

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 18 CVS 014001

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WAKE CO., N.C.

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COMMON CAUSE; NORTH CAROLINA  
DEMOCRATIC PARTY; PAULA ANN  
CHAPAN; HOWARD DU BOSE JR.;  
GEORGE DAVID GAUCK; JAMES MACKIN  
NESBIT; DWIGHT JORDAN; JOSEPH  
THOMAS GATES; MARKS. PETERS;  
PAMELA MORTON; VIRGINIA WALTERS  
BRIEN; JOHN MARK TURNER; LEON  
CHARLES SCHALLER; REBECCA  
HARPER; LESLEY BROOK WISCHMANN;  
DAVID DWIGHT BROWN; AMY CLARE  
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JOHN BALLA; REBECCA JOHNSON;  
AARON WOLFF; MARY ANN PEDEN  
COVIELLO; KAREN SUE HOLBROOK;  
KATHLEEN BARNES; ANN MCCrackEN;  
JACKSON THOMAS DUNN, JR.; ALYCE  
MACHAK; WILLIAM SERVICE; DONALD  
RUMPH; STEPHEN DOUGLAS MCGRIGOR;  
NANCY BRADLEY; VINOD THOMAS;  
DERRICK MILLER; ELECTRA E. PERSON;  
DEBORAH ANDERSON SMITH; ROSALYN  
SLOAN; JULIE ANN FREY; LILY NICOLE  
QUICK; JOSHUA BROWN; CARLTON E.  
CAMPBELL SR.,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, IN  
HIS OFFICIAL CAPACITY AS SENIOR  
CHAIRMAN OF THE HOUSE SELECT  
COMMITTEE ON REDISTRICTING;  
SENATOR RALPH E. HISE, JR., IN HIS  
OFFICIAL CAPACITY AS CHAIRMAN OF  
THE SENATE COMMITTEE ON  
REDISTRICTING; SPEAKER OF THE  
NORTH CAROLINA HOUSE OF  
REPRESENTATIVES TIMOTHY K. MOORE;

**MOTION TO INTERVENE**

(Three-Judge Court Pursuant to  
N.C. Gen. Stat § 1-267.1)

PRESIDENT *PRO TEMPORE* OF THE )  
NORTH CAROLINA SENATE PHILIP E. )  
BERGER; THE STATE OF NORTH )  
CAROLINA; THE NORTH CAROLINA )  
STATE BOARD OF ELECTIONS AND )  
ETHICS ENFORCEMENT; JOSHUA )  
MALCOLM, CHAIRMAN OF THE NORTH )  
CAROLINA STATE BOARD OF )  
ELECTIONS & ETHICS ENFORCEMENT'; )  
KEN RAYMOND, SECRETARY OF THE )  
NORTH CAROLINA STATE BOARD OF )  
ELECTIONS & ETHICS ENFORCEMENT; )  
STELLA ANDERSON, MEMBER OF THE )  
NORTH CAROLINA STATE BOARD OF )  
ELECTIONS & ETHICS ENFORCEMENT; )  
DAMON CIRCOSTA, MEMBER OF THE )  
NORTH CAROLINA STATE BOARD OF )  
ELECTIONS & ETHICS ENFORCEMENT; )  
STACY "FOUR" EGGERS IV, MEMBER OF )  
THE NORTH CAROLINA STATE BOARD )  
OF ELECTIONS & ETHICS )  
ENFORCEMENT; JAY HEMPHILL, )  
MEMBER OF THE NORTH CAROLINA )  
STATE BOARD OF ELECTIONS & ETHICS )  
ENFORCEMENT; VALERIE JOHNSON, )  
MEMBER OF THE NORTH CAROLINA )  
STATE BOARD OF ELECTIONS & ETHICS )  
ENFORCEMENT; JOHN LEWIS, MEMBER )  
OF THE NORTH CAROLINA STATE )  
BOARD OF ELECTIONS & ETHICS )  
ENFORCEMENT; ROBERT CORDLE, )  
MEMBER OF THE NORTH CAROLINA )  
STATE BOARD OF ELECTIONS & ETHICS )  
ENFORCEMENT, )

Defendants. )

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NOW COME Potential Intervenors Reginald Reid, Carolyn Elmore, Cathy Fanslau, Ben York, Connor Groce, and Aubrey Woodard (“Intervenor Applicants”), pursuant to Rule 24 of the North Carolina Rules of Civil Procedure (the “Rules”), file this Motion to Intervene (“Motion”) as Defendants in the above-captioned case. In support of their Motion, Intervenor Applicants show the Court as follows:

### INTRODUCTION

1. For more than a century the North Carolina General Assembly has taken party identification into account in drawing legislative district lines, and courts have upheld such considerations as constitutional. *See, e.g., Stephenson v. Bartlett*, 355 N.C. 354, 371, 562 S.E.2d 377, 390 (2002) (allowing Legislature to “consider partisan advantage” when redrawing maps, so long as it complies with the State Constitution’s Whole County Provisions, N.C. Const. Art. II, §§ 3(3), 5(3)).

2. Plaintiffs, which include thirty-eight alleged Democratic voters, ask the Court to declare that North Carolina’s 2017 redistricting plans (2017 N.C. Sess. Laws 207, 208) (the “2017 Plans”), are invalid for the North Carolina Legislature’s (“Legislature”) consideration, in part, of party identification. As a result, Plaintiffs allege that their “votes have been diluted or nullified,” preventing them from electing the Democratic candidates of their choice. Plaintiffs are therefore asserting not that their right to vote has been abridged, but rather that they have a purported right to representation by representatives who share their own policy and political views, and such a right was infringed by the Legislature’s consideration of party identification in the drawing of the 2017 Plans.<sup>1</sup> Plaintiffs here are not hiding their objective: they use political arguments to advance

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<sup>1</sup> It must be noted that Democrat-affiliated voters in North Carolina waited until late 2018 to challenge legislative distractive maps drawn taking into account party identification. Their concerns were not raised, for more than a century prior to 2010, Democrats controlled the North Carolina Legislature. Nor were Plaintiffs’ claims raised in the multiple rounds of federal litigation over North Carolina’s Legislative district maps over the past eight years.

a political goal through an extension of North Carolina law unsupported by precedent. Intervenor Applicants believe that, to the extent any of the Plaintiffs have standing to raise their claims, Intervenor Applicants have the same purported right to representation by representatives who share their own policy and political views, and that an award of the remedy Plaintiffs seek would impair Intervenor Applicants' rights. Therefore, Intervenor Applicants seek to intervene in this case to protect their rights.

3. Intervenor Applicants are registered voters, Republicans, and residents of the challenged districts or county groupings that, upon information and belief, would be impacted by a redrawing of the 2017 Plans. Plaintiffs' proposed relief—which would invalidate the 2017 Plans entirely and require all new districts because they do not support Plaintiffs' political views — impairs the Intervenor Applicants' own corresponding right to representation by a representative who shares their policy preferences. Plaintiffs can only vindicate their interest in enhanced representation by diminishing the exact same interests of the Intervenor Applicants. In short, if Plaintiffs' alleged right to enhanced representation exists, the Intervenor Applicants have that same right which may be impaired by the outcome of this case.

4. As such, Intervenor Applicants have an interest in the outcome of this litigation, and their interests are not fully represented by the current Defendants, who are state actors that took part in the district map drawing process and are being sued only in their official capacities. Furthermore, as this matter is in its beginning and discovery has only begun, intervention is timely, allowing intervention will not prejudice the Parties, and intervention will benefit this Court through the evidence and legal argument that Intervenor Applicants can provide. Accordingly, pursuant to N.C. R. Civ. P. 24, Intervenor Applicants should be allowed to intervene as Defendants.

## PARTIES

5. Plaintiffs are comprised of a group of thirty-eight (38) alleged Democratic voters (the “Individual Plaintiffs”), the North Carolina Democratic Party, and a foreign, non-profit organization. (Am. Compl. ¶¶ 7–46). Each of the Individual Plaintiffs contend that they (1) live and vote in certain North Carolina legislative districts and (2) regularly vote for Democratic candidates for office, (*id.* ¶¶ 9–46), and that their right to vote has been “diluted or nullified” by the purportedly unconstitutional Legislative district maps, making it less likely that their preferred candidates will win election, (*e.g., id.* ¶ 8, 203–04, 210, 217).

6. Similar to the Individual Plaintiffs, Intervenor Applicants are voters who live and reside in the challenged districts and who regularly vote for Republican candidates for office. If Individual Plaintiffs’ alleged right to enhanced representation exists, Intervenor Applicants’ corresponding right is necessarily affected as well.

7. Intervenor Applicant Reginald Reid is a customer service professional residing in Winston-Salem, Forsyth County, North Carolina, within House District 72 and Senate District 32. Mr. Reid is a registered Republican who has consistently voted for Republican candidates for the General Assembly.

8. Intervenor Applicant Bettie Carolyn Elmore is a retail furniture store owner residing in Dunn, Harnett County, North Carolina, within House District 53 and Senate District 12. Ms. Elmore is a registered Republican who has consistently voted for Republican candidates for the General Assembly.

9. Intervenor Applicant Cathy Fanslau is a Lutheran minister residing in Raleigh, Wake County, North Carolina, within House District 34 and Senate District 18. Rev. Fanslau is a

registered Republican who has consistently voted for Republican candidates for the General Assembly.

10. Intervenor Applicant Ben York is the Town Clerk of the Village of Alamance residing in Burlington, Alamance County, North Carolina, within House District 64 and Senate District 24. Mr. York is a registered Republican who has consistently voted for Republican candidates for the General Assembly.

11. Intervenor Applicant Connor Groce is a college student at the University of North Carolina at Chapel Hill residing in Clemmons, Forsyth County, North Carolina, within House District 73 and Senate District 31. Mr. Groce is a registered Republican who has consistently voted for Republican candidates for the General Assembly since he became eligible to vote.

12. Intervenor Applicant Aubrey Woodard is a retired computer software development and sales executive residing in Brevard, Transylvania County, North Carolina, within House District 113 and Senate District 48. Mr. Woodard is a registered Republican who has consistently voted for Republican candidates for the General Assembly.

13. Intervenor Applicant Jarrod Lowery is a regional director for a state administrative department residing in Pembroke, Robeson County, North Carolina, within House District 47 and Senate District 13. Mr. Lowery is a registered Republican who has consistently voted for Republican candidates for the General Assembly.

14. Defendants are comprised of four state legislators, Representative David R. Lewis, Senator Ralph E. Hise, Jr., Speaker Timothy K. Moore, and President *Pro Tempore* Philip E. Berger, sued in their legislative capacities (the "Legislative Defendants"); the State of North Carolina (together with the Legislative Defendants, the "State Defendants"); the North Carolina State Board of Elections and Ethics Enforcement; and the members of the North Carolina State

Board of Elections and Ethics Enforcement.<sup>2</sup> (altogether, “Defendants”) (*Id.* ¶¶ 47–61).

Defendants are sued in their official capacities only, and not in their individual capacities. (*Id.*).

### PROCEDURAL HISTORY

15. On November 13, 2018, Plaintiffs filed their first Complaint. On November 20, 2018, Plaintiffs moved for leave to conduct expedited discovery, requesting a trial and case management order reflecting an expedited schedule. On November 27, 2018, the Chief Justice assigned the three-judge panel to hear the case. On December 7, 2018, Plaintiffs filed their Amended Complaint, seeking, *inter alia*, declaration that the 2017 Plans are invalid and enjoining their use. (*Id.* at p. 75 (Prayer for Relief)).

16. On December 14, 2018, State Defendants filed their Notice of Removal to the U.S. District Court for the Eastern District of North Carolina (“District Court”) under 28 U.S.C. §§ 1441 and 1443. On December 18, 2018, Plaintiffs filed their motion for remand, which the District Court granted on January 2, 2019. The District Court remanded the case to this Court, which the District Court confirmed on January 17, 2019 following State Defendants’ request for clarification regarding an automatic stay of the remand order. The Legislative Defendants have since appealed, and Plaintiffs have cross-appealed, the Court’s order remanding the case. The District Court has not stayed this matter pending appeal. Accordingly, Intervenor Applicants’ Motion is properly before this Court.

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<sup>2</sup> As of February 1, 2019, the elections-related functions of the North Carolina State Board of Elections and Ethics Enforcement will be re-organized into the North Carolina State Board of Elections, along with a new slate of members. See 2018 N.C. Sess. Laws 146 §§ 3.4(c), 3.5(a). See also *id.* at § 3.5(b) (“No action or proceeding pending on January 31, 2019, brought by or against the Bipartisan State Board of Elections and Ethics Enforcement shall be affected by any provision of this act, but the same may be prosecuted or defended in the name of the Secretary of State regarding the lobbyist registration and lobbying enforcement of the Secretary of State, the State Board of Elections, or the State Ethics Commission, as re-recodified in this act. In these actions and proceedings, the former entity, as re-recodified by this act, as appropriate, shall be substituted as a party upon proper application to the courts or other administrative or quasi-judicial bodies.”).

## ARGUMENT

17. “Liberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with efficiency and due process.” *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986); see *Virmani v. Presbyterian Health Servs. Corp.*, 127 N.C. App. 629, 648, 493 S.E.2d 310, 322 (1997) (The North Carolina rule for intervention and the federal rule are “substantially the same,” thus “the holdings of the federal circuit courts are instructive.” (citation omitted)), *aff’d in part, rev’d in part on other grounds*, 350 N.C. 449, 515 S.E.2d 675 (1999).

18. Intervention may be available as a matter of right or, if the party does not have an absolute right to intervene, the Court may allow permissive intervention. N.C. R. Civ. P. 24(a), (b). In either instance, the party’s motion must be timely and “accompanied by a pleading setting forth the claim or defense for which intervention is sought.” N.C. Rule Civ. P. 24(c). Intervenor Applicants are entitled here to intervene by right or, in the alternative, show that the Court should grant permissive intervention.

### **I. The Motion is Timely.**

19. Regardless of whether the movant seeks to intervene as a matter of right or by permissive intervention, the motion must be timely. N.C. R. Civ. P. 24(a), (b). “In considering whether a motion to intervene is timely, the trial court considers ‘(1) the status of the case, (2) the possibility of unfairness or prejudice to the existing parties, (3) the reason for the delay in moving for intervention, (4) the resulting prejudice to the applicant if the motion is denied, and (5) any unusual circumstances.’ *Hamilton v. Freeman*, 147 N.C. App. 195, 201, 554 S.E.2d 856, 859 (2001) (quoting *Procter v. City of Raleigh Bd. of Adjust.*, 133 N.C. App. 181, 183, 514 S.E.2d 745, 746 (1999)).



20. Here Intervenor Applicant's Motion is timely and does not prejudice Plaintiffs. The instant suit is in its preliminary stages—the Amended Complaint was filed on December 7, 2018, responsive pleadings have only recently been filed and the issue over which Court has jurisdiction over the case was only decided (notwithstanding the appeal) on January 17, 2019. *Common Cause al. v. David Lewis et al.*, E.D.N.C. Case No. 5:18-cv-589-FL, D.E. 53 (Jan. 17, 2019). See also *Hamilton*, 147 N.C. App. at 201, 554 S.E.2d at 859-60 (2001) [“A motion to intervene is rarely denied as untimely prior to the entry of judgment . . .” (citations omitted)]; compare, e.g., *State Employees' Credit Union, Inc. v. Gentry*, 75 N.C. App. 260, 264-65, 330 S.E.2d 645, 648 (1985) (denying intervention as untimely after entry of default) with *Defenders of Wildlife v. NCDOT*, 281 F.R.D. 264, 267 (E.D.N.C. 2012) (allowing intervention after responsive pleadings were filed, but before the record and summary judgment motions were due). Intervenor Applicants acted promptly to intervene. The Parties are at the beginning of discovery and, as far as Intervenor Applicants are aware, the Court has not yet given any direction on how discovery is to proceed. Allowing the Motion will not substantially delay the proceedings and prejudice the Parties.

## **II. Intervenor Applicants Are Entitled to Intervention as a Matter of Right.**

21. Rule 24(a) allows intervention of right “[w]hen (1) a statute confers an unconditional right to intervene, or (2) [w]hen the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.” N.C. R. Civ. P. 24(a). Both subsections of Rule 24(a) apply here.

22. The Amended Complaint seeks a declaratory judgment that the 2017 Plans are invalid. (Am. Compl, at p. 75). Under the Declaratory Judgment Act, “[w]hen declaratory relief

is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration.” N.C. Gen. Stat. § 1-260 (2017). Intervenor Applicants have an interest that is affected by a declaration of the constitutionality of the 2017 Plans—their own corresponding right to voter representation—the same purported right which Plaintiffs themselves seek.

23. “Registered voters have. . . a sufficiently substantial interest to intervene [ ] in an action challenging the voting district in which they are registered.” *League of United Latin Am. Citizens Dist. 19 v. City of Boerne*, 659 F.3d 421, 435 (5th Cir. 2011) (citations omitted). The Intervenor Applicants are registered voters, Republicans, and residents of certain of the challenged districts. Plaintiffs’ proposed relief—entirely invalidating the 2017 Plans because the Legislature took into account party identification in preparing the 2017 Plans—impairs the Intervenor Applicants’ ability to organize the voters in their counties, to work with their preferred electoral candidates running for the Legislature in the districts within their respective districts, and to engage in political activity designed to support their views and policy positions. To the extent this Court finds that Plaintiffs have a personal interest in this case, the Intervenor Applicants do as well. Accordingly, the Intervenor Applicants are entitled to intervene as a matter of right under Rule 24(a)(1).

24. Under N.C. R. Civ. P. 24(a)(2), the Court must allow a party to intervene when the proposed intervener demonstrates that “(1) [the intervener] has a direct and immediate interest relating to the property or transaction, (2) denying intervention would result in a practical impairment of the protection of that interest, and (3) there is inadequate representation of that interest by existing parties.” *Virmani*, 350 N.C. at 459, 515 S.E.2d at 683. A party has a direct interest in the action if “he will either gain or lose by the direct operation and effect of the

judgment.” *Id.* at 459, 515 S.E.2d at 683 [quoting *Strickland v. Hughes*, 273 N.C. 481, 485, 160 S.E.2d 313, 316 (1968)].

25. If Plaintiffs’ right to vote is impaired, then Intervenor Applicants’ right is similarly affected. *See City of Boerne*, 659 F.3d at 434-435; *Bailey*, 326 N.C. at 747, 392 S.E.2d at 356. Plaintiffs seek to expand the concept of the right to vote in a way that favors Plaintiffs over other North Carolina citizens, claiming the strength of their votes was impermissibly diluted by the 2017 Plans. (Am. Compl. ¶ 8). Though Plaintiffs admit that nine constitutional criteria were followed and adopted in drafting the 2017 Plans, (*id.* ¶ 104), Plaintiffs claim that certain statistical and future elections projections indicate that the 2017 Plans “were [politically] gerrymandered to favor Republicans,” (*id.* at ¶ 110). If Plaintiffs’ alleged right to enhanced representation exists, the Intervenor Applicants have that same right. But their political and policy views, as Republican Party voters, differ from Plaintiffs’. Plaintiffs can only vindicate their interest in enhanced representation by diminishing the exact same interests of the Applicants.

26. As such, courts have routinely allowed voters to intervene in cases implicating their right to vote. *See, e.g., City of Boerne*, 659 F.3d 421; *NAACP, Inc. v. Duplin County*, 2012 WL 360018, at \*5 (E.D.N.C. Feb. 2, 2012) (allowing voters’ intervention as of right); *Miller v. Blackwell*, 348 F. Supp. 2d 916, 920 (S.D. Ohio 2004); *Carter v. Dies*, 321 F. Supp. 1358, 1360 (N.D. Tex. 1970), *aff’d sub nom. Bullock v. Carter*, 405 U.S. 134 (1972); *see also Republican Party of N.C. v. Martin*, 865 F.2d 1259 (4th Cir. 1988) (per curiam) (allowing intervention for association’s interest in preserving the residency requirement for election of North Carolina judges).

27. As Republican voters who reside and vote in and around the districts Plaintiffs have expressly put at issue in this case, and as Republican voters who would be impacted by a redrawing

of the 2017 Plans in Plaintiffs' favor, Intervenor Applicants interests are much more personal and fundamental than those of the Legislative Defendants. Intervenor Applicants work with Republican candidates in their counties, organize together, select their preferred candidates, and voice their values and political views. As such, they are directly impacted by Plaintiffs' attempt to enhance their right to representation by Democratic Representatives, which conversely diminishes Intervenor Applicants' right.

28. These substantial and important legal interests are not adequately represented by the existing Defendants in this case, who consist of constitutional officers of North Carolina government whose official duty interests are not as personal and fundamental as the rights and interests of the Intervenor Applicants. *See League of United Latin Am. Citizens v. Clements*, 884 F.2d 185, 188 (5th Cir. 1989) (discussing individual and official capacities and that “[a] voting rights case challenges the election process rather than the individuals holding office”). None of the Legislative Defendants have been sued in their individual capacity—only in their official capacity. *See id.* Moreover, none of the Defendants face the consequences of this Court granting Plaintiffs' requested relief in the same manner as the Intervenor Applicants, who suffer the threat of having his or her district redrawn prematurely and in a manner detrimental to that voter's interests. Therefore, the Legislative Defendants cannot represent the interests of each local district and the voters therein, nor can they adequately represent the unique interest of the voters as voters.

29. Permitting Intervenor Applicants to intervene will ensure that these unique and important interests applicable to the individual voters are represented, and that this Court has the benefit of the evidence and legal argument Intervenor Applicants can provide. Accordingly, intervention as of right pursuant to Rule 24(a)(2) should be allowed.

### III. Intervenor Applicants Are Also Entitled to Permissive Intervention.

30. Rule 24(b) provides that a Court may allow intervention “(1) [w]hen a statute confers a conditional right to intervene, or (2) [w]hen a movant’s claim or defense and the main action have a question of law or fact in common.” N.C. R. Civ. P. 24(b). “In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” N.C. R. Civ. P. 24(b)(2).

31. “Rule 24(b)(2) does not require a permissive intervenor to show ‘a direct personal or pecuniary interest in the subject of the litigation.’ ” *Koenig v. Town of Kure Beach*, 178 N.C. App. 500, 507, 631 S.E.2d 884, 889 (2006) (quoting *In re Scarce*, 81 N.C. App. 531, 541, 345 S.E.2d 404, 410 (1986)). Indeed, the substantive issue to be addressed if the Intervenor Applicants are permitted to intervene—whether the future use of the 2017 Plans should be enjoined—is a separate determination that does not affect “the question of who should be allowed to appear and present the issue[.]” *Virmani*, 350 N.C. at 461, 515 S.E.2d at 684. Further, the trial court’s decision on permissive intervention is within its sound discretion and will not be disturbed absent a “ruling so arbitrary that it could not have been the result of a reasoned decision.” *Id.* at 460, 515 S.E.2d at 683 (citation omitted).

32. For the same reasons described above, the Intervenor Applicants have a statutory right to intervene and their claims or defenses have questions of law and fact in common with the main action, constituting a real and direct interest in the determination of whether the 2017 Plans are deemed invalid. Plaintiffs seek to invalidate the 2017 Plans on constitutional grounds, and Intervenor Applicants seek to defend the constitutionality of the Plans and, in general, protect their own “right to vote”, as Plaintiffs put it. Moreover, all the voters of an affected district, like Intervenor Applicants here, have an equally protected interest in the constitutionality of the 2017

Plans. Furthermore, Intervenor Applicants have properly submitted an answer as their responsive pleading, *see* N.C. R. Civ. P. 24(c), supporting the same.

33. Permitting the Intervenor Applicants to intervene would not result in undue delay or prejudice the adjudication of the rights of Plaintiffs or the Legislative Defendants. The lawsuit is in its very early stages. Moreover, any possible prejudice that Plaintiffs might claim is substantially outweighed by the prejudice that Intervenor Applicants would suffer to their individual voting rights and their protection of the same if this Court denied their motion. The Court will also benefit from the evidence and legal argument Intervenor Applicants can provide. Accordingly, the Intervenor Applicants satisfy the requirements for permissive intervention, and the Court should allow the motion.

#### CONCLUSION

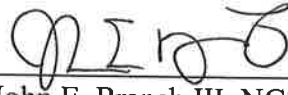
WHEREFORE, Intervenor Applicants respectfully request that the Court grant their Motion to Intervene as a matter of right or, in the alternative, with permission of the Court.

Pursuant to N.C. R. Civ. P. 24(c), an unsigned proposed Answer by Intervenor Applicants is attached hereto as **Exhibit A**. In the event that the Motion is granted, Intervenor Applicants ask that the Court allow them at least three (3) days to file an Answer to Plaintiffs' Amended Complaint.

This the 29<sup>th</sup> day of January 2019.

**SHANAHAN MCDOUGAL, PLLC**

By:



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*Attorneys for Defendant-Intervenors*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing **Motion to Intervene** upon all parties to this matter by placing a copy in the United States Mail, First Class, postage prepaid and addressed as follows:

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This the 29<sup>th</sup> day of January 2019.

**SHANAHAN MCDOUGAL, PLLC**

By: \_\_\_\_\_



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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 18 CVS 014001

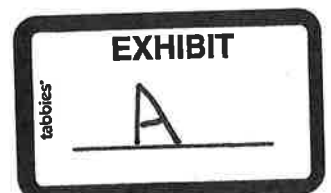
COMMON CAUSE; NORTH CAROLINA )  
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SLOAN; JULIE ANN FREY; LILY NICOLE )  
QUICK; JOSHUA BROWN; CARLTON E. )  
CAMPBELL SR., )

Plaintiffs, )

v. )

REPRESENTATIVE DAVID R. LEWIS, IN )  
HIS OFFICIAL CAPACITY AS SENIOR )  
CHAIRMAN OF THE HOUSE SELECT )  
COMMITTEE ON REDISTRICTING; )  
SENATOR RALPH E. HISE, JR., IN HIS )  
OFFICIAL CAPACITY AS CHAIRMAN OF )  
THE SENATE COMMITTEE ON )  
REDISTRICTING; SPEAKER OF THE )  
NORTH CAROLINA HOUSE OF )

**INTERVENOR APPLICANTS' PROPOSED  
ANSWER PURSUANT TO RULE 24(C)**



REPRESENTATIVES TIMOTHY K. MOORE; )  
 PRESIDENT *PRO TEMPORE* OF THE )  
 NORTH CAROLINA SENATE PHILIP E. )  
 BERGER; THE STATE OF NORTH )  
 CAROLINA; THE NORTH CAROLINA )  
 STATE BOARD OF ELECTIONS AND )  
 ETHICS ENFORCEMENT; JOSHUA )  
 MALCOLM, CHAIRMAN OF THE NORTH )  
 CAROLINA STATE BOARD OF )  
 ELECTIONS & ETHICS ENFORCEMENT'; )  
 KEN RAYMOND, SECRETARY OF THE )  
 NORTH CAROLINA STATE BOARD OF )  
 ELECTIONS & ETHICS ENFORCEMENT; )  
 STELLA ANDERSON, MEMBER OF THE )  
 NORTH CAROLINA STATE BOARD OF )  
 ELECTIONS & ETHICS ENFORCEMENT; )  
 DAMON CIRCOSTA, MEMBER OF THE )  
 NORTH CAROLINA STATE BOARD OF )  
 ELECTIONS & ETHICS ENFORCEMENT; )  
 STACY "FOUR" EGGERS IV, MEMBER OF )  
 THE NORTH CAROLINA STATE BOARD )  
 OF ELECTIONS & ETHICS )  
 ENFORCEMENT; JAY HEMPHILL, )  
 MEMBER OF THE NORTH CAROLINA )  
 STATE BOARD OF ELECTIONS & ETHICS )  
 ENFORCEMENT; VALERIE JOHNSON, )  
 MEMBER OF THE NORTH CAROLINA )  
 STATE BOARD OF ELECTIONS & ETHICS )  
 ENFORCEMENT; JOHN LEWIS, MEMBER )  
 OF THE NORTH CAROLINA STATE )  
 BOARD OF ELECTIONS & ETHICS )  
 ENFORCEMENT; ROBERT CORDLE, )  
 MEMBER OF THE NORTH CAROLINA )  
 STATE BOARD OF ELECTIONS & ETHICS )  
 ENFORCEMENT, )  
 Defendants. )  
 )  
 )

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**NOW COME** Potential Intervenors Reginald Reid, Carolyn Elmore, Cathy Fanslau, Ben York, Connor Groce, and Aubrey Woodard (“Defendant-Intervenors”) and hereby submit this Proposed Answer pursuant to Rule 24(c) of the North Carolina Rules of Civil Procedure (the “Rules”), as follows:

## RESPONSE TO ENUMERATED ALLEGATIONS

1. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 1; therefore, such allegations are denied.

2. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 2; therefore, such allegations are denied.

3. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 3; therefore, such allegations are denied.

4. The allegations of Paragraph 4 regarding veto power assert legal conclusions and do not require a response. It is specifically denied that judicial intervention is warranted under the facts of this case. To the extent such a response is required, denied. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 4; therefore, such allegations are denied.

5. Admitted that the *Stephenson* decision speaks for itself. The remaining allegations of Paragraph 5 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

6. The allegations of Paragraph 6 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

## PARTIES

### **A. Plaintiffs.**

7. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 7; therefore, such allegations are denied.

8. The allegations of Paragraph 8 regarding the legal status of the NCDP assert legal conclusions and do not require a response. To the extent such a response is required, denied.

Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations; therefore, such allegations are denied.

9. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 9; therefore, such allegations are denied.

10. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 10; therefore, such allegations are denied.

11. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 11; therefore, such allegations are denied.

12. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 12; therefore, such allegations are denied.

13. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 13; therefore, such allegations are denied.

14. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 14; therefore, such allegations are denied.

15. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 15; therefore, such allegations are denied.

16. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 16; therefore, such allegations are denied.

17. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 17; therefore, such allegations are denied.

18. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 18; therefore, such allegations are denied.

19. Defendant-Intervenors lack sufficient knowledge or information to respond to the

allegations contained in Paragraph 19; therefore, such allegations are denied.

20. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 20; therefore, such allegations are denied.

21. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 21; therefore, such allegations are denied.

22. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 22; therefore, such allegations are denied.

23. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 23; therefore, such allegations are denied.

24. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 24; therefore, such allegations are denied.

25. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 25; therefore, such allegations are denied.

26. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 26; therefore, such allegations are denied.

27. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 27; therefore, such allegations are denied.

28. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 28; therefore, such allegations are denied.

29. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 29; therefore, such allegations are denied.

30. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 30; therefore, such allegations are denied.

31. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 31; therefore, such allegations are denied.
32. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 32; therefore, such allegations are denied.
33. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 33; therefore, such allegations are denied.
34. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 34; therefore, such allegations are denied.
35. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 35; therefore, such allegations are denied.
36. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 36; therefore, such allegations are denied.
37. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 37; therefore, such allegations are denied.
38. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 38; therefore, such allegations are denied.
39. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 39; therefore, such allegations are denied.
40. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 40; therefore, such allegations are denied.
41. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 41; therefore, such allegations are denied.
42. Defendant-Intervenors lack sufficient knowledge or information to respond to the

allegations contained in Paragraph 42; therefore, such allegations are denied.

43. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 43; therefore, such allegations are denied.

44. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 44; therefore, such allegations are denied.

45. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 45; therefore, such allegations are denied.

46. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 46; therefore, such allegations are denied.

**B. Defendants.**

47. Defendant-Intervenors admit the allegations of paragraph 47 upon information and belief.

48. Defendant-Intervenors admit the allegations of paragraph 48 upon information and belief.

49. Defendant-Intervenors admit the allegations of paragraph 49 upon information and belief.

50. Defendant-Intervenors admit the allegations of paragraph 50 upon information and belief.

51. Admitted.

52. The allegations of Paragraph 52 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied. Specifically denied that, after January 31, 2019, the State Board of Elections and Ethics Enforcement is responsible for the regulation and administration of elections in North Carolina.

*See* 2018 N.C. Sess. Laws 146.

53. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 53; therefore, such allegations are denied. It is unknown, at this time, who will be appointed to the State Board of Elections after January 31, 2019. *See* 2018 N.C. Sess. Laws 146.

54. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 54; therefore, such allegations are denied. It is unknown, at this time, who will be appointed to the State Board of Elections after January 31, 2019. *See* 2018 N.C. Sess. Laws 146.

55. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 55; therefore, such allegations are denied. It is unknown, at this time, who will be appointed to the State Board of Elections after January 31, 2019. *See* 2018 N.C. Sess. Laws 146.

56. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 56; therefore, such allegations are denied. It is unknown, at this time, who will be appointed to the State Board of Elections after January 31, 2019. *See* 2018 N.C. Sess. Laws 146.

57. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 57; therefore, such allegations are denied. It is unknown, at this time, who will be appointed to the State Board of Elections after January 31, 2019. *See* 2018 N.C. Sess. Laws 146.

58. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 58; therefore, such allegations are denied. It is unknown, at



this time, who will be appointed to the State Board of Elections after January 31, 2019. *See* 2018 N.C. Sess. Laws 146.

59. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 59; therefore, such allegations are denied. It is unknown, at this time, who will be appointed to the State Board of Elections after January 31, 2019. *See* 2018 N.C. Sess. Laws 146.

60. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 60; therefore, such allegations are denied. It is unknown, at this time, who will be appointed to the State Board of Elections after January 31, 2019. *See* 2018 N.C. Sess. Laws 146.

61. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 61; therefore, such allegations are denied. It is unknown, at this time, who will be appointed to the State Board of Elections after January 31, 2019. *See* 2018 N.C. Sess. Laws 146.

#### **JURISDICTION AND VENUE**

62. The allegations of Paragraph 62 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

63. The allegations of Paragraph 63 are admitted.

64. The allegations of Paragraph 64 are admitted.

## FACTUAL ALLEGATIONS

### **A. National Republican Party Officials Target North Carolina for Partisan Gerrymandering Prior to the 2010 Election.**

65. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 65; therefore, such allegations are denied.

66. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 66; therefore, such allegations are denied.

67. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 67; therefore, such allegations are denied.

68. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 68; therefore, such allegations are denied.

### **B. Republican Mapmakers Create the 2011 Plans from Party Headquarters.**

69. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 69; therefore, such allegations are denied.

70. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 70; therefore, such allegations are denied.

71. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 71; therefore, such allegations are denied.

72. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 72; therefore, such allegations are denied.

73. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 73; therefore, such allegations are denied.

74. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 74; therefore, such allegations are denied.

75. Admitted that from the Court's opinion in *Dickson v. Rucho* speaks for itself. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 75; therefore, such allegations are denied.

**C. Republicans Enact the 2011 Plans To Entrench Their Party's Political Power.**

76. Admitted that HB 937 and SB 45 speak for themselves. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 76; therefore, such allegations are denied.

77. Admitted that HB 776 and SB 282 speak for themselves. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 77; therefore, such allegations are denied.

78. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 78; therefore, such allegations are denied.

**D. The 2011 Plans Gave Republicans Super-Majorities That Were Grossly Disproportionate to Republicans' Share of the Statewide Vote.**

79. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 79; therefore, such allegations are denied.

80. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 80; therefore, such allegations are denied.

81. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 81; therefore, such allegations are denied.

82. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 82; therefore, such allegations are denied.

83. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 83; therefore, such allegations are denied.

84. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 84; therefore, such allegations are denied.

**E. A Federal Court Strikes Down Many Districts as Racially Gerrymandered.**

85. Admitted that the Court filings in *Covington* speak for themselves. The remaining allegations of Paragraph 85, if any, are denied.

86. Admitted that the *Covington* filings speak for itself. The remaining allegations of Paragraph 86, if any, are denied.

**F. The General Assembly Enacts the 2017 Plans To Dilute the Voting Power of Democratic Voters and Maximize the Political Advantage of Republicans.**

87. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 87; therefore, such allegations are denied.

88. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 88; therefore, such allegations are denied.

89. Admitted that the Joint Committee Hearing record speaks for itself. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 89; therefore, such allegations are denied.

90. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 90; therefore, such allegations are denied.

91. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 91; therefore, such allegations are denied.

92. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 92; therefore, such allegations are denied.

93. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 93; therefore, such allegations are denied.

94. Admitted that the Joint Committee Hearing record speaks for itself. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 94; therefore, such allegations are denied.

95. Admitted that the Joint Committee Hearing record speaks for itself. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 95, if any; therefore, such allegations are denied.

96. Admitted that the Joint Committee Hearing record speaks for itself. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 96, if any; therefore, such allegations are denied.

97. Admitted that the Joint Committee Hearing record speaks for itself. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 97, if any; therefore, such allegations are denied.

98. Admitted that the Joint Committee Hearing record speaks for itself. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 98, if any; therefore, such allegations are denied.

99. Admitted that the Joint Committee Hearing record speaks for itself. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 99, if any; therefore, such allegations are denied.

100. Admitted that the Joint Committee Hearing record speaks for itself. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 100, if any; therefore, such allegations are denied.

101. Admitted that the Joint Committee Hearing record speaks for itself. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations

contained in Paragraph 101, if any; therefore, such allegations are denied.

102. Admitted that the Joint Committee Hearing record speaks for itself. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 102, if any; therefore, such allegations are denied.

103. Admitted that the *Covington* filings speak for themselves. The remaining allegations of Paragraph 103, if any, are denied.

104. Admitted that the *Covington* filings speak for themselves. The remaining allegations of Paragraph 104, if any, are denied.

105. Admitted that the *Covington* filings speak for themselves. The remaining allegations of Paragraph 105, if any, are denied.

106. Admitted that the House Floor record speaks for itself. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 106, if any; therefore, such allegations are denied.

107. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 107; therefore, such allegations are denied.

108. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 108; therefore, such allegations are denied.

109. Admitted that the Senate Committee record speaks for itself. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 109, if any; therefore, such allegations are denied.

110. Admitted that the *Covington* filings speak for themselves. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 110, if any; therefore, such allegations are denied.

111. Admitted that the *Covington* filings speak for themselves. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 111, if any; therefore, such allegations are denied.

112. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 112; therefore, such allegations are denied.

113. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 113; therefore, such allegations are denied.

114. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 114; therefore, such allegations are denied.

115. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 115; therefore, such allegations are denied.

116. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 116; therefore, such allegations are denied.

117. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 117; therefore, such allegations are denied.

118. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 118; therefore, such allegations are denied.

119. Admitted that HB 927 and SB 691 speak for themselves. Defendant-Intervenors lack sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 119; therefore, such allegations are denied.

120. Admitted that the *Covington* filings speak for themselves. The remaining allegations of Paragraph 120, if any, are denied.

**G. The *Covington* Court Appoints a Special Master to Redraw Several Districts in the 2017 Plans that Remained Racially Gerrymandered.**

121. Admitted that the *Covington* filings speak for themselves. The remaining allegations of Paragraph 121, if any, are denied.

122. Admitted that the *Covington* filings speak for themselves. The remaining allegations of Paragraph 122, if any, are denied.

123. Admitted that the *Covington* filings speak for themselves. The remaining allegations of Paragraph 123, if any, are denied.

124. Admitted that the *Covington* filings speak for themselves. The remaining allegations of Paragraph 124, if any, are denied.

125. Admitted that the *Covington* filings speak for themselves. The remaining allegations of Paragraph 125, if any, are denied.

**H. The 2017 Plans Pack and Crack Plaintiffs and Other Democratic Voters to Dilute Their Votes and Maximize the Political Advantage of Republicans.**

126. The allegations of Paragraph 126 are denied upon information and belief.

127. The allegations of Paragraph 127 are denied upon information and belief.

**1. The 2017 House Plan Packs and Cracks Democratic Voters.**

House Districts 2 and 32

128. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 128, if any, are denied.

129. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 129; therefore, such allegations are denied.



House Districts 4, 14, and 15

130. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 130, if any, are denied.

131. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 131; therefore, such allegations are denied.

House Districts 7 and 25

132. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 132, if any, are denied.

133. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 133; therefore, such allegations are denied.

House Districts 8, 9, and 12

134. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 134, if any, are denied.

135. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 135; therefore, such allegations are denied.

House Districts 10, 26, 28, 51, and 53

136. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 136, if any, are denied.

137. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 137; therefore, such allegations are denied.

House Districts 11, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 49

138. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 138, if any, are denied.

139. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 139; therefore, such allegations are denied.

140. Admitted that the *Lewis* decision speaks for itself. The remaining allegations of Paragraph 140, if any, are denied.

House Districts 16, 46, and 47

141. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 141, if any, are denied.

142. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 142; therefore, such allegations are denied.

House Districts 17, 18, 19, and 20

143. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 143, if any, are denied.

144. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 144; therefore, such allegations are denied.

House Districts 42, 43, 44, and 45

145. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 145, if any, are denied.

146. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 146; therefore, such allegations are denied.

House Districts 55, 68, and 69

147. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 147, if any, are denied.

148. Defendant-Intervenors lack sufficient knowledge or information to respond to the

allegations contained in Paragraph 148; therefore, such allegations are denied.

House Districts 58, 59, and 60

149. Admitted that the House Districts and their territorial locations speak for themselves. Admitted that the *Covington* filings speak for themselves. The remaining allegations of Paragraph 149, if any, are denied.

150. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 150; therefore, such allegations are denied.

House Districts 63 and 64

151. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 151, if any, are denied.

152. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 152; therefore, such allegations are denied.

House Districts 66, 67, 76, 77, 82, and 83

153. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 153, if any, are denied.

154. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 154; therefore, such allegations are denied.

House Districts 71, 72, 73, 74, and 75

155. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 155, if any, are denied.

156. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 156; therefore, such allegations are denied.

House Districts 88, 92, 98, 99, 100, 101, 102, 103, 104, 105, 106, and 107

157. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 157, if any, are denied.

158. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 158; therefore, such allegations are denied.

House Districts 108, 109, 110, and 111

159. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 159, if any, are denied.

160. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 160; therefore, such allegations are denied.

House Districts 113 and 117

161. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 161, if any, are denied.

162. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 162; therefore, such allegations are denied.

House Districts 114, 115, and 116

163. Admitted that the House Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 163, if any, are denied.

164. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 164; therefore, such allegations are denied.

**2. The 2017 Senate Plan Packs and Cracks Democratic Voters.**

Senate Districts 8 and 9

165. Admitted that the Senate Districts and their territorial locations speak for

themselves. The remaining allegations of Paragraph 165, if any, are denied.

166. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 166; therefore, such allegations are denied.

Senate Districts 10, 11, and 12

167. Admitted that the Senate Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 167, if any, are denied.

168. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 168; therefore, such allegations are denied.

Senate Districts 14, 15, 16, 17, and 18

169. Admitted that the Senate Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 169, if any, are denied.

170. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 170; therefore, such allegations are denied.

171. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 171; therefore, such allegations are denied.

172. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 172; therefore, such allegations are denied.

173. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 173; therefore, such allegations are denied.

Senate Districts 24, 26, 27, and 28

174. Admitted that the Senate Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 174, if any, are denied.

175. Admitted that the *Covington* filings speak for themselves. The remaining

allegations of Paragraph 175, if any, are denied.

176. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 176; therefore, such allegations are denied.

Senate Districts 31 and 32

177. Admitted that the Senate Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 177, if any, are denied.

178. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 178; therefore, such allegations are denied.

Senate Districts 37, 38, 39, 40, and 41

179. Admitted that the Senate Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 179, if any, are denied.

180. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 180; therefore, such allegations are denied.

181. Admitted that the Senate Districts and their territorial locations speak for themselves. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 181; therefore, such allegations are denied.

182. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 182; therefore, such allegations are denied.

Senate Districts 48 and 49

183. Admitted that the Senate Districts and their territorial locations speak for themselves. The remaining allegations of Paragraph 183, if any, are denied.

184. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 184; therefore, such allegations are denied.

### **3. The 2017 Plans Achieved Their Goal in the 2018 Election**

185. Admitted that the election results speak for themselves. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 185; therefore, such allegations are denied.

186. Admitted that the election results speak for themselves. The remaining allegations contained in Paragraph 186, if any, are denied.

187. Admitted that the election results speak for themselves. The remaining allegations contained in Paragraph 187, if any, are denied.

188. The allegations of Paragraph 188 are denied.

#### **I. The Partisan Gerrymandering of the 2017 Plans Causes Plaintiffs and Other Democratic Voters to be Entirely Shut Out of the Political Process.**

189. The allegations of Paragraph 189 are denied upon information and belief.

190. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 190; therefore, such allegations are denied.

191. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 191; therefore, such allegations are denied.

192. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 192; therefore, such allegations are denied.

193. Defendant-Intervenors lack sufficient knowledge or information to respond to the allegations contained in Paragraph 193; therefore, such allegations are denied.

194. Admitted that the voting statistics speak for themselves. The remaining allegations contained in Paragraph 194, if any, are denied.

195. Admitted that the voting statistics speak for themselves. The remaining allegations contained in Paragraph 195, if any, are denied.

196. Admitted that the voting statistics speak for themselves. The remaining allegations contained in Paragraph 196, if any, are denied.

**COUNT I**  
**Violation of the North Carolina Constitution's**  
**Equal Protection Clause, Art. I, § 19**

197. Defendant-Intervenors incorporate by reference their responses to Paragraphs 1 through 196.

198. Admitted that the North Carolina Constitution speaks for itself. The remaining allegations contained in Paragraph 198, if any, are denied.

199. Admitted that the cited case law speaks for itself. The remaining allegations of Paragraph 199 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

200. Admitted that the case law speaks for itself. The remaining allegations of Paragraph 200 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

201. The allegations of Paragraph 201 are denied.

202. Admitted that the *Covington* filings speak for themselves. The remaining allegations of Paragraph 202 are denied.

203. The allegations of Paragraph 203 are denied.

204. Admitted that the *Stephenson* decision speaks for itself. The remaining allegations of Paragraph 204 are denied.

**COUNT II**  
**Violation of the North Constitution's [sic]**  
**Free Elections Clause, Art. I, § 5**

205. Defendant-Intervenors incorporate by reference their responses to Paragraphs 1



through 204.

206. Admitted that the Constitution speaks for itself. The remaining allegations of Paragraph 206 are denied.

207. Admitted that the 1689 English Bill of Rights speaks for itself. The remaining allegations of Paragraph 207 are denied.

208. Admitted that the case law speaks for itself. The remaining allegations of Paragraph 208 are denied.

209. The allegations of Paragraph 209 are denied.

210. The allegations of Paragraph 210 are denied.

211. The allegations of Paragraph 211 are denied.

### **COUNT III**

#### **Violation of the North Constitution's [sic]**

#### **Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14**

212. Defendant-Intervenors incorporate by reference their responses to Paragraphs 1 through 211.

213. Admitted that the Constitution speaks for itself. The remaining allegations of Paragraph 213 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

214. Admitted that the Constitution speaks for itself. The remaining allegations of Paragraph 214 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

215. Admitted that the case law speaks for itself. The remaining allegations of Paragraph 215 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

216. Admitted that the Constitution speaks for itself. The remaining allegations of Paragraph 216 assert legal conclusions and do not require a response. To the extent the allegations are not legal conclusions, such allegations are denied.

217. The allegations of Paragraph 217 are denied.

218. The allegations of Paragraph 218 are denied.

219. The allegations of Paragraph 219 are denied.

220. The allegations of Paragraph 220 are denied.

221. Admitted that the cited case law speaks for itself. The remaining allegations of Paragraph 221 are denied.

222. The allegations of Paragraph 222 are denied.

To the extent that any portion of the Amended Complaint and any of its subparts and sections contain allegations that have not been specifically responded to in this Answer, such allegations are denied. Furthermore, the Prayer for Relief and Headings contained in the Amended Complaint (to the extent that the words and phrases contained therein may constitute allegations) are denied.

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' Amended Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6).

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' politically-biased theory of liability is a non-justiciable political question and therefore the Amended Complaint should be dismissed pursuant to Rule 12(b)(1).

### **THIRD AFFIRMATIVE DEFENSE**

Plaintiffs request that the Court grant them a right to reside or vote in districts that are drawn to favor their preferred political party at the expense of their non-preferred political party. Such a request if granted violates the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 10, 12, 14, and 19 of the North Carolina Constitution.

### **FOURTH AFFIRMATIVE DEFENSE**

The North Carolina Constitution allows the General Assembly to consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions. *Stephenson v. Bartlett*, 355 N.C. 35, 562 SE.2d 377, 390 (2002). Plaintiffs' requested relief violates the First and Fourteenth Amendments to the United States Constitution and Article I, Secs. 10, 12, 14, and 19 of the North Carolina Constitution.

### **FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' politically-biased theory of liability, if adopted by this Court, would effectively bypass the People and adopt a judicial amendment of the North Carolina Constitution in violation of Article XIII.

### **SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' requested relief, to redraw legislative districts without any consideration of party affiliation, violates of the separation of powers doctrine, in Article I, Section 6 of the North Carolina Constitution.

### **SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' are requesting that the Court "punish" and "burden" the Legislative Defendants, Republican candidates, and Republican voters in the same way plaintiffs contend that the General Assembly has "punished" or "burdened" Democratic voters. Plaintiffs' request for equitable relief

should therefore be denied because plaintiffs have unclean hands.

**PRAYER FOR RELIEF**

WHEREFORE, Defendants respectfully request that the Court enter an order and final judgment which:

1. Dismisses all of Plaintiffs' claims with prejudice;
2. Awards Defendants' their costs and attorneys' fees; and
3. Award Defendants such other and further relief as may be equitable and proper.

This the \_\_\_ day of January 2019.

**SHANAHAN MCDOUGAL, PLLC**

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing **Intervenor Applicant's Proposed Answer Pursuant to Rule 24(c)** upon all parties to this matter by placing a copy in the United States Mail, First Class, postage prepaid and addressed as follows:

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This the \_\_\_\_ day of January 2019.

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