the Republican Party, *Id.* at 64 ¶100.

483. Additional, district-specific findings in addition to those made above are as follows:

b. Individual Congressional Districts

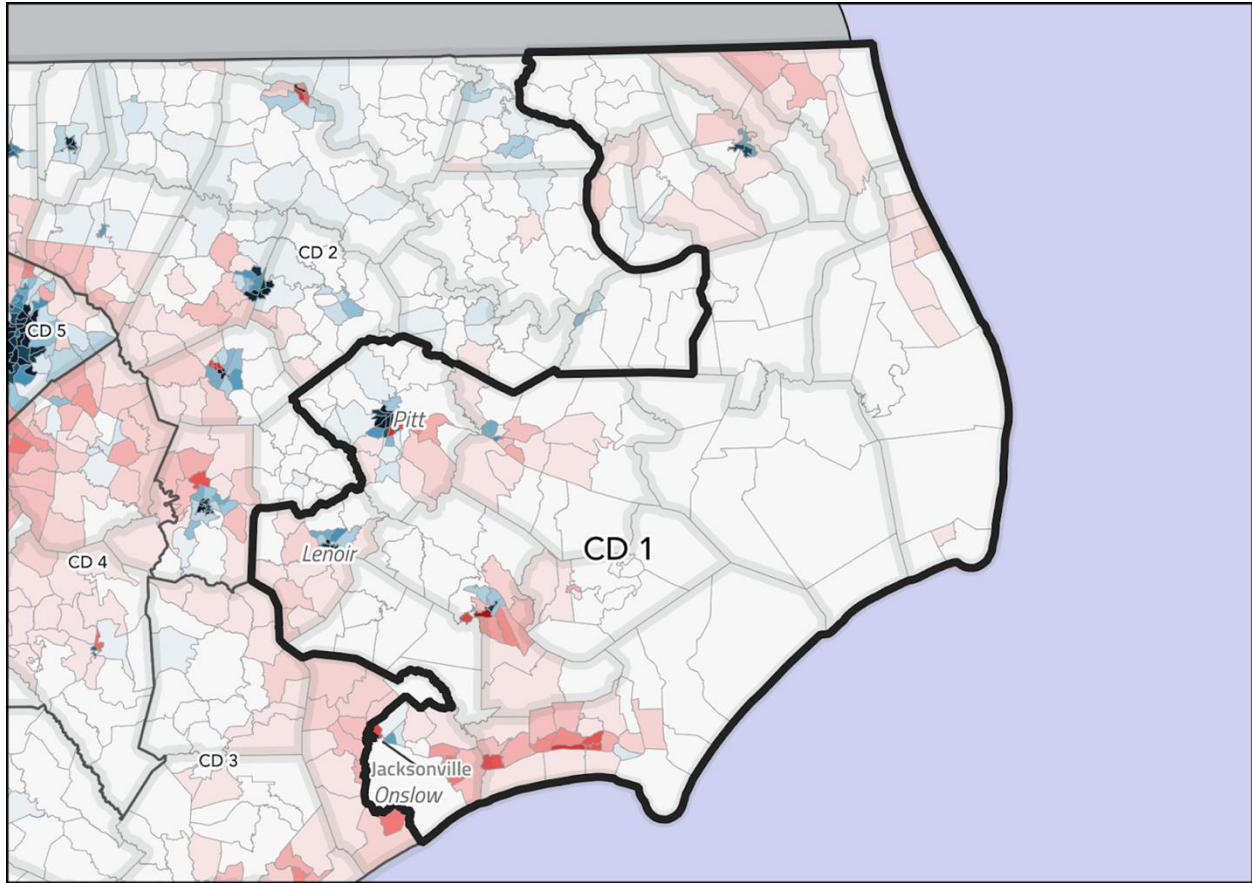
(i) Congressional District No. 1 (“CD1”)

484. CD1 is comprised of Beaufort County, Camden County, Carteret County, Chowan County, Craven County, Currituck County, Dare County, Gates County, Hyde County, Jones County, Lenoir County, Pamlico County, Pasquotank County, Perquimans County, Tyrrell County, portions of Onslow County, and portions of Pitt County. Harper Plaintiffs challenge this congressional district as the product of unlawful partisan gerrymanders.

485. Individual Harper Plaintiffs Amy Clare Oseroff and Donald Rumph reside in and challenge CD1.

486. CD1 is in the northeastern corner of the state and includes part of the former CD1 and CD3. PX425 at 21. As Dr. Cooper’s reported and his map illustrates, Legislative Defendants included the Democratic-leaning areas of Pitt County within CD1, allowing for a greater Republican advantage in bordering CD2, to the west. *Id.*

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PX440 (Cooper Map 5)

487. CD1 is likely to elect a Republican candidate based on a calculation of the two-party vote differential in the 2020 Secretary of Labor and Attorney General elections in the VTDs that are included within CD1, as well as other measures. PX425 at 21.

488. The Court finds this congressional district, CD1, to be the result of intentional, pro-Republican partisan redistricting.

(ii) Congressional District No. 2 (“CD2”)

489. CD2 is comprised of Bertie County, Caswell County, Edgecombe County, Franklin County, Granville County, Greene County, Halifax County, Hertford County, Martin County, Nash County, Northampton County, Person County, Vance County, Warren County, Washington County, Wilson County, portions of Pitt County, and portions of Wayne

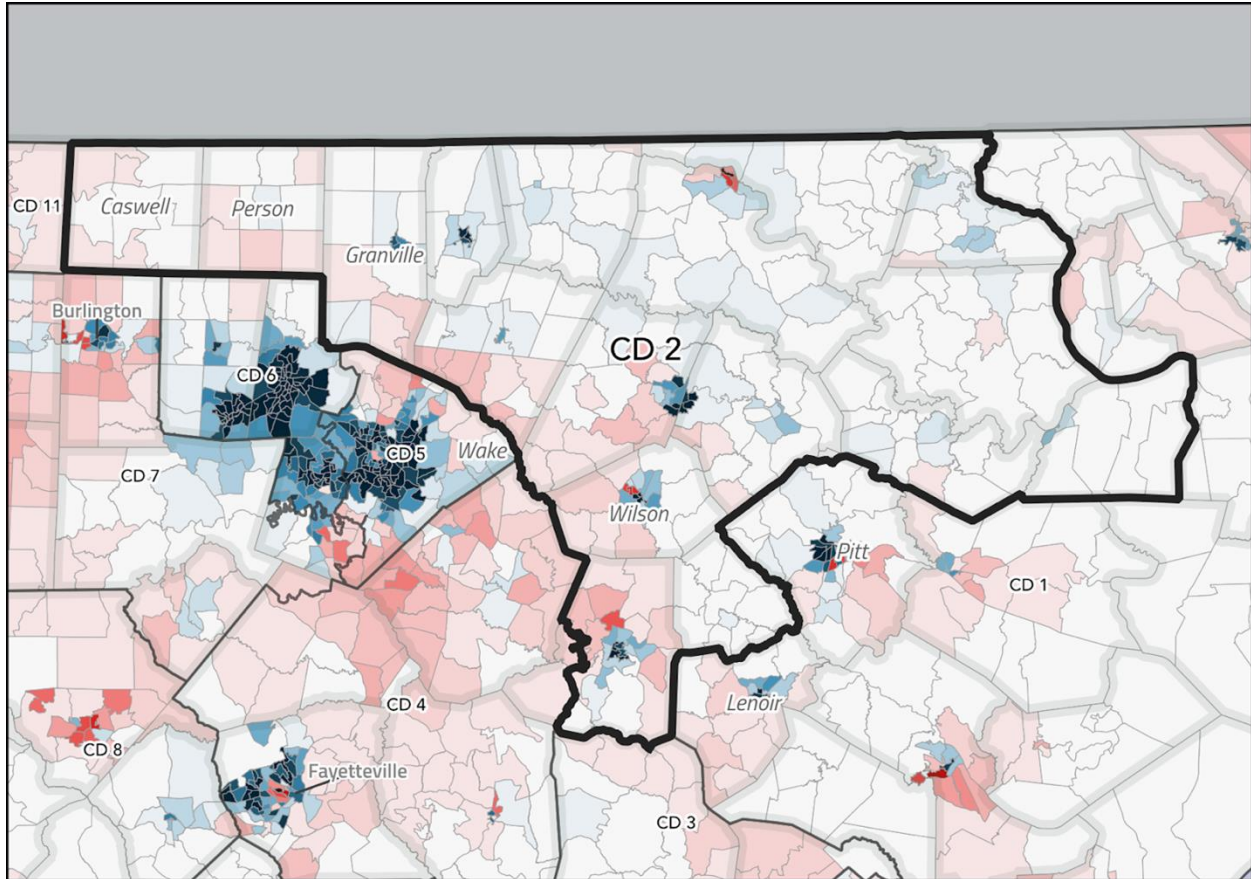
County. Plaintiffs challenge this congressional district as the product of unlawful partisan gerrymanders.

490. Individual Harper Plaintiffs Lauren Flood, Bobby Jones, and Kristiann Herring reside in and challenge CD2. Organizational Plaintiff Common Cause challenges CD2 as well.

491. CD2 stretches from Albemarle Sound, in the east, to the Raleigh-Durham-Chapel Hill metropolitan area and includes Caswell County, northeast of Greensboro, to the west. Washington County and Caswell County have never been paired together in a congressional map in North Carolina's history, no matter which political party was in charge. PX425 at 23; Trial Tr. 01/03/2022.

492. CD2 includes the "core" of former CD1, as well as portions of the former CD4 and CD13. While the former CD1 previously included Pitt County, home to East Carolina University in Greenville, CD2 does not include Pitt County. PX425 at 21-23.

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PX441 (Cooper Map 6)

493. CD2 is now a “competitive” district based on a calculation of the two-party vote differential in the 2020 Secretary of Labor and Attorney General elections in the VTDs that are included within CD2, as well as other measures. PX425 at 23. CD2 is “the lone competitive district in the state of North Carolina under the Enacted Maps.” Trial Tr. 01/03/2022.

494. Most of the area that comprises CD2 is represented by Democrat G.K. Butterfield in a Democratic-leaning district. Representative Butterfield, who is the longest serving member of North Carolina’s congressional delegation, announced that he will not seek re-election after the 2021 Congressional Plan was enacted. PX425 at 23.

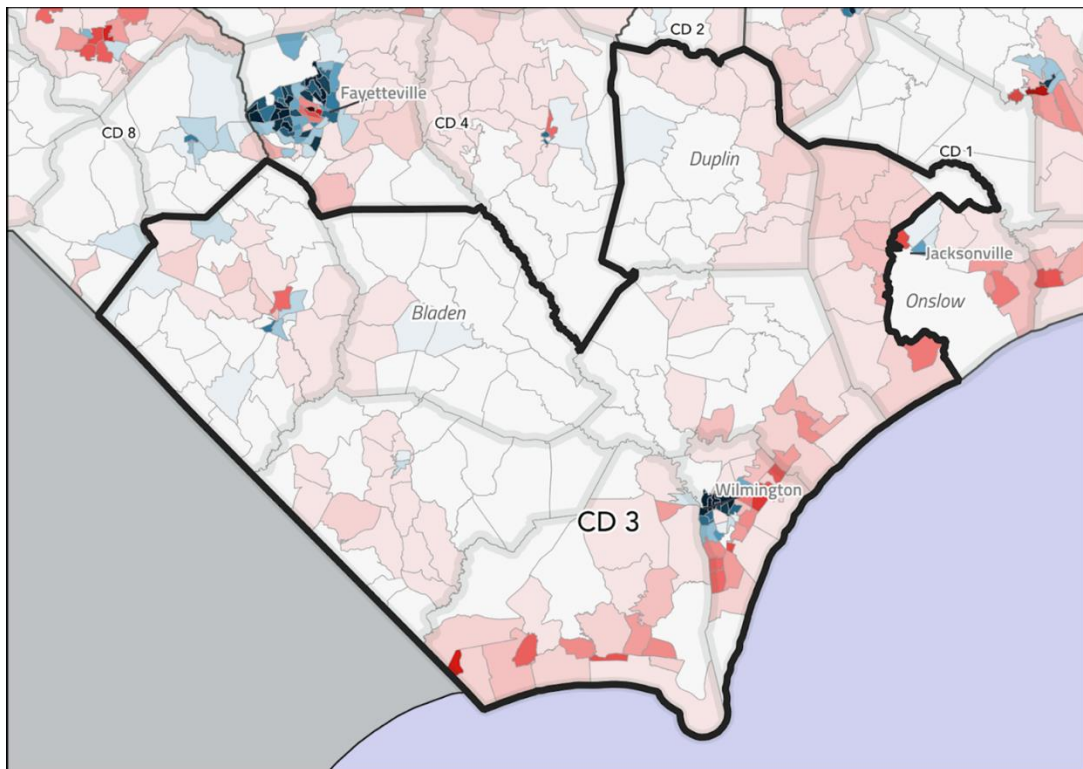
495. The Court finds this congressional district, CD2, to be the result of intentional, pro-Republican partisan redistricting.

(iii) Congressional District No. 3 (“CD3”)

496. CD3 is comprised of Bladen County, Brunswick County, Columbus County, Duplin County, New Hanover County, Pender County, portions of Onslow County, and portions of Robeson County. Plaintiffs challenge this congressional district as the product of unlawful partisan gerrymanders.

497. Individual Harper Plaintiff Eileen Stephens resides in and challenges CD3. Organizational Plaintiff NCLCV challenges CD3 as well.

498. CD3 combines portions of the Sandhills, on its western boundary, with the coastal enclave in and around Wilmington and a piece of Onslow County, in the east. CD3 includes portions of three former districts: CD3, CD7, and CD9. PX425 at 25.



PX442 (Cooper Map 7)

499. CD3 is likely to elect a Republican candidate based on a calculation of the two-party vote differential in the 2020 Secretary of Labor and Attorney General elections in the VTDs that are included within CD3, as well as other measures. PX425 at 25.

500. The Court finds this congressional district, CD3, to be the result of intentional, pro-Republican partisan redistricting.

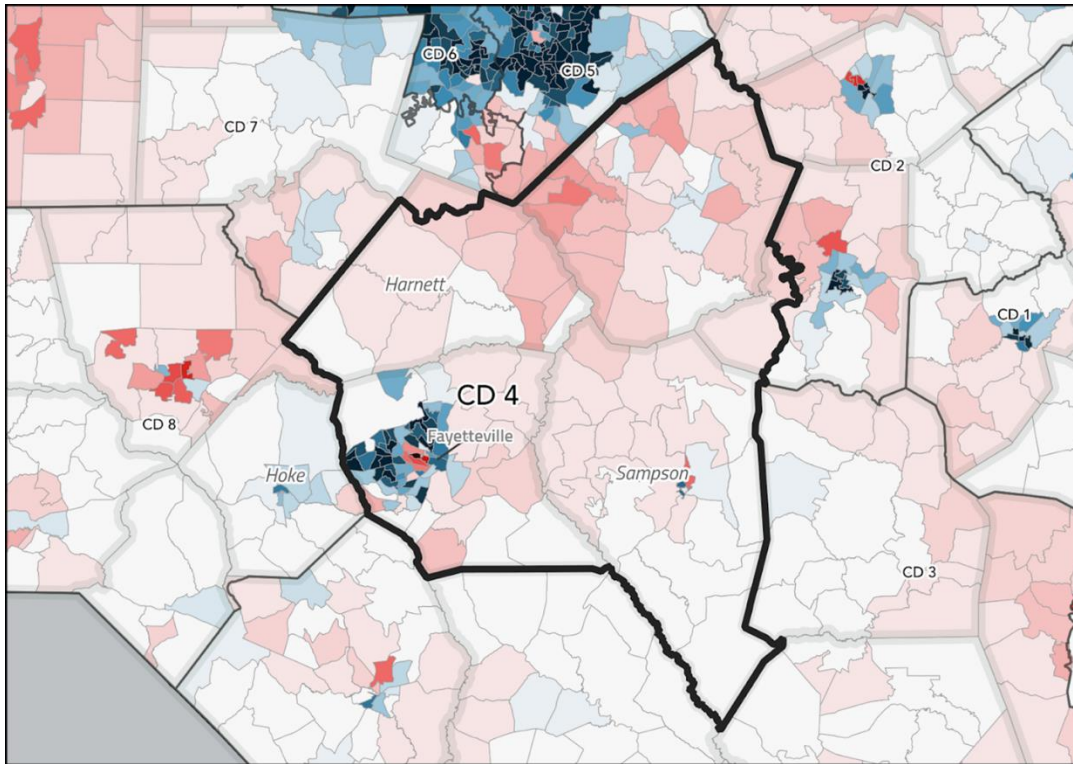
(iv) Congressional District No. 4 (“CD4”)

501. CD4 is comprised of Cumberland County, Johnston County, Sampson County, portions of Harnett County, and portions of Wayne County. Plaintiffs challenge this congressional district as the product of unlawful partisan gerrymanders.

502. Individual NCLCV Plaintiff Reverend Reginald Wells and Individual Harper Plaintiffs Gettys Cohen, Jr. and Sarah Taber reside in and challenge CD4. Organizational Plaintiff NCLCV and Organizational Plaintiff Common Cause challenge CD4 as well.

503. CD4 contains portions of the Sandhills, including Cumberland and Johnston counties along with parts of Harnett and Wayne counties. CD4’s boundaries thereby combine the Democratic-leaning areas in Fayetteville with Republican-leaning areas that were in the former CD7 and CD8. PX425 at 27.

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PX443 (Cooper Map 8)

504. CD4 does not contain the residence of an incumbent congressional representative. CD4 is likely to elect a Republican candidate based on a calculation of the two-party vote differential in the 2020 Secretary of Labor and Attorney General elections in the VTDs that are included within CD4, as well as other measures. PX425 at 27.

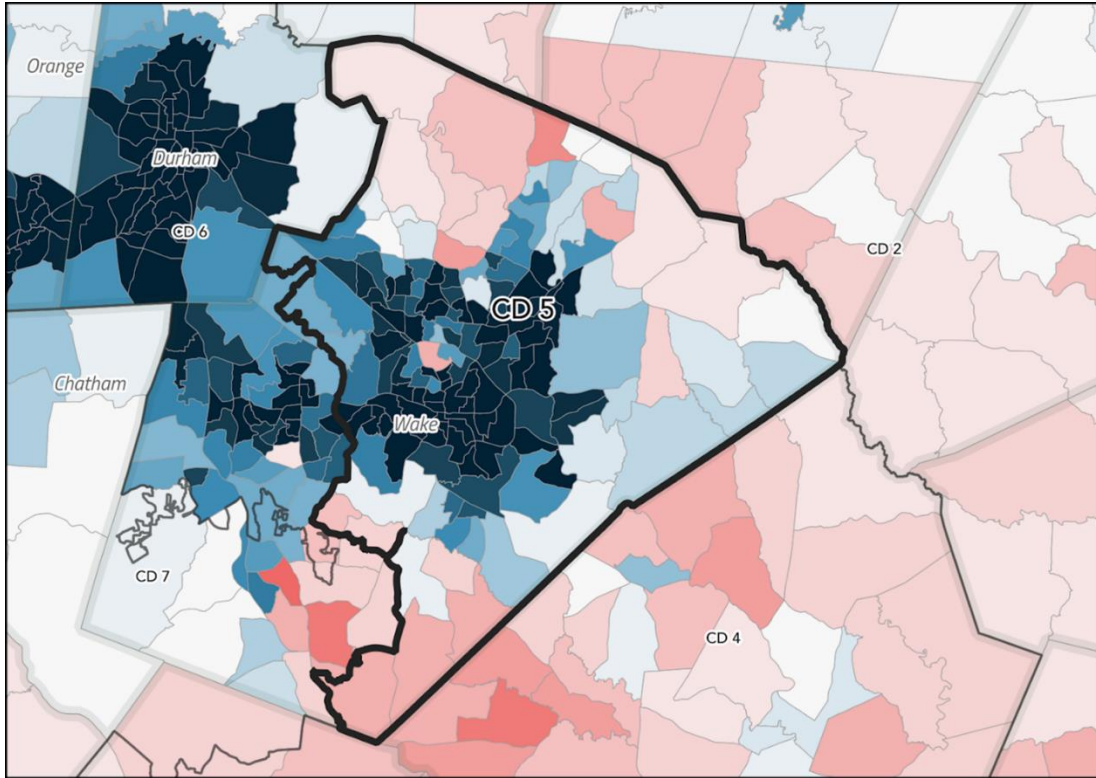
505. The Court finds this congressional district, CD4, to be the result of intentional, pro-Republican partisan redistricting.

(v) Congressional District No. 5 (“CD5”)

506. CD5 is comprised of portions of only Wake County. Plaintiffs challenge this congressional district as the product of unlawful partisan gerrymanders.

507. Individual Harper Plaintiff John Anthony Balla resides in and challenge CD5. Organizational Plaintiff NCLCV and Organizational Plaintiff Common Cause challenge CD5 as well.

508. CD5 sits entirely within Wake County and is one of the three districts that includes a part of that county. Trial Tr. 01/03/2022. It is made up of portions of former CD2 and CD4 and packs the Democratic voters in these heavily-Democratic areas into one district, increasing the probability that Republican candidates will win in the adjacent districts. PX425 at 29.



PX444 (Cooper Map 9)

509. CD5 is likely to elect a Democratic candidate based on a calculation of the two-party vote differential in the 2020 Secretary of Labor and Attorney General elections in the VTDs that are included within CD5, as well as other measures. PX425 at 29.

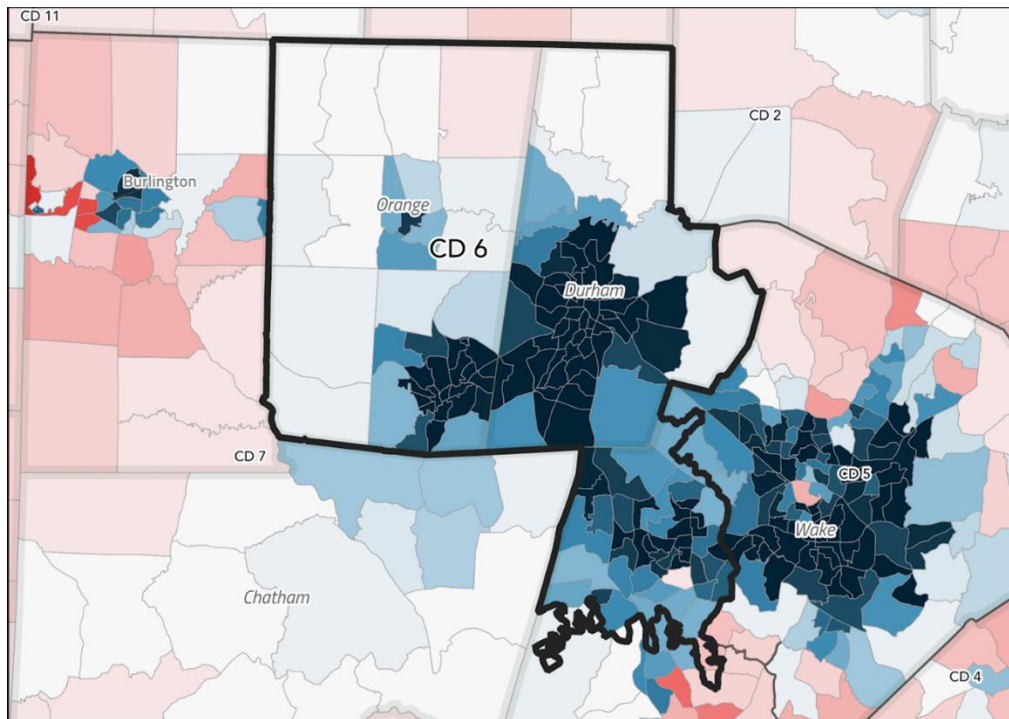
510. The Court finds this congressional district, CD5, to be the result of intentional, pro-Republican partisan redistricting.

(vi) Congressional District No. 6 (“CD6”)

511. CD6 is comprised of Durham County, Orange County, and portions of Wake County. Plaintiffs challenge this congressional district as the product of unlawful partisan gerrymanders.

512. Individual NCLCV Plaintiffs Henry M. Michaux, Jr. and Katherine Newhall and Individual Harper Plaintiffs Rebecca Harper and Sondra Stein reside in and challenge CD6. Organizational Plaintiff NCLCV and Organizational Plaintiff Common Cause challenge CD6 as well.

513. CD6 is another district including parts of Wake County and combines portions of the former CD4 and CD2.



PX445 (Cooper Map 10)

514. CD6 is a really good example of packing Democratic voters across multiple counties and adds a greater proportion of Democratic voters into a single district than any district from the former congressional plan, increasing the probability that Republicans can

win in the adjacent districts. There are only four marginally Republican-leaning VTDs in CD6. PX425 at 31; Trial Tr. 01/03/2022.

515. CD6 is likely to elect a Democratic candidate based on his calculation of the two-party vote differential in the 2020 Secretary of Labor and Attorney General elections in the VTDs that are included within CD6, as well as other measures. PX425 at 31.

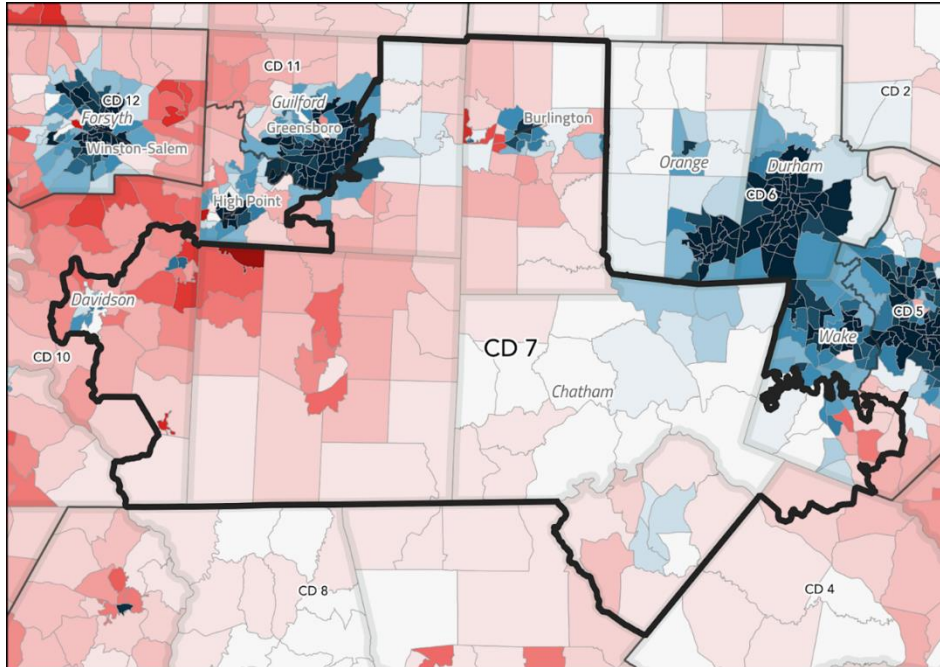
516. The Court finds this congressional district, CD6, to be the result of intentional, pro-Republican partisan redistricting.

(vii) Congressional District No. 7 (“CD7”)

517. CD7 is comprised of Alamance County, Chatham County, portions of Davidson County, portions of Guilford County, portions of Harnett County, Lee County, Randolph County, and portions of Wake County. Plaintiffs challenge this congressional district as the product of unlawful partisan gerrymanders.

518. Individual Harper Plaintiffs Lily Nicole Quick and Ron Osborne reside in and challenge CD7. Organizational Plaintiff NCLCV and Organizational Plaintiff Common Cause challenge CD7 as well.

519. CD7, one of three districts to include parts of Guilford county. is made up of portions of former CD2, CD4, CD6, and CD13. The boundaries of CD7 split Guilford and Wake counties but do not include the most Democratic-leaning VTDs in those counties within the district. PX425 at 33.



PX446 (Cooper Map 11)

520. CD7 leans heavily towards the Republican Party and is going to be a Republican district as a result of how this district is drawn alongside CD6. Trial Tr. 01/03/2022. CD7 is likely to elect a Republican candidate based on a calculation of the two-party vote differential in the 2020 Secretary of Labor and Attorney General elections in the VTDs that are included within CD7, as well as other measures. PX425 at 33.

521. Because District 7 is drawn to include several heavily Republican counties while carefully avoiding concentrations of Democratic voters, the result is a district that will reliably elect Republicans to office; in Dr. Duchin’s analysis of 52 elections, District 7 never once elects a Democrat. PX201 “SL-174” A8:BA8.

522. As a result of packing in Congressional District 6, and cracking in Guilford County, District 7 is less compact. District 7 has a Polsby-Popper compactness score of only 0.20 (on a scale of 0 to 1, where 1 is the most compact). PX150 at 14. It was not necessary to trisect Wake County in this manner.

523. The Court finds this congressional district, CD7, to be the result of intentional, pro-Republican partisan redistricting.

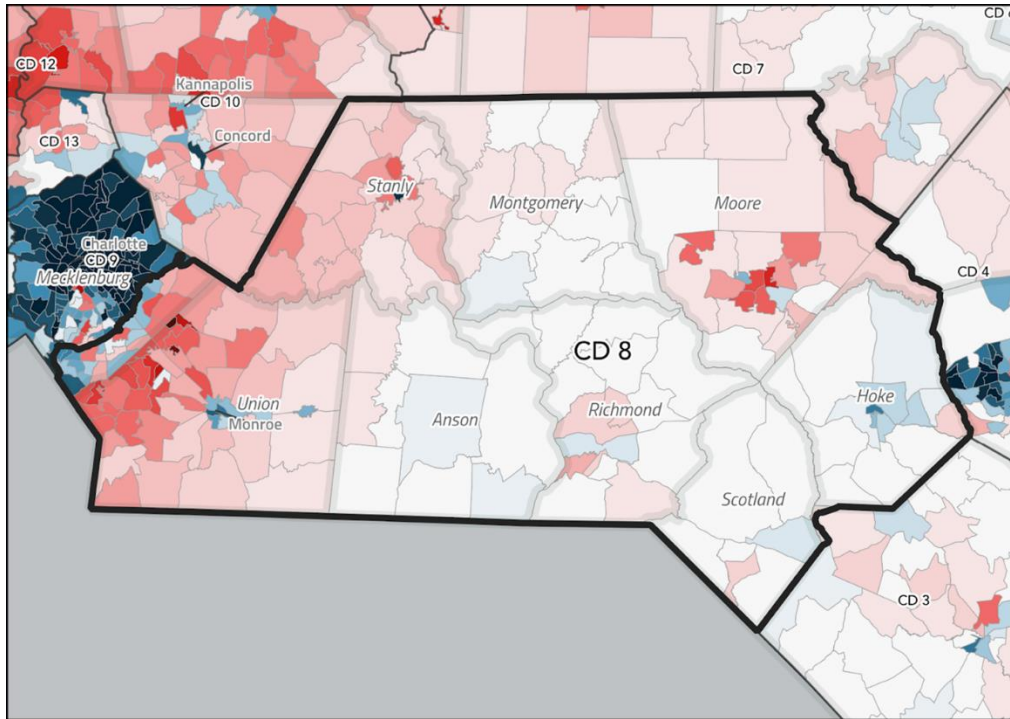
(viii) Congressional District No. 8 (“CD8”)

524. CD8 is comprised of Anson County, Hoke County, portions of Mecklenburg County, Montgomery County, Moore County, Richmond County, portions of Robeson County, Scotland County, Stanly County, and Union County. Plaintiffs challenge this congressional district as the product of unlawful partisan gerrymanders.

525. Individual Harper Plaintiff Barbara Proffitt resides in and challenges CD8. Organizational Plaintiff NCLCV and Organizational Plaintiff Common Cause challenge CD8 as well.

526. CD8 includes portions of the Sandhills, stretching from the eastern side of Mecklenburg County, in the west, to include Hoke and Scotland counties, in the east. It is one of three districts to contain portions of Mecklenburg County and is made up of portions of former CD8, CD9, and CD12. CD8’s western boundary splits Mecklenburg County in such a way that the most Democratic-leaning VTDs within that county fall outside of CD8. PX425 at 35.

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PX447 (Cooper Map 12)

527. CD8 is likely to elect a Republican candidate based on his calculation of the two-party vote differential in the 2020 Secretary of Labor and Attorney General elections in the VTDs that are included within CD8, as well as other measures. PX425 at 35.

528. The Court finds this congressional district, CD8, to be the result of intentional, pro-Republican partisan redistricting.

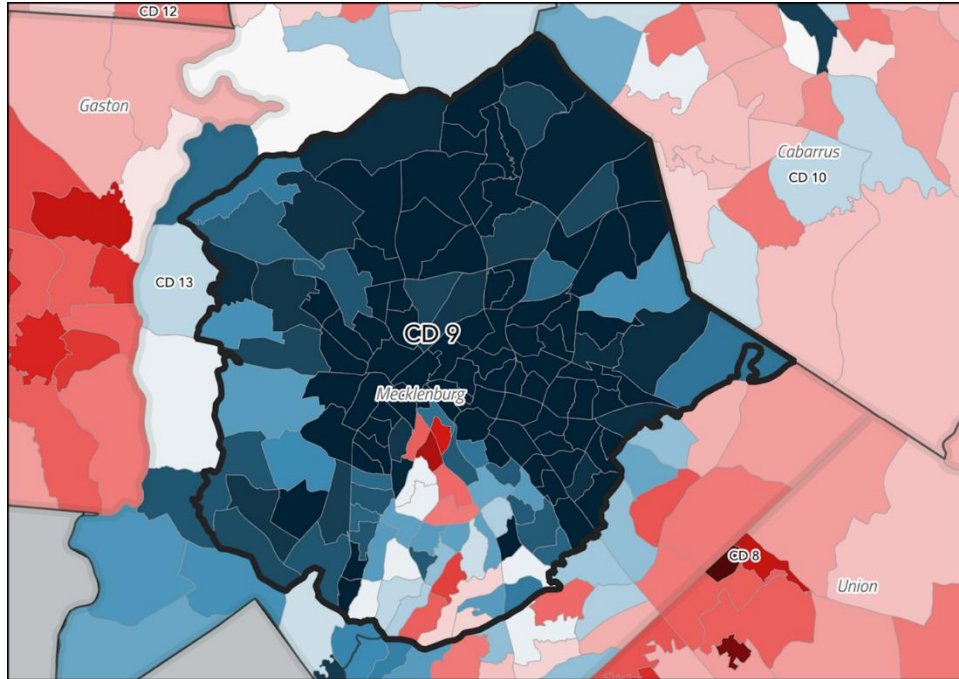
(ix) Congressional District No. 9 (“CD9”)

529. CD9 is comprised of portions of only Mecklenburg County. Plaintiffs challenge this congressional district as the product of unlawful partisan gerrymanders.

530. Individual Harper Plaintiff Virginia Walters Brien resides in and challenges CD9. Organizational Plaintiff NCLCV and Organizational Plaintiff Common Cause challenge CD9 as well.

531. CD9, one of three districts to contain portions of Mecklenburg County, sits wholly within Mecklenburg County and includes portions of the former CD9 and CD12. CD9

packs the most-Democratic VTDs in Mecklenburg County within one district, while most Republican-leaning and competitive VTDs are placed outside its boundaries, in CD13 to the west and CD8 to the east, allowing those districts to be more favorable to Republican candidates. PX425 at 37.



PX448 (Cooper Map 13)

532. CD9 is likely to elect a Democratic candidate based on his calculation of the two-party vote differential in the 2020 Secretary of Labor and Attorney General elections in the VTDs that are included within CD9, as well as other measures. PX425 at 37. Mecklenburg County need not have been fractured three times, and District 9 need not have been “packed.”

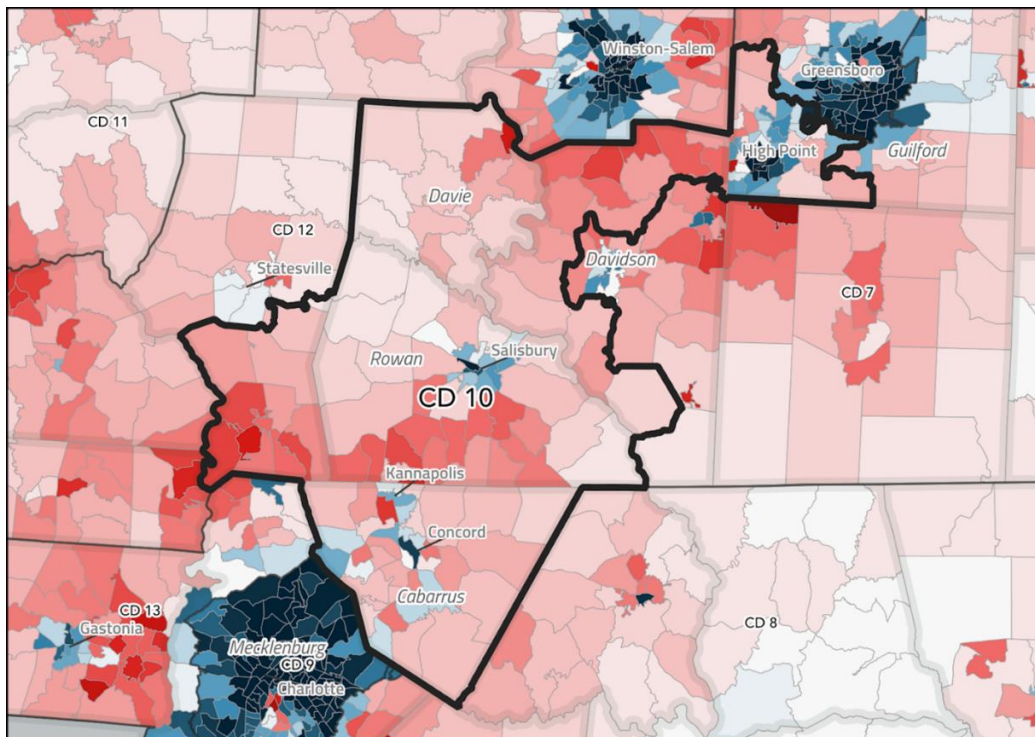
533. The Court finds this congressional district, CD9, to be the result of intentional, pro-Republican partisan redistricting.

(x) **Congressional District No. 10 (“CD10”)**

534. CD10 is comprised of Cabarrus County, portions of Davidson County, Davie County, portions of Guilford County, portions of Iredell County, and Rowan County. Plaintiffs challenge this congressional district as the product of unlawful partisan gerrymanders.

535. Individual Harper Plaintiffs Shawn Rush, Joshua Perry Brown, and Donald M. MacKinnon reside in and challenge CD10. Organizational Plaintiff NCLCV and Organizational Plaintiff Common Cause challenge CD10 as well.

536. CD10, one of three districts to contain portions of Guilford County, combines portions of former CD6, CD9, CD10, and CD13. PX425 at 39. CD10 includes heavily-Democratic VTDs in High Point, within Guilford County, as well as Democratic-leaning VTDs in Salisbury, Kannapolis, and Concord, in Rowan and Cabarrus counties. *Id.* at 40. But CD10 separates the Democratic voters in those areas from other pockets of Democratic voters just across CD10’s boundaries in Guilford, Forsyth, and Mecklenburg counties. *Id.*



PX449 (Cooper Map 14)

537. While North Carolina’s Piedmont Triad (High Point, Winston-Salem, and Greensboro) was previously kept together in one district (former CD6), the Piedmont Triad—and the Democratic voters there—are split across three districts, CD10, CD11, and CD12. PX425 at 39.

538. Because District 10 cuts west to avoid Democratic populations in central Davidson County and then turns 90 degrees to the south, bringing within its bounds Republican voters as distant as the suburbs of Charlotte, District 10 has a Polsby-Popper score of just 0.20. PX150 at 14.

539. The former CD6 is represented by Democrat Kathy Manning, who is now “double-bunked” with Republican Virginia Foxx in CD11, a Republican leaning district. PX425 at 4.

540. CD10 is likely to elect a Republican candidate based on a calculation of the two-party vote differential in the 2020 Secretary of Labor and Attorney General elections in the VTDs that are included within CD10, as well as other measures. PX425 at 39.

541. Because of the way in which the Enacted Plan divides the county’s Democratic voters, Districts 7, 10, and 11 do not elect a Democrat in a single one of the 52 elections Dr. Duchin studied. PX201 “SL-174” A8:BA9, A11:BA11. Just as with Mecklenburg and Wake Counties, there was no need to trisect Guilford County into CD7, CD10, and CD11 in this manner.

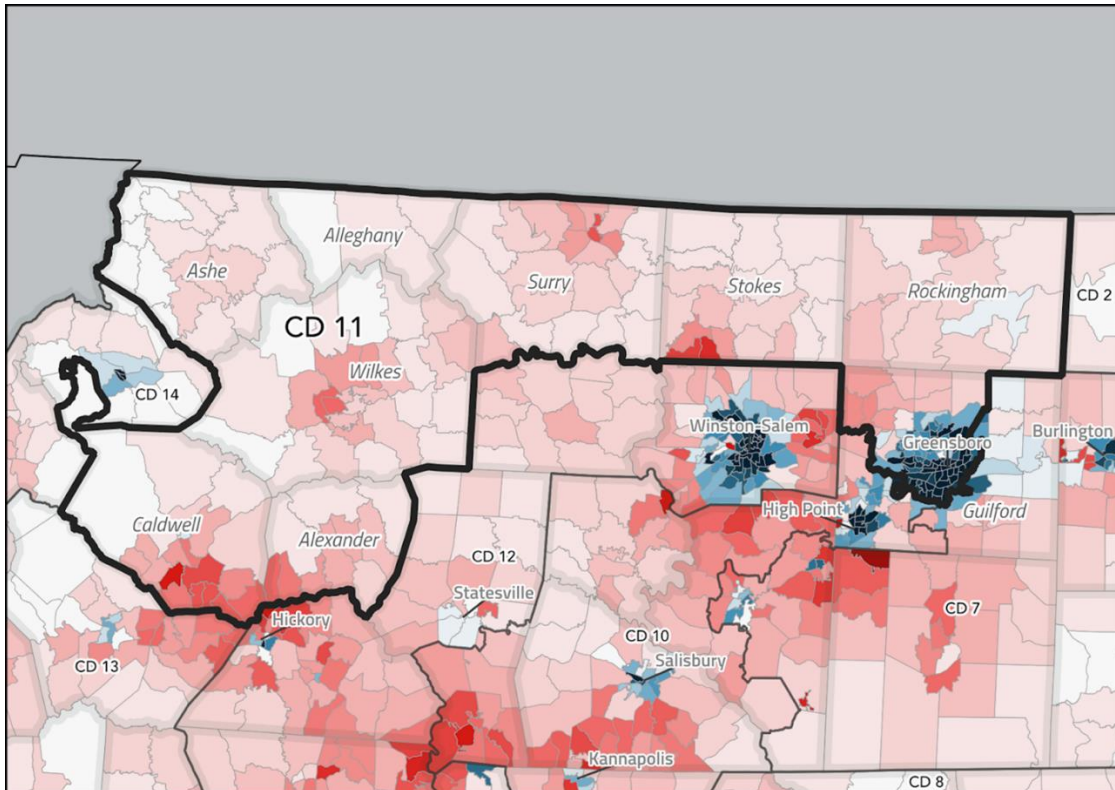
542. The Court finds this congressional district, CD10, to be the result of intentional, pro-Republican partisan redistricting.

(xi) Congressional District No. 11 (“CD11”)

543. CD11 is comprised of Alexander County, Alleghany County, Ashe County, Caldwell County, portions of Guilford County, Rockingham County, Stokes County, Surry County, portions of Watauga County, and Wilkes County. Plaintiffs challenge this congressional district as the product of unlawful partisan gerrymanders.

544. Individual NCLCV Plaintiffs Dandrielle Lewis and Talia Fernos and Individual Harper Plaintiff David Dwight Brown reside in and challenge CD11. Organizational Plaintiff NCLCV and Organizational Plaintiff Common Cause challenge CD11 as well.

545. CD11, one of three districts to contain portions of Guilford County, is made up of portions of the former CD5, CD6, and CD10. PX425 at 41.



PX450 (Cooper Map 15)

546. Caldwell County, in the west, and Rockingham, in the east, have never shared a congressional representative in the history of North Carolina. Some of the locations in CD11—particularly the “high country” areas in Watauga and Ashe counties and Greensboro, in the Piedmont—sit in different media markets, with different area codes. PX425 at 41; Trial Tr. 01/03/2022.

547. CD11 includes the Democratic-leaning VTDs in Greensboro in the same district as heavily-Republican VTDs to the north and the west in an “overwhelmingly Republican district,” thereby ensuring that Greensboro voters will not be represented by a Democrat. PX425 at 41.

548. District 11’s boundaries, by bending to avoid Forsyth County and stretching far west through Republican-majority counties all the way to the Tennessee border, result in a Polsby-Popper score of just 0.21. PX150 at 14.

549. The portion of CD11 that includes the residence of Republican incumbent Virginia Fox is a tiny sliver of Watauga County that is connected to Caldwell County by a narrow passage of land that is roughly three miles wide and requires a traverse of the Daniel Boone Scout Trail. PX425 at 41-42. This inclusion leads to a double bunking with a Republican and incumbent Democrat in another current district together in a new district that leans heavily towards the Republican Party. Trial Tr. 01/03/2022.

550. CD11 is likely to elect a Republican candidate based on a calculation of the two-party vote differential in the 2020 Secretary of Labor and Attorney General elections in the VTDs that are included within CD11, as well as other measures. PX425 at 41.

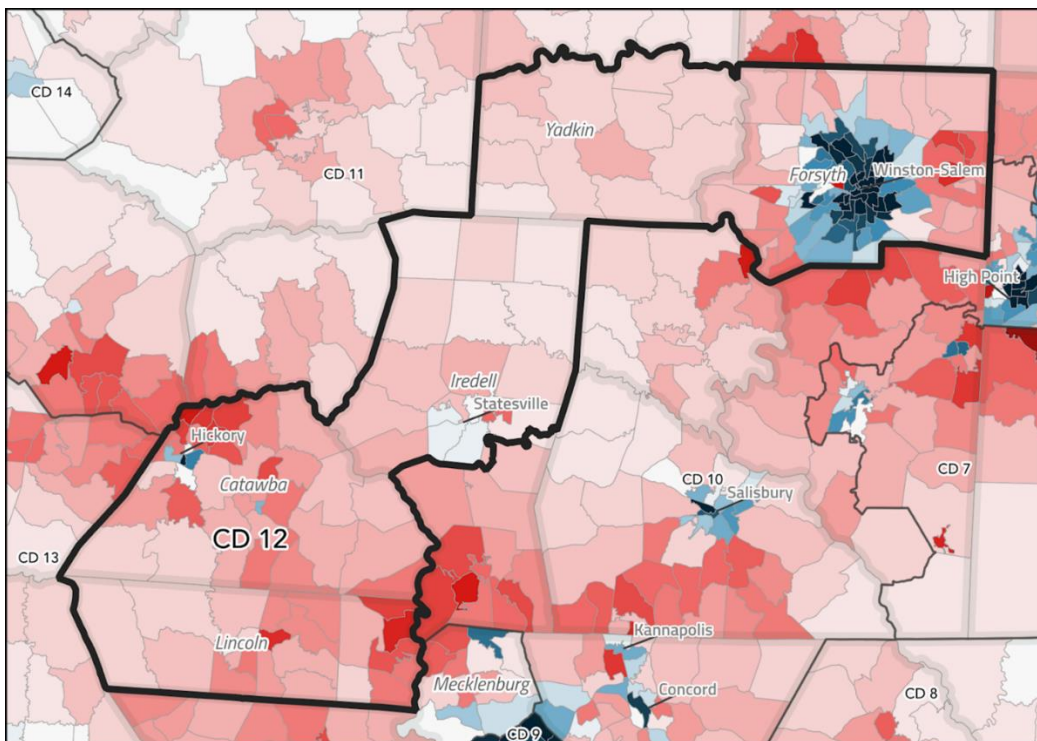
551. The Court finds this congressional district, CD11, to be the result of intentional, pro-Republican partisan redistricting.

(xii) Congressional District No. 12 (“CD12”)

552. CD12 is comprised of Catawba County, Forsyth County, portions of Iredell County, Lincoln County, and Yadkin County. Plaintiffs challenge this congressional district as the product of unlawful partisan gerrymanders.

553. Individual Harper Plaintiff Chenita Barber Johnson resides in and challenges CD12. Organizational Plaintiff NCLCV challenges CD12 as well.

554. CD12 stretches from Lincoln County, in the southwest, through Catawba, Iredell, Yadkin, and Forsyth counties, in the northeast. PX425 at 43. CD12’s boundaries separate the Democratic-leaning VTDs in Winston-Salem and the Democratic-leaning VTDs in High Point (in CD10), combining Winston-Salem with Republican-leaning VTDs further south. PX425 at 44. Republican incumbent Patrick McHenry currently resides in the southeast corner of CD12, on the other end of the district from Winston-Salem. PX425 at 43.



PX451 (Cooper Map 16)

555. CD12 is likely to elect a Republican candidate based on a calculation of the two-party vote differential in the 2020 Secretary of Labor and Attorney General elections in the VTDs that are included within CD12, as well as other measures. PX425 at 43.

556. The Court finds this congressional district, CD12, to be the result of intentional, pro-Republican partisan redistricting.

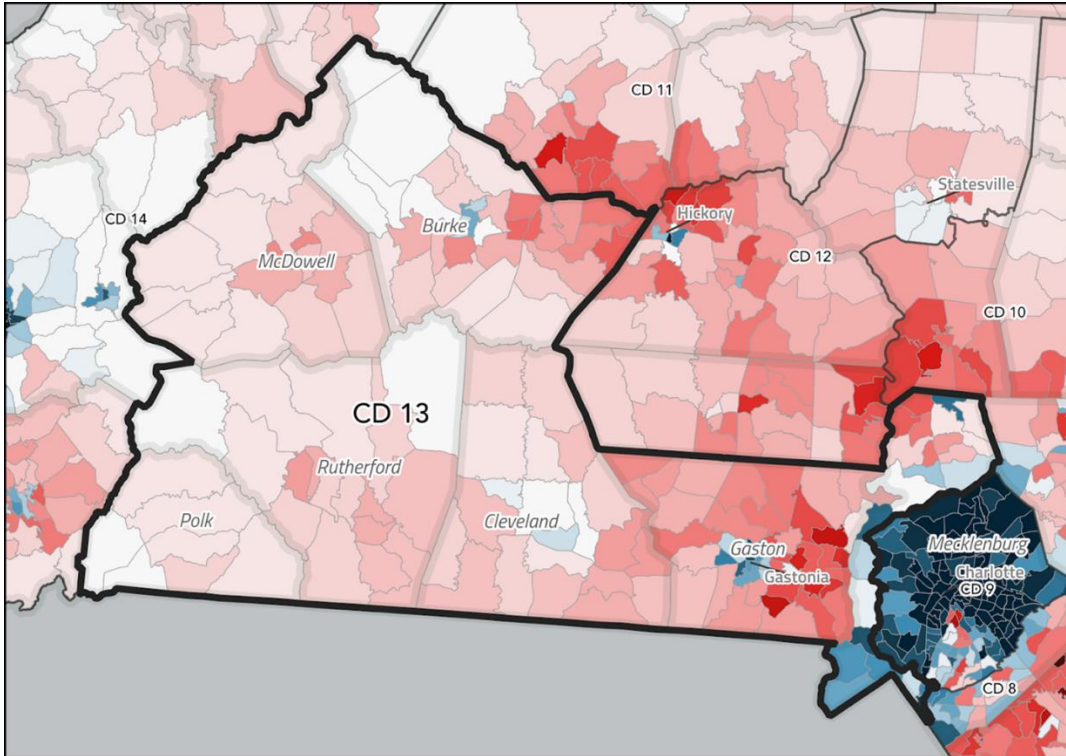
(xiii) Congressional District No. 13 (“CD13”)

557. CD13 is comprised of Burke County, Cleveland County, Gaston County, McDowell County, portions of Mecklenburg County, Polk County, and Rutherford County. Plaintiffs challenge this congressional district as the product of unlawful partisan gerrymanders.

558. Individual NCLCV Plaintiff Timothy Chartier and Individual Harper Plaintiff Mary Elizabeth Voss reside in and challenge CD13. Organizational Plaintiff NCLCV and Organizational Plaintiff Common Cause challenge CD13 as well.

559. CD13, one of three districts to include portions of Mecklenburg County, is made up of portions of former CD5, CD10, CD11, and CD12. *Id.* Until the 2021 Congressional Plan, Polk County and Mecklenburg County have never been included in the same congressional district. PX425 at 45.

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PX452 (Cooper Map 17)

560. CD13 is likely to elect a Republican candidate based on a calculation of the two-party vote differential in the 2020 Secretary of Labor and Attorney General elections in the VTDs that are included within CD13, as well as other measures. PX425 at 45.

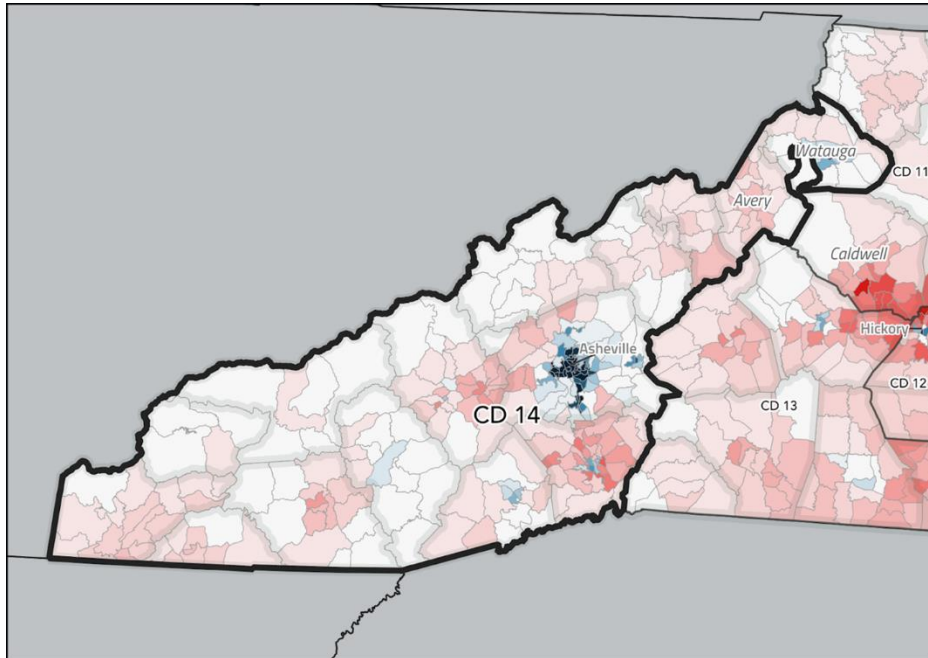
561. The Court finds this congressional district, CD13, to be the result of intentional, pro-Republican partisan redistricting.

(xiv) Congressional District No. 14 (“CD14”)

562. CD14 is comprised of Avery County, Buncombe County, Cherokee County, Clay County, Graham County, Haywood County, Henderson County, Jackson County, Macon County, Madison County, Mitchell County, Swain County, Transylvania County, portions of Watauga County, and Yancey County. Harper Plaintiffs challenge this congressional district as the product of unlawful partisan gerrymanders.

563. Individual Harper Plaintiffs Richard R. Crews, Mark S. Peters, Kathleen Barnes, and Ann Butzner reside in and challenge CD14. Organizational Plaintiff NCLCV challenges CD14 as well.

564. CD14 sits in the southwestern corner of the state and includes most of the former CD11, as well as part of Watauga County, to the northeast. PX425 at 47. The former CD11 also included “Republican strongholds” of Polk and McDowell counties, as well as part of Rutherford County, which are now placed in CD13. *Id.* Watauga County has not been in the same congressional district with the southwestern end of the state since 1871, before Graham and Swain counties were in existence. *Id.*



PX453 (Cooper Map 18)

565. CD14 is likely to elect a Republican candidate based on a calculation of the two-party vote differential in the 2020 Secretary of Labor and Attorney General elections in the VTDs that are included within CD14, as well as other measures. PX425 at 47.

566. The Court finds this congressional district, CD14, to be the result of intentional, pro-Republican partisan redistricting.

C. Elections are Decided by any Number of Factors

567. All of Plaintiff's statistical experts, except Dr. Pegden, used as a baseline or point of comparison nonpartisan maps to determine whether the Enacted Maps are partisan "outliers." Even Plaintiffs would have to concede that under *Stephenson*, the General Assembly is at least, to some degree, allowed to draw districts for partisan advantage. The experts' analysis does not inform the Court of how far the Enacted Maps are from what is permissible partisan advantage. Accordingly, these analyses do not inform the Court of how much of an outlier the Enacted Maps are from what is actually permissible.

568. Many of the opinions of the experts at trial were informed by either the vote share of a party on a single or aggregated statewide race or races. These statewide races include presidential and gubernatorial races as well as Attorney General, Judicial and Council of State races. These statewide races have one thing in common, that is, the elected positions have very little in common with the legislative and congressional races except that they all occur in North Carolina. The function and responsibilities of our legislature and our members of congress differ from these statewide and national offices. Also, these races do not take into account the individual needs and issues that are important to each of the 170 legislative districts and 14 congressional districts at issue. They also treat the candidates as inanimate objects in that they do not consider the personality or qualifications of each candidate, any political baggage each candidate may carry, as well as a host of other considerations that voters use to select a candidate. Moreover, these opinions assume that voters will vote along party lines. Testimony of the experts that by considering many statewide races across a significant period of time somehow washes these considerations out is not persuasive. In effect, they believe the computer can take the human element out of the human. That is a process we doubt they can do and hope will never happen.

569. Notwithstanding these doubts, we conclude based upon a careful review of all of the evidence that the Enacted Maps are a result of intentional, pro-Republican partisan redistricting.

IV. Intentional Racial Discrimination and Racial Vote Dilution Claims

A. Intentional Racial Discrimination

1. Direct Evidence

570. There is no express language showing discriminatory intent within the text of the session laws establishing the Enacted Plans.

571. The Adopted Criteria expressly proscribed the use of data identifying the race of individuals or voters in the construction or consideration of districts in the Enacted Plans while also requiring each redistricting committee to draw districts that comply with the Voting Rights Act.

572. There also is no evidence that the Enacted Plans were evaluated based on racial considerations after the respective congressional, Senate, and House plans were selected and prior to enactment. Defendants Expert Dr. Lewis stated that he was only asked to do the RPV study after he was retained on November 12, 2021. Trial Tr. 01/05/2022.

2. Circumstantial Evidence

a. Recent Race-Based Redistricting Litigation

573. The General Assembly's intentional racial gerrymandering has been subject to judicial review in multiple cases over the past decade.

574. First, in *Dickson v. Rucho*, 367 N.C. 542 (2014), the plaintiffs challenged North Carolina's redistricting plans for the North Carolina Senate, House of Representatives, and Congressional delegation as unconstitutional racial gerrymanders. 367 N.C. at 548.

575. The three-judge panel that heard the challenges concluded that 26 of the challenged districts were predominately motivated by race, and thus were subject to strict

scrutiny and determined that these districts were intended by the General Assembly to be “VRA districts” that necessarily required the drafters to classify residents by race. *Id.* at 551. The Supreme Court of North Carolina determined that the consideration of race to the degree necessary to comply with Section 2 of the VRA does not rise to the level of a “predominate motive,” though this was not fatal to the order, *Id.* at 522, because of the three-judge panel’s determination that compliance with Section 2 and Section 5 of the VRA are compelling state interests. *Id.* at 562-563.

576. The Supreme Court of the United States reviewed this decision, vacated the judgment, and remanded the case for further consideration in light of *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015). See *Dickson v. Rucho*, 368 N.C. 481, 484 (2015). The Supreme Court of North Carolina, again, affirmed the ruling of the three-judge panel, determining that the trial court did the appropriate district-by-district analysis without giving improper weight to population equalization. 368 N.C. at 485.

577. Second, in *Covington v. North Carolina*, 316 F.R.D. 176 (M.D.N.C. 2016), the plaintiffs challenged North Carolina state legislative redistricting plans as unconstitutional racial gerrymanders. The court determined that race was the predominate factor motivating the drawing of all the challenged districts, based on the redistricting committee’s criteria of creating “VRA districts” that reach a 50%-plus-one BVAP threshold first, *Id.* at 130-31, and that the defendants had not shown that their use of race was reasonably necessary to remedy a violation of Section 2 of the VRA because they had not demonstrated that any of the districts challenged were based on evidence that the majority votes sufficiently as a bloc, pursuant to *Thornburg v. Gingles*, 478 U.S. 30, 51 (1986). 316 F.R.D. at 124. The court ordered new maps be drawn. *Id.*

b. Plaintiff Common Cause's Expert James Leloudis, II

578. Dr. James Leloudis, a professor of history at the University of North Carolina at Chapel Hill, submitted an expert report and was accepted as an expert during trial for Plaintiff Common Cause in the areas of North Carolina history, politics, race relations, and government policy. Trial Tr. 01/04/2022.

579. Dr. Leloudis received his B.A. and Ph.D. from the University of North Carolina at Chapel Hill, and M.A. from Northwestern University. PX1486 (Leloudis Report) p. 4.

580. Dr. Leloudis' primary expertise is in the history of the United States, with specialization in the history of race, politics, labor, and reform in the 19th and 20th century American South. *Id.* Dr. Leloudis conducted qualitative research on the history of race, voting rights, voter suppression, and redistricting in North Carolina, from the end of the Civil War to the present. He examined the historical context for recent attempts to limit minority citizens' voting rights and ability to elect candidates of their choice. PX1486 (Leloudis Report) p. 5.

581. North Carolina has had a long and cyclical history of suppressing minority political participation. Over the last century and a half, there have been numerous instances where white conservatives have employed a variety of measures to limit the rights of racial and ethnic minorities. PX1486 (Leloudis Report) p. 77.

582. Dr. Leloudis found that although Republicans may claim that the redistricting process was conducted race-blind, accepting this contention "asks us to believe that history has ended and that in a society deeply scarred by slavery and Jim Crow, race no longer matters; and that politicians vying for public office in the racially polarized America of the 21st century lack an intimate knowledge of where people live and how they vote." PX1486 (Leloudis Report) p. 77.

B. Racial Vote Dilution

583. As noted above, the process in creating the Enacted Plans deviated from past procedure in not following *Stephenson* by drawing VRA districts first.

1. The Parties' Experts

a. NCLCV Plaintiffs' Expert Dr. Duchin

584. Dr. Moon Duchin, as noted above, submitted an expert report on behalf of NCLCV Plaintiffs. PX150. During trial, Dr. Duchin was accepted as an expert witness.

585. Dr. Duchin used well-recognized ecological inference statistical tools to assess racial voting trends in North Carolina and to determine if racial vote polarization persists today. *Id.* at 11. She designated 8 elections (4 generals and 4 primaries)—by prioritizing more recent elections that had a Black candidate on the ballot, that was polarized, and close enough to produce variation at the district level—to determine the opportunity to elect Blacks' candidates of choice. *Id.* at 11.

586. Dr. Duchin found that there is a consistent pattern of polarization in statewide general elections. More specifically, the Enacted Congressional districts had two effective districts for Black voters while the NCLCV map had four effective districts. The Enacted Senate map had eight effective districts while the NCLCV map had 12 effective districts. The Enacted House districts were effective for Black voters in 24 districts, while the NCLCV map had 36 effective districts. *Id.* at 12.

587. During trial, however, Dr. Duchin was asked about conducting a *Gingles* analysis, to which Dr. Duchin stated she did do *Gingles* two and three, by doing an RPV analysis, but didn't do *Gingles* one. Trial Tr. 01/04/2022. When asked whether a district-by-district analysis was conducted, Dr. Duchin stated that the EI is run on the statewide basis, but it makes inferences about every precinct's preferences. Trial Tr. 01/04/2022.

b. Plaintiff Common Cause's Expert Jonathan Mattingly

588. In his addendum report, Dr. Mattingly examined the correlation between the fraction of the black voting age population and the partisan makeup of (i) the North Eastern cluster choices in the North Carolina State Senate, and (ii) the districts within the Duplin-Wayne county cluster in the North Carolina State House. PX1485 (Mattingly Addendum) at 1.

589. The enacted plan splits the Black voters roughly in half between the two districts, whereas the other potential clustering would have concentrated Black voters into one of the two districts. PX1485 (Mattingly Addendum) at 2. Additionally, the enacted plan leads to two stable Republican districts when measured across a range of historic voting patterns. *Id.* In contract, the alternate clustering would have allowed the district with the larger BVAP (42.33% BVAP) to reliably elect a Democratic candidate. *Id.* Thus, the chosen cluster is the choice that favors the Republican Party and significantly fractures Black voters in that area. *Id.*

590. In examining the Duplin-Wayne cluster, Dr. Mattingly used the 2020 Governor race and plotted the relationship between the BVAP and the vote fraction in the ensemble maps he created and the exacted plan. PX1485 (Mattingly Addendum) at 2. Using this analysis, it is possible to draw districts with significantly higher BVAPs and raising the BVAP would likely raise the Democratic vote fraction. *Id.* Trial Tr. 01/04/2022.

c. Defendants' Expert Jeffrey Lewis

591. Dr. Jeffery B. Lewis, a Professor of Political Science at UCLA, received a B.A. in Political Science and Economics from Wesleyan University. He received a Ph.D. in Political Science from the Massachusetts Institute of Technology. LDTX109 at 1-2 (Lewis Rep.).

592. Dr. Lewis specializes in quantitative political methodology with a focus on making inferences about preferences and behavior from the analysis of voting patterns in the

mass public and in legislatures. *Id.* at 2. He submitted an expert report and was accepted as an expert witness on behalf of Legislative Defendants in the areas of political methodology and racial bloc voting analysis. Trial Tr. 01/05/2022.

593. Dr. Lewis presented summaries of the results of North Carolina general and Democratic primary election contests held in 2014, 2016, 2018, and 2020. He considered how each contest would have turned out if only the votes of those residing in each current and in each enacted State House, State Senate, and Congressional district had been counted. This allowed for the consideration of the voting strength of Black voters in each existing and proposed legislative district. *Id.* at 2.

594. For each of the reconstituted elections in each district, Dr. Lewis used weighted ecological regression (ER) to estimate the degree of Black voter cohesion and non-Black voter crossover. He omitted contest-district combinations where the number of voting precincts available for the analysis or Black share of voters was too small. *Id.* at 3. He evaluated 420 individual contests including over 190 that included a Black candidate. *Id.* at 5-6. He then used and relaxed, without endorsing, Dr. Duchin's definition of effective Black districts (greater than 75% Black preferred win rate in races with minority candidates combined with greater than 25% BVAP). *Id.* at 6.

595. Using Dr. Duchin's definition of effective Black districts against Dr. Lewis's data set and comparing it with more relaxed requirements of this definition, the Court finds that in no district, enacted or in 2020, does it appear that a majority of BVAP is needed for that district to regularly generate majority support for minority-preferred candidates in the reconstituted elections. *Id.* at 7.

2. A District-by-District Analysis of Racial Vote Dilution Is Not Necessary

596. Plaintiffs failed to set forth racial polarization data supporting a district-by-district analysis and relied solely on an argument as to the process as a whole.

597. Race was not the predominant, overriding factor in drawing the districts in the Enacted Plans.

598. The General Assembly did not subordinate traditional race-neutral districting principles, including compactness, contiguity, and respect for political subdivisions to *racial* considerations.

V. Whole-County Provision Claim

599. The Senate Districts in which counties were divided in their formation are as follows: 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 25, 26, 27, 28, 29, 31, 32, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, and 50. S.L. 2021-173.

600. Across all fifty Senate Districts, eighty-five (85) counties were kept whole and fifteen (15) counties were divided in the formation of a Senate District. S.L. 2021-173.

601. In the Senate District County Groupings, there are a total of 97 county boundary traversals (*i.e.*, the number of times a district crosses between adjacent counties within a grouping). PX150 at 17.

602. The House Districts in which counties were divided in their formation comprise 107 total House Districts, with the following House Districts being the only districts comprised solely of whole counties: 5, 12, 22, 23, 27, 48, 65, 67, 86, 97, 118, 119, and 120. S.L. 2021-175.

603. Across all 120 House Districts, sixty-three (63) counties were kept whole and thirty-seven (37) counties were divided in the formation of a House District. S.L. 2021-175.

604. In the House District County Groupings, there are a total of 69 county boundary traversals. PX150 at 17.

605. The number of persons in each state legislative district must be within plus or minus 5% of the ideal district population and, as determined under the most recent federal decennial census, this is a population of 86,995 in the House and 208,788 in the Senate. PX150 at 12; LDTX107 at 22.

606. NCLCV Plaintiffs present the sole challenge under the Whole County Provisions of the North Carolina Constitution, N.C. Const. art. II, §§ 3(3) and 5(3), and challenge Senate Districts 1, 2, 43, 44, 47, 50, 46, 49, and 48, and House Districts 1 and 79 as impermissibly traversing county lines in violation of the respective Whole County Provisions.

607. The North Carolina Constitution requires that State House and Senate districts comply with a series of requirements adopted to implement the Constitution's Whole County Provisions, including establishing districts within county groupings.

608. In several regions, multiple county groupings were possible under our Supreme Court's interpretation of the Whole County Provisions. In such instances, groupings were chosen from the range of legally possible groupings, as identified in the Duke Academic Paper.

609. NCLCV Plaintiffs do not bring a VRA claim, and there is on the record before the Court no evidence that majority-minority districts under Section 2 of the VRA are required anywhere in North Carolina, such that a deviation from these chosen county groupings is necessary to comply with the VRA.

610. The face of S.L. 2021-173 shows, and NCLCV Plaintiffs do not offer evidence to the contrary, that SD1, SD2, and SD 48 do not traverse county lines and are, therefore, each comprised of only whole counties.

611. Within each remaining county grouping containing a district challenged under the Whole County Provisions, the district line's traversal of a county line occurs because of the need to comply with the equal-population rule required by law and memorialized in the Adopted Criteria.

VI. Individual and Organizational Plaintiffs' Standing

A. Individual NCLCV Plaintiffs

612. Individual NCLCV Plaintiffs reside in North Carolina Congressional Districts 2, 4, 6, 11, and 13. PX206-211. As shown by the Individual NCLCV Plaintiffs residing in these Congressional Districts, these districts are the result of partisan packing or cracking, and there is a plausible alternative that would not create the same partisan composition of the districts that are the result of partisan packing or cracking.

613. Individual NCLCV Plaintiffs reside in North Carolina Senate Districts 2, 12, 20, 27, and 37. PX206-211. As shown by the Individual NCLCV Plaintiffs residing in these Senate Districts, these districts are the result of partisan packing or cracking, and there is a plausible alternative that would not create the same partisan composition of the districts that are the result of partisan packing or cracking. Furthermore, some are located in counties that have been divided in the formation of the Senate Districts and which further contribute to the resulting partisan packing and cracking.

614. Individual NCLCV Plaintiffs reside in North Carolina House of Representatives Districts 6, 27, 29, 58 and 98. PX206-211. As shown by the Individual NCLCV Plaintiffs residing in these House Districts, these districts are the result of partisan packing or cracking, and there is a plausible alternative that would not create the same partisan composition of the districts that are the result of partisan packing or cracking. Furthermore, some are located in counties that have been divided in the formation of the House Districts and which further contribute to the resulting partisan packing and cracking.

B. Individual Harper Plaintiffs

615. Individual Harper Plaintiffs reside in all North Carolina Congressional Districts. PX400-424. As shown by the Individual Harper Plaintiffs residing in these Congressional Districts, these districts are the result of partisan packing or cracking, and there is a plausible alternative that would not create the same partisan composition of the districts that are the result of partisan packing or cracking:

616. Individual Harper Plaintiffs reside in North Carolina Senate Districts 1, 18, 19, 27, 32, 40, 41, 46, and 49. PX400, 405, 407, 408, 410, 412, 413, 414, 415, 416, and 418. As shown by the Individual Harper Plaintiffs residing in these Senate Districts, these districts are the result of partisan packing or cracking, and there is a plausible alternative that would not create the same partisan composition of the districts that are the result of partisan packing or cracking.

617. Individual Harper Plaintiffs reside in North Carolina House Districts 2, 8, 9, 10, 21, 40, 58, 59, 60, 62, 72, 101, 102, 103, and 115. PX400, 402, 405, 407, 408, 410, 411, 412, 414, 416, 418, 419, 420, 421, 422, 423, and 424. As shown by the Individual Harper Plaintiffs residing in these House Districts, these districts are the result of partisan packing or cracking, and there is a plausible alternative that would not create the same partisan composition of the districts that are the result of partisan packing or cracking.

C. North Carolina League of Conservation Voters

618. Organizational Plaintiff NCLCV is a “nonpartisan nonprofit advocacy organization whose mission is to protect the health and quality of life for all North Carolinians, by fighting to build a better world with clean air, clean water, clean energy, and a safe climate, all protected by a just an equitable democracy.” NCLCV Compl. ¶ 11; PX203 ¶ 3. NCLCV attempts to complete this mission by helping to “elect legislators and statewide

candidates who share it's values," and working "to hold elected official accountable for their votes and actions." *Id.*

619. Plaintiff NCLCV has members who reside in every challenged North Carolina Congressional, North Carolina Senate, and North Carolina House of Representatives district. PX203 ¶ 5.

620. Plaintiff NCLCV's interests it seeks to protect in this litigation are its ability to effectively advocate for candidates who will protect the environment, its ability to build a pro-environment majority, and its ability to hold legislators accountable, which is frustrated by the predetermining of elections they allege will occur under the Enacted Plans. NCLCV Compl. ¶ 12; PX203 ¶ 6.

621. The partisan composition of the North Carolina Congressional, North Carolina Senate, and North Carolina House of Representatives Districts significantly affect NCLCV's ability to fulfill its mission and purpose because pro-environment candidates will often be unable to win individual elections and will certainly not be able to win individual elections. Additionally, when incumbent legislators know their seats and their majorities are safe regardless of their votes on legislation, NCLCV cannot fulfil its mission of "[i]nstill[ing] fear into NC's elected leaders of the consequences of taking anti-environment actions." PX203 ¶ 6. Additionally, when potential pro-environment candidates do not believe they can win, they are less likely to run for office. *Id.* at ¶ 7. Lastly, it will diminish the effectiveness of NCLCV's limited funds and resources and so will require the expenditure of more resources while at the same time making fundraising more difficult. *Id.* at 8-9.

622. Plaintiff NCLCV's interests it seeks to protect in this litigation on behalf of its members are the ability of its members' efforts to address environmental harms. NCLCV Compl. ¶ 13; PX203 ¶ 12.

623. Neither the claims asserted, nor the relief requested, by Plaintiff NCLCV requires the participation of individual members in the lawsuit.

D. Common Cause

624. Organizational Plaintiff-Intervenor Common Cause is “a non-profit nonpartisan democracy organization with over 1.5 million members and local organizations in 30 states, including North Carolina.” Common Cause Compl. ¶ 17; PX1480 ¶ 2. Common Cause is “dedicated to fair elections and making government at all levels more representative, open, and responsive to the interests of ordinary people.” *Id.*; PX1480 ¶ 5. The organization attempts to meet this goal by assisting voters in navigating the elections process, providing resources for voters to determine their districts and their polling locations, and mobilizing voters to engage in political advocacy. Common Cause also advocates for redistricting reform. *Id.*; PX1480 ¶¶ 5-6.

625. Plaintiff-Intervenor Common Cause has members who reside in every challenged North Carolina Congressional, North Carolina Senate, and North Carolina House of Representatives district. PX1480 ¶ 9.

626. Plaintiff-Intervenor Common Cause’s interests it seeks to protect in this litigation are its ability to engage with voters because Common Cause alleges the Enacted Plans will diminish the voices of these voters, its ability to direct its resources effectively, and it will be forced to divert these resources toward “combatting the ill effects of unlawful redistricting,” and its ability to increase voter engagement and holding government officials accountable, which is allegedly frustrated by “preordained election results.” Common Cause Compl. ¶ 17; PX1480 ¶ 7. Common Cause also seeks to protect its interest in advocating for redistricting reform measures. Common Cause Compl. ¶ 17.

627. The partisan composition of the North Carolina Congressional, North Carolina Senate, and North Carolina House of Representatives Districts significantly affect Common

Cause's ability to fulfill its mission and purpose because it frustrates Common Cause's organizational mission of increasing democratic engagement and voter participation by insulating elected officials from the democratic process and, in turn, voters are much less likely to contact their representatives, vote in elections, or engage in the democratic process. PX1480 ¶ 7.

628. Plaintiff-Intervenor Common Cause's interests it seeks to protect in this litigation on behalf of its members are the members', registered as Democrats, right to have representation in the State Legislature in compliance with the North Carolina Constitution, right to be free from unequal treatment, and right to free association.

629. Neither the claims asserted, nor the relief requested, by Plaintiff Common Cause requires the participation of individual members in the lawsuit.

E. Standing to Assert Intentional Racial Discrimination and Racial Vote Dilution Claims

630. Individual NCLCV Plaintiffs have shown that they are Black registered voters. PX206, 207, 208, 209, and 211. Organizational Plaintiffs NCLCV and Common Cause have shown that some of its members are Black registered voters. PX203 ¶ 14, PX205; PX1480 ¶ 10.

631. However, none of these plaintiffs have shown that the redistricting plan that affects their Congressional, State Senate, or State House district was the product of intentional racial discrimination.

632. Additionally, the NCLCV plaintiffs have not shown that the Congressional, State Senate, and State House redistricting plans provide one racial group with less opportunity than other members of the electorate to nominate and elect members of their choice.

CONCLUSIONS OF LAW

I. Standing

A. General Principles

1. The North Carolina Constitution provides: “All courts shall be open; every person, for an injury done him in this lands, goods, person, or reputations shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.” N.C. CONST. art. I, § 18. This provision should be read to guarantee standing where a legal right arising under the North Carolina Constitution has been infringed. *Comm. to Elect Forest v. Employees PAC*, 2021-NCSC-6, ¶ 81, 376 N.C. 558 (“*Elect Forest*”).

2. “[B]ecause North Carolina courts are not constrained by the ‘case or controversy’ requirement of Article III of the United States Constitution, our State’s standing jurisprudence is broader than federal law.” *Davis v. New Zion Baptist Church*, 811 S.E.2d 725, 727 (N.C. Ct. App. 2018) (quotation marks omitted); accord *Goldston v. State*, 361 N.C. 26, 35, 637 S.E.2d 876, 882 (2006) (“While federal standing doctrine can be instructive as to general principles. . . and for comparative analysis, the nuts and bolts of North Carolina standing doctrine are not coincident with federal standing doctrine.”).

3. The “gist of the question of standing” is whether the party seeking relief has “alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.” *Goldston*, 361 N.C. at 30, 637 S.E.2d at 879 (quoting *Stanley v. Dep’t of Conservation & Dev.*, 284 N.C. 15, 28, 199 S.E.2d 641, 650 (1973)). “[T]he ‘concrete adverseness’ rationale undergirding our standing doctrine is grounded on prudential principles of self-restraint in exercise of [the courts’] power of judicial review for constitutionality[.]” *Elect Forest*, 2021-NCSC-6, ¶ 65 (internal citations omitted).

4. An action, such as the case at bar, arising under the Declaratory Judgment Act does require that the plaintiff make a showing of direct injury. *Id.* at ¶ 61. This is because “only one with a genuine grievance, one personally injured by a statute, can be trusted to battle the issue.” *Id.* at ¶ 64 (quoting *Stanley*, 284 N.C. at 28). “The ‘direct injury’ required in this context could be, but is not necessarily limited to, ‘deprivation of a constitutionally guaranteed personal right or an invasion of his property rights.’” *Id.* at ¶ 82 (quoting *State ex rel. Summerell v. Carolina-Virginia Racing Ass’n*, 239 N.C. 591, 594, 80 S.E.2d 638, 640 (1954)); *see also Piedmont Canteen Services, Inc. v. Johnson*, 256 N.C. 155, 166, 123 S.E.2d 582, 589 (1962) (holding only persons “who have been injuriously affected . . . in their persons, property or constitutional rights” may challenge the constitutionality of a statute).

5. “An association may have standing to in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy.” *River Birch Assoc. v. Raleigh*, 326 N.C. 100, 129, 388 S.E.2d 538, 555 (1990) (quoting *Warth v. Seldin*, 422 U.S. 490, 511, 95 S. Ct. 2197, 2211 (1975)).

6. A plaintiff association may also assert that it has standing to sue on behalf of its members. *See River Birch Assocs. v. City of Raleigh*, 326 N.C. 100, 130, 388 S.E.2d 538, 555 (1990); *Shearon Farms Townhome Owners Ass’n v. Shearon Farms Dev., LLC*, 847 S.E.2d 229, 235 (N.C. Ct. App. 2020). Under North Carolina law, an organization has standing to bring suit on behalf of its members if: “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *River Birch Assocs.*, 326 N.C. at 129-30, 3388 S.E.2d at 555. An associational plaintiff need not show that *all* of its members would have standing to sue in their own right when seeking declaratory or injunctive relief; rather, it is sufficient

if any “one” member would have individual standing. *Id.*; see also *State Employees Ass’n of N.C., Inc. v. State*, 357 N.C. 239, 580 S.E.2d 693 (2003) (reversing lower court decision that had required every member of association or organization to have standing).

B. Plaintiffs’ Standing

7. As recognized by the Supreme Court of the United States, the right to vote is individual and unique to each person. Any “interest in the composition of ‘the legislature as a whole’” is “not an individual legal interest. *See Gill v. Whitford*, 138 S. Ct. 1916, 1932 (2018). As such, in federal court, a voter is only injured by specific concerns with that voter’s districts and has standing to challenge the districts in which the voter lives. *Id.* The “hope of achieving a Democratic [or Republican] majority in the legislature” is not a particularized harm. *Id.* at 1932. Additionally, a district’s partisan composition cannot constitute a cognizable injury if a similar composition would result “under any plausible circumstance.” *Id.* at 1924.

8. The Supreme Court of the United States has previously held that individual voters have standing under the federal Constitution to challenge only their own districts on gerrymandering grounds, *Gill*, 138 S. Ct. at 1930-31; however, in light of the different, prudential standing principles in our State, see *Comm. to Elect Forest*, 376 N.C. at 563, and because the unique manner in North Carolina in which one state legislative district is drawn in a county grouping necessarily is tied to the drawing of some, and possibly all, of the other districts within that same grouping, a challenge to the entire county grouping by an individual plaintiff constitutes the necessary “personal stake in the outcome of the controversy” for a plaintiff to have standing to challenge all districts within a county grouping. *Goldston*, 361 N.C. at 30, 637 S.E.2d at 879; see *Erfer v. Commonwealth*, 794 A.2d 325, 330 (Pa. 2002) (recognizing that a “reapportionment plan acts as an interlocking jigsaw puzzle, each piece reliant upon its neighbors to establish a picture of the whole” and that an “allegation that a litigant’s district was improperly gerrymandered necessarily involves a

critique of the plan beyond the borders of his district”), *abrogated on other grounds by League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737 (Pa. 2018).

9. Individual private citizens and voters of a county have standing to sue to seek redress from an alleged violation of N.C. Const. art II, §§ 3 and 5. *See Pender County v. Bartlett*, 361 N.C. 491, 497 (2007); *see also Pender County v. Bartlett*, 04-CVS-0696, slip op. at 139-171 (N.C. Sup. Ct. Dec. 2, 2005).

10. The individual Plaintiffs in these consolidated cases challenging a district as the product of impermissible extreme partisan gerrymandering reside either in the district challenged or, in the case of the state legislative districts, the county grouping containing a challenged district.

11. For those reasons, the Individual NCLCV Plaintiffs challenging a district based upon the Whole County Provision have standing.

12. The organizational Plaintiffs each seek to vindicate rights enjoyed by the organization under the North Carolina Constitution.

13. Similarly, the organizational Plaintiffs each have members who would otherwise have standing to sue in their own right, the interests each seeks to protect are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

14. However, as discussed below, Plaintiffs have not stated any cognizable claim for partisan gerrymandering under the various provisions of the North Carolina Constitution. As such, Plaintiffs lack standing.

15. “Courts never anticipate a question of constitutional law before the necessity of deciding it arises.” *Chemical Co. v. Turner*, 190 N.C. 471, 130 S.E.2d 154 (1925). “They will not listen to an objection made to the constitutionality of an ordinance by a party whose rights it does not affect and who therefore as no interest in defeating it.” *State v. Trantham*, 230

N.C. 641, 644, 33 S.E.2d 198 (1949). In the equal protection context, “[i]t is not sufficient to show discrimination. It must appear that the alleged discriminatory provisions operate to hurt the [plaintiff] or adversely affect his rights or put him to a disadvantage.” *Id.* “He who seeks to raise the question as to the validity of a discriminatory statute has no standing for that purpose unless he belongs to the class which is discriminated against.” *Id.* *See also Munger v. State*, 2002 N.C. App. 404, 410-11 (2010) (using the same standard in the context of taxpayer standing).

16. NCLCV Plaintiffs and Plaintiff Common Cause assert claims of intentional racial discrimination and racial vote dilution under the North Carolina Constitution. Because this Court finds there to be no factual basis underlying these asserted claims, there is a lack of the requisite “direct injury”—i.e., the deprivation of a constitutionally guaranteed personal right. Accordingly, these Plaintiffs do not have standing for these claims.

17. Similarly, Plaintiff Common Cause lacks standing for its claim requesting a declaratory judgment from this Court directing the legislative process to be undertaken in redistricting.

II. Partisan Gerrymandering Claims

18. These consolidated cases raise important constitutional issues in which we are asked to strike down, as unconstitutional, redistricting maps enacted by the General Assembly based in part upon what is termed “extreme partisan gerrymandering.”

19. The function of the judiciary is to faithfully interpret the law through judicial review and determine whether it is compliant with the constitution. *State ex. Rel. McCrory v. Berger*, 368 N.C. 633, 635, 781 S.E.2d 248, 250 (2016) citing N.C. Const. art. IV, § 1; *Bayard v. Singleton*, 1 N.C. 5, 6-7, 3 N.C. 42, 1 Martin 48 (1787). While *Bayard* and *Marbury v. Madison*, 5 U.S. 137, 1 Cranch 137, 177, 2 L.Ed 60 (1803), establish the right of the court to say what the law is, “sometimes, however, ‘the law is that the judicial department has no

business entertaining the claim of unlawfulness – because the question is entrusted to one of the political branches or involves no judicially enforceable rights.” *Rucho v. Common Cause*, ___ U.S. ___, 139 S. Ct. 2484, 2494 (2019) (citing *Vieth v. Jubelirer*, 541 U.S. 267, 277 (2004)).

20. The political power in this State has always been invested in and derived from its citizens. N.C. Const. of 1776, Decl. of Rights § 2; N.C. Const. of 1868 art. I, § 2; N.C. Const. of 1971, art. I, § 3. Likewise, the sole and exclusive right to regulate the government of this State has always been vested in its citizens. N.C. Const. of 1776, Decl. of Rights § 2; N.C. Const. of 1868, art. I, § 3; N.C. Const. of 1971, art. I, § 3.

21. “The will of the people as expressed in the Constitution is the supreme law of the land.” *State v. Emery*, 224 N.C. 581, 583, 31 S.E.2d 858, 860 (1944) (citing *Warrenton v. Warren County*, 215 N.C. 342, 2 S.E.2d 463 (1939)). “The Constitution is a restriction of powers and those powers not surrendered are reserved to the people to be exercised through their representatives in the General Assembly; therefore, so long as an act is not forbidden, the wisdom and expediency of the enactment is a legislative, not a judicial, decision.” *Wayne County Citizens Ass’n for Better Tax Control v. Wayne County Bd of Comm’rs*, 328 N.C. 24, 29, 399 S.E.2d 311, 315 (1991)(citing *In re Housing Bonds*, 307 N.C. 52, 57, 296 S.E.2d 281, 284 (1982)). “[T]he power of the people, through their elected representatives in the General Assembly, is constrained by the specific limitations imposed by duly adopted constitutional provisions.” *Stephenson v. Bartlett*, 355 NC 354, 390, 562 S.E.2d 377, 402 (2002) (Orr, J. dissenting).

22. It is not the function of the judiciary to express the will of the people or to right perceived wrongs allowed by laws that public sentiment deems unwise or ill-advised. *Blankenship v. Bartlett*, 363 N.C. 518, 523, 681 S.E.2d 759, 763 (2009) (citing *Chisom v. Roemer*, 501 U.S. 380, 400 (1991) (“Judges are ‘often called upon to disregard, or even to defy,

popular sentiment,’ creating a ‘fundamental tension between the ideal character of the judicial office and the real world of electoral politics”)); *People ex rel Von Bokkelen v. Canady*, 73 N.C. 198, 221 (1875) (“Whether [an act of the General Assembly] is wise or unwise, the Court can give no opinion. Our province is to expound the Constitution and laws as they are made, and not to make them”).

23. Declaring as unconstitutional, an act of the branch of government that represents the people is a task that is not to be taken lightly. There is a strong presumption that enactments of the General Assembly are constitutional. *Town of Spruce Pine v. Avery County*, 346 N.C. 787, 792, 488 S.E.2d 144, 147 (1997). Despite the presumption of the constitutionality of an enactment of the legislature, “[i]t is well settled in this State that the courts have the power, and it is their duty in proper cases, to declare an act of the General Assembly unconstitutional—but it must be plainly and clearly the case. If there is any reasonable doubt, it will be resolved in favor of the lawful exercise of their powers by the representatives of the people.” *City of Asheville v. State*, 369 N.C. 80, 87-88, 794 S.E.2d 759, 766 (2016) (quoting *Glenn v. Bd. of Educ.*, 210 N.C. 525, 529-30, 187 S.E. 781, 784 (1936)); *State ex rel. Martin v. Preston*, 325 N.C. 438, 449, 385 S.E.2d 473, 478 (1989). “An act of the General Assembly will be declared unconstitutional only when ‘it [is] plainly and clearly the case,’ . . . and its unconstitutionality must be demonstrated beyond a reasonable doubt.” *Town of Boone v. State*, 369 N.C. 126, 130, 794 S.E.2d 710, 714 (2016).

24. Plaintiffs request that this Court strike down the Enacted Maps is based upon the following clauses of the North Carolina Constitution: (1) Free Elections Clause; (2) Equal Protections Clause; (3) Freedom of Speech Clause; and (4) Freedom of Assembly Clause.

25. In *Stephenson*, a case cited and relied upon by the Plaintiffs, the North Carolina Supreme Court explained the framework of the analysis this Court must use in interpreting and giving meaning to the terms of our state Constitution:

“Issues concerning the proper construction of the Constitution of North Carolina ‘are in the main governed by the same general principles which control in ascertaining the meaning of all written instruments.’” *Preston*, 325 N.C. at 449, 385 S.E.2d at 478 (quoting *Perry v. Stancil*, 237 N.C. 442, 444, 75 S.E.2d 512, 514 (1953)). . . .

As part of our constitutional interpretation, it is fundamental “to give effect to the intent of the framers of the organic law and of the people adopting it.” *Perry*, 237 N.C. at 444, 75 S.E.2d at 514. More importance is to be placed upon the intent and purpose of a provision than upon the actual language used. *Id.* “In arriving at the intent, we are not required to accord the language used an unnecessarily literal meaning. Greater regard is to be given to the dominant purpose than to the use of any particular words . . .” *Id.* This Court will consider the “history of the questioned provision and its antecedents, the conditions that existed prior to its enactment, and the purposes sought to be accomplished by its promulgation” when interpreting the State Constitution in light of federal requirements. *Sneed v. Greensboro City Bd. of Educ.*, 299 N.C. 609, 613, 264 S.E.2d 106, 110 (1980); see also *Perry*, 237 N.C. at 444, 75 S.E.2d at 514.

Stephenson at 370-371, 562 S.E.2d at 389.

26. As our Supreme Court stated in *State v. Emery*, 224 N.C. 581, 584, 31 S.E. 858, 861 (1944):

It is a cardinal principle, in the interpretation of constitutions, that they should receive a consistent and uniform construction, **so as not to be given one meaning at one time and another meaning at another time, even though circumstances may have so changed as to render a different construction desirable. The will of the people as expressed in the organic law is subject to change only in the manner prescribed by them.**

Id. (emphasis added).

27. In order to determine the intent of the drafters, “[i]nquiry should be directed to the old law, the mischief and the remedy.” *Perry*, 237 N.C. at 444, 75 S.E.2d at 514 (1953).

The “court should look to the history, general spirit of the times, and the prior and the then existing law in respect of the subject matter of the constitutional provision under consideration, to determine the extent and nature of the remedy sought to be provided.” *Id.* The circumstances and conditions which existed at the time of the enactment of the constitutional provision must be given prime consideration in the construction of the language. *Id.* at 447, 75 S.E.2d at 516.

28. As Justice Orr stated in his partial dissent in *Stephenson*,

If the provisions of [an Article of the State Constitution] are obsolete or ill-adapted to existing conditions, this Court is without power to devise a remedy. However liberally we may be inclined to interpret the fundamental law, we should offend every canon of construction and transgress the limitations of our jurisdiction to review decisions upon matters of law or legal inference if we undertook to extend the function of the Court to a judicial amendment of the Constitution.

Stephenson, 355 at 410-411, 562 S.E.2d at 414 (Orr, J. dissenting) *citing Elliott v. State Bd. of Equalization*, 203 N.C. 749, 756, 166 S.E. 918, 922 (1932).

29. The principles stated above are bedrock principles of constitutional construction that have existed in the jurisprudence of this state for at least 150 years. The Court is not excused or relieved from this analytical framework because we disagree with the result it brings or even find personally repugnant.

30. Trial judges admonish jurors on an almost daily basis that it is “absolutely necessary that you understand and apply the law as [we] give it to you, not as you think the laws is, or as you might like it to be.” (N.C. Pattern Jury Instruction Civil 101.5; Criminal 101.5). It is our duty to apply the law as to the construction of the Constitution as set forth above. It is not our prerogative to deviate from this long-established analytical framework.

31. To date, no appellate court in North Carolina has examined the specific question of whether “extreme partisan gerrymandering” is violative of our State Constitution.

Plaintiffs, in support of their position that extreme partisan gerrymandering is unconstitutional, rely on two cases decided by a three-judge panel established pursuant to N.C. Gen. Stat. § 1-267.1(a): *Common Cause v. Lewis*, Wake County File No. 18CVS 14001 and its Judgment dated September 3, 2019; and (b) *Harper v. Hall*, Wake County, File No. 19 CVS 12667 (“*Harper I*”) and the Order on Injunctive Relief entered in that matter on October 28, 2019. In *Common Cause*, a prior three judge-panel, empaneled in 2010 pursuant to N.C. Gen. Stat. § 1-267.1(a), declared the legislative maps enacted in 2017 unconstitutional as a result of “extreme partisan” gerrymandering. That same panel, in *Harper I*, found congressional maps enacted by the N.C Legislature in 2016 unconstitutional as a result of “extreme partisan gerrymandering.”

32. While instructive and persuasive, the court’s legal analysis and conclusions in *Common Cause* and *Harper I* are not binding on this Court.

33. In reaching a decision, it is necessary for the Court to examine the history of the geographic areas from which legislators have been elected and the legislative body that was responsible for creating those districts and any limitations placed upon the same. In addition, it is necessary to review the history of the four constitutional provisions Plaintiffs claim are violated by the enactment of the maps at issue.

A. Historical Background

1. Structure of Government, Apportionment and Election of Members to Legislative Bodies Under the Lord Proprietors 1663-1729

34. North Carolinians have been electing individuals to representative bodies for approximately 350 years. The original 1663 Charter of Carolina from Charles II to the eight Lord Proprietors of Carolina and the 1665 Charter of Carolina gave the Lord Proprietors power to enact laws and constitutions with the “advice, assent and approbation of the freemen of the said province . . . or of their delegates.” Charter granted by Charles, II, King

of England to the Lords Proprietors of Carolina, March 24, 1663, The Colonial Records of North Carolina, Ed. William Sanders, Vol. 1 Raleigh, N.C. P.M. Hale, Printer to the State, 1886, 20-23 at 23, Documenting the South 2007, 2007 University Library, The University of North Carolina, <http://docsouth.edu/csr/>. (Colonial Records from docsouth are hereinafter referred to as C.R.)

35. In 1665 the Concessions and Agreements of the Lord Proprietors of the Province of Carolina were published. C.R. 1:75-93. The Concessions and Agreements provided for the election of freemen representatives to a General Assembly. The freemen were to be elected from certain political subdivisions within each county, with the election occurring annually on January 1. C.R. 1:81.

36. On March 1, 1669, the Lord Proprietors published the Fundamental Constitutions of Carolina (C.R. 1:187-206) which divided the province of Carolina into counties each of which consisted of four precincts. (C.R.1:80, Item Three) There were four precincts in each county. A parliament, consisting in part of freeholders elected from each precinct, was created and was required to meet every two years. (C.R. 1:99, Item 71). Elections for freeholder representatives were to be held on September 1 every two years. (C.R.1:200, Item 75).

2. Structure of Government, Apportionment and Election of Members to The General Assembly During Colonial Rule 1729-1996

37. In 1729 the Lord Proprietors sold their interest in the province of Carolina to the Crown and North Carolina became an official English Colony. See Charles Lee Raper, NORTH CAROLINA, A STUDY IN ENGLISH COLONIAL GOVERNMENT, P 1-2 (1904). See also, C.R. 3:32-47

38. The Royal Governor, who was appointed by the Crown by way of a commission (*see*, C.R. 3:68) and given authority or directives from the Crown by way of instructions (*see*,

C.R.3:93), was “the supreme ruler in [North Carolina] and responsible to the crown for all of his acts, and not to the people whose affairs he was to administer.” Charles S. Cooke, *THE GOVERNOR, COUNSEL AND ASSEMBLY IN ROYAL NORTH CAROLINA*, Vol. 12, No. 1 The James Sprunt Historical Publications, (J.G. DeRoulhac Hamilton, Henry McGilbert Wagstaff, Eds.) p. 13, 23 (1912). *See also*, Raper at 27.

39. Pursuant to the letters and instructions to each governor, North Carolina was to be governed by a bicameral General Assembly. The General Assembly consisted of the upper house, which included the Royal Governor’s Council, and the lower house, also called the House of Burgesses. Raper at 85-71; *See also*, C.R. 3:90.

40. The Council was comprised of a set number of individuals recommended by the Royal Governor and appointed by the Crown and were largely under the control of the Royal Governor. Cooke at 16-17. The Council was essentially an executive body that advised the Royal Governor. In the absence or death of the governor, the president of the Council became the acting governor. Finally, the Council, as the upper house of the legislature, had the ability to hold up legislation by giving its consent to the same. Raper at 75, Cooke at 19-20. “[T]he governor and council were practically a unit in their point of view and in their attempt to maintain the rights and interest of the Crown.” Cooke at 40, *see also*, Raper at 71.

41. The authority for the existence of a lower house was set forth in commissions given to each Royal Governor. *See* C.R. 3:66 Raper at 85. The lower house “stood not merely for the representative principle in government but also for distinctly local interests.” Cooke at 23. The House of Burgesses consisted of freeman elected from each county and certain towns.

42. Beginning in 1774 there were five extralegal provincial congresses that met in North Carolina culminating in the Fifth Provincial Congress that drafted North Carolina’s First Constitution in 1776 (1776 Constitution). During the First Provincial Congress the

concept of voting by counties and towns was established as the best method of deciding any differences that would arise during the deliberations of the Provincial Congresses. The membership of the Provincial Congresses mirrored closely the membership of the House of Burgesses.

3. Structure of Government, Apportionment and Election of Members to the General Assembly of the State of North Carolina 1776-Present

43. The 1776 Constitution⁸ drafted and approved by the Fifth Provincial Congress provided, in part, as follows:

Wherefore, in our present state, in order to prevent anarchy and confusion, it becomes necessary that government should be established in this State; therefore we, the Representatives of the freemen of North-Carolina, chosen and assembled in Congress, for the express purpose of framing a Constitution, under the authority of the people, most conducive to their happiness and prosperity, do declare, that a government for this State shall be established, in manner and form following, to wit:

I. That the legislative authority shall be vested in two distinct branches both dependent on the people, to wit, a *Senate* and *House of Commons*.

II. That the Senate shall be composed of Representatives annually chosen by ballot, one for each county in the State.

III. That the House of Commons shall be composed of Representatives annually chosen by ballot, two for each counts [sic] and one for each of the towns of Edentown, Newbern, Wilmington, Salisbury, Hillsborough and Halifax.

IV. That the Senate and House of Commons, assembled for the purpose of legislation, shall be denominated, *The General Assembly*.

44. In 1789, and as part of the constitutional convention in North Carolina that was called for the purpose of ratifying the new U.S. Constitution, the 1776 Constitution was amended to allow Fayetteville to elect a representative to the House of Commons. John L.

⁸ The 1776 Constitution was not presented to the people for ratification.

Sanders, *Amendments to the Constitutions of North Carolina, 1776-1996*, 1 (1997) (hereinafter referred to as “*Sanders, Amendments to the Constitution of N.C.*”).

45. While not expressly provided for in the 1776 Constitution, the power to create counties and draw their boundaries was necessarily vested in the people of this State, through their elected representatives. See, *Wayne County Citizens Ass’n for Better Tax Control*, 328 N.C. at 29, 399 S.E.2d at 319 (citation omitted).

4. 1835 Amendments to the N.C. Constitution of 1776

46. In 1835 a Constitutional Convention met in Raleigh for the purpose of, again, amending the 1776 Constitution. The convention was a result of “dissatisfaction with the legislative representation system, which gave no recognition to population.” John L. Sanders, *Our Constitutions: An Historical Perspective*, p. ___, (200_) (hereinafter “*Sanders, Our Constitutions*”)(the document available to the Court was not dated and did not include page numbers).

47. As a result of the 1835 Constitutional Convention, the 1776 Constitution was amended, in part, to provide one senator per district to be laid out by the General Assembly based upon public taxes paid by each county into the Treasury of the State. The amendment also prohibited a county from being divided in the creation of a Senate district. 1776 Constitution, amend. of 1835, art. I, § 1.⁹ The provision that a county not be divided in the formation of a district has become known as the “Whole County Provision.”

⁹ Due to the public interest in this case and the facts that the prior Constitutions of North Carolina and amendments thereto may not be readily or easily accessible to the public, the Court has elected to provide the relevant text of the same in footnotes.

Article 1 of the N.C. Const. of 1776 amend. of 1835 provide in relevant part:

§ 1. The Senate of this State shall consist of fifty Representatives, biennially chosen by ballot, and to be elected by districts; which districts shall be laid off by the General

48. The 1835 amendments also provided for 120 seats in the House of Commons, each county being guaranteed one seat with the remaining seats being distributed among the counties according to their population. 1776 Constitution, amend. of 1835, art. I, § 2. The apportionment on population favored the more populous counties. Sanders, *Our Constitutions*, 1.

Assembly, at its first session after the year one thousand eight hundred and forty-one; and afterwards, at its first session after the year one thousand eight hundred and fifty-one; and then every twenty years thereafter, in proportion to the public taxes paid into the Treasury of the State, by the citizens thereof; and the average of the public taxes paid by each county into the Treasury of the State, for the five years preceding the laying off of the districts, shall be considered as its proportion of the public taxes, and constitute the basis of apportionment: *Provided*, That no county shall be divided in the formation of a Senatorial district. And when there are one or more counties having an excess of taxation above the ratio to form a Senatorial district, adjoining a county or counties deficient in such ratio, the excess or excesses aforesaid shall be added to the taxation of the county or counties deficient, and if, with such addition, the county or counties receiving it, shall have the requisite ratio, such county and counties each, shall constitute a Senatorial district.

§ 2. The House of Commons shall be composed of one hundred and twenty representatives, biennially chosen by ballot, to be elected by counties according to their federal population, that is, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons, and each county shall have at least one member in the House of Commons, although it may not contain the requisite ratio of population.

§ 3. This apportionment shall be made by the General Assembly, at the respective times and periods when the districts for the Senate are hereinbefore directed to be laid off; and the said apportionment shall be made according to an enumeration to be ordered by the General Assembly, or according to the census which may be taken by order of Congress, next preceding the period of making such apportionment.

§ 4. In making the apportionment in the House of Commons, the ratio of representation shall be ascertained by dividing the amount of Federal population in the State, after deducting that comprehended within those counties which do not severally contain the one hundred and twentieth part of the entire Federal population aforesaid, by the number of Representatives less than the number assigned to the said counties. To each county containing the said ratio, and not twice the said ratio, there shall be assigned one Representative; to each county containing twice, but not three times the said ratio, there shall be assigned two Representatives, and so on progressively, and then the remaining Representatives shall be assigned severally to the counties having the largest fractions.

49. The 1835 Amendments also provided, for the first time, for the popular election of the Governor. 1776 Constitution, amend. 1835, art. 2, §1.

5. The North Carolina Constitution of 1868

50. In 1868, a constitutional convention was called at the initiative of the Federal Government in order to provide for a constitution that would allow North Carolina to rejoin the Union after the Civil War. While Article I largely became what had previously been known as the Declaration of Rights, Article II now set forth those provisions related to the Legislature.

51. Under the 1868 Constitution, the number of and apportionment of members of the newly renamed House of Representative remained relatively the same as set forth in the 1776 Constitution, amend. of 1835, art. I, § 2. However, apportionment of the Senate was now based upon population. The Whole County Provision remained and for the first time Senate districts drawn by the General Assembly were required to be contiguous, and once drawn could not be redrawn until the next statewide “enumeration” or census. 1868 Constitution, art. II, § 5. As the census was required every 10 years, the provision against redrawing districts until the next census has become known as the Mid-Decade Provision.¹⁰

¹⁰ Article II of the 1868 Constitution provides in relevant part:

Sec. 1. The Legislative authority shall be vested in two distinct branches, both dependent on the people, to wit: a Senate and House of Representatives.

Sec. 2. The Senate and House of Representatives shall meet annually on the third Monday in November and when assembled shall be denominated the General Assembly. Neither House shall proceed upon public business, unless a majority of all the members are actually present.

SEC. 3. The Senate shall be composed of fifty Senators biennially chosen by ballot.

. . .

Sec. 5. An enumeration of the inhabitants of the State shall be taken under the direction of the General Assembly in the year one thousand eight hundred and seventy-five, and at the end of every ten years thereafter; and the said Senate districts, shall be so altered by the General Assembly, at the first session after the return of every

6. Amendments to the North Carolina Constitution of 1868

52. In 1962, the voters of this State ratified a proposed Constitutional Amendment amending the apportionment of members of the House of Representatives by giving the Speaker of the House the authority of apportionment. 1868 Constitution, amend. of 1962, art. II, § 5.¹¹ The apportionment of the members of the Senate remained unchanged.

enumeration taken as aforesaid, or by order of Congress, that each Senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens and Indians not taxed, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a Senate district, unless such county shall be equitably entitled to two or more Senators.

Sec. 6. The House of Representatives shall be composed of one hundred and twenty Representatives, biennially chosen by ballot, to be elected by the counties respectively, according to their population, and each county shall have at least one Representative in the House of Representatives, although it may not contain the requisite ratio of representation. This apportionment shall be made by the General Assembly at the respective times and periods when the districts for the Senate are hereinbefore directed to be laid off.

Sec. 7. In making the apportionment in the House of Representatives, the ratio of representation should be ascertained by dividing the amount of the population of the State, exclusive of that comprehended within those counties which do not severally contain the one hundred and twentieth part of the population of the State, by the number of Representatives, less the number assigned to such counties; and in ascertaining the number of the population of the State, aliens and Indians not taxed, shall not be included. To each county containing the said ratio and not twice the said ratio, there shall be assigned one representative; to each county containing twice but not three times the said ratio, there shall be assigned two representatives, and so on progressively, and then the remaining representatives shall be assigned severally to the counties having the largest fractions.

¹¹ The amendment of 1962 to art. II, § 5, reads in part:

The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot, to be elected by the counties respectively, according to their population, and each county shall have at least one Representative in the House of Representatives, although it may not contain the requisite ratio of representation. This apportionment shall be made by the Speaker of the House of Representatives at the first regular Session of the General Assembly convening after the return of every enumeration by order of Congress. The formula set out in Section 6 of this Article shall be applied by the Speaker and the new apportionment entered on the Journal of the House of Representatives on or before the 60th calendar day of the Session. When so entered, the new apportionment shall have the same force and effect as an Act of the

53. In 1968, the voters of this State ratified a proposed Constitutional Amendment which amended the apportionment of members in both the Senate and House. 1868 Constitution, amend. of 1968, art. II, §§ 4-5¹²: In the Senate the provisions remained almost the same with certain exclusions from the population omitted. 1868 Constitution, amend. of 1968, art. II, §§ 4-5. The 1968 Amendment had the greatest impact on the apportionment of seats in the House of Representatives. While keeping the membership of the House at 120

General Assembly, and shall become effective at the next election for members of the General Assembly.

¹² The amendment of 1968 to art. II, § 5, reads in part:

Sec. 4. Senate Districts; Apportionment of Senators. The Senators shall be elected from districts. The General Assembly shall, at the first regular Session convening after the return of every decennial enumeration taken by order of Congress, revise the Senate Districts and the apportionment of Senators among those districts, subject to the following requirements:

- (1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants which each Senator represents being determined for this purpose by dividing the population of the district he represents by the number of Senators apportioned to that district;
- (2) Each Senate District shall at all times consist of contiguous territory;
- (3) No county shall be divided in the formation of a Senate District;
- (4) When established, the Senate Districts and the apportionment of Senators shall remain unaltered until the return of another decennial enumeration taken by order of Congress

Sec. 5. Number of Representatives. The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

Sec. 6. Representative Districts; Apportionment of Representatives. The Representatives shall be elected from districts. The General Assembly shall, at the first regular Session convening after the return of every decennial enumeration taken by order of Congress, revise the Representative Districts and the apportionment of Representatives among those districts, subject to the following requirements:

- (1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants which each Representative represents being determined for this purpose by dividing the population of the district he represents by the number of Representatives apportioned to that district;
- (2) Each Representative District shall at all times consist of contiguous territory;
- (3) No county shall be divided in the formation of a Representative District;
- (4) When established, the Representative Districts and the apportionment of Representatives shall remain unaltered until the return of another decennial enumeration taken by order of Congress.

members, representatives were no longer apportioned by county, but instead by districts to be drawn by the General Assembly with apportionment based upon equal population. In addition, districts had to be contiguous, were subject to the While County Provision and Mid-Decade Provision. N.C. Const. of 1868, amend. of 1968, art. II, §§ 4-5.

7. The North Carolina Constitution of 1971

54. In March, 1968, the North Carolina State Constitution Study Commission (“Study Commission”) was “created by the North Carolina State Bar and North Carolina Bar Association, acting concurrently on the recommendation of His Excellency Governor Dan K. Moore . . . to give consideration to the question of whether there is need for either rewriting or amending the Constitution” Report of the North Carolina State Constitution Commission, p. iii (December 16, 1968) (hereinafter referred to as “Report of Study Comm’n”). The Study Commission made recommendations to change certain language in the 1868 Constitution. Changes to the 1868 Constitution were made in two ways: to the body of the constitution itself in the form of a “proposed constitution; and proposed amendments to the “proposed constitution” once it had been ratified. The changes to be effected in the “proposed constitution” were typically grammatical or stylistic changes. Those substantive changes contained in the “proposed constitution” were not calculated “to bring about any fundamental change in the power of state and local government or the distribution of that power.” Report of Study Comm’n at 10. Any substantive change reflected in the “proposed constitution itself [was] not of significant magnitude” to justify their treatment in separate proposed amendments. *Id.* Those proposed changes that were significant in magnitude or in which citizens of the State would strongly differ were recommended to be voted on through separate proposed amendments. *Id. at 9-10.*

55. In 1971, a new constitution was ratified by the voters of this state. The 1971 Constitution did not modify Article II of the 1868 Constitution as it pertains to apportionment in any substantive manner.

56. Table 1 below reflects a summary of the progression of how districts for state legislative seats were to be created and the requirements, if any, for those districts from 1776 to the present.

TABLE 1	
Senate	
Year	Method for creating districts
1776	One senator per county
1835	50 districts with one senator per district to be laid out by General Assembly, apportionment based on the amount of public taxes paid into the Treasury; includes a whole-county provision
1868	50 districts with one senator per district to be laid out by General Assembly, apportionment based on equal population; includes mid-decade provision, a contiguous territory provision, and whole-county provision (with only exception being if a county's population was large enough, then the county was entitled to two senators)
1968	50 districts with one senator per district to be laid out by the General Assembly, apportionment based on equal population; includes mid-decade provision, a contiguous territory provision, and whole-county provision
1971	Only slight grammatical changes to 1968 amendment
House of Representatives (initially referred to as House of Commons)	
Year	Method for creating districts
1776	Two representatives per county with six towns receiving an additional representative
1835	120 representatives elected by the counties and each county must have at least one representative, apportionment based on population
1868	120 representatives elected by the counties and each county must have at least one representative, apportionment based on population
1962	Apportionment now made by the Speaker of the House of Representatives
1968	120 representatives now elected in districts with one representative per district to be laid out by General Assembly, apportionment based on equal population; includes mid-decade provision, a contiguous territory provision, and whole-county provision
1971	Only slight grammatical changes to 1968 amendment

8. The Governor's Power to Veto Acts of the General Assembly

57. As noted above, neither the 1776 Constitution, the 1868 Constitution, nor the 1971 Constitution as originally enacted, gave the Governor veto power over acts of the legislature.

58. In 1968, the Study Commission recommended nine separate amendments to the proposed constitution that provided such substantial changes that they believed the voters should have a chance to act upon them individually. Report Of Study Comm'n at 11-12. One proposed amendment would have granted the Governor the right to veto legislation passed by the General Assembly. *Id.* at 10, 102. In its commentary to the proposed amendment giving the Governor veto power, the Study Comm'n stated, "[i]t is intended to add to the legislative process one participant who is responsible to a state wide constituency, and who is in a position to consider the impact of a bill on the state as a whole and in the light of considerations perhaps not known to the majority of the General Assembly." *Id.* at 104. While the General Assembly, at that time, proposed 5 amendments to the Constitution, it did not submit the proposed amendment giving the Governor the power to veto acts passed by the General Assembly.

59. Finally, in 1995, the General Assembly placed a proposed amendment to the 1971 Constitution on the ballot in the 1996 general election to provide the Governor the power to veto ordinary statewide legislation enacted by the General Assembly. N.C. Sess. Laws. 1995, Chapter 5. The act placing the proposed amendment on the ballot was passed by a House of Representatives controlled by the Republican Party and a Senate controlled by the Democratic Party. This amendment was ratified on November 5, 1996, by a vote of 1,652,294 to 544,335. John L. Sanders, *Amendments to the Constitution of N.C.*, 24 (1997). Notably excepted from the Governor's veto power, as proposed by the General Assembly and approved by the people of this State, was the authority of the Governor to veto legislative or

congressional redistricting maps enacted by the General Assembly. 1971 Constitution, amend. of 1995, art. II, § 22(5)(b)-(d).

60. Over the last twenty years numerous bills have been submitted to the approximately 11 different General Assemblies in North Carolina which would require bipartisan or nonpartisan redistricting. Each party has had the ability to pass redistricting reform, yet each party has failed to take advantage of these opportunities.

9. Power to Draw Congressional Districts.

61. While Congress has the ability to regulate districting with respect to congressional maps, it has largely left the redistricting of congressional districts to the state legislatures or other bodies. *League of Latin Am. Citizens v. Perry*, 548 U.S. 399, 414 (2006) (citations omitted). Despite having this ability and the repeated public outcry concerning partisan gerrymandering, Congress has not taken any action to address the problem. The lack of will to address the problem is not limited to a single political party as the Republicans had an opportunity to address the issue between 2017 and 2018 when they controlled both houses of Congress as well as the Presidency. Likewise, with the results of the 2020 census and redistricting of congressional districts looming, Democrats have had an opportunity in 2021 to address the issue as it has control over both chambers of Congress as well as the Presidency. Congress' inaction has left the Equal Protection Clauses in both our State and Federal Constitution as they relate to racial gerrymandering, the Voting Rights Act of 1965, and the one person one vote requirement set forth in *Baker v. Carr*, 369 U.S. 186 (1962) and *Reynolds v. Sims*, 377 U.S. 533 (1964) as the only constraints placed on our General Assembly in the drawing of congressional districts.

B. The Constitutional Provisions Plaintiffs Claim Have Been Violated

1. Free Elections Clause

62. The 1776 Constitution provided that “[t]he election of members, to serve as representatives, ought to be free.” N.C. Const. of 1776, Decl. of Rights §, IV. This has become known as the Free Elections Clause. With the ratification of the 1868 Constitution, the Free Elections Clause was restated as “[a]ll elections ought to be free.” 1868 Const. art. I, § 10. Finally, the Free Elections Clause was again amended as part of the 1971 Constitution and now states “[a]ll Elections shall be free.” “[O]ught was changed to shall throughout the Declaration of Rights to make clear the rights are commands.” Report of Study Comm’n at 74-75). The change to the Free Elections Clause was not meant as a substantive change that was intended to “bring about a fundamental change” to the power of the General Assembly. *Id.*

2. Equal Protection Clause

63. The Equal Protection Clause came into existence as part of the ratification of the 1971 Constitution and provided “[n]o person shall be denied equal protection of the laws, nor shall any person be subjected to discrimination because of race, color, religion or national origin.” 1971 Const. art. I, § 19. The addition of the Equal Protection Clause, while a substantive change, was not meant to “bring about a fundamental change” to the power of the General Assembly. Report of Study Comm’n at 10.

3. Free Speech Clause

64. Like the Equal Protection Clause, the Free Speech Clause was added to the Freedom of the Press Clause as part of the 1971 Constitution and now reads “freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.” 1971 Const. art. I, § 14. The addition of the Free Speech Clause, while a substantive change, was not meant to

“bring about a fundamental change” to the power of the General Assembly. Report of Study Comm’n at 10.

4. Freedom of Assembly Clause

65. The Freedom of Assembly Clause first appeared in the Declaration of Rights set forth in the 1776 Constitution and provided that “the people have a right to assemble together, to consult for their common good, to instruct their Representatives, and to apply to the Legislature, for redress of grievances.” 1776 Const. Decl. of Rights XVII. The Freedom of Assembly Clause was modified by the 1868 Constitution by deleting the first word of the clause “that.” 1868 Const. art. I, § 26. Amendments were again made to the Freedom of Assembly Clause with the ratification of the 1971 Constitution which now reads “The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances; but secret political societies are dangerous to the liberties of a free people and shall not be tolerated.” 1971 Const. art. I, § 12. The change to the Freedom of Assembly Clause was not meant as a substantive change, nor was it meant to “bring about a fundamental change” to the power of the General Assembly. Rept. of Study Comm’n at 10.

C. Redistricting is an Inherently Political Process

66. Under our State Constitution, redistricting of Senate and House Districts is left to the General Assembly. As stated above, the drawing of congressional maps has been left to the discretion of state legislative bodies. *League of Latin Am. Citizens v. Perry*, 548 U.S. 399, 414 (2006) (citations omitted). In that redistricting is left to legislative bodies, bodies which are inherently political in nature, the United State Supreme Court has indicated that a State may engage in “constitutional political gerrymandering.” *Rucho*, ___ U.S. ___, 139 S. Ct. at 2947. Likewise, the North Carolina Supreme Court has stated:

[t]he General Assembly may consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions, *see Gaffney v. Cummings*, 412 U.S. 735, 37 L. Ed. 2d 298, 93 S. Ct. 2321 (1973), but it must do so in conformity with the State Constitution. To hold otherwise would abrogate the constitutional limitations or “objective constraints” that the people of North Carolina have imposed on legislative redistricting and reapportionment in the State Constitution.

Stephenson I, 355 N.C. at 371-372, 562 S.E.2d at 390.

67. Indeed, redistricting “inevitably has and is intended to have substantial consequences” as it is part of the American political process. *Rucho*, ___ U.S. at ___, 139 S. Ct. at 2497. While the United States Supreme Court has attempted to address partisan gerrymandering on a number of occasions, in *Rucho* it determined that claims for partisan gerrymandering were not justiciable because they:

present political questions beyond the reach of the federal courts. Federal judges have no license to reallocate political power between the two major political parties, with no plausible grant of authority in the [Federal] Constitution, and no legal standards to limit and direct their decisions.

Id. at ___, 139 S. Ct. at 2506-07.

68. While determining that political gerrymandering claims were beyond the reach of the federal courts, the U.S. Supreme Court noted that “[t]he States . . . are actively addressing the issue on a number of fronts,” and “[p]rovisions in state statutes and state constitutions can provide standards and guidance for state courts to apply.” *Id.* at 2507.

69. In *Rucho*, the U.S. Supreme Court pointed to examples of how the States are specifically addressing the issue and how statutes and constitutions can provide standards and guidance for the state courts to apply. In Florida, the Fair Districts Amendment to the Florida Constitution was adopted in 2010 and specifically provides that in creating congressional or legislative districts “[n]o apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent” Fla. Const. Art. III, §§ 20-21. In Michigan, the state constitution was amended in 2018 to provide for an independent citizens redistricting commission. Mich. Const. Art. IV, §6. Missouri has added

language to its constitution that requires that “[d]istricts be drawn in a manner that achieves both partisan fairness, and secondarily, competitiveness. . . .” Mo. Const. Art. III, § 3(b)(5). Other states identified by the Supreme Court, Iowa and Delaware, have elected to address the issue through their state statutes. All of the states identified and the manner in which they are addressing the problem have one thing in common: the problem was addressed by the people, their legislatures, or both—not the judiciary.

D. The Enacted Maps Are Not Unconstitutional as a Result of Partisan Gerrymandering.

1. The Enacted Maps Do Not Violate the Free Elections Clause

70. While the Free Elections Clause has been part of our constitutional jurisprudence since the 1776 Constitution, there are very few reported decisions that construe the clause. In *Clark v. Meyland*, 261 N.C. 140, 136 S.E.2d 168 (1964), the plaintiff, a registered Democrat sought to change his party affiliation to that of a Republican in order to vote in the next Republican primary. *Id.* at 141, 136 S.E.2d at 169. At the time, the then existing N.C.G.S. § 106-50, required a person changing their party affiliation to take an oath in which they agreed to support the nominees to their new party in all elections until such time as they change their party again. *Id.* The Court found that the provision of the oath requiring the plaintiff to vote for the candidate of his new party operated as a “detrant [sic] to his exercising a free choice among available candidates at the election ---even by casting a write-in ballot.” *Id.* at 142-143, 136 S.E.2d at 170. The Court found this to be violative of the Free Elections Clause. *Id.* at 143, 134 S.E.2d 170.

71. In *Swaringen v. Poplin*, 211 N.C. 700, 191 S.E. 746 (1937) the Supreme Court found that an allegation of fraud in an election was contrary to the Free Elections Clause and thus could serve as a basis to try title to an office through the *quo warranto* procedure. *Id.* at 701-02; 191 S.E. at 746.

72. In *Obie v. North Carolina State Board of Elections*, 762 F. Supp. 119 (E.D.N.C. 1991), the United States District Court for the Eastern District of North Carolina found that a requirement that an unaffiliated voter obtain the signature of 10% of the registered voters in the district in which they were running for office impeded the ability to gain access to the ballot and thus, among other things, violated the Free Elections Clause. *Id.* at 121.

73. None of the aforementioned cases deal with redistricting for partisan advantage. However, as noted above, “[t]he General Assembly may consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions, but it must do so in conformity with the State Constitution.” *Stephenson*, 355 N.C.at 371-72, 562 S.E.2d at 390. (citations omitted).

74. The Court must now seek to construe the Free Elections Clause as well as the redistricting provisions of the North Carolina Constitution within the analytical framework dictated by our Supreme Court, as set forth above and in light of the language of *Stephenson*.

75. The Free Elections Clause was first set forth as part of the North Carolina Declaration of Rights which was specifically incorporated as part of the 1776 Constitution. N.C. Const. of 1776, § XLIV. The Free Elections clause plainly and simply provided “[t]he election of members, to serve as representatives, ought to be free.” N.C. Const. of 1776, Decl. of Rights, § IV. “The word ‘free’ originally derives by way of Section 3 of the Virginia Declaration of Rights¹³, and from the English Bill of Rights (1689)¹⁴.” John V. Orth, *The North Carolina State Constitution: A Reference Guide*, 56 (1993). “The meaning is plain: free from interference or intimidation.” *Id.*

¹³ [E]lections of members to serve as representatives of the People, in assembly, ought to be free” Va. Decl. of Rights, §3.

¹⁴ [E]lections of members of Parliament ought to be free.”

76. In addition to the clear meaning of the words found in our Free Elections Clause, we are directed to also consider the circumstances and conditions which existed at the time of the enactment of the same. *Perry*, at 447, 75 S.E.2d at 516.

77. As Plaintiffs correctly point out, the words as originally used in the English Bill of Rights (1689) were crafted in response to abuses and interference by the Crown in elections for members of parliament which included changing the electorate in different areas to achieve electoral advantage. J.R. Jones, *The Revolution of 1688 in England*, 148 (1972). However, that is where the Plaintiffs' analysis ends. Examining the North Carolina Free Elections Clause in a greater context gives a complete understanding to its meaning.

78. At the time of the Glorious Revolution, King James II embarked on a campaign to pack Parliament with members sympathetic to him in an attempt to have laws that penalized Catholics and criminalized the practice of Catholicism repealed.¹⁵ After failing in his attempt to pack parliament, King James II was ultimately overthrown and fled England, paving the way for King William and Queen Mary to rule together. As a condition of King William and Queen Mary's assumption of the throne, they were required to sign the English Declaration of Rights which resulted in limiting the powers of the Crown and an increase in power to Parliament, most notably in the House of Commons.

79. The Glorious Revolution and the resulting English Bill of Rights were the beginning of a constitutional monarchy. While the English Bill of Rights, in part, sought to address the Crown's interference with the affairs of Parliament, there is no indication that the English Free Election Clause was directed at anyone but the Crown, much less a restriction on the power of Parliament. In fact, the opposite seems true. The English Bill of Rights reflected a shift in power from the Crown, who generally acted to protect its own

¹⁵ In 1669, and prior to his ascension to the throne, King James, II converted to Catholicism.

interest, to the House of Commons in Parliament, whose members were elected by the people. Because the English Bill of Rights did not abolish the monarchy, provisions were necessary to provide protection to the elected members of parliament from interference by the Crown.

80. By the time the Virginia Declaration of Rights and the North Carolina Declaration of Rights and Constitution were passed, the Glorious Revolution had been over for almost a century. It is safe to say that none of the drafters of the 1776 Constitution were alive during the Glorious Revolution or the establishment of the English Bill of Rights and their experiences and concerns did not arise from direct interactions with the Crown, but instead from direct interactions with the Royal Governors and their Council who represented the interests of the Crown. Moreover, the Royal Governors were representatives of a constitutional monarch, unlike the monarchs who claimed the throne through divine right before and up to the signing of the English Bill of Rights.

81. Under colonial rule, the North Carolina Royal Governor had veto power, as no law could be passed without his consent. While his instructions did not allow him to determine the manner of electing members to the House of Burgesses or set the number of members, they did allow him to dissolve the House of Burgesses. Raper at 35. The instructions to the Royal Governor also allowed him to issue charters of incorporation for towns and counties from which representatives would be elected.

82. No doubt there were tensions between the House of Burgesses and the Governor from 1729 to 1776. In 1746, in an effort to give equal representation to each county, as the newer counties were given fewer representatives in the House of Burgesses, the Royal Governor moved the legislature to Wilmington where representatives of the larger counties would not travel, giving the smaller counties effective control of the lower house. As a result, the legislature passed legislation giving each county two representatives in the assembly.

This remained in effect until 1754 when the legislation was repealed by the Crown. Raper 90-91.

83. Disputes also arose as to whether the Governor could require counties and towns to obtain charters of incorporation prior to being able to elect representative to the legislature. As this was specifically allowed in his instructions from the Crown, the colonists did not continually press this particular issue. Raper at 69.

84. At times, the House of Burgesses refused to seat new members from counties created by the Governor. The dispute was not necessarily that the Governor did not have the authority, but the House believed they had a role in the process in the creation of counties. Raper at 89-90.

85. The House of Burgesses fought the Royal Governor over the right to establish a quorum for the legislature to act - the governor desiring a smaller number, feeling they would be easier to influence. Raper at 216-217.

86. The House of Burgesses and Governor also had disputes regarding land, quit-rents and the form of payment thereof, (Cooke at 35, Raper at 191-193), the nomination of public treasurers, (Raper at 205), the appointment of agents to England, (Raper at 26), and disposition of public revenue, Raper at 197-199; Cooke at 37.

87. The most serious disputes between the Royal Governor and the House of Burgesses arose over fiscal matters, the courts and appointment of judges. Raper at 208-209; Cooke at 38.

88. At the time of the adoption of the 1776 Constitution, North Carolina was:

much more democratic than many of her sister states, such as Virginia and Maryland. There was an absence of any landed aristocracy as found in Virginia and the absence of any large ports had hindered the development on an influential commercial class. Lastly, the Church of England with its aristocratic tendencies, was weaker in North Carolina than in her sister colonies directly north and south.

Ketcham at 216.

89. Upon the adoption of the 1776 Constitution, the Royal Governor, who represented and protected the interest of the Crown, was replaced by a Governor chosen by the General Assembly. N.C. Const. of 1776, § XV. Unlike Parliament, who after the passage of the Declaration of English Rights continued to have to deal with the Crown as part of the constitutional monarchy, North Carolinians and their General Assembly were no longer subservient to parliament, the Crown, or its representatives: the Royal Governor and his Council.

90. The circumstances under which the English Free Election Clause was written were far different than those which caused the same language to be used in the 1776 Constitution.

91. It was the experience of the people of the State of North Carolina that was the most important source for the creation of the 1776 Constitution. Ketcham at 230. By far, the greatest change in the structure of North Carolina's government, other than elimination of the parliament and the Crown, was the vast reduction in the powers of the Governor and the substantial increase in the powers of the General Assembly. These changes were made to make “the governor that figurehead in law which in fact the colonial legislature had long sought to make him.” *Id.* Turning the Governor into a figurehead was a result of the experience of the colonists with “the overbearing colonial governors who presided over North Carolina.” John V. Orth, *North Carolina Constitutional History*, 70 *North Carolina Law Review*, 1759, 1764 (Sept. 1, 1992).

92. Any argument that the Free Elections Clause placed limits on the authority of the General Assembly to apportion seats flies in the face of the overwhelming authority given to the General Assembly in the 1776 Constitution. First, apportionment was by county and town. As past disputes between the Royal Governor and the House of Burgesses dealt

primarily with what role the lower house had in creation of counties, that dispute was eliminated with the severance of ties with the Monarch and the Royal Governor. The General Assembly, and only the General Assembly, had the right to create counties.

93. In addition to having authority to create counties and towns, the legislature had the exclusive power to: (1) elect the Governor (N.C. Const. of 1776, § XV); (2) appoint the Attorney General; (3) appoint Judges of the Supreme Court of Law and Equity and Judges of Admiralty (*id.* at § XIII); (4) appoint the general and field officers of the militia (*id.* at § XIV); (5) elect the council of State (*id.* at. XVI); (6) appoint a treasurer or treasurers of the State (*id.* at §. XXII); (7) appoint the Secretary of State (*id.* at § XXXIII); and (8) recommend the appointment of Justice of the Peace to the Governor who shall commission them accordingly. (*id.* at § XXXIII). Moreover, unlike the Royal Governor, the Governor of the State of North Carolina was not given the power to veto acts of the legislature. The lack of veto and the sweeping powers granted to the legislature caused the governor's "executive authority to be hemmed in on every side." John v. Orth, *Constitutional History of North Carolina*, 70 North Carolina Law Review, 1759, 1764 (Sept 1, 1992). Much like the English Bill of Rights, the 1776 Constitution shifted power to the elected representatives of the people.

94. The drafters of the 1776 Constitution discussed how to place a check on legislative excess. See, C.R. 10:498-99, Letter from Samuel Johnston to James Iredell dated April 20, 1776. Their solution was simple and direct: have elections often.

95. The check on any excesses of the legislature was embodied in Section XX of the Declaration of Rights of the 1776 Constitution which states "[t]hat for redress of grievances and for amending and strengthening the laws, elections ought to be often held." Further solidifying the check on legislative excesses was the requirement that Senators and Representatives be elected annually. N.C. Const. of 1776, arts. II & III. "Annual elections

ensured accountability” to the people of North Carolina. *The North Carolina State Constitution*, John V. Orth, Paul Martin Newby, 2nd Ed., p. 6 (2013).

96. While the legislature did not specifically draw districts from 1776 to 1835, they did create counties. In 1776 there were approximately 35 counties in North Carolina and by 1835 that number exceeded 60. There were no constitutional checks on the legislature’s ability to create counties, the basis of representation during that time, nor is there any evidence of the need for any constraints on that authority. As the General Assembly was given the authority to lay out Senate districts in 1835, objective constraints were placed on the General Assembly starting with a Whole County Provision. N.C. Const. of 1776, amended 1835, art. I, §1. Over time, additional objective constitutional constraints have been placed on the General Assembly so as today there are four objective constraints delineated in the North Carolina Constitution: (1) apportionment of the district by population such that the representative or senators in each district shall represent, as nearly as may be, an equal number of inhabitants; (2) A contiguity requirement; (3) a Whole County Provision; and (4) a Mid-Decade Provision.¹⁶ At no point has restriction of redistricting for partisan advantage ever been made part of any North Carolina Constitution.

97. Further evidence that the North Carolina Free Elections Clause was not intended to operate as a restriction on the authority of the General Assembly to redistrict is how the framers of the English Bill of Rights and Virginia Declaration of Rights understood how the provisions applied at the time they were enacted and immediately thereafter.

98. Before, during and after the Glorious Revolution, and the signing of the English Bill of Rights, there existed in England what were known as Rotten Boroughs. These

¹⁶ These are in addition to constraints/requirements imposed by the Fourteenth Amendment to the U.S. Constitution and the Voting Rights Act of 1965.

were Boroughs where there were very few residents but that elected the same number of members of parliament as heavily populated districts.

99. Thomas Paine in *The Rights of Man* explained:

The County of York, which contains nearly a million of souls, sends two county members; and so does the county of Rutland, which contains not an hundredth part of that number. The old town of Sarum, which contains not three houses, sends two members; and the town of Manchester, which contains upwards of sixty thousand souls, is not admitted to send any.

Thomas Paine, *The Rights of Man*, Part, the First, Being an Answer to Mr. Burke's Attack on the French Revolution.

100. Old Sarum was once the site of a cathedral and a fort, but when the cathedral moved, the population dwindled. Despite this, it continued to send two members to parliament. This allowed whoever controlled the land to elect the members. Old Sarum was just one of many Rotten Boroughs and it and others existed as such before, at the time of and after the signing of the English Bill of Rights.

101. Rotten Boroughs allowed fathers to pass on a constituency to their sons ensuring their son or a person of their choosing would have the power of a member of Parliament. <https://www.historylearningsite.co.uk/british-electoral-history-since-1832/rotten-boroughs/> (last visited 01/07/2022)

102. Despite the Free Elections Clause in the English Bill of Rights, the Rotten Boroughs were allowed to continue to exist until the Reform Act of 1832.¹⁷ At the time of the passage of the reform Act of 1832 more than 140 parliamentary seats out of a total of 658 or 21% of members of parliament came from Rotten Boroughs. Of those Rotten Boroughs, 50 had fewer than 50 voters.¹⁸

¹⁷ [Parliament.uk/about/living-heritage/evolutionofparliament/reformacts/overview/reformactof 1832/](https://www.parliament.uk/about/living-heritage/evolutionofparliament/reformacts/overview/reformactof1832/)

¹⁸ <http://www.britannica.com/topic/rotten-borough> (last visited January 7, 2022).

103. Given the existence of these Rotten Boroughs at the time of the signing of the English Bill of Rights, and their continued unopposed use of the same until 1832, it is doubtful that such boroughs maintained by or for members of parliament were subject to the English Free Elections Clause.

104. North Carolina's Free Election Clause is modeled and taken from a similar clause in the Virginia Declaration of Rights written by George Mason and approved by the Fourth Virginia Convention in 1775. Members of the convention who approved the Virginia Declaration of Rights included Patrick Henry and James Madison.

105. In *Rucho*, the United States Supreme Court noted that

During the very first congressional elections, George Washington and his Federalist allies accused Patrick Henry of trying to gerrymander Virginia's districts against their candidates—in particular James Madison, who ultimately prevailed over fellow future President James Monroe. Hunter, *The First Gerrymander?* 9 *Early Am. Studies* 792-794, 811 (2011). See 5 *Writings of Thomas Jefferson* 71 (P. Ford ed. 1895) (Letter to W. Short (Feb. 9, 1789)) (“Henry has so modelled the districts for representatives as to tack Orange [county] to counties where he himself has great influence that Madison may not be elected into the lower federal house”).

Rucho, ___ U.S. at ___, 139 S. Ct. at 2494.

106. What is telling is that Patrick Henry, who was responsible in part for the Free Elections Clause in the Virginia Declaration of Rights, was attempting to partisan gerrymander districts to the detriment of James Madison, who was also responsible in part for the Free Elections Clause in the Virginia Declaration of Rights. If the Virginia Free Elections Clause applied to partisan gerrymandering, two of the men responsible for the clause did not seem to think it applied. It did not stop Patrick Henry from his actions, nor did Madison or his supporters assert the Free Election Clause to stop Patrick Henry. If the two men who were responsible or approving the clause did not think it applied to partisan gerrymandering, this Court is certainly hesitant to do so. In fact, it was not until 2020 that Virginia addressed the issue of partisan gerrymandering, not by judicial fiat, but by a

constitutional amendment providing for a bipartisan districting commission. Va. Const. of 1971, amend. 2020, art. II, § 6-A. The Virginia General Assembly also passed legislation setting standards and criteria for redistricting. One of these standards specifically prohibits maps “when considered on a statewide basis from unduly favoring or disfavoring a political party.” Va. Code § 24.2-304.4 (8).

107. Given the history and factors described above, this Court concludes that the Free Elections Clause does not operate as a restraint on the General Assembly’s ability to redistrict for partisan advantage.

2. The Incorporation of the Free Speech Clause and the Equal Protection Clause to the North Carolina Constitution of 1971 Was Not Intended to Bring About a Fundamental Change to the Power of the General Assembly

108. In determining whether the Equal Protection Clause and Free Speech Clause were intended to apply to the political question of partisan gerrymandering, it is necessary to examine the intent of the framers and citizens who adopted it. *Sneed*, 299 N.C. at 613, 264 S.E.2d at 110. This necessarily entails an examination of “history, general spirit of the times, and the prior and the then existing law in respect of the subject matter of the constitutional provision under consideration” *Perry*, 237 N.C. at 444, 75 S.E.2d at 514.

109. The Equal Protection Clause was incorporated into our State constitution in 1971 as part of the Law of the Land Clause. N.C. Const. of 1971, art. I, § 19. The Free Speech Clause was incorporated into our State constitution in 1971 as part of Free Press Clause. N.C. Const. of 1971, art. I, § 14. Prior to the adoption of the “proposed constitution” in 1971, no version of an Equal Protection Clause or Free Speech Clause was found in any of our State’s prior Constitutions. *See* N.C. Const. of 1776, as amended; N.C. Const. of 1868 as amended. At the time the Equal Protection Clause and Free Speech Clause were added to the State Constitution, the North Carolina legislature had been dominated by the Democratic

Party since the end of Reconstruction, a period of over 90 years representing 45 legislative elections.

110. In 1967, and just three years prior to the addition of the Equal Protection Clause and Free Speech Clause to the State Constitution, the Legislature placed on the ballot for ratification a constitutional amendment setting forth the objective constraints placed on the legislature in the drawing of legislative districts. 1967 Sess. Laws ch. 640. This amendment was ratified on November 8, 1968, by a vote of 582,633 to 373,395. John L. Sanders, *Amendments to the Constitution of North Carolina 1776-1996*, 15 (1997). N.C. Const. of 1868, amend. 1968, art. II, §§ 4 & 6. The objective constraints listed in the amended Article II of the 1868 Constitution are the only objective constraints that the framers of the North Carolina Constitution and amendments thereto saw fit to place on the legislature in drawing legislative maps. *Id.* The constraints are overall consistent with the progression of constraints placed upon the legislature in the two prior constitutions. *See* Table 1.

111. Plaintiffs would have this Court infer that it was the intent of the framers of the 1971 Constitution, by including the Equal Protection Clause and Free Speech Clause in the State Constitution, to limit the legislature's ability to redistrict for partisan advantage to some degree. As previously stated, the addition of the Equal Protection Clause and Free Speech Clause, while a substantive change, was not meant to "bring about a fundamental change" to the power of the General Assembly. Rept. of Study Comm'n at 10. If the framers did intend to limit the partisan advantage that could be obtained through redistricting, "it is reasonable to presume it would have been declared in direct terms and not be left as a matter of inference." *Sneed*, 299 N.C. at 616, 264 S.E.2d at 112. We will not "assume that, whatever the intent of the framers, the citizens intended by their adoption at the polls of the 1970 constitutional changes" that the Equal Protection Clause and Free Speech Clause impose new restrictions on the political process of redistricting. *See Id.; Perry v. Stancil*, 237 N.C.

442, 447, 75 S.E.2d 512, 516 (1953) (“In the absence of an express provision to that effect, we should be slow in adopting the conclusion that it was the intention of the framers of the Constitution to enact so radical a change in the law; because if such was the intention, it is reasonable to presume it would have been declared in direct terms and not left to a matter of inference.”)

112. Perhaps most probative of the intent of the framers and citizens of 1971 was the refusal of the legislature, as the representative of the people, to accept the recommendation of the Study Commission to give the Governor, as a person elected on a Statewide basis by the majority of the voters of this State, the power of the veto as a check on the excesses of the Legislature.

a. The Enacted Maps Do Not Violate the Equal Protection Clause

113. Plaintiffs also ask this Court to strike down the enacted maps as unconstitutional as a violation of our State Constitution’s Equal Protection Clause.

114. As an initial matter, this Court notes that the United States declined to strike the partisan gerrymandered maps in *Rucho* as unconstitutional under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. ___ U.S. at ___, 139 S.Ct. at 2504. It is true that in some instances greater protection has been afforded to citizens of North Carolina under our State Constitution than under the Federal Constitution. However, those occasions are rare. *Stephenson*, 355 N.C. at 397-98, 398 S.E.2d at 406-07 (Orr, J. concurring in part, dissenting in part).

115. It is also true that our Courts have found on several occasions that certain circumstances involving elections or the right to vote may give rise to equal protection claims under our state Constitution. In *Common Cause*, the court relied upon *Stephenson*, *Blankenship v. Bartlett*, 363 N.C. 518, 681 S.E.2d 759 (2007), and *Northampton County*

Drainage District No. One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990), to justify application of the equal protection clause to strike down the 2017 redistricting plan as unconstitutional based upon extreme partisan gerrymandering.

116. In *Stephenson*, the North Carolina Supreme Court held that “[t]he classification of voters into both single-member and multi-member districts within plaintiffs’ proposed remedial plans necessarily implicates the fundamental right to vote on equal terms” *Stephenson*, 355 N.C. at 378, 562 S.E.2d at 393-94. The Court went on to reason that members in multi-member districts had greater representation, in terms of members, than those voters in a single member district. *Id.*

117. In *Blankenship*, the Court held that the Equal Protection Clause was implicated and that the legislature’s actions were examined with heightened scrutiny when judicial districts created by the General Assembly represented a great disparity of residents to judge when one such district had five times the voting power of another district. *Blankenship*, 363 N.C. at 527-28, 681 S.E.2d at 766.

118. In *Northampton County Drainage No. One*, commissioners of the drainage district could assess members for maintenance or improvements in the district. 326 N.C. at 745-46, 392 S.E.2d at 355. The commissioners were appointed by the Northampton County Clerk of Court. *Id.* Because the drainage district encompassed land in Hertford County, the landowners within the Hertford County district were unable to vote for the Clerk of Court of Northampton County. *Id.* This gave Northampton County members voting rights that member in Hertford County lacked. *Id.* The North Carolina Supreme Court found that this deprived the Hertford County residents of Equal Protection under the law. 326 N.C. at 747, 392 S.E.2d at 356.

119. *Blankenship* and *Stephenson* are cases dealing with the ratio between the voters in a district and the elected representatives in that district. *Northampton* deals with the right to vote on equal terms with other members of the voting district.

120. In analyzing Plaintiffs' Equal Protection Claims as it relates to redistricting for partisan advantage, Plaintiffs are not denied the right to vote, nor are they in a district where they have less voting power than those in other districts. Plaintiffs are not part of a suspect class. Plaintiffs cite no appellate case where a person's membership in a political party is a suspect classification. The opposite seems to be true. See *Libertarian Party of North Carolina v. State*, 365 N.C. 41, 51, 707 S.E.2d 199, 206 (2011). To find as such would subject any person affected by a political decision of the state to heightened scrutiny.

121. It is true that there is a fundamental right to vote. However, if "no individual minority voter has a right to be included in a majority-minority district," *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 504, 126 S. Ct. 2594, 2659 (2006) (Roberts, C.J., concurring in part, concurring in the judgment in part, and dissenting in part) (citing *Shaw v. Hunt*, 517 U.S. 899, 917, and n. 9, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996) (*Shaw II*); *id.*, at 947, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (Stevens, J., dissenting)), then an individual voter would not be entitled to be included in a district that is more likely to elect a candidate from their own party.

122. Moreover, there is no requirement that each party must be influential in proportion to its number of supporters. *Rucho*, 139 S.Ct. at 951.

123. Redistricting and the political considerations that are part of that process do not impinge on the right to vote. Nothing about redistricting affects a person's right to cast a vote. Any impingement is limited and distant and as such is subject to a rational basis review. "Under the rationality standard of review, '[s]tate legislatures are presumed to have

acted within their constitutional power despite the fact that, in practice, their laws result in some inequality.” See *Beech Mountain v. County of Watauga*, 324 N.C. 409, 414, 378 S.E.2d 780, 783 (1989) (citations omitted). The Court finds that the plans are amply supported by a rational basis and thus do not violate the Equal Protection Clause.

b. The Enacted Plans Do Not Violate the Free Speech Clause.

124. As stated above, the incorporation of the Free Speech Clause into the 1971 Constitution was not intended to bring about a fundamental change to the power of the General Assembly.

125. Our appellate courts have interpreted the rights to free speech in alignment with cases interpreting the First Amendment to the United States Constitution. *State v. Petersilie*, 334 N.C. 169, 184, 432 S.E.2d 832, 841 (1993); *State v. Shackelford*, 264 N.C. App. 542, 552, 825 S.E.2d 689, 696 (2019); *Feltman v. City of Wilson*, 283 N.C. App. 246, 252, 767 S.E.2d 615, 620 (2014). The United States Supreme Court addressed the issue of whether partisan gerrymandering impinged upon free speech and other rights protected by the First Amendment to the United States Constitution. Their analysis was direct and to the point: “To begin, there are no restrictions on speech, association, or any other First Amendment activities in the districting plans at issue. The plaintiffs are free to engage in those activities no matter what the effect of a plan may be on their district.” *Rucho*, 139 S. Ct. at 2504. The same is true with the enacted plans. Plaintiffs are free to engage in speech no matter what the effect the Enacted Plans have on their district.

126. Plaintiffs’ claims based upon the Free Speech Clause fail.

c. The Enacted Plans Do Not Violate the Right of Assembly Clause.

127. The 1971 Constitution, art. I, § 14 provides: “The people have a right to assemble together to consult for their common good, to instruct their representatives, and to

apply to the General Assembly for redress of grievances; but secret political societies are dangerous to the liberties of a free people and shall not be tolerated.” With the exception of the provision relating to the “right to instruct,” the language of the Freedom of Assembly Clause closely resembles the language in the First Amendment to the United States Constitution which guarantees, in part, the right of the people “to assemble and petition the government for a redress of grievances.”

128. In *Libertarian Party*, our Supreme Court

[J]oin[ed] a growing number of federal courts applying the Supreme Court’s associational rights analysis to equal protection challenges in the context of ballot access restrictions on political parties and candidates. [They did] so because the interests of equal protection bear a strong relationship to the associational rights protected by our state constitution’s free speech and assembly provisions.

(citations omitted) *Libertarian Party*, 365 NC. at 48, 707 S.E.2d at 204. See *Feltman*, 238 N.C. App. at 253, 767 S.E.2d at 620 (recognizing that “[t]he right to freedom of assembly is similar to the right of freedom of association embodied within the federal constitution” and analyzing a claim based upon freedom of assembly in light of federal case law).

129. Given our appellate courts’ adoption of the United States Supreme Court’s associational rights analysis and other federal precedent, we find no reason not to adopt the United States Supreme Court’s analysis and findings on the effect of redistricting plans to the right of assembly and petition as set forth in *Rucho*, 139 S.Ct. at 2504. Plaintiffs remain free to engage in their associational rights and rights to petition no matter what effect the Enacted Plans have on their district.

130. There is absolutely no evidence that the Plaintiffs’ right to instruction was violated during the redistricting process or that the Enacted Maps somehow inhibit the right to instruct.

131. Plaintiffs’ claims based upon the Right of Assembly Clause fail.

132. As the North Carolina Supreme Court has stated:

[t]he General Assembly may consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions, *see Gaffney v. Cummings*, 412 U.S. 735, 37 L. Ed. 2d 298, 93 S. Ct. 2321 (1973), but it must do so in conformity with the State Constitution. To hold otherwise would abrogate the constitutional limitations or “objective constraints” that the people of North Carolina have imposed on legislative redistricting and reapportionment in the State Constitution.

Stephenson I, 355 N.C. at 371-372, 562 S.E.2d at 390.

133. The objective constitutional constraints that the people of North Carolina have imposed on legislative redistricting are found in Article II, Sections 3 and 5 of the 1971 Constitution and not in the Free Elections, Equal Protection, Freedom of Speech or Freedom of Assembly Clauses found in Article I of the 1971 Constitution.

134. Therefore, the Court concludes that our Constitution does address limitations on considering partisan advantage in the application of its discretionary redistricting decisions and Plaintiffs' claims on the basis of “extreme partisan advantage” fail.

E. Plaintiffs' Claims Are Nonjusticiable

135. In North Carolina, our Supreme Court has had an opportunity on a number of occasions to address whether the creation of boundaries is a question that presents a justiciable controversy. In those instances, the Supreme Court has found that they were political questions and thus non-justiciable. *See e.g., Howell v. Howell*, 151 N.C. 575, 66 S.E. 571 (1909) (rejecting partisan-gerrymandering challenge to a special-tax district); *Norfolk & S.R. Co. v. Washington County*, 154 N.C. 333, 335-36, 70 S.E. 634, 635 (1911) (holding the General Assembly's authority to “declare and establish what it deemed the true boundary between . . . counties . . . is a political question, and the power to so declare is vested in the General Assembly.”); *see also Carolina-Virginia Coastal Highway v. Coastal Tpk. Auth.*, 237 N.C. 52, 62, 74 S.E.2d 310, 317 (1953) (“[T]he power to create or establish municipal corporations . . . is a political function which rests solely in the legislative branch of the

government.”); *State ex. Rel. Tillett v. Mustain*, 243 N.C. 564, 569, 91 S.E.2d 696, 699 (1956) (“The power to create and dissolve municipal corporations, being political in character, is exclusively a legislative function.”); *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 7, 269 S.E.2d 142, 147 (1980) (“Annexation by a municipal corporation is a political question which is within the power of the state legislature to regulate.”).

136. In *Hoke County Bd. of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004), in adopting the United States Supreme Court’s definition on what constitutes a nonjusticiable claim, the North Carolina Supreme Court held that “any trial court rulings that infringed on the legislative prerogative of establishing school-age eligibility were in error.” *Id.* at 639, 599 S.E.2d at 391. The North Carolina Supreme Court stated:

the United States Supreme Court has defined issues as nonjusticiable when either of the following circumstances are evident: (1) when the Constitution commits an issue, as here, to one branch of government; *or* (2) when satisfactory and manageable criteria or standards do not exist for judicial determination of the issue.

Id. (citing *Baker v. Carr*, 369 U.S. 186, 210, 7 L. Ed. 2d 663, 682, 82 S. Ct. 691 (1962)).

137. The constitutional provisions relevant to the issue before the Court establish that redistricting is in the exclusive province of the legislature. N.C. Const. of 1971, amend 1996, art. II §§ 3, 5, and 20. Moreover, redistricting of congressional districts is largely left to the legislatures of the individual states. *League of Latin Am. Citizens v. Perry*, 548 U.S. 399, 414, 126 S. Ct. 2594, 2607 (2006).

138. As to whether satisfactory and manageable criteria or standards exist for judicial determination of the issue, the United States Supreme Court’s analysis in *Rucho* is instructive. *See Rucho* 139 S. Ct. at 2498-2506.

139. As the role apportionment plays is critical and a traditional part of American politics, “[a]ny standard for resolving such claims must be grounded in a ‘limited and precise rationale’ and be ‘clear, manageable, and politically neutral.’” *Id.* at 2498.

140. This Court has not been asked to eliminate all partisan gerrymandering, only “extreme” partisan gerrymandering. In short, we are asked to decide how much partisanship is “extreme.” In attempting to do so, we necessarily require “especially clear standards” because “[w]ith uncertain limits [we] – even when proceeding with the best intentions – would risk assuming political, not legal, responsibility for a process that often produces ill will and distrust.” *Id.* (citing *Vieth, v. Jubelirer*, 541 U.S. 267, 307 (2004)).

141. “Partisan gerrymandering claims rest on an instinct that groups with a certain level of political support should enjoy a commensurate level of political power and influence. . . . But such a claim is based on a ‘norm that does not exist’ in our electoral system— ‘statewide elections for representatives along party lines.’” *Id.* at 2499. (citations omitted.)

142. In order to avoid repeating the entirety of *Rucho*, it is safe to say that all of the arguments as to justiciability in the present case were made before the United States Supreme Court in *Rucho* and after an exhaustive analysis, the United States Supreme Court determined that:

Excessive partisanship in districting leads to results that reasonably seem unjust. But the fact that such gerrymandering is “incompatible with democratic principles,” *Arizona State Legislature*, 576 U. S., at ___, 135 S. Ct. 2652, 192 L. Ed. 2d 704, 716, does not mean that the solution lies with the federal judiciary. We conclude that partisan gerrymandering claims present political questions beyond the reach of the federal courts. Federal judges have no license to reallocate political power between the two major political parties, with no plausible grant of authority in the Constitution, and no legal standards to limit and direct their decisions. “[J]udicial action must be governed by *standard, by rule,*” and must be “principled, rational, and based upon reasoned distinctions” found in the Constitution or laws. *Vieth*, 541 U. S., at 278, 279, 124 S. Ct. 1769, 158 L. Ed. 2d 546 (plurality opinion). Judicial review of partisan gerrymandering does not meet those basic requirements.

Id. at 2506-07

143. In essence we are asked to apportion political power as a matter of fairness. This is no different than what our Supreme Court was asked to determine in *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014). In that case, the North Carolina Supreme Court stated:

Finally, plaintiffs argue that the enacted plans violate the “Good of the Whole” clause found in Article I, Section 2 of the Constitution of North Carolina. We do not doubt that plaintiffs’ proffered maps represent their good faith understanding of a plan that they believe best for our State as a whole. However, the maps enacted by the duly elected General Assembly also represent an equally legitimate understanding of legislative districts that will function for the good of the whole. Because plaintiffs’ argument is not based upon a justiciable standard, and because acts of the General Assembly enjoy “a strong presumption of constitutionality,” *Pope v. Easley*, 354 N.C. 544, 546, 556 S.E.2d 265, 267 (2001) (per curiam) (citation omitted), plaintiffs’ claims fail.

Id. at 575, 766 S.E.2d at 260, vacated and remained on other grounds *Dickson v. Rucho*, ___ U.S. ___ 135 S. Ct. 1843 (2015).

144. Utilizing the test for determining whether a claim is nonjusticiable as adopted in *Hoke County Bd. Of Education*, and following the extensive analysis of the nonjusticiability of partisan gerrymandering claims in *Rucho*, this Court determines that satisfactory and manageable criteria or standards do not exist for judicial determination of the issue and thus the partisan gerrymandering claims present a political issue beyond our reach.

145. We agree with the United States Supreme Court that excessive partisanship in districting leads to results that are incompatible with democratic principles. *Rucho*, 139 S.Ct, at 2504. Furthermore, it has the potential to violate “the core principle of republican government . . . that the voters should choose their representatives, not the other way around.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 567 U.S. 787, 824, 135 S. Ct. 2652, 2658 (2015). Also, it can represent “an abuse of power that, at its core, evinces a

fundamental distrust of voters, serving the self-interest of the political parties at the expense of the public good.” *LULAC v. Perry*, 548 U.S. 399, 456, 126 S.Ct. 2594, 2631 (2006) (Stevens, J. concurring in part and dissenting in part) (quotation and citation omitted)).

146. In addition, excessive partisan gerrymandering can subject the State to unwanted attention, ridicule and derision. As this Court mentioned at the hearing on Plaintiffs' Motions for Preliminary Injunction, the Supreme Court in *Stephenson* pointed out:

Since *Cavanagh*, many North Carolina legislative districts have been increasingly gerrymandered to a degree inviting widespread contempt and ridicule. See, e.g., “Red-Light District: It’s time to draw the line on gerrymandering,” John Fund's Political Diary, WSJ.com Opinion Journal from the Wall Street Journal Editorial Page, at <http://www.opinionjournal.com/diary/?id=105001756> (Mar. 13, 2002) (“elections in many semi-free Third World nations routinely offer more choices than many North Carolina residents will have” under the 2001 legislative redistricting plans); *How to Rig an Election*, *The Economist*, Apr. 27, 2002, at 29, 30 (“In a normal democracy, voters choose their representatives. In America, it is rapidly becoming the other way around” and asserting that “North Carolina [has been] long notorious for outrageous reapportionment.”)

Stephenson, 355 N.C. at 375, 562 S.E.2d at 392.

147. Over 19 years have elapse since *Stephenson* was decided. The political party drawing North Carolina’s legislative maps has changed, yet the ridicule has continued. See, “Gerrymandering Puts Partisanship in Overdrive; Can California Slow It” Gerald F. Seib, WSJ.com from the Wall Street Journal Politics Page at <https://www.wsj.com/articles/gerrymandering-puts-partisanship-in-overdrive-can-california-reverse-it-11638198550> (November 29, 2021).

148. This Court neither condones the enacted maps nor their anticipated potential results. Despite our disdain for having to deal with issues that potentially lead to results incompatible with democratic principles and subject our State to ridicule, this Court must remind itself that these maps are the result of a democratic process.

149. The drafters of the 1776 Constitution were elected from eligible males to the Fifth Provincial Congress who were responsible for drafting and approving the 1776 Constitution. Beginning with the 1835 Amendments to the 1776 Constitution, every proposed change since then relating to the drawing of legislative districts was proposed by elected representatives of the people of this State and ratified by the eligible voters. This democratic process left redistricting solely in the province of the legislature subject to only four objective restraints and accountability through frequent elections.

150. The decision of the voters of this State to approve an amendment to the Constitution giving the Governor the right to veto acts of the General Assembly, which excepted the right to veto redistricting maps, by an almost 3-1 margin, put out of reach any control over redistricting by a person elected by the majority of the citizens of this State.

151. The Enacted Maps comply with the objective constraints contained in the North Carolina Constitution of 1971, art. II, §§ 3 & 5., and were thereafter approved by a majority of the elected members of the General Assembly, all of whom were elected pursuant to maps that had previously been determined constitutional by the courts of North Carolina.

152. The people of this State enacted this political process and specifically declined to place any checks on their representatives, other than the objective constraints set forth in the North Carolina Constitution of 1971, art. II, §§ 3 & 5. Some of these people, perhaps even a majority, now ask this Court to undo what they have allowed to be done through the democratic processes of this State. To do so would require us to act outside the bounds of our constitutional authority.

153. Redistricting is a political process that has serious political consequences. It is one of the purest political questions which the legislature alone is allowed to answer. Were we as a Court to insert ourselves in the manner requested, we would be usurping the political power and prerogatives of an equal branch of government. Once we embark on that slippery

slope, there would be no corner of legislative or executive power that we could not reach. Indeed, under Plaintiffs' rationale, we could require the Governor to ensure that the partisan makeup of his political appointees matched or closely resembled the percentage of votes that his political opponent received.

154. We are aware of the effects of partisan gerrymandering. This Court is not without power remedy some of those effects. If partisan gerrymandering dilutes the vote of minorities, remedies under Section 2 of the Voting Rights Act are available. However, either for strategic reasons or a lack of evidence, Plaintiffs have repeatedly informed the Court that they are not pursuing a Voting Rights Act claim, but rather, are only pursuing a State Constitutional claim for racial gerrymandering. This is true despite the fact that it potentially would be easier to prove a violation of the Voting Rights Act, as one only need prove effect and need not prove intent.

155. Plaintiffs' theory of extreme partisan gerrymandering necessarily entails a calculation of the number of seats a party is expected to win in any given election. Seats that are deemed outliers based upon certain calculations are the result of "extreme partisan gerrymandering."

156. In a scenario where a party is expected to win 65 seats and the legislatively approved extreme partisan gerrymandered maps would result in a win of 75 seats, those seats in excess of 65 would be outliers and under plaintiffs' theories, are the product of extreme partisan gerrymandering. The Court would be required to order the mapmakers to redraw the maps so that they are consistent with the number of seats a party would expect to win. Given that the party could reach the 65 seat projection through the use of allowable partisan gerrymandering, some of the voters in the 65 permitted districts would suffer the same effects from partisan gerrymandering that the voters in the 10 excessively gerrymandered districts would have suffered had the maps not been withdrawn. To accept

the Plaintiffs' arguments that the maps are unconstitutional on the theories advanced would necessarily mean that no partisan gerrymandering is allowed as no voter should suffer from the effects of the same. This is contrary to the established precedent of the United States Supreme Court and the North Carolina Supreme Court. *Rucho*, 139 S. Ct. at 2504; *Stephenson*, 355 N.C.at 371-372, 562 S.E.2d at 390.

III. Intentional Racial Discrimination and Racial Vote Dilution Claims

A. Intentional Discrimination and Voter Dilution in Violation of the Equal Protection Clause

157. NCLCV Plaintiffs and Plaintiff Common Cause have asserted a claim that the Enacted Plans unnecessarily dilute the voting strength of Black North Carolinians and intentionally discriminate against Black North Carolinians in violation of the Equal Protection Clause of the North Carolina Constitution. The Court concludes that based upon the record before the Court, Plaintiffs have failed to prove the merit of their claim.

158. Under North Carolina's Equal Protection Clause, North Carolina's citizens—including its minority voters—have “a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” *White v. Pate*, 308 N.C. 759, 768, 304 S.E.2d 199, 205 (1983). In particular, North Carolina's minority voters have a right to “substantially equal voting power” and “substantially equal legislative representation.” *Stephenson I*, 355 N.C. at 379.

159. The North Carolina Constitution's guarantees of “substantially equal voting power” and “substantially equal legislative representation” are violated when a redistricting plan deprives minority voters of “a fair number of districts in which their votes can be effective,” measured based on “the minority's rough proportion of the relevant population.” *Bartlett v. Strickland*, 556 U.S. 1, 28-29 (2009) (Souter, J., dissenting)

160. An act of the General Assembly can violate North Carolina's Equal Protection Clause if discriminatory purpose was "a motivating factor." *Holmes v. Moore*, 270 N.C. App. 7, 16, 840 S.E.2d 244, 254 (quoting *N.C. State Conference of NAACP v. McCrory*, 831 F.3d 204, 220-21 (4th Cir. 2016)); *see also Stephenson I*, 355 N.C. at 377, 562 S.E.2d at 393 (quoting *White*, 308 N.C. at 766, 304 S.E.2d at 204) (strict scrutiny is triggered under North Carolina's Equal Protection Clause when it creates a "classification" that "operates to the peculiar disadvantage of a suspect class"). And whether discriminatory purpose was a motivating factor can be "inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another." *Holmes*, 270 N.C. App. at 17. To determine whether this is true, the court may weigh the law's historical background, the sequence of events leading up to the law, departures from normal procedure, legislative history, and the law's disproportionate impact. *Id.* at 17.

161. The Supreme Court has observed that "courts must exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Dickson v. Rucho*, 368 N.C. 481, 506, 781 S.E.2d 404, 423 (2015), *cert. granted, judgment vacated on other grounds*. The Court considers three factors:

First, in light of the interplay detailed below between the Fourteenth Amendment, which virtually forbids consideration of race, and the VRA, which requires consideration of race, the Supreme Court has acknowledged that the existence of legislative consciousness of race while redistricting does not automatically render redistricting plans unconstitutional.

Second, the Supreme Court has recognized the importance of the states' own traditional districting principles, holding that states can adhere to them without being subject to strict scrutiny so long as those principles are not subordinated to race.

Finally, the Supreme Court has accepted that some degree of deference is due in light of the difficulties facing state legislatures when reconciling conflicting legal responsibilities.

Id. (internal citations omitted).

162. North Carolina’s Equal Protection Clause is treated the same as the Equal Protection Clause of the United States Constitution. “No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.” N.C. Const. art. I, § 19.

163. “[A] finding that race was the predominant motive in drawing a district does not automatically render that district unconstitutional. Nor does it signify that the legislature acted in bad faith or with discriminatory intent in its redistricting.” *Covington v. N.C.*, 316 F.R.D. 117, 129 (2016). Further, a legislature’s knowledge of racial demographics is most certain, “but that sort of race consciousness does not lead inevitably to impermissible race discrimination.” *Id.* (quoting *Shaw v. Reno*, 509 U.S. 630, 646 (1993)).

164. If a plaintiff shows “that race predominated over traditional race-neutral redistricting principles, [then the court is to] apply strict scrutiny,” and the government defendants then “have the burden of show[ing] not only that [their] redistricting plan was in pursuit of a compelling state interest, but also that [their] redistricting legislation is narrowly tailored to achieve [that] compelling interest.” *Id.* (quoting *Shaw v. Hunt*, 517 U.S. 899, 908 (1996)) (internal quotations omitted).

165. A “discriminatory purpose may often be inferred from the totality of the relevant facts,” even when no discriminatory purpose is “express or appear[s] on the face of the statute.” *Washington v. Davis*, 426 U.S. 229, 241-42, 96 Ct. 2040, 2048 (1976).

166. The relevant framework for analyzing whether an official action was motivated by discriminatory purpose is set forth in *Village of Arlington Heights v. Metro. House. Dev. Corp.*, 429 U.S. 252 (1977). Courts must undertake “a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Id.* at 266; *State v. Jackson*,

322 N.C. 251, 261, 318 S.E.2d 838, 843-44 (1988) (Frye, J., concurring). The Supreme Court of the United States in *Arlington Heights* laid out a non-exhaustive list of factors for courts to consider. *Holmes v. Moore*, 270 N.C. App. 7, 18 (2020). Those factors include: (1) the law’s historical background, (2) the specific sequence of events leading to the law’s enactment, including any departures from the normal procedural sequence, (3) the legislative history of the decision, and (4) the impact of the law and whether it bears more heavily on one race than another.” *Arlington Heights*, 429 U.S. at 266-68.

167. NCLCV Plaintiffs and Plaintiff Common Cause have failed to satisfy their burden of establishing that race was the predominant motive behind the way in which the Enacted Plans were drawn.

168. First, Plaintiffs have failed to show a predominant racial motive through direct evidence. The Adopted Criteria proscribed the use of racial considerations in the drawing of the Enacted Plan, nor did the General Assembly consider race by, for instance, conducting a racially polarized voting study on the selected plans prior to their enactment.

169. Plaintiffs have also failed to show a predominant racial motive through circumstantial evidence. Though the testimony elicited from Plaintiff’s expert, Dr. Leloudis, provided a contextual backdrop for the way redistricting maps have been drawn, litigated, and accordingly struck down in the past, it is incumbent upon this Court to afford the legislature a presumption of good faith. *N.C. State Conference of the NAACP v. Raymond*, 981 F.3d 295, 303 (4th Cir. 2020). “A legislature’s past acts do not condemn acts of a later legislature, which we must presume acts in good faith.” *Id.* at 298 (citing *Abbot v. Perez*, 138 S. Ct. 2305, 2324 (2018)). Plaintiffs have failed to link past, impermissible race-based redistricting to the current legislature and have failed to provide sufficient circumstantial evidence in accordance with the requirements of the *Arlington Heights* analysis.

170. Second, Plaintiffs have failed to establish that the General Assembly failed to adhere to traditional districting principles *on account of racial considerations*. Plaintiffs provide insufficient evidence that the instances in which traditional districting principles were not adhered to was because of *racial* considerations. Instead, as discussed above, the General Assembly consistently acted with an intent to redistrict for partisan advantage, and nothing in the record shows that to be a pretext for underlying racial considerations.

171. Third, giving deference to the redistricting process as conducted by the General Assembly, Plaintiffs have failed to make the requisite evidentiary showing that the General Assembly sought to dilute the voting strength of Blacks based upon their race, or that Blacks have less of an opportunity to vote for or nominate members of the electorate less than those of another racial group. Plaintiffs have shown, and the Court agrees, that a substantial number of Black voters are affiliated with the Democratic Party. What Plaintiffs have not shown, however, is how the General Assembly targeted this group on the basis of race instead of partisanship. Black voters who also happen to be Democrats have therefore been grouped into the partisan intent of the General Assembly. There is nothing in the evidentiary record before this Court showing that race *and* partisan gain were *coincident* goals predominating over all other factors in the redistricting.

172. Plaintiffs, for the same reasons, have failed to satisfy their burden of showing that the General Assembly was motivated by discriminatory purpose with regard to violating the Equal Protection Clause. Plaintiffs have presented no direct evidence as to discriminatory purpose, and the circumstantial evidence presented is insufficient to sustain their burden pursuant to *Arlington Heights*.

B. Voter Dilution in Violation of the Free Elections Clause

173. NCLCV Plaintiffs' claim that the Enacted Plan unnecessarily dilutes the voting power of citizens on account of race in violation of the Free Elections Clause of Art. I, § 10 is without an evidentiary or legal basis.

174. Under North Carolina's Free Elections Clause, "the object of all elections is to ascertain, fairly and truthfully the will of the people." *Hill v. Skinner*, 169 N.C. 405, 415, 86 S.E.351, 356 (1915).

175. As explained above, the Free Elections Clause has been interpreted narrowly, and Courts have upheld violations of the Free Elections Clause infrequently. "The meaning [of the word free] is plain: free from interference or intimidation." John V. Orth, *The North Carolina State Constitution: A Reference Guide*, 56 (1993). The Free Elections Clause is inapplicable to NCLCV Plaintiffs' voter dilution claim.

176. Further, Plaintiffs failed to assert a claim under the Voting Rights Act of 1965 ("VRA"), and their application of the *Gingles* analysis, even if used in support of a VRA claim, is insufficient—Plaintiffs failed to conduct a complete *Gingles* analysis. While Dr. Duchin conducted an analysis and made findings concerning the "effective" districts for Black voters, admittedly, she did not conduct step 1 of the *Gingles* analysis.

IV. Whole-County Provision Claims

177. NCLCV Plaintiffs claim that certain state legislative districts violate the Whole County Provision of the North Carolina Constitution. While the boundaries for these districts, noted in the findings of fact, cross county lines, the Court concludes that the counties grouped and then divided in the formation of the specific districts at issue for this claim were the minimum necessary, and contained the minimum number of traversals and maintained sufficient compactness, to comply with the one-person-one-vote standard in such

a way that it met the equalization of population requirements set forth in *Stephenson v. Bartlett*, 355 N.C. 354, 383,84, 562 S.E.2d 377, 397 (2002).

178. The Court further concludes that the manner by which the counties at issue for this specific claim were traversed was not unlawful because it was predominantly for traditional and permissible redistricting principles, including for partisan advantage, which are allowed to be taken into account in redistricting.

V. Declaratory Judgment Claim Regarding the Redistricting Process Laid Out in *Stephenson I* and *Dickson*.

179. Intervenor-Plaintiff Common Cause, in its First Claim for Relief requests that this Court declare that

Plaintiff and its members and the voters it serves are entitled to, and Legislative Defendants have a duty to undertake, a redistricting process that adheres to the requirements of Article II, Sections 3 and 5 of the North Carolina Constitution as set forth in *Stephenson v. Bartlett*, including a requirement to undertake the analysis of racial data necessary to ascertain what districts are required by the VRA.

Common Cause Complaint, ¶ 157.

180. Plaintiff Common Cause further seeks injunctive relief requiring

the North Carolina General Assembly to adhere to the requirements of Article II, Sections 3 and 5, as set forth in *Stephenson v. Bartlett*, and specifically to perform a meaningful attempt to determine whether there are any districts compelled by the VRA, which, at a minimum, requires the consideration of racial data to understand changing demographics and performing a racially polarized voting analysis where the racial demographics indicate potential VRA problems before designating county clusters required in Senate and House legislative maps.

Common Cause Complaint, ¶ 159.

181. At the outset, the Court notes that in *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002), the Supreme Court of North Carolina was asked to address whether the legislative plans enacted in 2001 violated the Whole County Provision (WCP) of the State Constitution. *Id.* 355 N.C. at 360, 520 S.E.2d at 383. The Supreme Court stated “the

expanded question before this Court, in light of the VRA, is whether the WCP is now entirely unenforceable . . . or, alternatively, whether the WCP remains enforceable throughout the State to the extent not preempted or otherwise superseded by federal law.” *Id.* at 369, 562 S.E.2d at 388.

182. The Court then embarked on an analysis to harmonize the WCP and VRA. The *Stephenson* Court, in reconciling the VRA and WCP, required the formation of single-member legislative districts to ensure compliance with the VRA according to the following criteria:

[L]egislative districts required by the VRA shall be formed prior to creation of non-VRA districts. . . . To the maximum extent practicable, such VRA districts shall also comply with the legal requirements of the WCP, as herein established for all redistricting plans and districts throughout the State.

In forming new legislative districts, any deviation from the ideal population for a legislative district shall be at or within plus or minus five percent for purposes of compliance with federal "one-person, one-vote" requirements.

In counties having a 2000 census population sufficient to support the formation of one non-VRA legislative district falling at or within plus or minus five percent deviation from the ideal population consistent with "one-person, one-vote" requirements, the WCP requires that the physical boundaries of any such non-VRA legislative district not cross or traverse the exterior geographic line of any such county.

When two or more non-VRA legislative districts may be created within a single county, which districts fall at or within plus or minus five percent deviation from the ideal population consistent with "one-person, one-vote" requirements, single-member non-VRA districts shall be formed within said county. Such non-VRA districts shall be compact and shall not traverse the exterior geographic boundary of any such county.

In counties having a non-VRA population pool which cannot support at least one legislative district at or within plus or minus five percent of the ideal population for a legislative district or, alternatively, counties having a non-VRA population pool which, if divided into districts, would not comply with the at or within plus or minus five percent "one-person, one-vote" standard, the requirements of the WCP are met by combining or grouping the minimum number of whole, contiguous counties necessary to comply with the at or within

plus or minus five percent "one-person, one-vote" standard. Within any such contiguous multi-county grouping, compact districts shall be formed, consistent with the at or within plus or minus five percent standard, whose boundary lines do not cross or traverse the "exterior" line of the multi-county grouping; provided, however, that the resulting interior county lines created by any such groupings may be crossed or traversed in the creation of districts within said multi-county grouping but only to the extent necessary to comply with the at or within plus or minus five percent "one-person, one-vote" standard. The intent underlying the WCP must be enforced to the maximum extent possible; thus, only the smallest number of counties necessary to comply with the at or within plus or minus five percent "one-person, one-vote" standard shall be combined, and communities of interest should be considered in the formation of compact and contiguous electoral districts.

Id. at 355 N.C. at 381-84, 520 S.E.2d at 396-97.

183. The requirement in *Stephenson* that districts required by the VRA be drawn first was put in place to alleviate the conflict and tension between the WCP and VRA. There is nothing in *Stephenson* that requires any particular analysis prior to making a decision as to whether VRA districts are necessary. In this case, having just been involved in multiple redistricting lawsuits, the Legislative Defendants determined, based on their prior experience, that no VRA districts were required. FOF 41-50, 52, 72. The Legislative Defendants were open to considering any VRA analysis submitted. While counsel for Common Cause "raised concerns," no VRA analysis was provided to Legislative Defendants that contradicted the Legislative Defendant's perception of the need, or lack thereof, for VRA districts. Whether the decision to rely on prior experience rather than an expert analysis was prudent or wise, that is not for the Court to decide and would impermissibly intrude on the internal decision-making processes of the Legislature. The fact is, whether correct or not, the Legislative Defendants made a decision that no VRA Districts are required.

184. What Plaintiff Common Cause asks of this Court is to impose a judicially-mandated preclearance requirement. Such a requirement does not exist in *Stephenson*.

185. If the Legislative Defendants are incorrect that no VRA Districts are required, Plaintiff Common Cause has an adequate remedy at law and that is to bring a claim under Section 2 of the VRA. Plaintiff Common Cause has made it abundantly clear that it has not made such a claim and have presented no evidence to support such as claim.

186. For the reasons stated above, the Court concludes, as a matter of law, that Plaintiff Common Cause is not entitled to a Declaratory Judgment or Injunctive Relief pursuant to its First Claim for Relief.

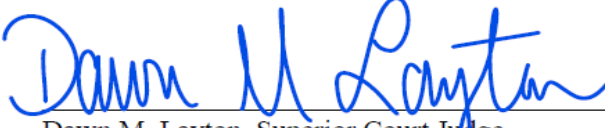
DECREE

Having considered all of the evidence, the memoranda and arguments of counsel, and the record proper, and based upon the foregoing Findings of Fact and Conclusions of Law, the Court ORDERS the following:

- I. Plaintiffs' requests for Declaratory Judgment are DENIED.
- II. Plaintiffs' requests for Permanent Injunctive Relief are DENIED.
- III. This Judgment fully and finally resolves all claims of all Plaintiffs raised in the consolidated cases and Judgment is hereby entered in favor of Legislative Defendants, and Plaintiffs Claims are hereby dismissed with prejudice.
- IV. The candidate filing period for the 2022 primary and municipal elections is hereby set and shall resume at 8:00 A.M. on Thursday, February 24, 2022 and shall continue through and end at 12:00 noon on Friday, March 4, 2022.
SO ORDERED, this the 11th day of January, 2022.


A. Graham Shirley, Superior Court Judge


Nathaniel J. Poovey, Superior Court Judge


Dawn M. Layton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

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Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 11th day of January 2022.

/s/ Kellie Z. Myers
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