

21 NOV 15 2016

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

CVS

2021 NOV 16 P 4:19

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC.; HENRY M. MICHAUX, JR.;
DANDRIELLE LEWIS; TIMOTHY CHARTIER; TALIA
FERNÓS; 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,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his official
capacity as Chair of the House Standing Committee on
Redistricting; SENATOR WARREN DANIEL, in his
official capacity as Co-Chair of the Senate Standing
Committee on Redistricting and Elections; SENATOR
RALPH E. HISE, JR., in his official capacity as Co-Chair
of the Senate Standing Committee on Redistricting and
Elections; SENATOR PAUL NEWTON, in his official
capacity as Co-Chair of the Senate Standing Committee on
Redistricting and Elections; REPRESENTATIVE
TIMOTHY K. MOORE, in his official capacity as Speaker
of the North Carolina House of Representatives; SENATOR
PHILIP E. BERGER, in his official capacity as President
Pro Tempore of the North Carolina Senate; THE STATE
OF NORTH CAROLINA; THE NORTH CAROLINA
STATE BOARD OF ELECTIONS; DAMON CIRCOSTA,
in his official capacity as Chairman of the North Carolina
State Board of Elections; STELLA ANDERSON, in her
official capacity as Secretary of the North Carolina State
Board of Elections; JEFF CARMON III, in his official
capacity as Member of the North Carolina State Board of
Elections; STACY EGGERS IV, in his official capacity as
Member of the North Carolina State Board of Elections;
TOMMY TUCKER, in his official capacity as Member of
the North Carolina State Board of Elections; and KAREN
BRINSON BELL, in her official capacity as Executive
Director of the North Carolina State Board of Elections,

Defendants.

WAKE CO. C.S.C.

BY 

VERIFIED
COMPLAINT

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

INTRODUCTION

1. This suit is about harnessing the power of mathematics and computer science to identify and remedy the severe constitutional flaws in the redistricting maps recently enacted by the North Carolina General Assembly—the maps for the U.S. Congress (the “Enacted Congressional Plan,” attached as Ex. A to the Feldman Affidavit),¹ the North Carolina Senate (the “Enacted Senate Plan,” attached as Ex. B),² and the North Carolina House of Representatives (the “Enacted House Plan,” attached as Ex. C)³ (collectively, the “Enacted Plans”).

2. Plaintiffs include the North Carolina League of Conservation Voters, which has members all over the State who are harmed by these constitutional flaws, as well as numerous individual voters, including former elected officials, civil rights leaders, and educators who care deeply about ensuring fair representation for all North Carolinians. Plaintiffs also include professors in the fields of mathematics, statistics, and computer science, all of whom are U.S. citizens and registered North Carolina voters. Over the past decade, advances in these areas have yielded a new field known as “computational redistricting”—which applies principles of mathematics, high-performance computing, and spatial demography to the redistricting process. Mathematicians and scientists working in this field have created tools that allow scientists both to *identify* maps that unconstitutionally burden the right to vote and to *remedy* those violations—by using algorithmic techniques that fix the constitutional flaws while adhering to traditional, neutral redistricting principles and state law.

¹ S.B. 740, S.L. 2021-174, 2021-2022 Sess. (N.C. enacted Nov. 4, 2021). All exhibits referenced in this Complaint refer to the Affidavit of Stephen Feldman, filed with this Complaint.

² S.B. 739, S.L. 2021-173, 2021-2022 Sess. (N.C. enacted Nov. 4, 2021).

³ H.B. 976, S.L. 2021-175, 2021-2022 Sess. (N.C. enacted Nov. 4, 2021).

3. These tools show, distressingly, that the Enacted Plans create (and intentionally create) a severe partisan gerrymander: Although North Carolina is a highly competitive state, the Enacted Plans entrench one party in power—by “packing” some voters of the disfavored party into a relatively small number of districts and “cracking” other voters so they cannot elect their preferred candidates. For example, the Enacted Congressional Plan splinters Democratic strongholds in Wake, Mecklenburg, and Guilford Counties into three districts each, precisely in order to dilute Democratic voting strength. Because of this type of gerrymandering, the favored Republican Party will control North Carolina’s congressional delegation, state Senate, and state House for the coming decade under any realistic electoral scenario—even if the state’s voters consistently and repeatedly prefer the other party’s candidates by substantial margins. In Congress, for example, models show that a nearly tied election, with each party’s candidates receiving about half the statewide vote, will deliver 71% of North Carolina’s delegation to Republicans. Democratic candidates, by contrast, cannot hope to obtain even a 7-to-7 split unless they win by a statewide margin of more than seven percentage points.

4. These computational tools also show that the Enacted Plans egregiously (and intentionally) dilute the voting power of North Carolina’s black citizens—again, by packing some black voters and cracking others. For example, even though members of minority groups account for more than 30% of North Carolina’s adult citizens, and thus could be expected to win elections in four of the state’s 14 districts, the Enacted Congressional Plan deprives them of the ability to win elections in all but two districts. The Enacted Congressional Plan does so by (among other things) breaking apart cohesive and compact black communities like the one centered in Guilford and Forsyth Counties, which the plan divides into four districts dominated by white Republican voters. By contrast, compact districts that comply with North Carolina law and traditional, neutral

districting principles can protect these communities of interest and preserve black voters' opportunity to nominate and elect the candidates of their choice in four districts across the state.

5. The Enacted Plans' partisan gerrymandering and racial vote dilution did not happen by accident. When the General Assembly's redistricting committees drafted the Enacted Plans on computer terminals in hearing rooms, they stated that "[d]ata identifying the race of individuals or voters shall not be used in the construction or consideration of districts," and that "[p]artisan considerations and election results data shall not be used." But legislators have vast knowledge of the racial and partisan characteristics of communities across their state—and indeed, the committees expressly allowed legislators to rely on "local knowledge of the character of communities and connections between communities" in mapmaking. Moreover, the committees did not (and could not) prevent legislators from using racial and political data to draw maps outside the hearing rooms and then simply "re-drawing" those maps inside the hearing rooms.

6. Whether legislators leveraged their own knowledge or relied on racial and partisan data outside the hearing rooms, the conclusion is the same: They drew maps that dilute voting strength by race and that gerrymander by party—and they meant to do exactly that. *Cf. Gaffney v. Cummings*, 412 U.S. 735, 753 (1973) ("[I]t is most unlikely that the political impact of ... a [grossly gerrymandered] plan would remain undiscovered by the time it was proposed or adopted, in which event the results would be both known and, if not changed, intended.").

7. Computational tools will also show that it did not have to be this way. Plaintiffs and their counsel have leveraged the tools of computational redistricting to develop maps that approach being "Pareto optimal," which means that they are so strong on each redistricting criterion that improving the map on any one criterion necessarily worsens it on another. As a practical matter, these ideal, or nearly ideal, maps cannot be devised by hand, even with the best

commercial redistricting software and weeks to draw them. But these maps can be discovered through computational redistricting. This approach simply was not available to courts in prior redistricting cycles. But this approach is available now. And here, Plaintiffs provide the Court with the results that this approach can yield. The maps that Plaintiffs present in this Complaint—which this Complaint identifies as the Optimized Congressional Map, the Optimized Senate Map, and the Optimized House Map (collectively, the “Optimized Maps”)—avoid the partisan gerrymandering and racial vote dilution that mark the Enacted Plans, while also improving on the Enacted Plans’ compliance with the laws and legitimate policies governing redistricting in North Carolina. Any claim that North Carolina’s political geography or state law compels the outcomes created by the Enacted Plans thus cannot withstand the scrutiny of math and science.

8. By gerrymandering based on party and by diluting and devaluing North Carolinians’ right to vote based on race, the Enacted Plans violate the North Carolina State Constitution’s Free Elections Clause, Equal Protection Clause, and Free Speech and Free Assembly Clauses. The Enacted Senate and House Plans also violate the North Carolina State Constitution’s Whole County Provisions, as interpreted in the *Stephenson/Dickson* line of cases from the North Carolina Supreme Court—because these plans, to achieve their partisan and racial ends, traverse more county lines than necessary and contain districts that are less compact than they could be in fairer, more neutral maps.

9. Plaintiffs ask this Court to set aside the unlawful Enacted Plans and, as interim relief, to enjoin the use of the Enacted Plans in the 2022 primary and general elections. To the extent that the General Assembly does not timely enact redistricting plans that remedy the violations described in this Complaint as fully as the Optimized Maps, the Court should order

Defendants to prepare for, administer, and conduct the 2022 primary and general elections under the Optimized Maps.

10. Although this suit challenges maps drawn by a legislature controlled by one political party, Plaintiffs do not seek via this suit to favor any political party or incumbent. Rather, Plaintiffs sue to advance the common good by promoting competitive, fair, and free elections for all North Carolina citizens. Plaintiffs support fair maps drawn with advanced science and technology that preserve every North Carolinian’s right to vote in free elections on equal terms and that do not discriminate against voters based on race or party.

PARTIES

A. Plaintiffs

11. Plaintiff North Carolina League of Conservation Voters, Inc. (“NCLCV”) brings this action on its own behalf and on behalf of thousands of its members who are registered to vote in North Carolina and reside in every congressional, state Senate, and state House district in the state, but will have their votes systematically diluted by the Enacted Plans on the basis of party, race, or both.⁴ 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 world with clean air, clean water, clean energy, and a safe climate, all protected by a just and equitable

⁴ In particular, NCLCV has confirmed that it has members who are registered Democratic voters in all 14 districts under the Enacted Congressional Plan, all 50 districts under the Enacted Senate Plan, and all 120 districts under the Enacted House Plan. NCLCV also has confirmed that it has members who are black registered voters in all 14 districts under the Enacted Congressional Plan, at least 48 of the 50 districts under the Enacted Senate Plan, and at least 107 of the 120 districts under the Enacted House Plan, with the only uncertainty involving Senate Districts 46 and 50, and House Districts 1, 22, 36, 70, 85, 86, 93, 95, 110, 117, 118, 119, and 120. NCLCV also counts among its members voters of all political stripes—Democrats, Republicans, and independents—who care about fair redistricting and about fair and effective representation for all North Carolinians

democracy. NCLCV helps elect legislators and statewide candidates who share its values, to build a pro-environment majority across the state of North Carolina. And NCLCV works to hold elected officials accountable for their votes and actions.

12. The Enacted Plans undermine NCLCV's ability to advance its core mission. By effectively predetermining the results of elections and entrenching one party in power—in individual gerrymandered districts, and in North Carolina's congressional delegation and the General Assembly as a whole—the Enacted Plans impair NCLCV's ability to engage in effective advocacy for candidates who will protect the environment, frustrate NCLCV's efforts to build a pro-environment majority, and undermine NCLCV's ability to hold legislators accountable. NCLCV will have to expend additional funds and other resources to counteract the gerrymandering in the Enacted Plans. The Enacted Plans also dilute the votes of NCLCV members and frustrate their ability to express their preferences for sound environmental policy at the ballot box and before their legislators.

13. NCLCV is especially concerned about the Enacted Plans' effects on North Carolina's black voters. Black citizens are often hurt first and worst by pollution and climate change. And historically, redistricting has been used to exclude communities of color from representation. The Enacted Plans continue that unfortunate legacy, dilute the voting power of black North Carolinians, including voters who are members of NCLCV, and undermine NCLCV's efforts to address environmental harms in systematically excluded communities of color.

14. Plaintiff Henry M. "Mickey" Michaux, Jr. is a black voter and a U.S. citizen who resides in Durham, North Carolina, within Congressional District 6, Senate District 20, and House District 29, as set forth in the Enacted Plans. Senator Michaux is a longstanding civil rights leader and one of the most prominent black political leaders in North Carolina. Before the enactment of

the Voting Rights Act, he and future Congressman John Lewis worked to register black voters in North Carolina. In 1956, when Dr. Martin Luther King, Jr., first came to Durham, he stayed at Senator Michaux's house; Dr. King urged Senator Michaux to go into politics, which he eventually did. In 1972, Senator Michaux became Durham County's first black representative in the General Assembly. He held office in the North Carolina House from 1973 until 1977, when President Carter appointed Representative Michaux as a U.S. Attorney—the South's first black U.S. Attorney since Reconstruction. In 1983, Senator Michaux returned to the North Carolina House. He served on the House Redistricting Committee and was active on redistricting matters; he also served on the House Elections Committee, including as its Chair. He retired from the House in 2019. Senator Michaux remains a registered Democrat and has consistently voted for Democratic candidates for the General Assembly and Congress. He remains active in Democratic politics, including by working to elect Democratic candidates. In 2020, Senator Michaux served briefly in the North Carolina Senate—making him both the longest-serving member of the House and the shortest-serving member of the Senate.

15. Plaintiff Dandrielle Lewis is a black voter and a U.S. citizen who resides in Greensboro, North Carolina, within Congressional District 11, Senate District 27, and House District 58, as set forth in the Enacted Plans. Dr. Lewis is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Dr. Lewis is the Department Chair of Mathematical Sciences at High Point University. She teaches applied math modeling for business. Her research interests are in finite group theory, interdisciplinary programs, math education, and women and historically underrepresented groups in STEM. Dr. Lewis holds a Ph.D. in mathematics from State University of New York at Binghamton, an M.S.

in mathematics from the University of Iowa, and a B.S. in mathematics and computer science from Winston-Salem State University.

16. Plaintiff Timothy Chartier is a U.S. citizen who resides in Davidson, North Carolina, within Congressional District 13, Senate District 37, and House District 98, as set forth in the Enacted Plans. Dr. Chartier is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Dr. Chartier is the Joseph R. Morton Professor of Mathematics and Computer Science at Davidson College, where he teaches a course on mathematical modeling that covers topics such as optimization. He has written on elections for the Mathematical Association of America and is the current Chair of Congress for (and former Vice President of) the Mathematical Association of America. Dr. Chartier's professional research interests include data analytics, and he has consulted for organizations including the National Basketball Association and the U.S. Olympic and Paralympic Committee. Dr. Chartier holds a Ph.D. in applied mathematics from the University of Colorado at Boulder and an M.S. in computational mathematics and a B.S., *summa cum laude*, in applied mathematics from Western Michigan University.

17. Plaintiff Talia Fernós is a U.S. citizen who resides in Greensboro, North Carolina, within Congressional District 11, Senate District 27, and House District 61, as set forth in the Enacted Plans. Dr. Fernós is an Associate Professor of Mathematics at the University of North Carolina at Greensboro and teaches courses that range from introductory undergraduate to advanced graduate topics and researches infinite groups by examining their geometric and analytic properties. Dr. Fernós holds a Ph.D. and an M.S. in Mathematics from the University of Illinois at Chicago, as well as a B.S. in mathematics and physics from The Evergreen State College.

18. Plaintiff Katherine Newhall is a U.S. citizen who resides in Carrboro, North Carolina, within Congressional District 6, Senate District 23, and House District 56, as set forth in the Enacted Plans. Dr. Newhall is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. She is an Associate Professor of Mathematics at the University of North Carolina at Chapel Hill, where she teaches at the undergraduate and graduate levels, including courses on differential equations and stochastic processes. Dr. Newhall's research interests include stochastic modeling, analysis, and simulation. She holds a Ph.D. in mathematics, an M.S. in aeronautical engineering, and a B.S. in applied physics and applied math, all from Rensselaer Polytechnic University, and she conducted postdoctoral work at New York University.

19. Plaintiff R. Jason Parsley is a U.S. citizen and registered voter who resides in Winston-Salem, North Carolina, within Congressional District 12, Senate District 32, and House District 72, as set forth in the Enacted Plans. Dr. Parsley is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Dr. Parsley is an Associate Professor of Mathematics at Wake Forest University, where he teaches a variety of courses, including calculus, geometry, multivariable analysis, and complex analysis, as well as a seminar on voting and redistricting. He is also the former North Carolina State Director for the Mathematical Association of America. Dr. Parsley's research interests include knot theory, differential geometry, and geometric analysis. In particular, he studies the geometry of weighted voting, in which different voters, such as stockholders in a corporation, may have different roles or weights. In this work, he has devised a new, geometrically meaningful method for measuring the power of each voter. Dr. Parsley is currently engaged in a project analyzing the results of Arizona's independent redistricting commission for congressional redistricting following the 2010

census. He has completed training as an expert witness in redistricting. In the 2018–2019 academic year, Dr. Parsley taught two courses at Wake Forest University on the mathematics of voting and redistricting. He has also supervised four students conducting mathematics research on redistricting. He holds a Ph.D. and M.A. in mathematics from the University of Pennsylvania as well as a B.S., *summa cum laude*, in mechanical engineering from Duke University.

20. Plaintiff Edna Scott is a black voter and a U.S. citizen who resides in Warrenton, North Carolina, within Congressional District 2, Senate District 2, and House District 27, as set forth in the Enacted Plans. Ms. Scott is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Ms. Scott is a retired banker, educator, and curator for an African-American museum.

21. Plaintiff Roberta Scott is a black voter and a U.S. citizen who resides in Norlina, North Carolina, within Congressional District 2, Senate District 2, and House District 27, as set forth in the Enacted Plans. Ms. Scott is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Ms. Scott is a retired educator and member of the Warren County Board of Education.

22. Plaintiff Yvette Roberts is a black voter and a U.S. citizen who resides in Warrenton, North Carolina, within Congressional District 2, Senate District 2, and House District 27, as set forth in the Enacted Plans. Ms. Roberts is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Ms. Roberts works in personal care service as a home health aide.

23. Plaintiff Dr. Cosmos George is a black voter and a U.S. citizen who resides in Norlina, North Carolina, within Congressional District 2, Senate District 2, and House District 27, as set forth in the Enacted Plans. Dr. George is a registered Democrat who has consistently voted

for Democratic candidates for the General Assembly and Congress. Dr. George is a retired obstetrician/gynecologist. After retiring, he worked in a free clinic. He has a long history of working actively in his county for civil rights, justice, and equality.

24. Plaintiff Viola Ryals Figueroa is a black voter and a U.S. citizen who resides in Goldsboro, North Carolina, within Congressional District 2, Senate District 4, and House District 10, as set forth in the Enacted Plans. Ms. Figueroa is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Ms. Figueroa is the founder of a nonprofit organization named the Veterans and Military Families Command Center.

25. Plaintiff Jereann King Johnson is a black voter and U.S. citizen who resides in Warrenton, North Carolina, within Congressional District 2, Senate District 2, and House District 27, as set forth in the Enacted Plans. Ms. Johnson is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Ms. Johnson works at the North Carolina Conference of United Methodist Churches as a project coordinator for Living the Word.

26. Plaintiff Reverend Reginald Wells is a black voter and a U.S. citizen who resides in Spring Lake, North Carolina, within Congressional District 4, Senate District 12, and House District 6, as set forth in the Enacted Plans. Reverend Wells is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. He is active in politics and served three terms as a member of the Duplin County Board of Commissioners.

27. Plaintiff Yarbrough Williams, Jr., is a black voter and a U.S. citizen who resides in Warrenton, North Carolina, within Congressional District 2, Senate District 2, and House District 27, as set forth in the Enacted Plans. A retired educator who taught for 33 years as well as a retired farmer who raised hogs for 35 years, Mr. Williams is active in politics. He is a registered Democrat

who has consistently voted for, and worked to promote the election of, Democratic candidates for the General Assembly and Congress. Mr. Williams currently serves as the Chair of the Warren County Democratic Party.

28. Plaintiff Reverend Dr. Deloris L. Jerman is a black voter and U.S. citizen who resides in Norlina, North Carolina, within Congressional District 2, Senate District 2, and House District 27, as set forth in the 2021 Plans. Dr. Jerman is a registered Democrat who is active in community affairs and has consistently voted for Democratic Candidates for the General Assembly and Congress. Dr. Jerman is a retired educator and public school and higher education administrator who currently serves as a pastor at Green Chapel Church in Brodnax, Virginia, which is just across the North Carolina border.

29. This Complaint refers to these individual Plaintiffs—that is, all Plaintiffs except for NCLCV—as the Individual Plaintiffs. The Individual Plaintiffs are harmed by the Enacted Plans’ unconstitutional partisan gerrymandering and racial vote dilution. Many Individual Plaintiffs are Democratic and/or black voters who are packed, cracked, and/or deprived of the opportunity to nominate and elect the candidates of their choice in the districts and/or clusters where they reside. Many Individual Plaintiffs are also harmed statewide by the Enacted Plans’ dilution of Democratic and black voting power and by the Enacted Plans’ burdening of the Individual Plaintiffs’ ability to associate with other Democratic voters and to work to elect Democratic candidates. By effectively determining the results of elections for a decade, the Enacted Plans make it more difficult for North Carolinians who are active in politics—including some of the Individual Plaintiffs—to carry out their political activities.

B. Defendants

30. Defendant Destin Hall is a member of the North Carolina House of Representatives. In 2021, Representative Hall serves as Chair of the House Committee on Redistricting that oversaw the creation of the Enacted Plans. Defendant Hall is sued in his official capacity only.

31. Defendant Warren Daniel is a member of the North Carolina Senate. In 2021, Senator Daniel serves as Co-Chair of the Senate Committee on Redistricting and Elections that oversaw the creation of the Enacted Plans. Defendant Daniel is sued in his official capacity only.

32. Defendant Ralph E. Hise, Jr., is a member of the North Carolina Senate. In 2021, Senator Hise serves as Co-Chair of the Senate Committee on Redistricting and Elections that oversaw the creation of the Enacted Plans. Defendant Hise is sued in his official capacity only.

33. Defendant Paul Newton is a member of the North Carolina Senate. In 2021, Senator Newton serves as Co-Chair of the Senate Committee on Redistricting and Elections that oversaw the creation of the Enacted Plans. Defendant Newton is sued in his official capacity only.

34. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives. Defendant Moore is sued in his official capacity only.

35. Defendant Philip E. Berger is President Pro Tempore of the North Carolina Senate. Defendant Berger is sued in his official capacity only.

36. Defendant State of North Carolina is one of the 50 States of the United States of America and has its capital in Raleigh, North Carolina.

37. Defendant North Carolina State Board of Elections is the agency of the State of North Carolina responsible for the regulation and administration of elections in North Carolina.

38. Defendant Damon Circosta is the Chair of the North Carolina State Board of Elections. Defendant Circosta is sued in his official capacity only.

39. Defendant Stella Anderson is the Secretary of the North Carolina State Board of Elections. Defendant Anderson is sued in her official capacity only.

40. Defendant Jeff Carmon III is a Member of the North Carolina State Board of Elections. Defendant Carmon is sued in his official capacity only.

41. Defendant Stacy Eggers IV is a Member of the North Carolina State Board of Elections. Defendant Eggers is sued in his official capacity only.

42. Defendant Tommy Tucker is a Member of the North Carolina State Board of Elections. Defendant Tucker is sued in his official capacity only.

43. Defendant Karen Brinson Bell is the Executive Director of the North Carolina State Board of Elections. Defendant Brinson Bell is sued in her official capacity only.

JURISDICTION AND VENUE

44. This Court has jurisdiction over this action pursuant to Article 26 and Article 26A of Chapter 1 of the North Carolina General Statutes.

45. Under North Carolina General Statutes § 1-81.1, exclusive venue for this action lies with the Wake County Superior Court.

46. Under North Carolina General Statutes § 1-267.1, this action must be heard by a three-judge panel because this action challenges the validity of redistricting plans enacted by the General Assembly.

FACTUAL ALLEGATIONS

I. The Law Governing Redistricting in North Carolina

47. Under Article II, Sections 3 and 5, of the North Carolina State Constitution, “the General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment

of Senators among those districts ... [and] the representative districts and the apportionment of Representatives among those districts.”

48. The North Carolina State Constitution identifies four express limits on the General Assembly’s decennial redistricting authority:

- a. Each Senator and Representative “shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each [legislator] represents being determined for this purpose by dividing the population of the district that he represents by the number of [legislators] apportioned to that district”;
- b. Each district “shall at all times consist of contiguous territory”;
- c. “No county shall be divided in the formation of a senate district ... [or] a representative district” (the “Whole County Provisions”); and
- d. “When established, the senate [and representative] districts and the apportionment of [legislators] shall remain unaltered until the return of another decennial census of population taken by order of Congress.”

N.C. Const. art. II, §§ 3, 5.

49. Several other provisions of the North Carolina State Constitution also apply to legislative and congressional redistricting, including:

- a. The Free Elections Clause, which provides that “[a]ll elections shall be free.” N.C. Const. art. I, § 10.
- b. The Equal Protection Clause, which provides that “[n]o 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.

- c. The Free Assembly Clause, which provides that “[t]he 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.” N.C. Const. art. I, § 12.
- d. The Free Speech Clause, which provides that “[f]reedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.” N.C. Const. art. I, § 14.

50. In particular, North Carolina courts have recognized that these clauses prohibit “extreme partisan gerrymandering,” and indeed, any measures that unfairly “dilute and devalue votes of some citizens compared to others.” *Common Cause v. Lewis*, No. 18-CVS-014001, 2019 WL 4569584, at *110 (N.C. Super. Ct. Sept. 3, 2019); *see id.* at *113–29; *see Harper v. Lewis*, No. 19-CVS-012667, slip op. at 6–14 (N.C. Super. Ct. Oct. 28, 2019).

51. Redistricting in North Carolina also must comply with federal law, including the one-person, one-vote requirement and the Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437, as amended (the “VRA”).

52. In a line of cases beginning with *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) (*Stephenson I*), the North Carolina Supreme Court set forth a mandatory, nine-step algorithm explaining how to apply certain aspects of North Carolina redistricting law consistent with federal law. *See id.*; *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*); *Dickson v. Rucho*, 368 N.C. 481, 781 S.E.2d 404 (2015) (*Dickson II*). As the North Carolina Supreme Court summarized:

- a. First, “legislative districts required by the VRA shall be formed” before non-VRA districts.

- b. Second, “[i]n forming new legislative districts, any deviation from the ideal population for a legislative district shall be at or within plus or minus five percent” to ensure “compliance with federal ‘one-person, one-vote’ requirements.”
- c. Third, “in counties having a ... population sufficient to support the formation of one non-VRA legislative district,” “the physical boundaries” of the non-VRA district shall “not cross or traverse the exterior geographic line of” the county.
- d. Fourth, “[w]hen two or more non-VRA legislative districts may be created within a single county,” “single-member non-VRA districts shall be formed within” the county, “shall be compact,” and “shall not traverse” the county’s exterior geographic line.
- e. Fifth, for non-VRA counties that “cannot support at least one legislative district,” or counties “having a non-VRA population pool” that, “if divided into” legislative “districts, would not comply with” one-person, one-vote requirements, the General Assembly should combine or group “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.” Moreover, “[w]ithin any such contiguous multi-county grouping, compact districts shall be formed, consistent with the [one-person, one-vote] standard, whose boundary lines do not cross or traverse the ‘exterior’ line of the multi-county grouping.” “[T]he 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.”

- f. Sixth, “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.”
- g. Seventh, “communities of interest should be considered in the formation of compact and contiguous [legislative] districts.”
- h. Eighth, “multi-member districts shall not be” created “unless it is established that such districts are necessary to advance a compelling governmental interest.”
- i. Ninth, “any new redistricting plans . . . shall depart from strict compliance with” these criteria “only to the extent necessary to comply with federal law.”

Dickson II, 368 N.C. at 530–31, 781 S.E.2d at 490–91 (quoting *Stephenson I*, 355 N.C. at 383–84, 562 S.E.2d at 396–97 (quotation marks omitted) (alterations in original)).

II. Partisan Gerrymandering and Racial Discrimination in North Carolina

53. North Carolina has a long history of partisan gerrymandering its congressional and legislative districts. *See generally* J. Michael Bitzer, *Redistricting and Gerrymandering in North Carolina* (2021). In the 2011 redistricting cycle, for example, the General Assembly’s controlling party (the Republican Party) expressly instructed its mapmaker to “ensure Republican majorities,” based on claims that the majority was “‘perfectly free’ to engage in constitutional partisan gerrymandering.” *Common Cause*, 2019 WL 4569584, at *4. In 2016, federal courts invalidated the 2011 congressional and legislative maps as unconstitutional racial gerrymanders.⁵ But when the General Assembly redrew those maps, it again created “extreme partisan gerrymanders.” *Id.* at *125, *135; *see Harper v. Lewis*, No. 19-CVS-012667, slip op. at 13–14 (N.C. Super. Ct. Oct.

⁵ *Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016); *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016).

28, 2019). Indeed, one Republican legislative leader “acknowledge[d] freely that” the congressional map “would be a political gerrymander.” *Harper*, slip op. at 13. North Carolina courts ultimately enjoined both the congressional and state legislative maps as partisan gerrymanders that violated the North Carolina State Constitution. *Id.*; *Common Cause*, 2019 WL 4569584, at *125, *135.

54. North Carolina, “[j]ust as with other states in the South,” also has ““a long history of race discrimination generally and race-based vote suppression in particular.”” *Holmes v. Moore*, 270 N.C. App. 7, 20–21, 840 S.E.2d 244, 257 (2020) (quoting *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 223 (4th Cir. 2016)). After black North Carolinians gained the right to vote following the Civil War and began to ally politically with white Republicans, white Democrats devised what they called the “white supremacy campaign” to break apart the new multiracial coalition by exploiting and inflaming racial tensions and encouraging whites to vote on racial, rather than economic, lines.⁶ When Congress enacted the VRA, it looked to “North Carolina’s pre-1965 history of pernicious discrimination” and made “[f]orty North Carolina jurisdictions ... covered” jurisdictions under Section 5 of the VRA based on their use of “suspect prerequisites to voting, like literacy tests.” *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 215, 223 (4th Cir. 2016).

55. “[S]tate officials [have] continued in their efforts to restrict or dilute African American voting strength well after 1980 and up to the present day.” *Holmes*, 270 N.C. App. at 23, 840 S.E.2d at 258. On numerous occasions, “the North Carolina legislature has attempted to suppress and dilute the voting rights of African Americans,” and “the Department of Justice or federal courts have determined that the North Carolina General Assembly acted with

⁶ Helen G. Edmonds, *The Negro and Fusion Politics in North Carolina, 1894–1901*, at 136 (1951).

discriminatory intent, reveal[ing] a series of official actions taken for invidious purposes.” *McCrorry*, 831 F.3d at 223 (quotation marks omitted). In 2013 and 2018, for example, the General Assembly enacted restrictive voter-identification laws that state and federal courts struck down as “targeting voters who, based on race, were unlikely to vote” for the party controlling the General Assembly. *Id.* at 215, 223–33; *see Holmes*, 270 N.C. App. at 23, 34, 36. And in just the last decade, courts have repeatedly invalidated North Carolina’s congressional and legislative maps as impermissibly discriminating against voters based on race.⁷

56. North Carolina’s black voters are targeted by race largely due to the persistence of racially polarized voting. Voting in North Carolina, both historically and today, is racially polarized, which means that “the race of voters correlates with the selection of a certain candidate or candidates.” *McCrorry*, 831 F.3d at 214. Racial polarization in voting in North Carolina “offers a ‘political payoff for legislators who seek to dilute or limit the minority vote.’” *Holmes*, 270 N.C. App. at 22, 840 S.E.2d at 258 (quoting *McCrorry*, 831 F.3d at 222). The fact that “race and party are inexorably linked in North Carolina,” *McCrorry*, 831 F.3d at 225, creates an “incentive for intentional discrimination in the regulations of elections,” *id.* at 222.

57. Statistics confirm that racial vote polarization persists in North Carolina. “Ecological inference” tools can measure this racial vote polarization. Ecological inferences

⁷ *Harris v. McCrorry*, 159 F. Supp. 3d 600 (M.D.N.C. 2016) (three-judge court), *aff’d sub nom. Cooper v. Harris*, 137 S. Ct. 1455 (2017) (invalidating two congressional districts based on the impermissible use of race); *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016) (three-judge court) (invalidating legislative districts based on the impermissible use of race), *summarily aff’d*, 137 S. Ct. 2211 (2017); *Covington v. North Carolina*, 283 F. Supp. 3d 410 (M.D.N.C. 2018) (three-judge court) (invalidating legislative districts based on the impermissible use of race), *aff’d in part, rev’d in part*, 138 S. Ct. 2548 (2018); *North Carolina v. Covington*, 138 S. Ct. 2548 (2018) (per curiam) (affirming district court’s conclusion that legislative districts unconstitutionally sorted voters on the basis of race).

enable data scientists to draw conclusions about individual behavior or preferences from aggregate data. Those tools show:

- a. During the last two presidential elections, black voters preferred the Democratic candidate by an average margin of 84 percentage points. In the same elections, white voters preferred the Republican candidate by an average margin of 30 percentage points.
- b. During the last three U.S. Senate elections, black voters preferred the Democratic candidate by an average margin of 87 percentage points. In the same elections, white voters preferred the Republican candidate by an average margin of 31 percentage points.
- c. During the last three gubernatorial elections, black voters preferred the Democratic candidate by an average margin of 87 percentage points. In the same elections, white North Carolinians preferred the Republican candidate by an average margin of 32 percentage points.
- d. During the last three elections for Lieutenant Governor, black voters preferred the Democratic candidate by an average margin of 86 percentage points. In the same elections, white North Carolinians preferred the Republican candidate by an average margin of 34 percentage points.
- e. Racial vote polarization exists within, as well as between, political parties. For instance, in the 2020 Democratic primary election for U.S. Senate, white primary voters preferred the white candidate over the black candidate by a margin of 49 percentage points. Black primary voters preferred the black candidate over the white candidate by a margin of 27 percentage points.

58. White residents constitute slightly less than 70% of North Carolina’s adult citizenry, or “citizen voting-age population” (CVAP), according to the U.S. Census Bureau’s American Community Survey, and about 67% of North Carolina’s registered voters, according to registration forms completed by the voters themselves. Because white voters form an overwhelming majority of North Carolina’s electorate, and because of racially polarized voting, white-preferred candidates usually prevail in North Carolina elections, even when strongly opposed by black voters.

59. Black citizens’ ability to attain anything approaching fair representation in the General Assembly and in North Carolina’s congressional delegation thus hinges on fair districting—that is, districting that respects the politically cohesive, geographically distinct black communities that exist today in many parts of North Carolina. But at no point in North Carolina’s modern history have the state’s congressional or legislative districts provided minority voters with fair opportunities to nominate and elect their candidates of choice. Simply put, North Carolina’s federal and state legislators have never fully and accurately represented, or resembled, North Carolina’s people.

III. Enactment of the Enacted Plans

A. The 2021 Redistricting Process

60. This case concerns the 2021 redistricting cycle. Decennial redistricting depends on data generated by the U.S. Census Bureau. Ordinarily, the census data used for redistricting are released in February or March of the year following the decennial census; in 2021, however, the Census Bureau announced that its release of data would be delayed.⁸ The Census Bureau

⁸ Press Release, U.S. Census Bureau, *Census Bureau Statement on Redistricting Data Timeline* (Feb. 12, 2021), <https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html>.

eventually released census data to state redistricting officials on August 12, 2021, about five months later than normal.⁹

61. The General Assembly formed two committees to oversee the redistricting process, the House Committee on Redistricting and the Senate Committee on Redistricting and Elections. Each was tasked with proposing maps for its own chamber and for Congress. This Complaint refers to the two committees collectively as “the Committees.”

62. The Senate Redistricting Committee was co-chaired by Defendants Hise, Daniel, and Newton. The House Redistricting Committee was chaired by Defendant Hall.

63. On August 9, 2021, the Committee chairs proposed redistricting criteria to govern the 2021 mapmaking process (the “2021 Redistricting Criteria”).¹⁰ The Committee chairs’ proposed criteria were adopted on August 12, 2021, with minimal amendments.¹¹

64. The 2021 Redistricting Criteria state: “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*

⁹ Press Release, U.S. Census Bureau, *2020 Census Statistics Highlight Local Population Changes and Nation’s Ethnic and Racial Diversity* (Aug. 12, 2021), <https://www.census.gov/newsroom/press-releases/2021/population-changes-nations-diversity.html>.

¹⁰ *2021 Joint Redistricting Committee Proposed Criteria*, House Committee on Redistricting & Senate Committee on Redistricting and Elections, N.C. General Assembly, <https://www.ncleg.gov/documentsites/committees/House2021-182/2021/08-09-21/2021%20Joint%20Redistricting%20Committee%20Plan%20Proposed%20Criteria.pdf>; see Travis Fain, *Redistricting Process Starts in N.C.*, WRAL (Aug. 9, 2021) <https://www.wral.com/redistricting-process-starts-in-n-c/19818939>.

¹¹ *Criteria Adopted by the Committees*, House Committee on Redistricting & Senate Committee on Redistricting and Elections, N.C. General Assembly (Aug. 12, 2021), <https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/08-12-2021/Criteria.adopted.8.12.pdf>; see Rusty Jacobs, *NC Lawmakers Adopt Criteria for Next Round of Redistricting*, WUNC (Aug. 12, 2021), <https://www.wunc.org/politics/2021-08-12/nc-lawmakers-adopt-criteria-for-next-round-of-redistricting>.

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*.”

65. The first step of the *Stephenson/Dickson* algorithm provides that “‘legislative districts required by the VRA shall be formed’ before non-VRA districts.” *Dickson II*, 368 N.C. at 530, 781 S.E.2d at 438. Given North Carolina’s long history of racially discriminatory voting laws and racially polarized voting, *see supra* Part II, the VRA has often been held to require the drawing of districts that protect black voters’ opportunities to nominate and elect their candidates of choice. *E.g.*, *Covington v. North Carolina*, 316 F.R.D. 117, 167 (M.D.N.C. 2016) (three-judge court), *aff’d*, 137 S. Ct. 2211 (2017) (per curiam).

66. The 2021 Redistricting Criteria, however, did not provide for any analysis of whether the VRA required the formation of particular districts. The 2021 Redistricting Criteria stated that the “Committees will draw districts that comply with the Voting Rights Act”—but also stated that “[d]ata 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.”¹²

67. The Committees did not explain how they could determine whether maps could comply with the VRA without analyzing racial data. And in fact, it is impossible to determine whether maps comply with the VRA or with North Carolina law without analyzing whether voting is racially polarized and, if so, how that racial vote polarization affects election results.

68. The Committees knew that their map-drawing process did not follow the *Stephenson/Dickson* framework. For example, Senator Dan Blue, a black Democrat, challenged the Committee chairs on how they could draw VRA-compliant districts without considering racial

¹² *Criteria Adopted by the Committees*, *supra* note 11 (emphasis in the original).

data and observed that there is racially polarized voting in North Carolina. Senator Blue also introduced an amendment that would have prohibited the redistricting of black voters for partisan advantage. That amendment was rejected.¹³

69. The 2021 Redistricting Criteria also stated that “[p]artisan considerations and election results data *shall not* be used in the drawing of districts in the 2021 Congressional, House, and Senate plans.”¹⁴ Again, the Committees did not explain how they could determine whether maps complied with the VRA without analyzing political data. In fact, assessing whether minority voters have an adequate opportunity to nominate and elect their preferred candidates *requires* combining election results and racial data.

70. Nevertheless, the Committees did not impose any meaningful limits on legislators’ ability to rely on partisan or racial considerations. Many legislators have vast knowledge of the racial and partisan characteristics of communities across the state; indeed, the Committees expressly permitted reliance on “local knowledge of the character of communities and connections between communities.”¹⁵ And although the mapmaking terminals in the hearing rooms did not contain accessible electoral or racial data, Chair Hall at the October 5 hearing admitted that he could not, and would not, prevent legislators from relying on racial or partisan data outside the hearing rooms and then redrawing maps in the hearing rooms.¹⁶

¹³ *Amendment to Proposed Criteria*, House Committee on Redistricting & Senate Committee on Redistricting and Elections, N.C. General Assembly (Aug. 12, 2021), <https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/08-12-2021/Proposed%20Amendments/Voting%20Rights%20Act.Amendment.pdf>; *Criteria Adopted by the Committees*, *supra* note 11.

¹⁴ *Criteria Adopted by the Committees*, *supra* note 11 (emphasis in the original).

¹⁵ *Id.*

¹⁶ See N.C. General Assembly, *House Redistricting Committee Hearing*, YouTube (Oct. 5, 2021), https://www.youtube.com/watch?v=9UsiS_6rlUA (1:50:45–1:51:25) (exchange between Chair Hall and Representative Harrison), 1:51:44–1:52:39 (same), 1:53:26–1:54:45 (same), 2:05:23–2:08:05 (exchange between Chair Hall and Representative Reives).

71. The Committees also chose not to rank their redistricting criteria and chose to make many of their enumerated criteria permissive. For example, the criteria provided that the “Committees may consider municipal boundaries when drawing districts.” This approach left the Committees free to decide when to consider municipal boundaries, depending on whether doing so furthered their other goals.¹⁷

72. The Committees held 13 public hearings over the course of three weeks in September.¹⁸ But the maps had not yet been either drawn or proposed. As a result, these hearings did not provide the public or experts a meaningful opportunity to address the maps that the Committees would ultimately propose, consider, and enact.

73. On October 5, the Committees began designing proposed maps in the hearing rooms. In designing legislative maps, committee members were instructed to begin by selecting one of the county clusters that had been developed by an academic research group at Duke University. In their report, the Duke researchers explained that the clusters were “largely algorithmically determined through an optimization procedure outlined by the NC Supreme Court in *Stephenson v. Bartlett*” using the 2020 census data.¹⁹ The Duke study yielded 16 county

¹⁷ *Criteria Adopted by the Committees, supra* note 11.

¹⁸ *Joint Public Hearing Schedule*, House Committee on Redistricting & Senate Committee on Redistricting and Elections, N.C. General Assembly (Sept. 13, 2021), <https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/General%20Redistricting%20Information/Public%20Hearing%20Schedule%20with%20addresses.pdf>.

¹⁹ Christopher Cooper, Blake Esselstyn, Gregory Herschlag, Jonathan Mattingly & Rebecca Tippett, *NC General Assembly County Clusterings from the 2020 Census* (Aug. 17, 2021), <https://sites.duke.edu/quantifyinggerrymandering/files/2021/08/countyClusters2020.pdf>.

clustering options for the Senate map,²⁰ and eight county clustering options for the House map.²¹ The Duke researchers cautioned that the “one part of *Stephenson v. Bartlett* which this analysis does not reflect is compliance with the Voting Rights Act.”²²

74. Nevertheless, the Committees did not account for this limitation in the Duke study. At the October 5 hearings, the Committee chairs directed staff to present county cluster options for the Senate and House maps based on the Duke study. The Committee chairs were once again warned that failing to consider racial data and analyze compliance with the VRA would render their maps unlawful, and that the Duke study did not take into account the first step of the *Stephenson/Dickson* algorithm. Senator Blue, for instance, questioned how the Committees could determine the proper county clusters without first determining what the VRA requires. The Committee chairs, however, continued to refuse to consider racial data—or, at least, to *publicly* consider racial data—or conduct any study of racially polarized voting in the State.

75. Starting October 6, Committee members were permitted to draw congressional and legislative maps in the hearing rooms. Although the mapmaking terminals in the hearing rooms did not contain electoral or racial data, legislators were free to bring materials into and out of the hearing rooms. Upon information and belief, many of the maps drawn in the hearing rooms had likely been analyzed outside the hearing rooms.

²⁰ *Duke Senate Groupings*, Senate Redistricting and Elections Committee, N.C. General Assembly, <https://ncleg.gov/documentsites/committees/Senate2021-154/2021/10-05-2021/Duke%20Senate%20Groupings%20Maps%2011x17.pdf>.

²¹ *Duke House Groupings*, House Redistricting Committee, N.C. General Assembly, <https://ncleg.gov/documentsites/committees/House2021-182/2021/10-05-21/Duke%20House%20Groupings%20Maps%2011x17.pdf>.

²² Cooper et al., *supra*, note 19.

76. Midway through the process, on October 21, with almost no advance notice, the Committees announced that public hearings would be held on October 25 and 26 for the public to comment on proposed maps.²³ The Committees did not specify which, if any, of the maps that had been posted online at that point were final contenders, leaving the public unable to identify the maps that were the Committees' focus.

77. On October 28, the Committees announced committee hearings on November 1 and 2 to consider proposed congressional and legislative maps.

B. Enactment of the Final Maps

78. The General Assembly moved quickly to enact the final maps, holding the first Committee hearings on the proposed maps on November 1 and enacting those maps just three days later, on November 4, each on a party-line vote.²⁴

79. On November 1, the Senate Redistricting Committee held its first and only hearing to consider proposed congressional maps. The Committee considered one map proposed by Senator Ben Clark, a black Democrat, and one map proposed by Chairs Hise, Daniel, and Newton. The Chairs' map was favorably reported out of the Committee; Senator Clark's map was not. The next day, the full Senate approved the map, as did the House Redistricting Committee and full House in the following two days, without amendment. On November 4, the General Assembly enacted the map as the Enacted Congressional Plan.

²³ Gary D. Robertson, *NC Redistricting Hearing Speakers Criticize GOP Proposals*, Associated Press (Oct. 25, 2021), <https://www.usnews.com/news/best-states/north-carolina/articles/2021-10-25/public-hearings-offer-input-on-nc-redistricting-proposals>; Charles Duncan, *First Maps Posted in N.C. Redistricting, Public Hearings Scheduled*, Spectrum News 1 (Oct. 21, 2021), <https://spectrumlocalnews.com/nc/charlotte/politics/2021/10/21/first-maps-posted-in-n-c--redistricting--public-hearings-scheduled>.

²⁴ Will Doran, *Take a Closer Look at North Carolina's Approved Political Maps for Congress, Legislature*, Raleigh News & Observer (Nov. 4, 2021), <https://www.newsobserver.com/news/politics-government/article255552826.html>.

80. Also on November 1, the House Redistricting Committee held a hearing to consider a House map proposed by Chair Hall. The Committee considered no other maps, and the Chair’s map passed the House Redistricting Committee, the full House, the Senate Redistricting Committee, and the full Senate in three days, with few amendments. On November 4, the General Assembly enacted the map as the Enacted House Plan.

81. On November 2, the Senate Redistricting Committee held a hearing to consider a Senate map proposed by Chairs Hise, Daniel, and Newton. The Committee considered no other maps, and the Chairs’ map passed both redistricting committees and both chambers in three days, with few amendments. On November 4, the General Assembly enacted the map as the Enacted Senate Plan.

IV. Partisan Gerrymandering and Racial Vote Dilution in the Enacted Plans

82. North Carolina elections are highly competitive. Republican candidates win many statewide races; Democratic candidates win many others—and nearly all statewide races are closely divided. For example, in 2016, Republican candidates won the most votes for President (51.9% to 48.1%), U.S. Senator (53.0% to 47.0%), and Lieutenant Governor (53.3% to 46.7%); Democratic candidates won the most votes for Governor (50.1% to 49.9%) and Attorney General (50.3% to 49.7%). In 2020, Republican candidates won the most votes for President (50.7% to 49.3%) and Lieutenant Governor (51.6% to 48.4%); Democratic candidates won the most votes for Governor (52.3% to 47.7%) and Attorney General (50.1% to 49.9%).²⁵

83. North Carolina is also a growing state—and one that is growing more and more diverse. Between the 2010 and 2020 Censuses, North Carolina’s population increased by 9.5%,

²⁵ Figures are taken from North Carolina State Board of Elections, *Elections Results Dashboard*, <https://er.ncsbe.gov>. Figures describe the major-party vote and thus exclude votes cast for third-party, independent, and write-in candidates.

from approximately 9.5 million residents to approximately 10.4 million. As a result, North Carolina has been allocated an additional, fourteenth seat in the U.S. House of Representatives. Nearly two-thirds of all of North Carolina's population growth (63%) has come in Durham, Guilford, Forsyth, Mecklenburg, and Wake Counties. Black, Hispanic, Asian, and multiracial individuals account for nearly all of North Carolina's population growth (87%).²⁶

84. Fair districting maps would allow North Carolina's voters—Democratic and Republican, black and white—to translate their voting strength into representation. Where, for example, black voters are geographically concentrated, those voters would be able to elect their preferred candidates. And when one party succeeds in persuading more voters, that party would receive more seats—and a party that received a majority of votes would, more often than not, win at least half the seats. These features are the hallmarks of truly fair, evenhanded districting maps.

85. The Enacted Plans, however, are not fair districting maps. First, these plans are extreme partisan gerrymanders that entrench the political party that currently controls the General Assembly, the Republican Party, in power. Under any plausible electoral scenario, the Republican Party will retain large majorities of seats in Congress, the state Senate, and the state House, even when Democratic candidates receive a significant majority of statewide votes. And second, the Enacted Plans dilute the voting strength of North Carolina's black voters—by depriving black voters of the opportunity to nominate and elect their preferred candidates in many geographic areas where, under fair maps, they would be able to do so. To accomplish these partisan and racial goals, moreover, the maps unnecessarily traverse county boundaries and create noncompact districts.

²⁶ Figures are taken from U.S. Census, *North Carolina: 2020 Census*, <https://www.census.gov/library/stories/state-by-state/north-carolina-population-change-between-census-decade.html>.

86. The Enacted Plans’ extreme partisan and racial effects do not reflect any inevitable feature of North Carolina’s political geography or state law. As detailed in Part V, alternative maps avoid partisan gerrymandering and racial vote dilution while improving on traditional, neutral districting principles set forth in North Carolina law. The partisan gerrymandering and racial vote dilution in the Enacted Plans instead reflect the intentional choices of those who drew those maps.

87. Below, Plaintiffs detail the racial vote dilution and partisan gerrymandering that the Enacted Plans effectuate. Part A addresses partisan gerrymandering in the Enacted Congressional Plan, Enacted Senate Plan, and Enacted House Plan. Part B addresses racial vote dilution in the Enacted Congressional Plan, Enacted Senate Plan, and Enacted House Plan.

A. Extreme Partisan Gerrymandering in the Enacted Plans

88. Statistics-driven analysis shows that the Enacted Plans gerrymander congressional and legislative districts to entrench Republican political power and that the Enacted Plans will not fairly translate the preferences of North Carolina voters into representation in Congress or the General Assembly. The Enacted Plans crack and pack Democratic voters to dilute Democratic voting strength and guarantee that Republicans will control the North Carolina congressional delegation and General Assembly. As a result, the outcomes of congressional and legislative elections are foreordained, and voters lack the power to hold their leaders accountable.

89. The General Assembly intended the extreme partisan gerrymander that the Enacted Plans yield. Not only do legislative map-drawers typically have exhaustive knowledge of the partisan characteristics of areas across the state, but here the Committees and the General Assembly were told about the partisan implications of the Enacted Plans. The Committees and the General Assembly were informed—as publicly available sources disclosed—that the specific

maps they proposed constituted partisan gerrymanders that would not fairly translate voters' preferences into representation.²⁷ Yet the General Assembly adopted the Enacted Plans anyway, after a rushed process whose putative prohibition on considering “[p]artisan ... election results” served only to avoid publicizing the partisan data that would shine a light on the severe gerrymandering in the proposed maps and to avert more searching scrutiny of those maps by the public and experts.

i. The Enacted Congressional Plan

90. Like the 2016 congressional plan that was enjoined as an unlawful partisan gerrymander, the Enacted Congressional Plan effects a partisan gerrymander that dilutes Democrats' voting power and effectively precludes Democrats from winning a majority—or even a tie—in North Carolina's congressional delegation, even if Democrats win a solid majority of votes statewide.

91. One way to illustrate the extent of the gerrymander is to examine the results the Enacted Congressional Plan would have yielded had it applied to recent statewide elections. This analysis shows that the Enacted Congressional Plan would have translated competitive elections,

²⁷ *E.g.*, Gary D. Robertson, *NC Congressional Map That Helps GOP Gets Senate Panel's OK*, Associated Press (Nov. 1, 2021), <https://apnews.com/article/north-carolina-legislature-voting-rights-redistricting-congress-f11be13a63b159abaa926928c96413a2> (“It’s not coincident that it’s only in the urban areas that you subject these counties to that kind of treatment,’ Senate Minority Leader Dan Blue of Wake County told Republican colleagues.”); *accord* Will Doran & Brian Murphy, *North Carolina Could Have New Political Maps This Week. Here’s Where Things Stand*, Raleigh News & Observer (Nov. 3, 2021), <https://www.newsobserver.com/news/politics-government/article255506961.html>; Gary D. Robertson, *North Carolina GOP Nears Completion of Redistricting Maps*, Associated Press (Nov. 4, 2021), <https://www.newsobserver.com/news/state/north-carolina/article255525166.html>; Charles Duncan, *Redistricting in N.C.: New Maps Approved, Favoring GOP*, Spectrum News 1 (Nov. 4, 2021), <https://spectrumlocalnews.com/nc/charlotte/politics/2021/11/04/redistricting-in-n-c---new-maps-approved--favoring-gop>; Will Doran, *NC Lawmakers File Their Official Redistricting Plans, Giving GOP a Solid Edge*, Raleigh News & Observer (Oct. 29, 2021), <https://www.newsobserver.com/news/politics-government/article255390786.html>.

including elections with statewide Democratic victories, into Republican candidates winning at least 10 of 14 seats in North Carolina's congressional delegation (or 71% of the total). That signals an extreme partisan gerrymander.

- a. The 2020 race for Chief Justice of the Supreme Court resulted in a near-tie statewide, with the Republican candidate winning by only 401 votes. But if the votes for the Republican candidate in that election had been cast for Republican congressional candidates under the Enacted Congressional Plan, the Republican candidates would have carried 10 of 14 congressional districts. Republican candidates would thus have won six more districts (10 to 4) than their Democratic opponents despite the effective tie in the statewide vote.
- b. In the 2020 race for Attorney General, the Democratic candidate won the major-party vote by 0.3 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican congressional candidates under the Enacted Congressional Plan, the Republican candidates would still have carried 10 of 14 congressional districts.
- c. In the 2020 race for President, the Republican candidate won the major-party vote by 1.4 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican congressional candidates under the Enacted Congressional Plan, the Republican candidates would still have carried 10 of 14 congressional districts.
- d. In the 2016 election for Governor, the Democratic candidate prevailed by 0.2 percentage points, and in the 2016 election for Insurance Commissioner, the Republican candidate prevailed among major-party voters by 0.8 percentage points.

But if the votes for the Republican candidate in those elections had been cast for Republican congressional candidates under the Enacted Congressional Plan, the Republican candidates would still have carried 10 of 14 congressional districts.²⁸

92. The Enacted Congressional Plan effects this extreme partisan gerrymander by “packing” Democratic voters into Congressional Districts 6 and 9 and “cracking” other Democratic voters among 10 districts where they cannot meaningfully impact elections (Congressional Districts 1, 3, 4, 7, 8, 10, 11, 12, 13, and 14). Several examples follow.

93. The Enacted Congressional Plan fractures Mecklenburg County, home to North Carolina’s largest concentration of Democratic voters, across three districts. The Enacted Congressional Plan packs Democrats into one Mecklenburg County district (Congressional District 9) and then splits Mecklenburg County’s remaining Democratic voters into two districts (Congressional Districts 8 and 13) where they cannot affect election results due to those districts’ large Republican majorities. Had the Enacted Congressional Plan *not* cracked Mecklenburg County in this way, the remainder of the county could have been part of a Democratic-leaning district. *Infra* ¶ 158 (Congressional District 10 of the Optimized Congressional Map).

94. The Enacted Congressional Plan also fragments Wake County, home to North Carolina’s second-largest concentration of Democratic voters, across three districts to carve out an extra safe Republican seat. One district (Congressional District 5) is housed entirely within Wake County and is majority Democrat. The Enacted Congressional Plan then splits Wake County’s remaining voters into two districts. Democrats in Cary are packed into Congressional District 6 with heavily Democratic Durham and Orange Counties, resulting in a second heavily Democratic

²⁸ These figures are taken from North Carolina State Board of Elections, *Elections Results Dashboard*, <https://er.ncsbe.gov>. These figures describe the major-party vote and thus exclude votes cast for third-party, independent, and write-in candidates.

district with an expected Democratic vote share of more than 70% (thus “wasting” Democratic votes). The deliberate packing of Congressional District 6 ensures that Wake County’s remaining Democratic voters, who are apportioned into the heavily Republican Congressional District 7, cannot affect election results. The overall effect is to dilute Democratic votes: If Wake County were *not* split into three districts in this way, Congressional Districts 5 and 6 would be Democratic, and Congressional District 7 would be highly competitive instead of safely Republican. *Infra* ¶ 158 (Congressional Districts 5, 6, and 7 of the Optimized Congressional Map).

95. The Enacted Congressional Plan cracks Democratic voters in the heavily populated Piedmont Triad, comprising Greensboro, High Point, and Winston-Salem. Voters in the Piedmont Triad—which formed one Democratic congressional district under the prior districting plan—are split into four separate congressional districts:

- a. First, Democrats west of downtown Greensboro are cracked into Congressional District 7, which is heavily Republican due to the partisan gerrymandering in Durham, Orange, and Wake Counties to the east. As a result of packing in Congressional District 6, and cracking in Guilford County, Congressional District 7 is far less compact than necessary under a fair map. It has a Polsby-Popper compactness score of only 0.20 (on a scale of 0 to 1, where 1 is the most compact).
- b. Second, Democrats in downtown Greensboro and to the north are cracked into a heavily Republican District 11. District 11 is designed to aggregate enough Republican votes to overcome Greensboro’s Democratic voters by bending to avoid Forsyth County and stretching far west through Republican-majority counties all the way to the Tennessee border. The result is a Polsby-Popper score of just 0.21.

- c. Third, Democratic voters from the High Point area are cracked into a third heavily Republican district, District 10. To overcome the voting strength of these Democratic voters, 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.
- a. Fourth, Democratic voters in Winston-Salem are cracked into District 12, which stretches west into the Republican-dominated areas of Yadkin County and veers southwest until it reaches the northern border of Gaston County, which sits on the South Carolina line. The result, again, is a Republican-dominated district that is less compact than necessary under a fair map: Congressional District 12 has a Polsby-Popper score of just 0.24.

96. The three counties with the largest Democratic populations—Mecklenburg, Wake, and Guilford—are the only counties trisected in the Enacted Congressional Plan. Nothing in North Carolina law or federal law, and no traditional redistricting principle, required that result. Guilford County could have been placed entirely into one district. *Infra* ¶ 158 (Congressional District 11 of the Optimized Congressional Map). Mecklenburg and Wake Counties each have only enough population to fill one-and-a-half districts and thus could have been placed in two districts each. *Infra* ¶ 158 (Congressional Districts 5, 7, 9, and 10 of the Optimized Congressional Map).

97. The Enacted Congressional Plan also dilutes Democratic voting strength elsewhere. Congressional District 4 is drawn in a way that splits a large concentration of Democratic voters in southeastern North Carolina by separating Democrats in Cumberland County from Democrats in Hoke and Scotland Counties. This cracking of Democratic votes ensures that District 4 and

District 8 will elect Republican candidates. Under a fair map, these voters would all reside in one district where they could elect their preferred candidates. *Infra* ¶ 158 (Congressional District 4 of Plaintiffs’ Optimized Congressional Map).

98. At the November 1 Senate Redistricting Committee hearing, Senator Nickel of Wake County warned that the congressional map’s severe partisan tilt and lack of competitive districts constituted an extreme partisan gerrymander.²⁹ In the November 3 House Redistricting Committee hearing, Representative Pricey Harrison of Guilford County likewise cautioned that the congressional map was an extreme partisan gerrymander.³⁰ The General Assembly, however, proceeded to enact the Enacted Congressional Plan.

99. Nothing in North Carolina’s political geography or state law required the General Assembly to enact a congressional map that effected such a severe partisan gerrymander. Under any plausible electoral scenario, Republican candidates will always win the general election in a majority or supermajority of districts. By contrast, Plaintiffs’ Optimized Congressional Map (detailed in Part V.A) shows that it is possible to create a fairer and far less partisan districting plan that complies with state-law requirements and policies, advances traditional and neutral districting principles, and contains more competitive districts. Under the Optimized Congressional

²⁹ See N.C. General Assembly, *Senate Redistricting Committee Hearing*, YouTube (Nov. 1, 2021) <https://www.youtube.com/watch?v=KgSkfFY7r7g> (51:39-54:27) (“[T]his map speaks louder than words. You can’t argue with the map. And it’s right there in front of us: We’ve heard the public comments. We’ve heard the outside experts, and you can see in my diagram exactly what’s going on. This is a map that robs 10.7 [million] North Carolinians of any real choice at the ballot box. It’s a map that guarantees that 10 or 11 Republicans will be elected in our 50-50 state. It doesn’t pass the eye test. It doesn’t pass the smell test. I wish I could make this committee understand why this is so wrong. Why this is so wrong for every single voter in our state. . . . [Y]ou can’t have a competition at the ballot box for the best ideas when you decide the outcome in advance. This is not a fair fight. We could do 50-50 districts in every part of the state...” (Sen. Nickel).

³⁰ See N.C. General Assembly, *House Redistricting Committee Hearing*, YouTube (Nov. 3, 2021) <https://www.youtube.com/watch?v=M53S7TbN6ew> (50:50-51:00) (“The partisan analysis shows us it’s a possible 11-3 [map] in a 50-50 state and that’s just flat wrong.”) (Rep. Harrison).

Map, the party that receives more congressional votes statewide will generally receive at least half the state's congressional seats—allowing voters to meaningfully express their preferences at the ballot box and to hold their representatives in Congress to account.

ii. The Enacted Senate Plan

100. Like the 2016 Senate plan that was enjoined as an unlawful partisan gerrymander, the Enacted Senate Plan effects a partisan gerrymander that dilutes Democratic voting power and effectively precludes Democrats from winning a majority—or even a tie—in the Senate, even if Democrats win a solid majority of votes statewide.

101. One way to illustrate the extent of the gerrymander is to examine the results the Enacted Senate Plan would have yielded had it applied to recent statewide elections. This analysis shows that the Enacted Senate Plan would have translated competitive elections, including elections with statewide Democratic victories, into substantial Republican Senate majorities.

- a. The 2020 race for Chief Justice of the Supreme Court resulted in a near-tie statewide. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted Senate Plan, the Republican candidates would have carried 28 out of 50 districts, or six more than the Democratic candidates.
- b. In the 2020 race for Attorney General, the Democratic candidate won the major-party vote by 0.3 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted Senate Plan, the Republican candidates would have carried 29 of 50 Senate districts, or eight more than the Democratic candidates.

- c. In the 2020 race for President, the Republican candidate won the major-party vote by 1.4 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted Senate Plan, the Republican candidates would have carried a veto-proof majority of 30 of 50 Senate districts, or 10 more than the Democratic candidates.
- d. In the 2016 election for Governor, the Democratic candidate prevailed by 0.2 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted Senate Plan, the Republican candidates would have carried a veto-proof majority of 30 of 50 Senate districts, or 10 more than the Democratic candidates.
- e. In the 2016 election for Insurance Commissioner, the Republican candidate prevailed among major-party voters by 0.8 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted Senate Plan, the Republican candidates would have carried 28 of 50 Senate districts, or six more than the Democratic candidates.

102. The Enacted Senate Plan achieves its extreme partisan gerrymander by packing Democratic voters into a small number of Senate districts and then cracking the remaining Democratic voters by splitting them across other districts, where they will be outvoted by larger populations of Republican voters.

103. Sometimes, the Enacted Senate Plan packs and cracks Democratic voters based on its selection of county clusters from the possibilities identified in the Duke study.

104. For example, the Enacted Senate Plan configures the 18 counties in Senate Districts 1 and 2 to crack northeastern North Carolina's Democratic votes.

- a. The 18 counties that comprise Senate Districts 1 and 2 can be configured to group in one district Carteret, Chowan, Dare, Hyde, Pamlico, Pasquotank, Perquimans, and Washington Counties; and to group in another district Bertie, Camden, Currituck, Gates, Halifax, Hertford, Martin, Northampton, Tyrrell, and Warren Counties. *Infra* ¶ 165 (Senate Districts 1 and 2 of the Optimized Senate Map). The first district would still favor Republican candidates; the second district would be more competitive and would give Democratic voters an opportunity to elect candidates of their choice.
- b. This configuration is preferable under state law for other reasons as well: It minimizes the number of county traversals among the 18 counties (at 23 traversals), consistent with the Whole County Provisions. It also yields more compact districts. The lowest Polsby-Popper compactness score for either district is 0.17.
- c. The General Assembly rejected this configuration. Instead, under the Enacted Senate Plan, it grouped Bertie, Camden, Currituck, Dare, Gates, Hertford, Northampton, Pasquotank, Perquimans, and Tyrrell Counties into District 1; and Carteret, Chowan, Halifax, Hyde, Martin, Pamlico, Warren, and Washington Counties into District 2. This configuration increases the number of county traversals to 24. It also lowers District 2's Polsby-Popper compactness score to just 0.10. That score indicates a substantially non-compact district. This configuration dilutes Democratic voting power: With Democratic voters divided between districts, both districts will reliably vote for Republican candidates.

105. The Enacted Senate Plan also clusters counties to crack Democratic votes in and around Buncombe County.

- a. Buncombe County is home to a substantial Democratic population. The Enacted Senate Plan combines Buncombe County with heavily Republican McDowell and Burke Counties into one cluster that is divided into two districts, a lopsidedly Democratic district (District 49) and a heavily Republican district (District 46).
- b. Instead, Buncombe County could be combined into a two-district cluster with Polk and Henderson Counties. Polk and Henderson Counties have larger Democratic vote shares than McDowell and Burke Counties, and clustering them with Buncombe County allows for fairer districts; one district nested in Buncombe County would favor Democrats, but not as lopsidedly as District 49. The other district—spanning Polk, Henderson, and the remainder of Buncombe County—would be competitive, giving both Democratic and Republican voters an opportunity to elect candidates of their choice. *Infra* ¶ 165 (Senate Districts 48 and 49 of the Optimized Senate Map).
- c. In its pursuit of Republican partisan advantage, the Enacted Senate Plan unnecessarily traverses county boundaries. Had Buncombe County been grouped with Henderson and Polk Counties to create more competitive districts, Burke, Gaston, and Lincoln Counties would have been grouped in a two-district cluster, and Cleveland, McDowell, and Rutherford Counties would have been grouped in a one-district cluster. This configuration would have resulted in just six traversals.
- d. Instead, grouping Buncombe County with Burke and McDowell Counties required grouping Henderson, Polk, and Rutherford together into a one-district cluster and grouping Cleveland, Gaston, and Lincoln Counties into a two-district cluster. This arrangement—which the General Assembly adopted to enhance Republican

partisan advantage—requires at least seven traversals. In fact, the Enacted Senate Plan adds an unnecessary county traversal in the cluster with, Cleveland, Gaston, and Lincoln Counties. That yields eight traversals in the nine-county region, instead of six under the fairer configuration.

106. The Enacted Senate Plan also packs and cracks Democratic voters via how it draws lines within the county clusters identified in the Duke study. Several examples follow.

107. The Republican advantage in Senate District 26 results from unconstitutional packing.

- a. Pursuant to the Duke study’s implementation of the *Stephenson/Dickson* algorithm, Guilford County must be grouped into a three-district Democratic-leaning county cluster with Rockingham County.
- b. The Enacted Senate Plan packs most of the cluster’s Democratic voters into two districts—Senate District 27 and Senate District 28, where they generate large Democratic vote margins. In the 2020 elections for Chief Justice, Attorney General, and President, for instance, Senate Districts 27 and 28 had average Democratic vote margins of roughly 23% and 53%, respectively. By wasting these surplus votes, the Enacted Senate Plan ensures that Senate District 26 will reliably vote for Republican candidates: In the same three races, Senate District 26 voted for Republican candidates by an average margin of roughly 24%.
- c. This gerrymandering departs from traditional redistricting principles and reduces the compactness of these districts: Senate District 26 has a Polsby-Popper score of 0.30, and Senate District 28 has a Polsby-Popper score of 0.25. Without this degree of packing, these districts can be designed to be more compact and fairer, such that

Senate District 27 and Senate District 28, while still Democratic, are more competitive, and Senate District 26 is a Democratic-leaning swing district. *Infra* ¶ 165 (Senate Districts 26, 27, and 28 of the Optimized Senate Map).

108. The Republican advantage in Senate District 13 also results from unconstitutional packing. Based on the Duke study’s implementation of the *Stephenson/Dickson* algorithm, the cluster comprising Wake and Granville Counties must contain six Senate districts. Under the Enacted Senate Plan, Wake County’s large Democratic population is artificially “packed” into four overwhelmingly Democratic districts—Senate Districts 14, 15, 16, and 18. As a result, a Democratic-leaning swing district in northern Wake County is replaced with Republican-favored Senate District 13 in the Enacted Senate Plan. *Infra* ¶ 165 (Senate District 13 of the Optimized Senate Map).

109. The Enacted Senate Plan also unnecessarily packs Democratic voters in Mecklenburg County into Senate Districts 38, 39, 40, and 42. At the same time, the plan carves out a district (Senate District 41) that carefully joins Republican-leaning areas in and around Clear Creek and Lakeland Hills with Republican-leaning voting districts around the Carmel Country Club, in pursuit of statewide Republican advantage.

110. The Enacted Senate Plan also unnecessarily packs Democratic voters in Forsyth County. Forsyth County, which is home to a large number of Democratic voters, is grouped into a two-district cluster with Stokes County. The Enacted Senate Plan concentrates Forsyth County’s Democratic voters into one district—Senate District 32—where Democratic candidates would regularly win by more than 30 percentage points. This district’s design ensures that Forsyth County’s Democratic voters cannot impact electoral outcomes in Senate District 31, which is safely Republican. Instead, Senate District 32 and Senate District 31 could have been configured

such that Senate District 32 would be more competitive (while still favorable to Democrats), and Senate District 31 would be a swing district. *Infra* ¶ 165 (Senate Districts 31 and 32 of the Optimized Senate Map). The General Assembly rejected this alternative in order to dilute the voting power of Forsyth County’s Democratic voters.

111. Moreover, in drawing Districts 31 and 32, the General Assembly created unnecessary county traversals. Based on the clusters identified in the Duke study, Forsyth County could have been grouped with Stokes County or Yadkin County. Grouping Forsyth County with Stokes County requires creating a one-district cluster of Alexander, Surry, Wilkes, and Yadkin Counties. There is a minimum of one traversal in the Forsyth-Stokes cluster, and a minimum of four traversals in the Alexander-Surry-Wilkes-Yadkin cluster, for a total of five. By contrast, grouping Forsyth and Yadkin Counties together reduces the minimum of traversals in the six-county area to four: one in the Forsyth-Yadkin cluster and only three in the Alexander-Stokes-Surry-Wilkes cluster.

112. The General Assembly’s effort to maximize partisan (and racial) advantage came at the cost of excess county traversals. The configuration of Senate Districts 1 and 2 creates excess traversals directly attributable to partisan gerrymandering and racial vote dilution (as discussed below), and the configuration of Senate Districts 43, 44, 46, 48, and 49 creates extra traversals directly attributable to partisan gerrymandering. In addition, Senate Districts 47 and 50 are configured to create four extra traversals; it is possible to draw these districts to cross county boundaries only 19 times, instead of 23.

113. Nothing in North Carolina’s political geography or state law required the General Assembly to enact a Senate map that effected such a severe partisan gerrymander. Under any plausible electoral scenario, Republican candidates will always win a majority in the Senate—yet

the Enacted Senate Plan effects this result by creating more county traversals than necessary and by creating districts that are less compact than necessary. By contrast, Plaintiffs' Optimized Senate Map is fairer and less partisan, while also complying with state redistricting requirements and policies, advancing traditional and neutral districting principles, and creating more competitive districts. *See infra* ¶¶ 165–72.

iii. The Enacted House Plan

114. Like the 2016 House plan that was enjoined as an unlawful partisan gerrymander, the Enacted House Plan effects a partisan gerrymander that dilutes Democrats' voting power and effectively precludes Democrats from winning a majority—or even a tie—in the House, even if Democrats win a majority of statewide votes.

115. One way to illustrate the extent of the gerrymander is to examine the results the Enacted House Plan would have yielded had it applied to recent statewide elections. This analysis shows that the Enacted House Plan would have translated competitive elections, including elections with statewide Democratic victories, into substantial Republican House majorities.

- a. The 2020 race for Chief Justice of the Supreme Court resulted in a near-tie statewide. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted House Plan, the Republican candidates would have carried 68 out of 120 House districts, or 16 more than Democratic candidates.
- b. In the 2020 race for Attorney General, the Democratic candidate won the major-party vote by 0.3 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted House

Plan, the Republican candidates would have carried 69 of 120 House districts, or 18 more than the Democratic candidates.

- c. In the 2020 race for President, the Republican candidate won the major-party vote by 1.4 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted House Plan, the Republican candidates would have carried 70 of 120 House districts, or 20 more than Democratic candidates.
- d. In the 2016 election for Governor, the Democratic candidate prevailed by 0.2 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted House Plan, the Republican candidates would have carried 70 of 120 House districts, or 20 more than Democratic candidates.
- e. In the 2016 election for Insurance Commissioner, the Republican candidate prevailed among major-party voters by 0.8 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted House Plan, the Republican candidates would have carried 70 of 120 House districts, or 20 more than Democratic candidates.

116. The Enacted House Plan achieves its extreme partisan gerrymander by packing Democratic voters into a small number of House Districts and then cracking the remaining Democratic voters by splitting them across other districts, where they will be outvoted by larger populations of Republican voters.

117. The Enacted House Plan packs Democratic voters throughout the state.

118. As one example, the four-district county cluster containing New Hanover and Brunswick Counties contains a sizable number of Democratic voters. The General Assembly, however, drew the House district boundaries within the cluster to create three safe Republican districts: House Districts 17, 19, and 20. The Enacted House Plan accomplishes this result by aggregating Wilmington’s most Democratic voting districts in one district—House District 18. A fairer map would distribute these voters into two districts, which would have created an additional district in New Hanover and Brunswick Counties where Democratic voters would have a fighting chance to win elections. *Infra* ¶ 173 (House Districts 17 and 18 of the Optimized House Map).

119. In Buncombe County, the House Plan packs Democrats into Districts 114 and 115 to carve out a Republican seat in District 116. District 116 is the least compact district in the Enacted House Plan. It is possible to draw the district in a more compact way that does not entrench Republican partisan advantage. *Infra* ¶ 173 (House District 116 of the Optimized House Map).

120. The General Assembly systematically drew districts to artificially pack Democratic voters into certain districts (thus “wasting” Democratic votes) and thereby create more districts favorable to Republicans elsewhere. In addition to Buncombe, Brunswick, and New Hanover Counties, the Enacted House Plan also “packs” Democrats in Cumberland County (to create House Districts 43 and 45); Guilford County (to create House Districts 59 and 62); Mecklenburg County (to create House Districts 98 and 103); Pitt County (to create House District 9); and Wake County (to create House Districts 35 and 37), all to ensure that Republicans retain a substantial statewide majority of seats even if Democratic candidates receive a substantial statewide majority of votes.

121. The General Assembly also systematically pursued Republican advantage by cracking Democratic voters elsewhere in the state. For example, the Enacted House Plan groups

Duplin and Wayne Counties into a two-district cluster. Wayne County contains a large population of Democratic voters in the city of Goldsboro and southern Wayne County. The General Assembly could have drawn one House district to keep these communities of Democratic voters together, which would have given Democratic voters the opportunity to elect candidates of their choice in one of the cluster's two House seats. *Infra* ¶ 173 (House District 10 of the Optimized House Map). Instead, the Enacted House Plan cracks Wayne County's Democratic voters between House Districts 4 and 10, creating two reliably Republican districts.

122. Onslow County is in a three-district cluster with Pender County. One of the two districts in this cluster could have been based around Jacksonville, such that the district would be competitive and would give the region's Democratic voters an opportunity to elect candidates of their choice. *Infra* ¶ 173 (House District 15 of the Optimized House Map). The General Assembly, however, instead split the Jacksonville area's Democratic voters between two districts—House Districts 14 and 15—in order to create three heavily Republican districts that prevent Onslow County's Democratic voters from electing their candidates of choice.

123. In Alamance County, the General Assembly altered the boundaries of House District 63, which under the prior map had elected a Democrat to the House. The changes make the district more favorable to Republicans, without endangering the Republican majority in surrounding House District 64. Drawing House Districts 63 and 64 such that they are more compact creates districts that more accurately reflect the preferences of Alamance County's voters—by yielding one Democratic House representative and one Republican House representative—and that increases the fairness of the House map as a whole. *Infra* ¶ 173 (House Districts 63 and 64 of the Optimized House Map).

124. The Enacted House Plan creates this Republican advantage by increasing the number of county traversals beyond what is necessary. In particular, House Districts 1 and 79 could have been reconfigured so that the cluster would have three fewer county traversals. *See infra* ¶ 173.

125. Nothing in North Carolina’s political geography or state law required the General Assembly to enact a House map that effected such a severe partisan gerrymander. Under any plausible electoral scenario, Republican candidates will always win a majority in the House. The Enacted House Plan effects this result by traversing more county boundaries than necessary and by creating districts that are less compact than necessary. By contrast, Plaintiffs’ Optimized House Map is fairer and less partisan, while also complying with state redistricting requirements and policies, advancing traditional districting principles, and creating more competitive districts.

iv. Entrenchment of Partisan Advantage in the Enacted Plans.

126. The Enacted Plans are highly effective in entrenching Republican partisan advantage. The Enacted Plans virtually guarantee Republicans a majority, or even a supermajority, in North Carolina’s congressional delegation and state Senate and House even when voters prefer Democratic candidates statewide.

127. In every statewide general election in the last decade where the Democratic candidate won by less than seven percentage points, the Republicans carried an outright majority of the Enacted Plans’ congressional, state Senate, and state House districts. That is a remarkably consistent and durable partisan skew.

128. Figures 1, 2, and 3 illustrate the unfair partisan advantage that the Enacted Plans entrench. The x-axes depict the Republican share of the major-party vote in every partisan statewide general election conducted in 2020, 2018, 2016, 2014, and 2012. The y-axes depict the

share of seats that the vote share would be expected to generate under the Enacted Congressional Plan (Figure 1), the Enacted Senate Plan (Figure 2), and the Enacted House Plan (Figure 3).

Figure 1: Vote & Seat Share in Enacted Congressional Plan

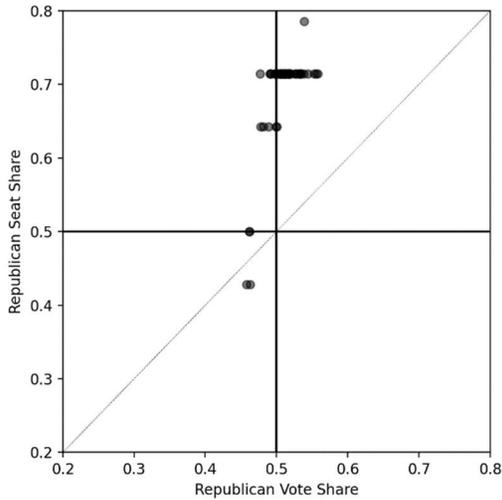


Figure 2: Vote & Seat Share in Enacted Senate Plan

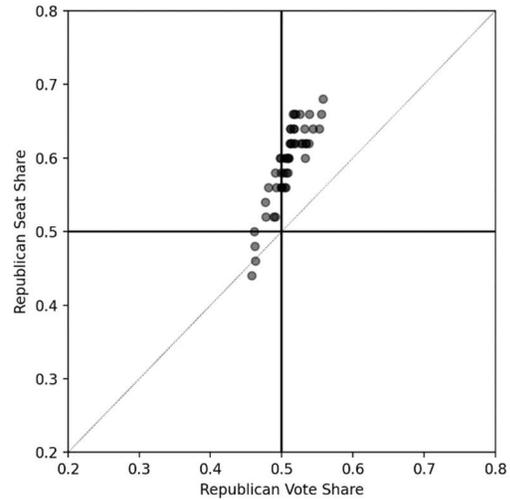
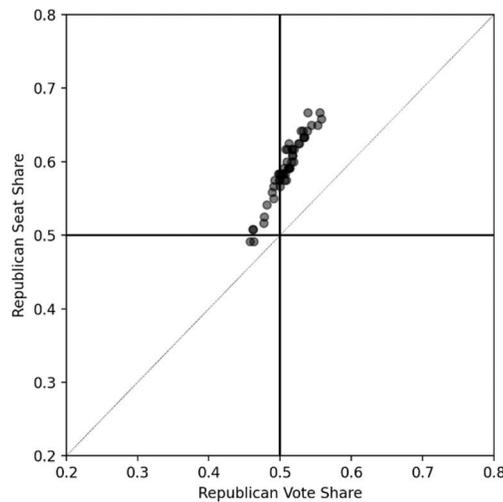


Figure 3: Vote & Seat Share in Enacted House Plan



129. As Figure 1 shows, if the major-party vote is almost evenly divided, 50% to 50%, the Enacted Congressional Plan will likely result in Republicans winning either 64% (9 of 14) or 71% (10 of 14) of North Carolina’s congressional seats. And this remains true even if the statewide vote shifts significantly in favor of Democratic candidates. When Democrats carry the statewide

vote by less than about seven percentage points (53.5% to 46.5%), they routinely continue to carry only four or five districts out of 14. The data suggest that Democrats would carry half or more of the congressional districts only if they were to prevail in the statewide vote by a margin of at least seven or eight percentage points.

130. As Figure 2 shows, if the major-party vote is almost evenly divided, 50% to 50%, the Enacted Senate Plan will likely result in Republicans winning between 56% and 60% of North Carolina's Senate seats (28 to 30, out of 50). And this remains true even if the statewide vote shifts significantly in favor of Democratic candidates. When Democrats carry the statewide vote by less than about seven percentage points (53.5% to 46.5%), they routinely continue to carry less than half the Senate seats. The data suggests that Democrats would carry half or more of the Senate districts only if they were to prevail in the statewide vote by a margin of at least seven or eight percentage points.

131. As Figure 3 shows, if the major-party vote is almost evenly divided, 50% to 50%, the Enacted House Plan will likely result in Republicans winning between 57% and 58% of North Carolina's House seats (68 to 70 seats, out of 120). And this remains true even if the statewide vote shifts significantly in favor of Democratic candidates. When Democrats carry the statewide vote by less than about seven percentage points (53.5% to 46.5%), they routinely continue to carry less than half the House seats. The data suggest that Democrats would carry half or more of the House districts only if they were to prevail in the statewide vote by a margin of at least seven or eight percentage points.

B. Racial Vote Dilution in the Enacted Plans

132. The General Assembly in the past has often enacted voting laws that target voters by race. *Supra* Part II. Statistics-driven analysis shows that the Enacted Plans similarly dilute

black voting strength. The Enacted Plans pack black voters in some districts while cracking them across others. And the Enacted Plans deny many black voters the opportunity to nominate and elect their candidates of their choice when, under fair maps that comply with state-law requirements and policies, black voters would have that opportunity.

133. The General Assembly, moreover, intended to target voters by race and engage in racial vote dilution. Not only do legislative map-drawers typically have exhaustive knowledge of the racial and partisan characteristics of areas across the state, but here, the Committees and the General Assembly were told about the racial problems in the Enacted Plans. In particular, they were told that the criteria and methods they adopted would unlawfully dilute the voting strength of black voters.³¹ They were also told—as publicly available sources disclosed—that the specific maps they proposed would unlawfully dilute the voting strength of black voters.³² Yet the General Assembly enacted the Enacted Plans anyway, after a rushed process whose putative prohibition on considering “[d]ata identifying the race of ... voters” or “[p]artisan ... election results” served only to avoid publicizing the racial and partisan data that would shine a light on just how severely the

³¹ Lucille Sherman, *NC Lawmakers Move to Bar the Use of Racial, Election Data in Drawing Election Districts*, Raleigh News & Observer (Aug. 11, 2021), <https://www.newsobserver.com/news/politics-government/article253397675.html>; Lucille Sherman, *NC Lawmakers Will Not Use Racial and Election Data from the Census to Draw District Maps*, Raleigh News & Observer (Aug. 13, 2021), <https://www.newsobserver.com/news/politics-government/article253434564.html>; Yanqi Xu, *Republican Legislators Reject Democrats’ Proposal to Include Racial Data in Redistricting*, NC Policy Watch (Aug. 13, 2021), <https://www.ncpolicywatch.com/2021/08/13/republican-legislators-reject-democrats-proposal-to-include-racial-data-in-redistricting>.

³² Will Doran & Brian Murphy, *North Carolina Could Have New Political Maps This Week. Here’s Where Things Stand*, Raleigh News & Observer, <https://www.newsobserver.com/news/politics-government/article255506961.html> (Nov. 3, 2021); Gary D. Robertson, *North Carolina GOP Nears Completion of Redistricting Maps*, Associated Press (Nov. 4, 2021), <https://www.newsobserver.com/news/state/north-carolina/article255525166.html>; Rusty Jacobs, *The General Assembly Has Passed GOP-Drawn Maps, Setting Stage for Likely Legal Challenges*, WFAE (Nov. 4, 2021), <https://www.wfae.org/politics/2021-11-04/the-general-assembly-has-passed-gop-drawn-maps-setting-stage-for-likely-legal-challenges>.

proposed maps diluted black voting power and to avert more searching scrutiny of the proposed maps by the public and experts. Indeed, the General Assembly refused to even consider amendments “trying to address illegal racial or partisan gerrymanders in certain regions, including Mecklenburg, Wake, and several northeastern counties.”³³

i. The Enacted Congressional Plan

134. The Enacted Congressional Plan dilutes black voting power by dispersing, or “cracking,” black voters among districts so that they cannot impact election outcomes.

135. For example, under the districting plan used for the 2020 congressional elections, one district (old Congressional District 6) preserved the cohesive black populations in Greensboro, High Point, and Winston-Salem in Guilford and Forsyth Counties and protected the ability of these voters to nominate and elect candidates of their choice. The Enacted Congressional Plan, by contrast, deprives these voters of that opportunity by splitting Guilford and Forsyth Counties’ black communities into a separate district dominated by white, Republican voters.

- b. First, black voters who live west of downtown Greensboro are cracked into District 7. The Enacted Congressional Plan draws District 7 to create a substantial Republican advantage. As a result, Congressional District 7 is far less compact than necessary under a fair map: It has a Polsby-Popper compactness score of only 0.20.
- c. Second, black voters in downtown Greensboro and to the north are cracked into a heavily Republican District 11. To overcome the voting strength of these black voters, District 11 curves around Democratic-leaning Forsyth County before

³³ Gary D. Robertson, *North Carolina GOP Nears Completion of Redistricting Maps*, Associated Press (Nov. 4, 2021), <https://www.newsobserver.com/news/state/north-carolina/article255525166.html>.

stretching far west, bringing within its borders Republican-majority regions all the way to the Tennessee border. Again, District 11 is far less compact than necessary under a fair map: It has a Polsby-Popper score of just 0.21.

- d. Third, black voters from the High Point area are cracked into a third heavily Republican district, District 10. To overcome the voting strength of these black voters, District 10 cuts west to skirt Democratic populations in Davidson County, then turns 90 degrees to the south to collect white Republican voters all the way to the Charlotte suburbs. Again, District 10 is less compact than necessary under a fair map: It has a Polsby-Popper score of just 0.20.
- e. Fourth, black voters in Winston-Salem are cracked into District 12, which stretches west into Republican-dominated areas of Yadkin County and then heads southwest until it reaches the Gaston County border. The result, again, is that District 12 is less compact than necessary under a fair map: It has a Polsby-Popper score of 0.24.

136. The Committee chairs were warned of the Enacted Congressional Plan's racial impact. In the November 3 House Redistricting Committee hearing, Representative Pricey Harrison of Guilford County stated that the map divided the Triad region "very significantly in ways that are splitting up the large African-American populations and communities of interest," in part by extending Congressional District 11 from "downtown Greensboro all the way to the Tennessee border." The General Assembly, however, proceeded to enact a map carving up the Triad's black communities into different districts.³⁴

³⁴ See also N.C. General Assembly, *House Redistricting Committee Hearing*, YouTube (Nov. 3, 2021) <https://www.youtube.com/watch?v=M53S7TbN6ew> ((50:30–50:50) (Representative Harrison observing, "I think that it was a problem for us not to consider, as I said, on the Senate maps and the House maps, the Voting Rights Act implications for this because I think you have a

137. The Enacted Congressional Plan also dilutes black voting strength in Durham County through cracking. The Plan combines Durham County’s black population into one heavily Democratic district—Congressional District 6—that is dominated by white Democratic voters. Although Congressional District 6 is likely to vote for a Democratic candidate in the general election, black voters in Durham will not have the opportunity to nominate and elect candidates of their choice because of racially polarized voting in the Democratic primary. This result could have been avoided by combining Durham’s black communities with black communities in northeastern North Carolina in Congressional District 2. *Infra* ¶ 158 (Congressional District 2 of the Optimized Congressional Map). The Enacted Congressional Plan, however, places Durham County’s black voters in Congressional District 6 to limit their electoral power.

138. The Enacted Congressional Plan splits most of the black population in southeastern North Carolina across three separate districts. The black communities in Bladen, Cumberland, Duplin, Hoke, Richmond, Robeson, Sampson, and Scotland Counties are divided among Congressional Districts 3, 4, and 8. All three districts are likely to elect white-preferred Republican candidates. And because the General Assembly drew these districts to dilute black voting strength, these districts are less compact than they would be under a fair map. These districts could have been drawn to preserve black voters’ opportunity to nominate and elect candidates of their choice while improving compactness. *Infra* ¶ 158 (Congressional District 4 of the Optimized Congressional Map).

139. By cracking black North Carolinians and diluting their voting power across the state, the Enacted Congressional Plan provides black voters an opportunity to nominate and elect

serious violation here with the African American populations in Greensboro that are all divided up. I just don’t understand it. I think it’s a terrible congressional map.”)).

their preferred candidates in only *two* of the state’s 14 congressional districts—or about 14% of the districts. That is far less than black citizens’ share of North Carolina’s voting-age population.

140. Nothing in North Carolina’s political geography or state law required the General Assembly to enact a congressional map that dilutes black voting strength. As shown in Plaintiffs’ Optimized Congressional Map, it is possible to draw four, rather than two, highly compact congressional districts where black voters can nominate their preferred candidates in Democratic primaries and then elect them in the general elections. *Infra* ¶ 158.

ii. The Enacted Senate Plan

141. The Enacted Senate Plan dilutes black voting power by packing black voters into a small number of districts to reduce their voting power in other districts, and by cracking other black voters across different districts. As explained, the Committees skipped the very first requirement of the *Stephenson/Dickson* algorithm, which provides that “‘legislative districts required by the VRA shall be formed’ before non-VRA districts” and before identifying county clusters. *Dickson II*, 368 N.C. at 490, 781 S.E.2d at 413 (quoting *Stephenson I*, 355 N.C. at 383, 562 S.E.2d at 396-97); *see supra* ¶ 52. But even taking the county clusters that the Duke study identified as a given (without regard to the first step of the *Stephenson/Dickson* algorithm), the Enacted Senate Plan unlawfully dilutes black voting strength.

142. Northeastern North Carolina is home to a significant, historically cohesive community of black voters. The community was one of the earliest targets of racial gerrymandering in North Carolina: After the Civil War, it was packed into the “Black Second” congressional district in order to dilute black voting strength.³⁵

³⁵ Eric Anderson, *Race and Politics in North Carolina 1872–1901: The Black Second* 3–4, 141 (1981).

143. The Enacted Senate Plan dilutes the black community's voting strength by cracking the community across Senate Districts 1 and 2.

144. Pursuant to the Duke study's implementation of the *Stephenson/Dickson* algorithm, the 18 counties within Senate Districts 1 and 2 can be clustered into two possible one-district groupings.

- a. First, the 18 counties can be configured such that Carteret, Chowan, Dare, Hyde, Pamlico, Pasquotank, Perquimans, and Washington Counties are grouped into one district; and Bertie, Camden, Currituck, Gates, Halifax, Hertford, Martin, Northampton, Tyrrell, and Warren Counties are grouped into a second district. Pursuant to this configuration, the first district would still favor white-preferred Republican candidates, but the second district would maintain much of northeastern North Carolina's black community in one district and preserve these voters' opportunity to nominate and elect candidates of their choice. *Infra* ¶ 165 (Senate Districts 1 and 2 of the Optimized Senate Map).
- b. This configuration is preferable under state law for other reasons as well: It minimizes the number of county traversals among the 18 counties to 23 county-border crossings, consistent with the Whole County Provisions. It also yields more compact districts. The lowest Polsby-Popper compactness score for either district is 0.17.
- c. The General Assembly, however, rejected this configuration. Instead, the General Assembly split northeastern North Carolina's black community into two districts in which they cannot elect candidates of their choice. And in doing so, the General Assembly unnecessarily increased county traversals and reduced compactness.

- d. Under the Enacted Senate Plan, Bertie, Camden, Currituck, Dare, Gates, Hertford, Northampton, Pasquotank, Perquimans, and Tyrrell Counties are grouped into District 1; and Carteret, Chowan, Halifax, Hyde, Martin, Pamlico, Warren, and Washington Counties are grouped into District 2. This configuration increases the number of county traversals to 24. It also lowers District 2's Polsby-Popper compactness score to just 0.10. That score indicates a substantially non-compact district.
- e. This configuration dilutes black voting power: With black voters divided between districts, both districts will reliably elect the white-preferred Republican candidates.
- f. The General Assembly knew that adopting the Enacted Senate Plan's configuration would dilute black voting power. Senator Blue warned, both in committee and on the floor, that adopting this configuration would dilute the voting power of black voters by cracking them between two side-by-side districts, and he offered an amendment to avoid this result by using the first configuration.³⁶ The amendment was rejected, and the Committees and General Assembly enacted their plan to divide northeastern North Carolina's black community into two districts and deny black voters the opportunity to elect their candidates of choice.

145. The Enacted Senate Plan draws Senate District 14 to pack the large black community in Raleigh, in Wake County, while cracking black voters elsewhere.

- a. Drawing compact Senate districts in Wake County would create two districts in which Wake County's black voters have the opportunity to nominate and elect

candidates of their choice, both in the Democratic primary election and in the general election. The Enacted Senate Plan eliminates one of these districts. It does so through a combination of packing and cracking.

- b. Under the previous map, the old Senate District 14 provided black voters in Raleigh and eastern Wake County the opportunity to nominate and elect their candidates of choice. The Enacted Senate Plan, however, increases the proportion of Senate District 14's voters who are black by nearly ten percentage points. This packing of black voters helps push the district's Democratic vote share to more than 70%. The Enacted Senate Plan thus "wastes" these additional black votes in District 14 and then splits other black voters into Senate District 18, where black candidates will often be unable to elect candidates of their choice due to racially polarized voting in primary elections. This creates an additional district where the white-preferred candidate will prevail. Nothing in North Carolina's political geography or state law required the packing of black voters into District 14 or the cracking of voters into District 18. To the contrary, a more compact configuration would have yielded two, more compact Senate districts where Wake County's large black population could nominate and elect their candidates of choice. *Infra* ¶ 165 (Senate Districts 14 and 18 of the Optimized Senate Map).
146. The Enacted Senate Plan packs and cracks black voters in Guilford County.
- a. In Guilford County, the Enacted Senate Plan again adds thousands of black voters to a district where black voters already had the opportunity to nominate and elect the candidate of their choice, to weaken black voting power in an adjoining district.

- b. Under the previous map, old Senate District 28 already allowed black voters to nominate and elect their candidates of choice. The Enacted Senate Plan, however, increases the proportion of the district's voting population that is black by nearly six percentage points. This packing, in turn, cracks the rest of Guilford County's black community into Senate District 27. Although Senate District 27 is heavily Democratic, it is unlikely to nominate a black-preferred candidate due to racially polarized voting in the Democratic primary.
- c. Senate District 27 could have been drawn, consistent with North Carolina law, to form a second district where Guilford County's black community would have the opportunity to nominate and elect its candidates of choice. Instead, the General Assembly drew the district to add more white voters and to deprive the black community of the opportunity to elect the candidates of its choice. *Infra* ¶ 165 (Senate Districts 27 and 28 of the Optimized Senate Map).

147. Nothing in North Carolina's political geography or state law required the General Assembly to enact a Senate map that dilutes black voting strength. As shown in Plaintiffs' Optimized Senate Map, it is possible to draw at least three additional Senate districts that comply with North Carolina law, adhere to traditional and neutral districting principles, and preserve the opportunity of North Carolina's black communities to nominate and elect their candidates of choice.

iii. The Enacted House Plan.

148. The Enacted House Plan dilutes black voting power by packing black voters into a small number of districts to reduce their voting power in other districts and by cracking other black voters across districts so that they cannot affect election outcomes. As with the Enacted Senate

Plan, the Committees skipped the first requirement of the *Stephenson/Dickson* algorithm. *Supra* ¶¶ 65–69. But even taking as a given the county clusters that the Duke study identified (without regard to the first step of the *Stephenson/Dickson* algorithm), the Enacted House Plan unlawfully dilutes black voting strength.

149. Wayne County is home to well-established black communities in Brogden and Goldsboro. Wayne County’s two House districts can be drawn to preserve these communities within one district where black voters have an opportunity to nominate and elect candidates of their choice. *Infra* ¶ 173 (House District 10 of the Optimized House Map). Instead, the Enacted House Plan cracks Wayne County’s black population into two districts (House Districts 4 and 10) where they have no opportunity to elect their candidates of choice due to opposition from white voters. The line between the two districts severs Goldsboro from Brogden just a few miles to the south.

150. Pitt County must accommodate two House districts. The Enacted House Plan draws the line between these districts to pack Greenville’s largest black neighborhoods into House District 8. The Enacted House Plan also carves several largely white neighborhoods southeast of downtown Greenville out of House District 8 and places them in House District 9. This enables white voters to vote as a bloc to defeat black-preferred candidates in House District 9.

151. Cumberland County is also affected by racial vote dilution in the Enacted House Plan. The county’s four districts are configured to pack black voters into House District 44. By doing so, the Enacted House Plan deprives black residents in several other parts of the county—including in downtown Fayetteville—the opportunity to nominate and elect candidates of their choice.

152. The Enacted House Plan does the same in Wake County. Wake County can yield five districts where black voters have the opportunity to nominate and elect the candidates of their choice. *Infra* ¶ 173. The Enacted House Plan concentrates black voters into House Districts 38 and then cracks other black voters by splitting them into House Districts 11, 34, and 35 in order to carve out one additional district where white voters can vote as a bloc to defeat the black-preferred candidate.

153. Nothing in North Carolina’s political geography or state law required the General Assembly to enact a House map that dilutes black voting strength. As shown in Plaintiffs’ Optimized House Map, it is possible to draw at least four additional House districts in Wayne, Wake, Cumberland, and Pitt Counties that comply with North Carolina law, adhere to traditional districting principles, and preserve black voters’ opportunity to nominate and elect candidates of their choice. *Infra* ¶ 173.

V. Plaintiffs’ Optimized Maps

154. Plaintiffs have harnessed the power of high-performance computers, and employed cutting-edge computational methods and resources, to draw alternative maps that comply with state-law requirements and policies, advance traditional and neutral districting principles, and yield more competitive districts. Indeed, using these cutting-edge tools, Plaintiffs have created maps that approach being “Pareto optimal,” which means that the maps are so strong on each redistricting criterion that improving the map on any one criterion necessarily worsens it on another. This Complaint refers to these maps as the “Optimized Maps.” Part A describes the Optimized Congressional Map; Part B describes the Optimized Senate Map; and Part C describes the Optimized House Map.

155. Plaintiffs offer their Optimized Maps for two purposes.

156. First, these maps show that if the General Assembly had wanted to create fair maps—ones that avoid partisan gerrymandering and racial vote dilution—it could have done so while adhering to North Carolina law and traditional and neutral districting principles. Indeed, as detailed below, Plaintiffs’ Optimized Maps better implement these traditional and neutral districting principles than do the Enacted Plans. Hence, the General Assembly cannot claim that North Carolina’s political geography or state law compelled the skewed results the Enacted Plans yield. In fact, in every Senate and House cluster (except the one-district clusters mandated by the *Stephenson/Dickson* algorithm), the Optimized Maps increase partisan fairness, increase black voters’ electoral opportunities, reduce the number of county traversals, reduce the number of split municipalities, and/or increase compactness scores—showing that the Enacted Plans’ partisan gerrymandering and racial vote dilution affected every Senate and House district (as well as every congressional district) and confirming that relief from those constitutional violations must extend statewide to every district and cluster (except, again, for the one-district clusters mandated by the *Stephenson/Dickson* algorithm).

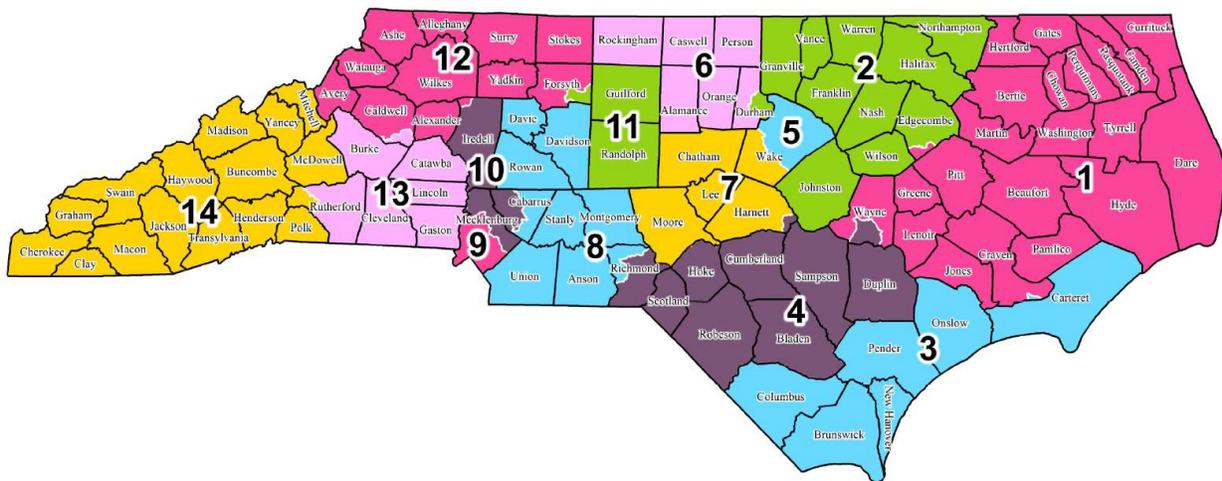
157. Second, Plaintiffs offer their Optimized Maps as remedial maps for the Court’s consideration. Although North Carolina law presumptively allows the General Assembly two weeks to enact its own remedial maps, N.C. Gen. Stat. § 120-2.4(a), it is quite possible that the General Assembly will not timely enact remedial maps that fully remedy the Enacted Plans’ constitutional violations. Plaintiffs respectfully submit that their Optimized Maps—by showing what is possible, consistent with state law and traditional and neutral districting principles—provide the benchmark against which other remedial plans should be measured. Most tellingly, under each of the three Optimized Maps, both political parties have a realistic opportunity to capture half or more of the districts if their candidates can garner half or more of the votes

statewide—which is precisely the key feature that all of the General Assembly’s Enacted Plans lack. To the extent the General Assembly does not timely adopt remedial maps that remedy the constitutional violations in the Enacted Plans as well as the Optimized Maps would, the Court should order that the 2022 elections proceed under the Optimized Maps.

A. Plaintiffs’ Optimized Congressional Map.

158. Figure 4 depicts the Optimized Congressional Map. Exhibit D provides a larger version of the Optimized Congressional Map; Exhibit G provides the detailed locational data that the Optimized Congressional Map reflects. *See* Feldman Aff., Exs. D, G.

Figure 4: Optimized Congressional Map



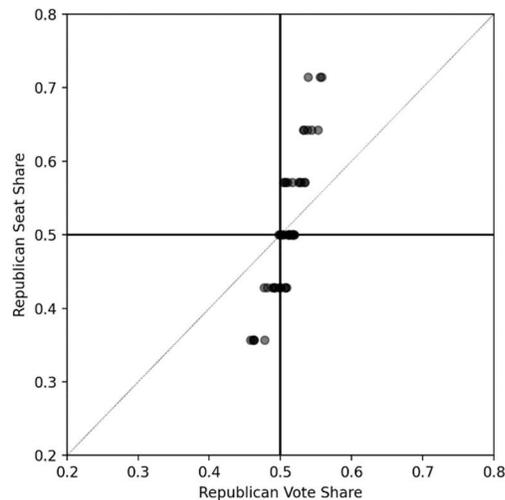
159. In the Optimized Congressional Map, neither party has an entrenched advantage. Instead, the party whose candidates earn the most votes statewide has a fair chance to win the most congressional seats. For example, as Table 1 shows, had the votes in the five close elections described above, *supra* ¶ 91, gone to congressional candidates of the same party, the outcomes under the Optimized Congressional Map would have far better reflected each party’s strength in the electorate.

Table 1: Outcomes in 5 Elections in Enacted & Optimized Congressional Maps

Election (margin)	Enacted Congressional Plan	Optimized Congressional Map
2016 Governor (0.2% D win)	10 R, 4 D	7 R, 7 D
2016 Ins. Comm'r (0.8% R win)	10 R, 4 D	8 R, 6 D
2020 President (1.4% R win)	10 R, 4 D	6 R, 8 D
2020 Chief Justice (0.0% R win)	10 R, 4 D	6 R, 8 D
2020 Atty General (0.3% D win)	10 R, 4 D	6 R, 8 D

160. Figure 5 illustrates how the Optimized Congressional Map preserves equal opportunities for both political parties. The x-axis depicts the Republican share of the major-party vote in every partisan statewide general election conducted in 2020, 2018, 2016, 2014, and 2012. The y-axis depicts the share of seats that the vote share would be expected to generate under the Optimized Congressional Map.

Figure 5: Vote Share & Seat Share in Optimized Congressional Map



161. As Figure 5 shows, if the major-party vote is almost evenly divided, 50% to 50%, the Optimized Congressional Map will likely result in a 7-to-7 split of North Carolina’s congressional seats, or in one major party winning 43% (6 seats) and the other 57% (8 seats) of North Carolina’s congressional seats. If the statewide vote shifts significantly in favor of

Democratic candidates, so that Democratic candidates win by five to seven points, Democrats are likely to win eight or nine (57% or 64%) of North Carolina's congressional seats. If the statewide vote shifts significantly in favor of Republican candidates, so that Republican candidates win by five to seven points, Republicans are likely to win eight or nine (57% or 64%) of North Carolina's congressional seats.

162. The Optimized Congressional Map also creates districts that are more compact than the Enacted Congressional Plan. Compactness is commonly measured in two ways. The Polsby-Popper score—which this Complaint has discussed above—measures a district's jaggedness by comparing its area to the length of its perimeter. A circle gets a perfect Polsby-Popper score of 1.0. The Reock score measures a district's elongation by comparing its area to the area of the smallest circle that could circumscribe the district. Again, a circle gets a perfect Reock score. The average Polsby-Popper score of the 14 districts in the Optimized Congressional Map is 0.38. The same figure for the Enacted Congressional Plan is 0.30. The average Reock score of the 14 districts in the Optimized Congressional Map is 0.47. The same figure for the Enacted Congressional Plan is 0.42.

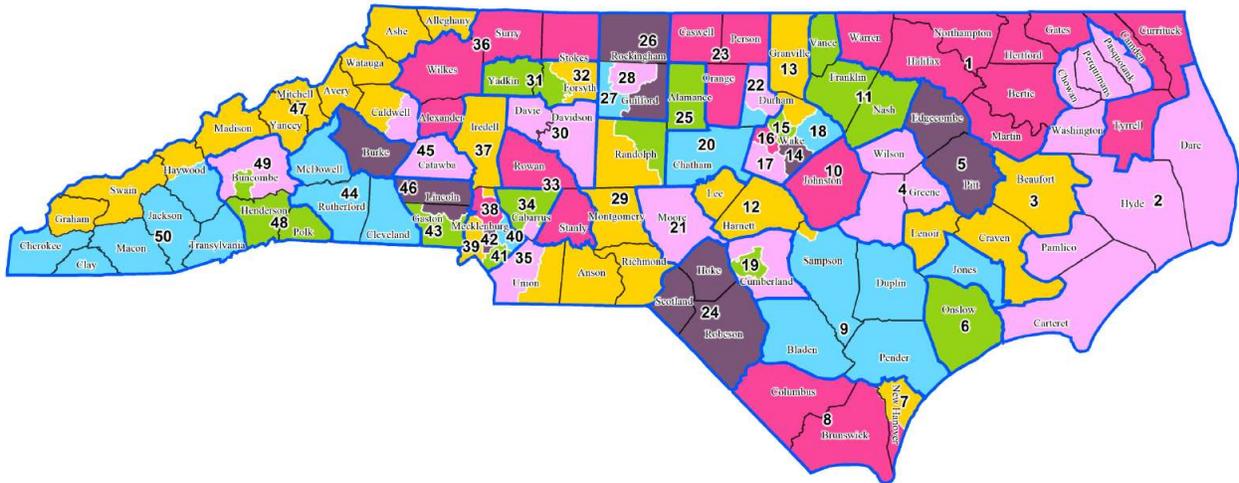
163. The Optimized Congressional Map avoids unnecessary municipal splits. The Optimized Congressional Map splits 27 municipalities into 58 parts. The Enacted Congressional Plan splits 42 municipalities into 90 parts.

164. The Optimized Congressional Map also avoids unlawfully packing and cracking black voters—and thereby depriving black voters an equal opportunity to nominate and elect their preferred candidates. In the Optimized Congressional Map, black voters would have that opportunity in four districts, compared with only two districts in the Enacted Congressional Plan.

B. Plaintiffs’ Optimized Senate Map.

165. Figure 6 depicts the Optimized Senate Map. Exhibit E provides a larger version of the Optimized Senate Map; Exhibit H provides the detailed locational data that the Optimized Senate Map reflects. *See* Feldman Aff., Exs. E, H.

Figure 6: Optimized Senate Map



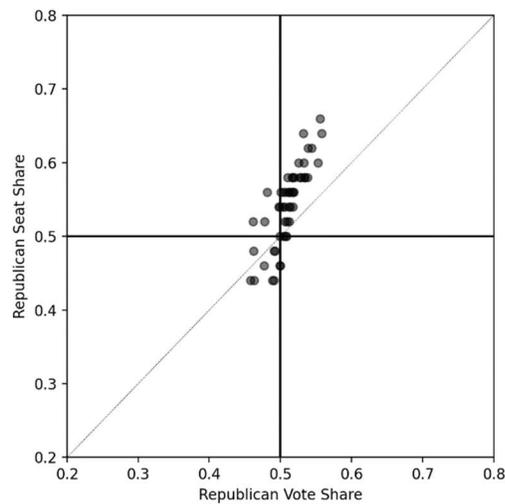
166. In the Optimized Senate Map, neither party has an entrenched advantage. Instead, the party whose candidates earn the most votes statewide has a fair chance to win the most Senate seats. For example, as Table 2 shows, had the votes in the five close elections described above, *supra* ¶ 91, gone to Senate candidates of the same party, the outcomes under the Optimized Senate map would have far better reflected each party’s strength in the electorate.

Table 2: Outcomes in 5 Elections in Enacted & Optimized Senate Maps

Election (margin)	Enacted Senate Plan	Optimized Senate Map
2016 Governor (0.2% D win)	30 R, 20 D	23 R, 27 D
2016 Ins. Comm’r (0.8% R win)	28 R, 22 D	28 R, 22 D
2020 President (1.4% R win)	30 R, 20 D	25 R, 25 D
2020 Chief Justice (0.0% R win)	28 R, 22 D	23 R, 27 D
2020 Atty General (0.3% D win)	29 R, 21 D	25 R, 25 D

167. Figure 7 illustrates how the Optimized Senate Map preserves equal opportunity for both political parties. The x-axis depicts the Republican share of the major-party vote in every partisan statewide general election conducted in 2020, 2018, 2016, 2014, and 2012. The y-axis depicts the share of seats that the vote share would be expected to generate under the Optimized Senate Map.

Figure 7: Vote Share & Seat Share in Optimized Senate Map



168. As Figure 7 shows, if the major-party vote is almost evenly divided, 50% to 50%, the Optimized Senate Map will likely result in Democrats winning between 44% (22 seats) and 54% (27 seats) of North Carolina’s Senate seats. If the statewide vote shifts significantly in favor of Democratic candidates, so that Democratic candidates win by five to seven points, Democrats are likely to win between 44% (22 seats) and 56% (28 seats) of North Carolina’s Senate seats. If the statewide vote shifts significantly in favor of Republican candidates, so that Republican candidates win by five to seven points, Republicans are likely to win between 58% (29 seats) and 64% (32 seats) of North Carolina’s Senate seats.

169. The Optimized Senate Map also creates districts that are more compact than the Enacted Senate Plan. The average Polsby-Popper score of the 50 districts in the Optimized Senate Map is 0.37. The same figure for the districts in the Enacted Senate Plan is 0.34. The average Reock score of the 50 districts in the Optimized Senate Map is 0.43. The same figure for the Enacted Senate Plan is 0.42.

170. Similarly, the Optimized Senate Map avoids unnecessary county traversals. The Optimized Senate Map traverses county boundaries only 89 times. The Enacted Senate Plan traverses county boundaries 97 times, creating eight unnecessary county traversals.

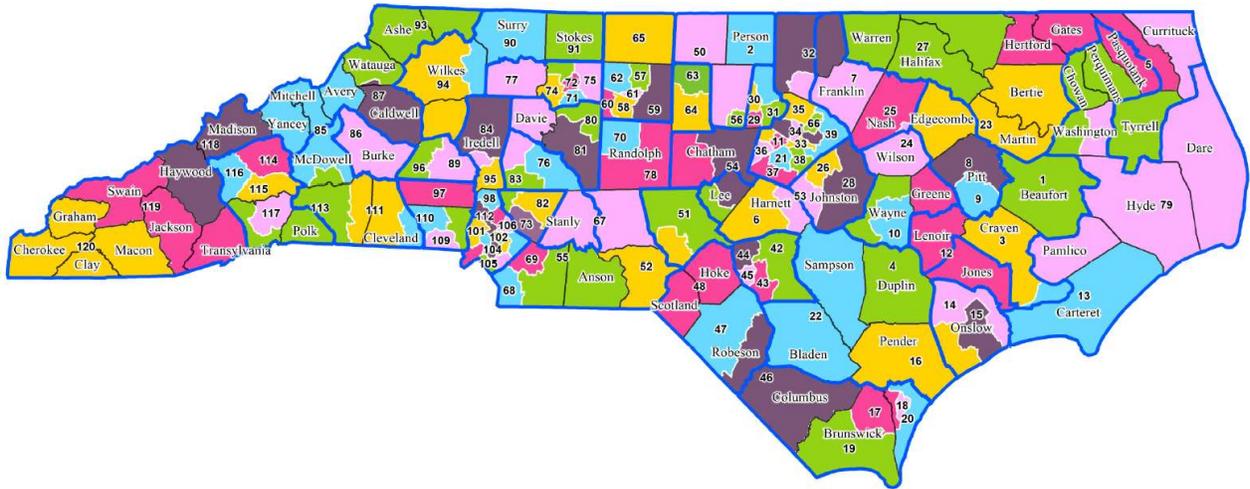
171. The Optimized Senate Map avoids unnecessary municipal splits. The Optimized Senate Map splits 51 municipalities into 125 parts. The Enacted Senate Plan splits 65 municipalities into 152 parts.

172. The Optimized Senate Map also avoids unlawfully packing and cracking black voters. In the Optimized Senate Map, black voters retain the opportunity to nominate and elect their candidates of choice in 13 districts, compared with just 10 in the Enacted Senate Plan.

C. Plaintiffs' Optimized House Map.

173. Figure 8 depicts the Optimized House Map. Exhibit F provides a larger version of the Optimized House Map; Exhibit I provides the detailed locational data that the Optimized House Map reflects. *See* Feldman Aff., Exs. F, I.

Figure 8: Optimized House Map



174. In the Optimized House Map, neither party has an entrenched advantage. Instead, the party whose candidates earn the most votes statewide has a fair chance to win the most House seats. For example, as Table 3 shows, had the votes in the five close elections described above, *supra* ¶ 91, gone to House candidates of the same party, the outcomes under the Optimized House Map would have far better reflected each party’s strength in the electorate.

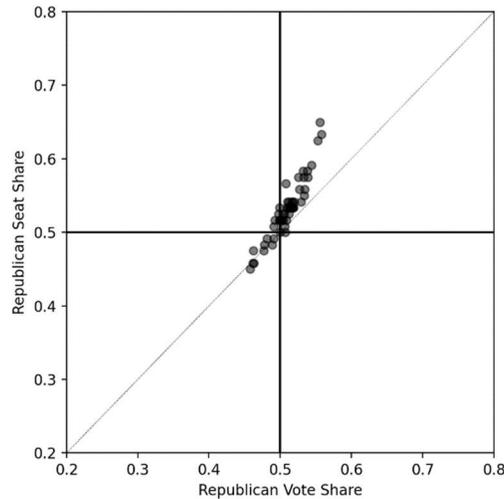
Table 3: Outcomes in 5 Elections in Enacted & Optimized House Maps

Election (margin)	Enacted House Plan	Optimized House Map
2016 Governor (0.2% D win)	70 R, 50 D	62 R, 58 D
2016 Ins. Comm’r (0.8% R win)	70 R, 50 D	63 R, 57 D
2020 President (1.4% R win)	70 R, 50 D	60 R, 60 D
2020 Chief Justice (0.0% R win)	68 R, 52 D	60 R, 60 D
2020 Atty General (0.3% D win)	69 R, 51 D	62 R, 58 D

175. Figure 9 illustrates how the Optimized House Map preserves equal opportunity for both political parties. The x-axis depicts the Republican share of the major-party vote in every partisan statewide general election conducted in 2020, 2018, 2016, 2014, and 2012. The y-axis

depicts the share of seats that the vote share would be expected to generate under the Optimized House Plan.

Figure 9: Vote Share & Seat Share in Optimized House Map



176. As Figure 9 shows, if the major-party vote is almost evenly divided, 50% to 50%, the Optimized House Map will likely result in Democrats winning between 47% (56 seats) and 50% (60 seats) of North Carolina’s House seats. If the statewide vote shifts significantly in favor of Democratic candidates, so that Democratic candidates win by five to seven points, Democrats are likely to win between 52% (62 seats) and 54% (65 seats) of North Carolina’s House seats. If the statewide vote shifts significantly in favor of Republican candidates, so that Republican candidates win by five to seven points, Republicans are likely to win between 54% (65 seats) and 58% (70 seats) of North Carolina’s House seats.

177. The Optimized House Map also creates districts that are more compact than the Enacted House Plan. The average Polsby-Popper score of the 120 districts in the Optimized House Map is 0.41. The same figure for the districts in the Enacted House Plan is 0.35. The average Reock score of the 120 districts in the Optimized House Map is 0.47. The same figure for the Enacted House Plan is 0.44.

178. Similarly, the Optimized House Map avoids unnecessary county traversals. The Optimized House Plan traverses county boundaries only 66 times. The Enacted House Plan traverses county boundaries 69 times—creating three unnecessary county boundary traversals.

179. The Optimized House Map avoids unnecessary municipal splits. The Optimized House Map splits 71 municipalities into 201 parts. The Enacted House Plan splits 112 municipalities into 292 parts.

180. The Optimized House Map also avoids unlawfully “packing” and “cracking” black voters. In the Optimized House Map, black voters retain the opportunity to nominate and elect their candidates of choice in 36 districts (compared with 31 in the Enacted House Plan).

VI. The Court Can and Should Enter Preliminary Relief Necessary to Preserve the Rights of Millions of North Carolinian Voters.

181. North Carolina’s primary election for congressional and legislative offices is currently scheduled for March 8, 2022, with second primaries set for April 26 (for North Carolina offices) or May 17, 2022 (for federal offices).³⁷ Any candidate seeking nomination for a congressional or legislative office currently must file a notice of candidacy between December 6 and December 17, 2021.³⁸

182. The North Carolina State Board of Elections administers these elections, and its officials are among the Defendants here.

183. North Carolina is an outlier on the 2022 election calendar. Forty-eight of the 50 States have 2022 primaries scheduled in May or later. Nineteen States have scheduled 2022

³⁷ *Running for Office*, N.C. State Board of Elections, <https://www.ncsbe.gov/candidates/running-office>.

³⁸ *See id.*; *see also* N.C. Gen. Stat. § 163-106.2.

primaries for August or later. Only North Carolina and Texas are contemplating a March primary, and Texas's may well be postponed.

184. The General Assembly's choice to retain a March 2022 primary is particularly striking given how the COVID-19 pandemic delayed the release of the census data required for redistricting. As early as February 24, 2021, North Carolina State Board of Elections Executive Director Karen Brinson Bell advised the General Assembly that it needed to delay the congressional and legislative primaries from March 8 to May 3 and the second primaries to July 12, given that the COVID-19 pandemic was likely to delay the release of census data.³⁹

185. The General Assembly, however, declined to reschedule the primaries for congressional and legislative offices despite the census delay—even as it did permit municipalities to delay municipal elections.⁴⁰

186. Ultimately, the census data were not released until August 12, 2021. Nevertheless, the General Assembly declined to delay the congressional and legislative primaries.⁴¹

187. Given the General Assembly's choice to retain an outlier primary schedule, even while enacting redistricting plans that gerrymander by party and dilute voting strength by race,

³⁹ *A Look Back at North Carolina's Historic 2020 Election & Looking Ahead at 2021*, N.C. State Board of Elections (Feb. 24, 2021) <https://www.ncleg.gov/documentsites/committees/House2021-21/02-24-21/House%20Elections%20Committee%20Presentation%202-24-2021%20FINALv2.pdf>.

⁴⁰ S.B. 722, S.L. 2021-56, 2021-2022 Sess. (N.C. 2021); Bryan Anderson, *N Carolina Elections Head: Delay '21 City Races, '22 Primary*, Associated Press (Feb. 23, 2021), <https://apnews.com/article/redistricting-municipal-elections-north-carolina-elections-fdc23aca0ba9981944a944923937f46c>.

⁴¹ The General Assembly's refusal to delay the primaries persisted into the fall. Representative Zack Hawkins asked Chair Hall at an October 5 hearing whether there was any consideration begin given to moving the March 2022 primary to May 2022 to allow the Committees time to consider public comment and develop the maps; Chair Hall, however, responded that the General Assembly would not consider moving the primaries. See N.C. General Assembly, *House Redistricting Committee Hearing*, YouTube (Oct. 5, 2021), https://www.youtube.com/watch?v=9UsiS_6r1UA (1:49:03–1:50:30) (exchange between Representative Hawkins and Chair Hall)).

prompt preliminary relief is necessary to safeguard the voting rights of the millions of North Carolinians harmed by the Enacted Plans. North Carolinians' constitutional rights should not be held hostage to an aberrational election calendar. This Court has the authority to, and should, order the necessary relief.

188. The Court should begin by enjoining Defendants, and anyone associated with them, from preparing for, administering, or conducting any elections (including the 2022 primary and general elections) under the Enacted Congressional Plan, the Enacted Senate Plan, the Enacted House Plan, or any other congressional or legislative redistricting plan that violates the North Carolina State Constitution. *E.g.*, *Stephenson I*, 355 N.C. at 359–60, 562 S.E.2d at 382; *see* N.C. Gen. Stat. § 120-2.3. If the North Carolina State Board of Elections proceeds with the March 2022 primary election as scheduled based on the Enacted Plans, Plaintiffs will be forced to vote under maps that constitute unconstitutional partisan gerrymanders and that dilute their votes based on race.

189. The Court should further order that, to the extent that the General Assembly does not, within two weeks from the date of an order granting such relief, enact redistricting plans that remedy the violations found herein as fully as Plaintiffs' Optimized Maps, then Defendants shall prepare for, administer, and conduct the 2022 primary and general elections under the Optimized Maps. Although North Carolina law presumptively allows the General Assembly two weeks to enact its own remedial maps, N.C. Gen. Stat. § 120-2.4(a), North Carolina courts can—indeed, must—select their own maps to the extent the General Assembly fails to fully remedy constitutional violations that the courts have identified. *E.g.*, *Stephenson I*, 355 N.C. at 385, 562 S.E.2d at 398; *Stephenson II*, 357 N.C. at 304, 582 S.E.2d at 249.

190. The Court should also, to the extent it deems necessary, delay the 2022 primary elections. While Plaintiffs believe that the Court can expeditiously hold proceedings on the unlawfulness of the Enacted Plans and on the Optimized Maps, the Court may determine that a modest delay in the primaries is appropriate. One option would be to delay the primaries until May 3, 2022, as the North Carolina State Board of Elections originally recommended. That would still leave North Carolina with the Nation’s second-earliest primaries (after only Texas). Because the statewide general election does not occur until November 8, 2022, that delay will not interfere with the administration of the general election. The Court should also delay and/or shorten the candidate filing period for the 2022 congressional and legislative elections for a reasonable time after the adoption of remedial maps.

191. North Carolina courts have previously granted similar relief: When necessary to avoid elections proceeding under unlawful maps, North Carolina courts have both delayed primary elections and deferred candidate filing periods.⁴²

192. Particularly given the General Assembly’s failure to take reasonable steps to accommodate the 2022 primary schedule to the COVID-19 pandemic, the Court should not

⁴² *Harper v. Lewis*, No. 19-CVS-012667, slip op. at 18 (N.C. Super. Ct. Oct. 28, 2019) (preliminarily enjoining legislative defendants and State Board of Elections “from preparing for or administering the 2020 primary and general elections” and retaining jurisdiction “to move the primary date for the congressional elections, or all of the State’s 2020 primaries, including for offices other than Congressional Representatives, should doing so become necessary to provide effective relief”); *Harper*, No. 19-CVS-012667, slip op. at 2 (N.C. Super. Ct. Nov. 20, 2019) (enjoining filing period for the 2020 congressional primary elections “until further order” in order to “allow the Court sufficient opportunity” to review the remedial maps recently enacted by the General Assembly); *see also Harper*, No. 19-CVS-012667, slip op. at 1 (N.C. Super. Ct. Dec. 2, 2019) (setting aside the injunction delaying the filing period for the congressional elections and ordering that period to begin by directing the State Board to “immediately accept for filing any notices of candidacy” from congressional candidates).

hesitate to delay the 2022 primary election and/or shorten the candidate filing period to the extent the Court deems doing so necessary.

193. Further, given the General Assembly’s failure to take reasonable steps to ensure that the 2022 elections take place under lawful and fair maps, the Court should order that, if any citizen has established his or her residence in a Senate or House district modified by any remedial redistricting plan approved by this Court, then that citizen shall be qualified to serve if elected to that office, notwithstanding the requirements of Sections 6 and 7 of Article II of the North Carolina State Constitution providing that each Senator and Representative, at the time of their election, shall have resided “in the district for which he is chosen for one year immediately preceding his election.” *See, e.g., Covington v. North Carolina*, 267 F. Supp. 3d 664, 668 (M.D.N.C. 2017) (entering similar order). Such relief is necessary to ensure that candidates from both parties are not unfairly disadvantaged by the need to implement remedial maps to remedy the constitutional defects in the Enacted Plans.

COUNT I⁴³
Unlawful Partisan Gerrymandering in Violation of
the North Carolina State Constitution’s Free Elections Clause,
Article I, Section 5

194. Plaintiffs incorporate paragraphs 1–193 as if fully set forth herein.

195. Article I, Section 10, of the North Carolina State Constitution provides that “[a]ll elections shall be free.” This clause is known as the Free Elections Clause.

196. The North Carolina Supreme Court gives the North Carolina State Constitution “a liberal interpretation in favor of its citizens with respect to those provisions which were designed

⁴³ As to each Count, Plaintiffs pursue claims exclusively under the North Carolina State Constitution and state law, irrespective of protections that federal law might independently provide.

to safeguard the liberty and security of the citizens.” *Corum v. Univ. of N.C. ex rel. Bd. of Governors*, 330 N.C. 761, 783, 413 S.E.2d 276, 290 (1992). Thus, the North Carolina Supreme Court has “recognized a direct action under the State Constitution against state officials for violations of rights guaranteed by the Declaration of Rights.” *Id.*

197. In particular, the Free Elections Clause “guarantees that all elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the People and that this is a fundamental right of North Carolina citizens, a compelling governmental interest, and a cornerstone of our democratic form of government.” *Common Cause*, 2019 WL 4569584, at *2.

198. The Free Elections Clause dates to the North Carolina Declaration of Rights of 1776 and is “one of the clauses that makes the North Carolina State Constitution more detailed and specific than the federal Constitution in the protection of the rights of its citizens.” *Common Cause*, 2019 WL 4569584, at *109 (citing *Corum*, 330 N.C. at 783, 413 S.E.2d at 290). “The federal Constitution contains no similar counterpart to this declaration, although several other states’ constitutions do.” *Id.* In other states, parallel constitutional provisions modeled on the English Bill of Rights have been broadly construed to protect the right to “an equally effective power to select the [candidate] of [one’s] choice.” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 793, 814 (Pa. 2018).

199. Fair districting maps implement the Free Elections Clause’s guarantee by allowing each major political party—Republican and Democratic—to fairly translate its voting strength into representation. By contrast, “extreme partisan gerrymandering ... is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Common Cause*, 2019 WL 4569584, at *110. That is because such gerrymanders do “not fairly and truthfully ascertain the will of the people”: “Voters

are not freely choosing their representatives. Rather, representatives are choosing their voters”—and “it is the will of the map drawers,” not the voters, “that prevails.” *Id.*

200. A redistricting plan violates the Free Elections Clause when it “specifically and systematically design[s] the contours of the election districts” in a way that makes it “nearly impossible for the will of the people ... to be expressed through their votes.” *Common Cause*, 2019 WL 4569584, at *112. When a law implicates the Free Elections Clause, “it is the effect of the act, and not the intention of the Legislature, which renders it void.” *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 225–26 (1875); see *Common Cause*, 2019 WL 4569584, at *112–13. Here, moreover, the General Assembly knew about and intended the partisan gerrymandering that the Enacted Plans yield.

201. The Enacted Plans constitute an extreme partisan gerrymander and thereby violate the Free Elections Clause. The Enacted Plans crack some groups of Democratic voters, while packing others. And even when the Democratic Party’s candidates earn more votes, those votes will not reliably translate into more seats. Under any likely election scenario, even if Democratic candidates win a substantial majority of statewide votes, they will not win more than 4 Congressional seats (of 14), more than 23 state Senate seats (of 50), or more than 58 state House seats (of 120). Meanwhile, few seats are competitive; most seats are “safe” Republican seats, while a smaller number are “safe” Democratic seats. Map-drawers, not voters, have determined the results of elections in North Carolina for the next decade.

202. No compelling or legitimate state interest justifies the extreme partisan gerrymandering reflected in the Enacted Plans.

203. These violations of the Free Elections Clause harm NCLCV and its members in the manner described above. *Supra* ¶¶ 11–13. These violations also harm many Individual Plaintiffs,

as well as NCLCV members, in the districts and/or clusters where they reside (by packing or cracking Democratic voters and/or preventing them from electing their candidates of choice) and statewide (by unfairly preventing Democratic voters across North Carolina from translating their votes into representation in Congress and the General Assembly).

COUNT II
Unlawful Partisan Gerrymandering in Violation of the
North Carolina State Constitution’s Equal Protection Clause,
Article I, Section 19

204. Plaintiffs incorporate paragraphs 1–193 as if fully set forth herein.

205. Article I, Section 19, of the North Carolina State Constitution provides in relevant part that “[n]o person shall be denied the equal protection of the laws” and that no person “shall ... be subjected to discrimination by the State because of race, color, religion, or national origin.” This clause is known as the Equal Protection Clause.

206. North Carolina’s Equal Protection Clause affords broader protections for voting rights than the U.S. Constitution’s equal protection provision. *See Common Cause*, 2019 WL 4569584, at *113 (citing *Stephenson I*, 355 N.C. at 377–81 & n.6, 562 S.E.2d at 393–96 & n.6; *Blankenship v. Bartlett*, 363 N.C. 518, 522–28, 681 S.E.2d 759, 762–66 (2009)); *Evans v. Cowan*, 122 N.C. App. 181, 184, 468 S.E.2d 575, 557–78, *aff’d*, 345 N.C. 177, 477 S.E.2d 926 (1996).

207. “The right to vote is one of the most cherished rights in our system of government.” *Blankenship v. Bartlett*, 363 N.C. 518, 522, 681 S.E.2d 759, 762 (2009). Hence, North Carolina’s Equal Protection Clause protects “[t]he right to vote on equal terms in representative elections,” *id.*, as well as the right to “substantially equal voting power.” *Stephenson I*, 355 N.C. at 379, 562 S.E.2d at 394.

208. “Generally, partisan gerrymandering runs afoul of the State’s obligation to provide all persons with equal protection of the law,” because “a partisan gerrymander treats individuals

who support candidates of one political party less favorably than individuals who support candidates of another party.” *Common Cause*, 2019 WL 4569584, at *113.

209. A plaintiff may prevail on a partisan-gerrymandering claim under North Carolina’s Equal Protection Clause by showing that a predominant purpose of state officials in drawing district maps was to entrench their party in power and that resulting plans in fact substantially dilute the votes of voters favoring rival parties. *Common Cause*, 2019 WL 4569584, at *114. If plaintiffs make such a showing, the State must provide a “legitimate, non-partisan justification” for its map. *Id.* 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.” *Common Cause*, 2019 WL 4569584, at *114 (quotation marks omitted).

210. The Enacted Plans violate the Equal Protection Clause by intentionally entrenching in power the political party favored by the map-drawers (the Republican Party) while diluting the votes of voters favoring the rival party (the Democratic Party) and preventing voters of the rival party from translating their votes into representation in Congress and the General Assembly.

211. No compelling or legitimate nonpartisan interest justifies the extreme partisan gerrymandering in the Enacted Plans.

212. These violations of the Equal Protection Clause harm NCLCV and its members in the manner described above. *Supra* ¶¶ 11–13. These violations also harm many Individual Plaintiffs, as well as NCLCV members, in the districts and/or clusters where they reside (by packing or cracking Democratic voters and/or preventing them from electing their candidates of choice) and statewide (by unfairly preventing Democratic voters across North Carolina from translating their votes into representation in Congress and the General Assembly).

COUNT III
Unlawful Partisan Gerrymandering in Violation of the
North Carolina State Constitution’s Free Speech and Free Assembly Clauses,
Article I, Sections 12 and 14

213. Plaintiffs incorporate paragraphs 1–193 as if fully set forth herein.

214. Article I, Section 12, of the North Carolina State Constitution provides in relevant part: “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.” This clause is known as the Free Assembly Clause.

215. Article I, Section 14, of the North Carolina State Constitution provides in relevant part: “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.” This clause is known as the Free Speech Clause.

216. North Carolina’s Free Assembly and Free Speech Clauses afford broader protections than the federal First Amendment. *Evans*, 122 N.C. App. at 184, 468 S.E.2d at 577; *Common Cause*, 2019 WL 4569584, at *118.

217. The Free Assembly and Free Speech Clauses protect the right of voters to participate in the political process in order to further the common good, to express political views, to affiliate with or support a political party, and to cast a vote. Voting for a candidate of one’s choice is core political speech protected by the Free Assembly and Free Speech Clauses. *Common Cause*, 2019 WL 4569584, at *119.

218. “The government unconstitutionally burdens speech where it renders disfavored speech *less effective*, even if it does not ban such speech outright. The government may not restrict citizens’ ‘ability to effectively exercise’ their free speech rights.” *Common Cause*, 2019 WL 4569584, at *121 (quoting *Heritage Vill. Church & Missionary Fellowship, Inc. v. State*, 40 N.C. App. 429, 451, 253 S.E.2d 473 (1979), *aff’d*, 299 N.C. 399, 263 S.E.2d 726 (1980)).

219. A law that discriminates between individuals’ speech based on its content or viewpoint without adequate justification impermissibly burdens protected expression. *State v. Bishop*, 368 N.C. 869, 875, 787 S.E.2d 814, 818–19 (2016). Discrimination may be evident from “the plain text of a statute, or the animating impulse behind it, or the lack of any plausible explanation besides distaste for the subject matter or message.” *Common Cause*, 2019 WL 4569584, at *121 (quotation marks omitted). A districting plan “need not explicitly mention any particular viewpoint to be impermissibly discriminatory.” *Id.*

220. “Just as voting is a form of protected expression, banding together with likeminded citizens” to participate in politics “is a form of protected association.” *Id.* “[F]or elections to express the popular will, the right to assemble and consult for the common good must be guaranteed.” *Id.* (quoting John V. Orth, *The North Carolina State Constitution* 48 (1995)).

221. The Enacted Plans violate the Free Assembly and Free Speech Clauses by diluting the voting power of voters who seek to vote for and associate with the disfavored political party and by impairing the effectiveness of political speech and expression because of the partisan content of that speech. Moreover, voters who seek to speak in favor of and associate with the disfavored political party—by working to elect that party’s candidates—cannot effectively do so because of the extreme partisan gerrymanders reflected in the Enacted Plans. And voters’ engagement with, and interest in, North Carolina’s elections will decline—because mapmakers have effectively determined the results.

222. No compelling or legitimate state interest justifies the extreme partisan gerrymandering reflected in the Enacted Plans.

223. These violations of the Free Assembly and Free Speech Clauses harm NCLCV and its members in the manner described above. *Supra* ¶¶ 11–13. These violations also harm many

Individual Plaintiffs, as well as NCLCV members, by diluting their voting power in the districts and/or clusters where they reside (by packing or cracking Democratic voters and/or preventing them from electing their candidates of choice) and statewide (by diluting the voting power of Democratic voters with whom many Individual Plaintiffs seek to associate, by burdening many Individual Plaintiffs’ ability to associate with other Democratic voters and to work to elect Democratic candidates, and by undermining many Individual Plaintiffs’ efforts to engage other voters on matters of public concern in order to further the common good).

COUNT IV
Unlawful Racial Vote Dilution in Violation of the
North Carolina State Constitution’s Free Elections Clause,
Article I, Section 5

224. Plaintiffs incorporate paragraphs 1–193 as if fully set forth herein.

225. The Free Elections Clause “guarantees that all elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the People and that this is a fundamental right of North Carolina citizens, a compelling governmental interest, and a cornerstone of our democratic form of government.” *Common Cause*, 2019 WL 4569584, at *2.

226. A redistricting plan violates the Free Elections Clause when it “specifically and systematically design[s] the contours of the election districts” in a way that makes it “nearly impossible for the will of the people ... to be expressed through their votes.” *Common Cause*, 2019 WL 4569584, at *112.

227. In particular, a redistricting plan violates the Free Elections Clause when it unnecessarily dilutes the voting power of North Carolina citizens on account of race—that is, when the plan provides voters from one racial group with less opportunity than other members of the electorate to nominate and elect representatives of their choice. *See Common Cause*, 2019 WL 4569584, at *115 (“A state may not dilute the strength of a person’s vote to give weight to other

interests.” (quoting *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 13, 269 S.E.2d 142, 150 (1980)).

228. When a law implicates the Free Elections Clause, “it is the effect of the act, and not the intention of the Legislature, which renders it void.” *Van Bokkelen*, 73 N.C. at 225–26; see *Common Cause*, 2019 WL 4569584, at *112–13. Here, moreover, the General Assembly knew about and intended the racial vote dilution that the Enacted Plans yield.

229. The Enacted Plans violate the Free Elections Clause by establishing district boundaries that pack and crack black voters into certain districts and make it more difficult for black voters to nominate and elect the candidates of their choice.

230. Alternative redistricting plans exist that would have avoided the racial vote dilution that the Enacted Plans yield while also complying with the other redistricting requirements set forth in the North Carolina State Constitution.

231. No compelling or legitimate state interest justifies the racial vote dilution reflected in the Enacted Plans.

232. These violations of the Free Elections Clause harm NCLCV and its members in the manner described above. *Supra* ¶¶ 11–13. These violations also harm many Individual Plaintiffs, as well as NCLCV members, in the districts and/or clusters where they reside (by packing or cracking black voters and/or preventing them from nominating and electing their candidates of choice) and statewide (by diluting the voting power of black voters across North Carolina).

COUNT V
Unlawful Racial Vote Dilution in Violation of the
North Carolina State Constitution’s Equal Protection Clause,
Article I, Section 19

233. Plaintiffs incorporate paragraphs 1–193 as if fully set forth herein.

234. North Carolina’s Equal Protection Clause provides that “[n]o person shall be denied the equal protection of the laws” and that no person “shall ... be subjected to discrimination by the State because of race, color, religion, or national origin.”

235. “The right to vote is one of the most cherished rights in our system of government,” and North Carolina’s Equal Protection Clause protects “[t]he right to vote on equal terms in representative elections.” *Blankenship*, 363 N.C. at 522, 681 S.E.2d at 762. “The right to vote on equal terms in representative elections—a one-person, one-vote standard—is a fundamental right.” *Id.*

236. 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.” *Common Cause*, 2019 WL 4569584, at *114 (quotation marks omitted). “[I]ntentionally targeting a particular race’s access to the franchise because its members vote for a particular party, in a predictable manner, constitutes discriminatory purpose,” even absent “any evidence of race-based hatred.” *McCrorry*, 831 F.3d at 222–23. It is not necessary to show that “any member of the General Assembly harbored racial hatred or animosity toward any minority group.” *Id.* at 233.

237. The Enacted Plans violate the Equal Protection Clause because they were designed to dilute the voting power of North Carolina citizens on account of race—that is, they pack and crack voters from one racial group and provide voters from one racial group with less opportunity than other members of the electorate to nominate and elect candidates of their choice.

238. Alternative redistricting plans exist that would have avoided the racial vote dilution that the Enacted Plans yield while also complying with the other redistricting requirements set forth in the North Carolina State Constitution.

239. The General Assembly acted intentionally in diluting the voting power of black voters by race.

240. No compelling or legitimate state interest justifies the racial vote dilution reflected in the Enacted Plans.

241. These violations of the Equal Protection Clause harm NCLCV and its members in the manner described above. *Supra* ¶¶ 11–13. These violations also harm many Individual Plaintiffs, as well as NCLCV members, in the districts and/or clusters where they reside (by packing or cracking black voters and/or preventing them from nominating and electing their candidates of choice) and statewide (by diluting the voting power of black voters across North Carolina).

COUNT VI

Violation of the North Carolina State Constitution’s Whole County Provisions, Article II, Sections 3(3) and 5(3), *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*

242. Plaintiffs incorporate paragraphs 1–193 as if fully set forth herein.

243. Article II, Section 3(3), of the North Carolina State Constitution provides: “No county shall be divided in the formation of a senate district.” Article II, Section 5(3), of the North Carolina State Constitution provides: “No county shall be divided in the formation of a representative district.” These clauses are known as the Whole County Provisions.

244. In *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*, the North Carolina Supreme Court interpreted the Whole County Provisions to harmonize them with other provisions of federal and state law and required adherence to a specific nine-step algorithm for drawing boundaries for state Senate and House districts. *Stephenson I*, 355 N.C. at 383–84, 562 S.E.2d at 397–98; *see Dickson II*, 368 N.C. at 489–91, 781 S.E.2d at 412–13. Adherence to this algorithm

is mandatory. See *Pender County v. Bartlett*, 361 N.C. 491, 510, 649 S.E.2d 364, 376 (2007), *aff'd sub nom. Bartlett v. Strickland*, 556 U.S. 1 (2009).

245. The Enacted Senate Plan and Enacted House Plan violate the mandatory *Stephenson/Dickson* algorithm and thereby violate the Whole County Provisions of the North Carolina State Constitution.

246. The *Stephenson/Dickson* algorithm requires the General Assembly to ““combin[e] or group[] 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.”” *Dickson II*, 368 N.C. at 490, 781 S.E.2d at 413 (quoting *Stephenson*, 355 N.C. at 383). “[W]ithin any such contiguous multi-county grouping, compact districts shall be formed, consistent with the [one-person, one-vote] standard, whose boundary lines do not cross or traverse the “exterior” line of the multi-county grouping.” *Id.* (quoting *Stephenson I*, 355 N.C. at 383–84, 562 S.E.2d at 397 (alteration in original)). “[T]he 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.” *Id.* (quoting *Stephenson I*, 355 N.C. at 384, 562 S.E.2d at 397). The *Stephenson/Dickson* algorithm also requires that districts be compact. Indeed, steps four, five, seven, and nine of the nine-step algorithm consider whether districts are compact. *Id.* at 490–91, 781 S.E.2d at 413.

247. In order to dilute the voting strength of black voters, and to gerrymander in favor of the incumbent Republican Party, the Enacted Plans violate the *Stephenson/Dickson* algorithm, and the Whole County Provisions, by unnecessarily traversing county boundaries and by forming

districts that, because they are drawn to favor Republican interests, are less compact than they could be under a fair map.

248. These violations of the Whole County Provisions and the *Stephenson/Dickson* algorithm harm Plaintiffs by contributing to the unconstitutional partisan gerrymandering and racial vote dilution described above, which harms Plaintiffs in the manner described in Counts I–V.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants, and:

- a. Declare that the Enacted Congressional Plan is unconstitutional and invalid because it violates the rights of Plaintiffs and other North Carolina voters under North Carolina’s Free Elections Clause, Equal Protection Clause, Free Speech Clause, and Free Assembly Clause and that all of its districts are affected by unconstitutional partisan gerrymandering, racial vote dilution, or both.
- b. Declare that the Enacted Senate Plan is unconstitutional and invalid because it violates the rights of Plaintiffs and other North Carolina voters under North Carolina’s Free Elections Clause, Equal Protection Clause, Free Speech Clause, and Free Assembly Clause and that all of its districts are affected by unconstitutional partisan gerrymandering, racial vote dilution, or both.
- c. Declare that the Enacted House Plan is unconstitutional and invalid because it violates the rights of Plaintiffs and other North Carolina voters under North Carolina’s Free Elections Clause, Equal Protection Clause, Free Speech Clause, and Free Assembly Clause and that

all of its districts are affected by unconstitutional partisan gerrymandering, racial vote dilution, or both.

- d. Declare that the Enacted Senate Plan and Enacted House Plan are unconstitutional and invalid because they violate the Whole County Provisions of the North Carolina State Constitution (Article II, Sections 3(3) & 5(3)), as interpreted in the *Stephenson/Dickson* cases, by unnecessarily traversing county lines and by forming districts that are less compact than they could be under a fair map.
- e. Enjoin Defendants, their officers, agents, servants, employees, attorneys, successors in office, and all persons in active concert or participation with them, from preparing for, administering, or conducting any election (including the 2022 primary and general elections) under the Enacted Congressional Plan, the Enacted Senate Plan, or the Enacted House Plan, or any other congressional or legislative redistricting plan that violates the North Carolina State Constitution.
- f. Order that, to the extent that the General Assembly does not, within two weeks after the date of an order from this Court, enact redistricting plans that remedy the constitutional violations found in any of the Enacted Plans as fully as would Plaintiffs' Optimized Maps, then Defendants, their officers, agents, servants, employees, attorneys, successors in office, and all persons in active concert or participation with them shall prepare for, administer, and conduct the 2022 primary and general elections under Plaintiffs' Optimized Maps.
- g. Order that, to the extent that the Court determines that it would otherwise be infeasible to conduct the 2022 primary election as scheduled on March 8, 2022, the Court retains jurisdiction to—in its discretion—delay the 2022 primary election, shorten or eliminate the

two-week period described in Subparagraph (f) above, or order such other relief as the Court deems just and equitable.

- h. Order Defendants, their officers, agents, servants, employees, attorneys, successors in office, and all persons in active concert or participation with them to delay or shorten the candidate-filing period for the 2022 congressional and legislative elections for such time as this Court, by further order, shall direct, and to make such other adjustments to the 2022 election calendar as the Court deems just and equitable.
- i. Declare that any citizen having established his or her residence in a Senate or House district modified by any remedial redistricting plan approved by this Court, as of the closing day of the candidate filing period for the 2022 election in that district, shall be qualified to serve as Senator or Representative if elected to that office, notwithstanding the requirements of Sections 6 or 7 of Article II of the North Carolina State Constitution, which provide that each Senator and Representative, at the time of his or her election, shall have resided “in the district for which he is chosen for one year immediately preceding his election.”
- j. Grant Plaintiffs such other and further relief, including attorney fees and costs, as the Court deems just and equitable.

Dated: November 16, 2021

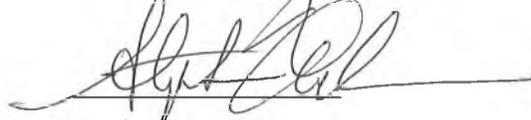
Respectfully submitted,

JENNER & BLOCK LLP

David J. Bradford*
JENNER & BLOCK LLP
353 North Clark Street
Chicago, IL 60654
(312) 923-2975
dbradford@jenner.com

Sam Hirsch*
Jessica Ring Amunson*
Kali Bracey*
Zachary C. Schauf*
Karthik P. Reddy*
Urja Mittal*
JENNER & BLOCK LLP
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
(202) 639-6000
shirsch@jenner.com
zschauf@jenner.com

ROBINSON, BRADSHAW & HINSON, P.A.



Stephen D. Feldman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
(919) 239-2600
sfeldman@robinsonbradshaw.com

Adam K. Doerr
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
(704) 377-2536
adoerr@robinsonbradshaw.com

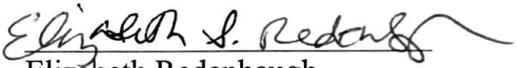
Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
(919) 328-8800
ezimmerman@robinsonbradshaw.com

Counsel for Plaintiffs

* *Pro hac vice motion forthcoming*

VERIFICATION

I, Elizabeth Redenbaugh, serve as President of the North Carolina League of Conservation Voters Inc. (NCLCV) and hereby state that my organization, NCLCV, is a Plaintiff in the above-titled action, that I have read the contents of the foregoing Verified Complaint, and that the contents therein are true and accurate as they pertain to the NCLCV and the other Plaintiffs (whose party registration, racial, and district information I have reviewed), except to those matters stated on information and belief, which I believe to be true.


Elizabeth Redenbaugh

Sworn and subscribed before me
this the 16th of November, 2021


Notary Public



Name: Christina M. Carter

My commission expires: April 12, 2023