STATE OF NORTH CAROLINA

COUNTY OF WAKE

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WAKE CO., C.S.C.

BY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, et al.,

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON REDISTRICTING, et al.,

Defendants.

SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR EXPEDITED DISCOVERY AND TRIAL AND FOR CASE MANAGEMENT ORDER

(OTHR)

Plaintiffs Common Cause, the North Carolina Democratic Party, and 38 North Carolina registered voters respectfully file this supplemental brief in support of their Motion for Expedited Discovery and Trial and for Case Management Order. A new development in the General Assembly underscores the critical need to resolve this matter as expeditiously as possible.

1. Plaintiffs filed their initial complaint in this action on November 13, 2018. On November 20, 2018, Plaintiff filed a motion for leave to conduct expedited discovery, and for entry of a Discovery Scheduling Order and Case Management Order establishing a schedule for expedited discovery, motions practice, and trial. Through this motion, Plaintitffs seek to ensure that, if the challenged districting plans for the state House of Representatives and state Senate (the "2017 Plans") are found unconstitutional in this case, there will be sufficient time to establish new, lawful districts for the 2020 primary and general elections. On December 7, 2018, Plaintiffs filed an amended complaint as contemplated by the schedule that Plaintiffs requested in the Motion to Expedite.

2. Last night, on December 11, 2018, leaders in the General Assembly unveiled a bill that, among other things, would attempt to significantly extend the time that the General

Assembly must be afforded to develop remedial districtings plans should the current plans be found unconstitutional. The bill would amend N.C. Gen. Stat. § 120-2.4(a)—which currently affords the General Assembly at least two weeks to establish remedial plans—to read as follows, with the underlined language reflecting the proposed changes:

> If the General Assembly enacts a plan apportioning or redistricting State legislative or congressional districts, in no event may a court impose its own substitute plan unless the court first gives the General Assembly a period of time to remedy any defects identified by the court in its findings of fact and conclusions of law. That period of time shall not be less than two ~~weeks~~ weeks, provided, however, that if the General Assembly is scheduled to convene legislative session within 45 days of the date of the court order that period of time shall not be less than two weeks from the convening of that legislative session.

HB 1029, § 4.7.

3. The House voted to approve this revision today, December 12, 2018, just a day after the proposal was first unveiled. The Senate is set to vote on the bill in the days ahead.

4. If enacted, the revised provision could purport to require that the General Assembly be given up to *59 days* to enact remedial districting plans, depending on when the General Assembly schedules its next legislative session. The provision would revise N.C. Gen. Stat. § 120-2.4 even though the current requirement of two weeks to enact remedial plans has never been an impediment to the General Assembly carrying out this task, and no compelling reason has been advanced for changing the statute.

5. The proposed revisions are a transparent attempt to interfere with this already filed litigation by making it more difficult to complete a remedial process in time for the 2020 elections. Before they have even begun defending the challenged plans in this case, leaders in the General Assembly already are trying to create unnecessary delay in hopes of running out the clock.

6. While Plaintiffs do not believe that the proposed new requirement could be lawfully applied to this pending lawsuit (or at all, if a shorter remedial timeline were necessary to cure a constitutional violation), the prospect that the General Assembly will enact the proposed language provides all the more reason to grant Plaintiffs' Motion to Expedite. Resolving this matter as expeditiously as possible will reduce the chances that the courts will have to rule on the constitutionality of the new provision, and it will ensure that the 2017 Plans, if found unconstitutional, will be remedied in time for the next election. Above all else, it is essential that North Carolonians not be forced yet again to vote in unconstitutional districts should Plantiffs prevail in this case. To that end, Plaintiffs respectfully request that the Court adopt their proposed expedited schedule.

Respectfully submitted this the 12th day of December, 2018.

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* *Pro hac vice motions forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email and by U.S. mail*, addressed to the following persons at the following addresses which are the last addresses known to me:

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This the 12th day of December, 2018.

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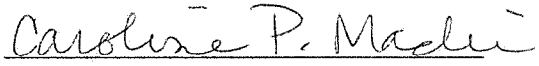

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