

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
No. 21 CVS 500085

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL  
CAPACITY AS SENIOR CHAIR OF THE HOUSE  
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

**PLAINTIFFS' MOTION FOR  
A PRELIMINARY  
INJUNCTION**

**TABLE OF CONTENTS**

	<b>Page</b>
INTRODUCTION .....	1
FACTUAL BACKGROUND.....	3
A.    The General Assembly repeatedly enacts extreme gerrymanders.....	3
B.    The <i>Harper I</i> court preliminarily enjoins use of the 2016 plan in advance of the candidate filing period. ....	4
C.    Legislative defendants enact another extreme gerrymander.....	5
D.    The 2021 Plan packs and cracks Democratic voters in every district.....	8
E.    The 2021 Plan is an intentional extreme partisan gerrymander.....	24
F.    The 2021 Plan harms plaintiffs and other Democratic voters.....	29
ARGUMENT .....	30
I.    Legal Standard .....	30
II.   Plaintiffs are likely to succeed on the merits of their claims that the 2021 Plan violates the North Carolina Constitution. ....	31
A.    The 2021 Plan violates North Carolina’s Free Elections Clause.....	31
B.    The 2016 Plan violates North Carolina’s Equal Protection Clause. ....	36
C.    The 2021 Plan violates North Carolina’s Freedom of Speech and Assembly Clauses. ....	40
1.    The 2021 Plan unconstitutionally discriminates against protected expression and association.....	41
2.    The 2021 Plan unconstitutionally retaliates against protected expression and association.....	44
D.    All Plaintiffs have established a likelihood of standing.....	45
III.  Plaintiffs are likely to suffer irreparable harm absent a preliminary injunction. ....	47
IV.   There is adequate time to implement a remedy before the 2022 primaries. ....	48
V.    The balance of equities strongly favors a preliminary injunction.....	49
CONCLUSION.....	51

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Council of Alternative Political Parties v. Hooks</i> , 121 F.3d 876 (3d Cir. 1997).....	43
<i>A.E.P. Indus., Inc. v. McClure</i> , 308 N.C. 393, 302 S.E.2d 754 (1983).....	26, 45
<i>Action NC v. Strach</i> , 216 F. Supp. 3d 597 (M.D.N.C. 2016) .....	41
<i>Auto Dealer Res., Inc. v. Occidental Life Ins. Co.</i> , 15 N.C. App. 634, 190 S.E.2d 729 (1972).....	27
<i>Common Cause v. Lewis</i> , No. 18 CVS 014001, 2019 WL 4569584 (N.C. Super. Ct. Sep. 3, 2019) .....	<i>passim</i>
<i>Common Cause v. Rucho</i> , 318 F. Supp. 3d 777 (M.D.N.C. 2018) .....	32
<i>Covington v. North Carolina</i> , 316 F.R.D. 117 (M.D.N.C. 2016), <i>aff'd</i> 137 S. Ct. 2211 (2017).....	3
<i>Davis v. New Zion Baptist Church</i> , 811 S.E.2d 725 (N.C. Ct. App. 2018).....	40
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976).....	43
<i>Erfer v. Commonwealth</i> , 794 A.2d 325 (Pa. 2002).....	43
<i>Goldston v. State</i> , 361 N.C. 26, 637 S.E.2d 876 (2006).....	40, 41
<i>Harris v. McCrory</i> , 159 F. Supp. 3d 600 (M.D.N.C. 2016) .....	3
<i>Harper v. Lewis</i> , No. 19-CVS-012667 (N.C. Super. Ct. Oct. 28, 2019).....	<i>passim</i>

<i>Holmes v. Moore</i> , 270 N.C. App. 7, 840 S.E.2d 244 (2020).....	33
<i>League of Women Voters of N.C. v. North Carolina</i> , 769 F.3d 224 (4th Cir. 2014) .....	44
<i>People ex rel. Van Bokkelen v. Canaday</i> , 73 N.C. 198 (1875) .....	27
<i>Staton v. Russell</i> , 151 N.C. App. 1, 565 S.E.2d 103 (2002).....	46
<i>Triangle Leasing Co. v. McMahon</i> , 327 N.C. 224, 393 S.E.2d 854 (1990) .....	26, 43

**Constitutional Provisions**

N.C. Const., art. I, § 10. ....	1, 27
N.C. Const., art. I, § 12 .....	1, 38
N.C. Const., art. I, § 14 .....	1, 36
N.C. Const., art. I, § 19 .....	1, 31

Pursuant to N.C. R. Civ. P. 65 and N.C. Gen. Stat. § 1-485, Plaintiffs hereby move for a preliminary injunction (1) barring Defendants from administering, preparing for, or moving forward with the 2022 primary and general elections for the U.S. House of Representatives using the 2021 congressional redistricting plan; and (2) setting forth a remedial process to create a new plan that complies with the North Carolina Constitution, including a court-ordered remedial plan if the General Assembly fails timely to enact a new plan that comports with the North Carolina Constitution. In support of this motion, Plaintiffs state as follows:

### INTRODUCTION

Partisan gerrymandering, where partisan mapmakers manipulate district boundaries to predetermine the outcome of elections before anyone casts a ballot, erodes the integrity of our democracy by diluting the voting power of certain citizens based on their party affiliation, past votes, and political beliefs. It is also incompatible with the North Carolina Constitution. By predetermining election outcomes, partisan gerrymandering violates the Free Election Clause's guarantee that elections shall be conducted "to ascertain, fairly and truthfully, the will of the people—the qualified voters." *Common Cause v. Lewis*, No. 18-CVS-014001, 2019 WL 4569584, at \*109-110 (N.C. Super. Ct. Sep. 3, 2019) (quoting *Hill v. Skinner*, 169 N.C. 405, 415, 86 S.E. 351, 356 (1915)); *see also* Decl. of Lalitha Madduri ("Madduri Decl."), Ex. A, Order Granting Mot. for Prelim. Inj. at 7, *Harper v. Lewis*, No. 19-CVS-012667 (N.C. Super. Ct. Oct. 28, 2019) ("*Harper I*") (same). And by reducing the voting power of citizens based on ideological and partisan differences, partisan gerrymandering is irreconcilable with the North Carolina Constitution's guarantees that the State shall not deny to any person the equal protection of the laws, *see* N.C. Const., art. I, § 19, and that the State shall not punish citizens based on their speech or expression, *see id.*, art. I, §§ 12, 14.

The General Assembly's new congressional plan (the "2021 Plan") violates the constitutional rights of millions of North Carolina citizens. This is one of the most closely divided states in the country. But as Plaintiffs' expert testimony makes abundantly clear, the 2021 Plan is engineered to guarantee that Republicans will win 10 or 11 of North Carolina's 14 congressional seats in nearly every conceivable political environment. Indeed, Democrats would need to win the statewide popular vote by an astonishing 7 percentage points to win just *half* of North Carolina's congressional districts. The 2021 Plan, by design, ensures that the will of North Carolina voters will never truthfully be reflected in the state's congressional delegation.

This Court's immediate intervention is required to avoid irreparable injury to millions of North Carolina voters. As a three-judge panel of this Court explained in 2019 in granting a preliminary injunction against use of the gerrymandered 2016 congressional plan, "[t]he loss to Plaintiffs' fundamental rights guaranteed by the North Carolina Constitution will undoubtedly be irreparable if congressional elections are allowed to proceed under" gerrymandered districts. *Harper I*, slip op. at 14. And that deprivation of fundamental rights "outweighs the potential harm[s]" likely to be identified by the Legislative Defendants here, such as "disruption, confusion, and uncertainty in the electoral process for them, candidates, election officials, and the voting public." *Id.* at 15. Now, as then, preliminary injunctive relief is necessary to ensure that North Carolina administers its congressional elections under a map that ensures that elections fairly and truthfully reflect the will of the people.

## FACTUAL BACKGROUND

### A. The General Assembly repeatedly enacts extreme gerrymanders.

North Carolina is one of the most closely divided states in the country. Nevertheless, over the past decade, the General Assembly has repeatedly enacted extreme gerrymanders that guarantee an overwhelming majority of safe Republican seats in the General Assembly and in Congress. As a result of these unlawful gerrymanders, “[t]he voters of this state, since 2011, have been subjected to a dizzying succession of litigation over North Carolina’s legislative and Congressional districts in state and federal courts.” *Common Cause*, 2019 WL 4569584, at \*1.

The General Assembly repeatedly gerrymandered North Carolina’s congressional districts following the 2010 decennial census. A three-judge federal district court struck down the 2011 congressional map as racially gerrymandered in violation of the Fourteenth Amendment’s Equal Protection Clause and ordered the General Assembly to draw a remedial map. *See Harris v. McCrory*, 159 F. Supp. 3d 600, 604-05 (M.D.N.C. 2016). The General Assembly then illegally gerrymandered the remedial plan (the “2016 Plan”), prompting a three-judge panel of this Court to issue a preliminary injunction barring use of that plan. *See Harper I*, slip op. at 18; *infra* pp. 4-5.

The General Assembly repeatedly gerrymandered North Carolina’s state legislative districts as well. A three-judge federal district court held that the 2011 state legislative maps enacted by the General Assembly were racially gerrymandered in violation of the Fourteenth Amendment’s Equal Protection Clause. *Covington v. North Carolina*, 316 F.R.D. 117, 124-25 (M.D.N.C. 2016), *aff’d* 137 S. Ct. 2211 (2017). And a three-judge panel of this Court later held that the remedial legislative districts drawn by the General Assembly after *Covington* were unlawful partisan gerrymanders. *See Common Cause*, 2019 WL 4569584, at \*3.

**B. The *Harper I* court preliminarily enjoins use of the 2016 plan in advance of the candidate filing period, finding it to be an extreme partisan gerrymander.**

On September 27, 2019, the same Plaintiffs here filed a lawsuit challenging the 2016 Plan as an extreme partisan gerrymander in violation of the Free Elections Clause, Equal Protection Clause, and Free Speech and Assembly Clauses of the North Carolina Constitution. *Harper I*, slip op. at 1. A three-judge panel was appointed days later, and the plaintiffs promptly moved for a preliminary injunction. *Id.* at 2. The *Harper I* court ordered expedited briefing, ensuring that it would resolve the plaintiffs' motion for preliminary relief in advance of the December 2, 2019 commencement of the candidate filing period for the 2020 congressional primaries. *Id.*

On October 28, 2019, the court granted a preliminary injunction barring use of the 2016 Plan in the 2020 elections. *Id.* at 18. The court held that the plaintiffs were likely to succeed on the merits of their claims that the 2016 Plan, designed to “give a partisan advantage to 10 Republicans and 3 Democrats,” violated the Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Assembly Clauses. *Id.* at 13-14. It further held that “[t]he loss to Plaintiffs’ fundamental rights guaranteed by the North Carolina Constitution will undoubtedly be irreparable if congressional districts are allowed to proceed under the 2016 congressional districts.” *Id.* at 14. And the court explained that this harm to North Carolina voters outweighed potential concerns about “disruption, confusion, and uncertainty in the electoral process.” *Id.* at 15.

In mid-November 2019, the General Assembly enacted a remedial plan. The court *sua sponte* enjoined the candidate filing period pending its review of that remedial map. Madduri Decl., Ex. B, Order Enjoining Filing Period at 1-2, *Harper v. Lewis*, No. 19-CVS-012667 (N.C. Super. Ct. Nov. 20, 2019). At a hearing on December 2, 2019, the court declined to resolve whether the 2019 Plan was constitutional. *See* Madduri Decl., Ex. C, Hr’g Tr. at 7:23-8:8, *Harper v. Lewis*, No. 19-CVS-012667 (N.C. Super. Ct. Dec. 2, 2019) (“*Harper I* Summ. J. Hr’g Tr.”). In doing so,

the court expressed its “fervent hope that the past 90 days” since the filing of the *Harper I* case would become “a foundation for future redistricting in North Carolina and that future maps are crafted through a process worthy of public confidence and a process that yields elections that are conducted freely and honestly to ascertain fairly and truthfully the will of the people.” *Id.* at 9:3-8.

**C. Legislative defendants enact another extreme gerrymander.**

North Carolina gained a fourteenth congressional seat following the 2020 census after seeing its population grow by 9.5% over the previous decade. *See* North Carolina: 2020 Census, U.S. Census Bureau (Aug. 25, 2021).<sup>1</sup> Several of the most populous counties in the state have grown even more rapidly: Wake County grew by 22.6%, Mecklenburg by 20.3% Durham by 18.4%, and Guilford by 9.7%. Overall, more than 78% of North Carolina’s population growth came from the Triangle area and the Charlotte metro area. Madduri Decl., Ex. G, Expert Rep. of Christopher Cooper at 8 (“Cooper Rep.”).

On August 12, 2021, the House Committee on Redistricting and the Senate Committee on Redistricting and Elections adopted criteria to guide the enactment of new maps. While the adopted criteria provide 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,” they freely permitted the use of “local knowledge of the character of communities and connections between communities,” as well as “[m]ember residence.” Madduri Decl., Ex. D, House Committee on Redistricting & Senate Committee on Redistricting and Elections, Criteria Adopted by the Committees (Aug. 12, 2021) (the “2021 Adopted Criteria”). Unlike the 2016 criteria, which provided that “[r]easonable efforts shall be made not to divide a county into more than two

---

<sup>1</sup> Available at <https://www.census.gov/library/stories/state-by-state/north-carolina-population-change-between-census-decade.html>.

districts,” Madduri Decl., Ex. E, Joint Committee on Redistricting, 2016 Contingent Congressional Plan Committee Adopted Criteria (the “2016 Adopted Criteria”), the 2021 Adopted Criteria contained no similar limitation. *See* 2021 Adopted Criteria at 1-2. The 2021 Adopted Criteria were otherwise materially identical to the 2016 Adopted Criteria.

On October 6, 2021, legislators began drawing potential maps for consideration by the House and Senate Committees. Despite *Harper I’s* admonition to use a transparent process that would follow the adopted criteria and eschew the use of election data, the process that followed was designed to produce another partisan gerrymander. Legislative Defendants sought to instill public confidence in that preordained result by requiring legislators to draw and submit maps using software on computer terminals in the redistricting committee hearing rooms. Madduri Decl., Ex. F, *Hearing Before the House Committee on Redistricting*, 2021 Leg., 155th Sess. 3:1-20 (N.C. 2021) (statement of Rep. Destin Hall, Chairman, H. Comm. on Redistricting) (“Oct. 5, 2021 H. Redistricting Comm. Hr’g Tr.”). According to Defendant Hall, Chairman of the House Redistricting Committee, North Carolinians could be confident in the process because that software did not include political data, and the House and Senate Committees would only consider maps drawn and submitted on the software. Oct. 5, 2021 H. Redistricting Comm. Hr’g Tr. at 52:3-8.

But there was an obvious and intentional loophole that rendered that supposed restriction meaningless. Legislators asked Chairman Hall if the Committees would prevent legislators from simply bringing prohibited political data—or maps drawn by political consultants using prohibited political data—with them into the map-drawing room. Chairman Hall responded that the Committees did not intend to prevent this practice, and made clear that he interpreted the 2021 Adopted Criteria to allow the use of political data in the drawing of maps so long as the data were

not loaded onto the computer terminals.

CHAIRMAN HALL: And on these computers in this room, you essentially are bound by that criteria because there is no racial data or election data that's loaded into these computers.

REPRESENTATIVE HARRISON: But it seems like if you come in, and you might have the material with you, it might not be actually loaded in the software, but you might actually have [it] with you. I just didn't know if there was some way to enforce that, or how you plan to do that?

CHAIRMAN HALL: I don't plan to search every member who comes into this committee room, nor do I want to do that . . . So, you know, members . . . are free to handle those issues as they see fit, but they will follow the criteria in the sense that that data is not in these computers.

Oct. 5, 2021 H. Redistricting Comm. Hr'g Tr. at 52:18-53:13 (emphasis added); *see also id.* at 66:11-66:16 (Representative Reives asserting that this process “sounds [like] an easy get around, in a legal sense, around the criteria that we've set up”); *id.* at 66:17 (Chairman Hall responding: “I don't think I have the ability to police members of this committee, nor do I want to . . . I know I'm not going to bring in a map and sit down and draw it, but you know, the reality is, we're elected officials.”).

Various legislators proposed solutions like not allowing legislators to have maps with them at the computer terminals or requiring members to disclose if they were copying maps drawn by external political consultants. *Id.* at 54:21-25, 67:25-68-3. Chairman Hall rejected these proposals. *Id.* at 55:4-6, 68:4-25; *see also id.* at 70:2-7 (Chairman Hall: “I think it ultimately results in the best path forward to just say, you know, look folks, the map you draw has got to be the one that you do in here and nowhere else. And that's up to the members and their integrity as to how they want to handle that.”). And he tacitly acknowledged that legislators had already been presented with maps drawn by outside political consultants. *Id.* at 61:19-23 (Representative Hawkins: “I want to make sure that there have been no maps drawn outside of this building that any of us have

been privy to. Can we say that unequivocally that that’s been the case?”); *id.* at 61:24-62:2 (“I can’t speak for other members of this committee. What I’ll say is that I have not contributed to the drawing of any map, at all.”).

Legislative Defendants also held public hearings to discuss the map-drawing process primarily in Republican counties while carefully avoiding more heavily Democratic areas. And they ignored public testimony submitted during these hearings that would have resulted in fair representation for North Carolinians. For example, residents in the Sandhills overwhelmingly asked that their communities be united in one congressional district centered in Cumberland County. Cooper Rep. at 8. But the 2021 Plan disregards this request by dividing the Sandhills communities among three different congressional districts, diluting their influence and further inhibiting the ability to coalesce around preferred candidates.

This process predictably resulted in the Republican-controlled Redistricting Committees choosing a map that produced 10 safe Republican seats, 3 safe Democratic seats, and 1 competitive seat. *See* Cooper Rep. at 1. The 2021 Plan was voted out of the Senate Committee as Senate Bill 740 on November 1. It was then voted out of the House Committee on November 3. The full Senate and House passed the 2021 Plan on November 2 and November 4, respectively, on strict party-line votes. *See* Charles Duncan, *Redistricting in NC: New Maps Approved, Favoring GOP*, Spectrum News 1 (Nov. 4, 2021).<sup>2</sup>

**D. The 2021 Plan packs and cracks Democratic voters in every district.**

The 2021 Plan meticulously packs and cracks Democratic voters in each and every district—without exception. Dr. Christopher Cooper, the Robert Lee Madison Distinguished

---

<sup>2</sup> Available at <https://spectrumlocalnews.com/nc/charlotte/politics/2021/11/04/redistricting-in-n-c---new-maps-approved--favoring-gop>.

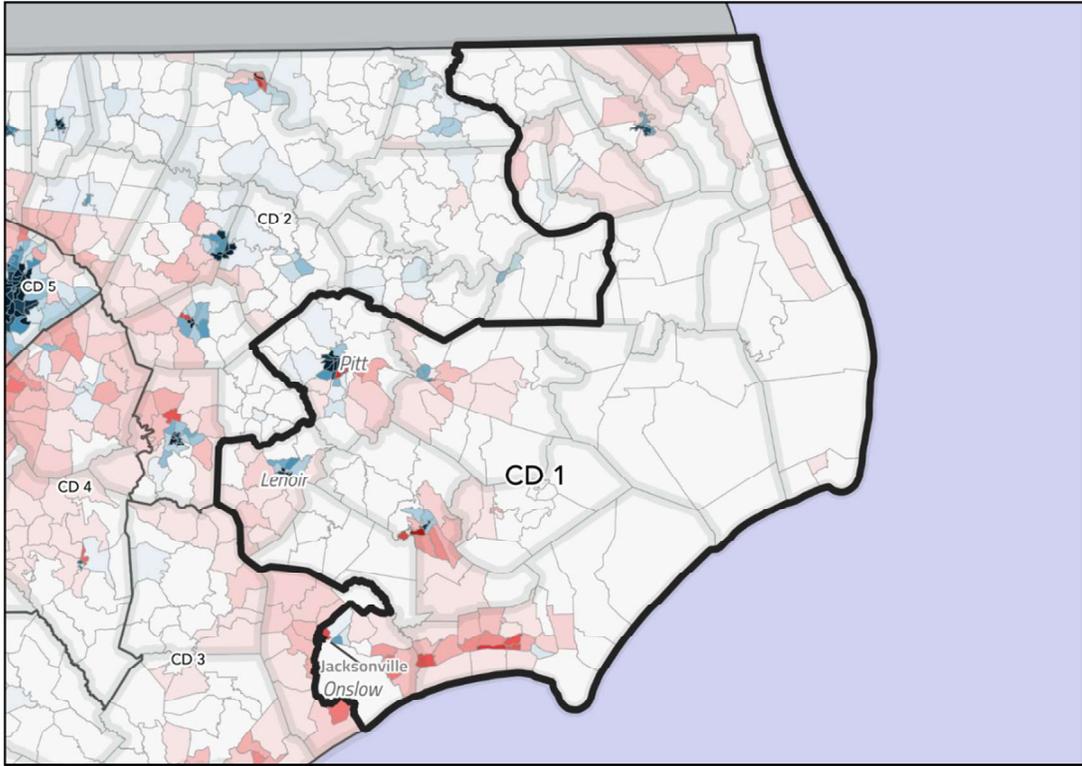
Professor of Political Science and Public Affairs at Western Carolina University, describes the packing and cracking in his expert report. Dr. Cooper has been a professor at Western Carolina University since 2002 and is an expert in North Carolina’s elections, political geography, and political history. Dr. Cooper was accepted as an expert in *Common Cause v. Lewis*, where the court found his analysis “persuasive” and gave it “great weight.” *Common Cause*, 2019 WL 4569584, at \*17, 43.<sup>3</sup>

### **Congressional District 1**

Legislative Defendants drew District 1 to be a safe Republican seat while undermining Democratic voting strength in the neighboring District 2—the predecessor of which was a Democratic-leaning seat represented by Congressman G.K. Butterfield. District 1, which is mostly comprised of District 3 in the 2019 Plan, receives nearly all of Pitt County’s Democratic VTDs from Congressman Butterfield’s former district (District 1 under the 2019 Plan), including the entire city of Greenville as shown below.

---

<sup>3</sup> The images reproduced below from Professor Christopher Cooper’s Expert Report show each district’s boundaries and the partisanship of its VTDs using a composite of the results of the 2020 North Carolina Attorney General and 2020 North Carolina Labor Commissioner races, with darker blue shading for the VTDs that voted more heavily Democratic, darker red for VTDs that voted more heavily Republican, and lighter shading for VTDs that were closer to a tie—with the shading adjusted for the VTD’s population.



The upshot of Legislative Defendants’ engineering is a safe Republican seat where Democratic voters have no meaningful chance of electing the candidate of their choice. The PVI<sup>4</sup> of this district is R+10 and no Democratic member of Congress represents a district that leans so heavily Republican. Cooper Rep. at 8.

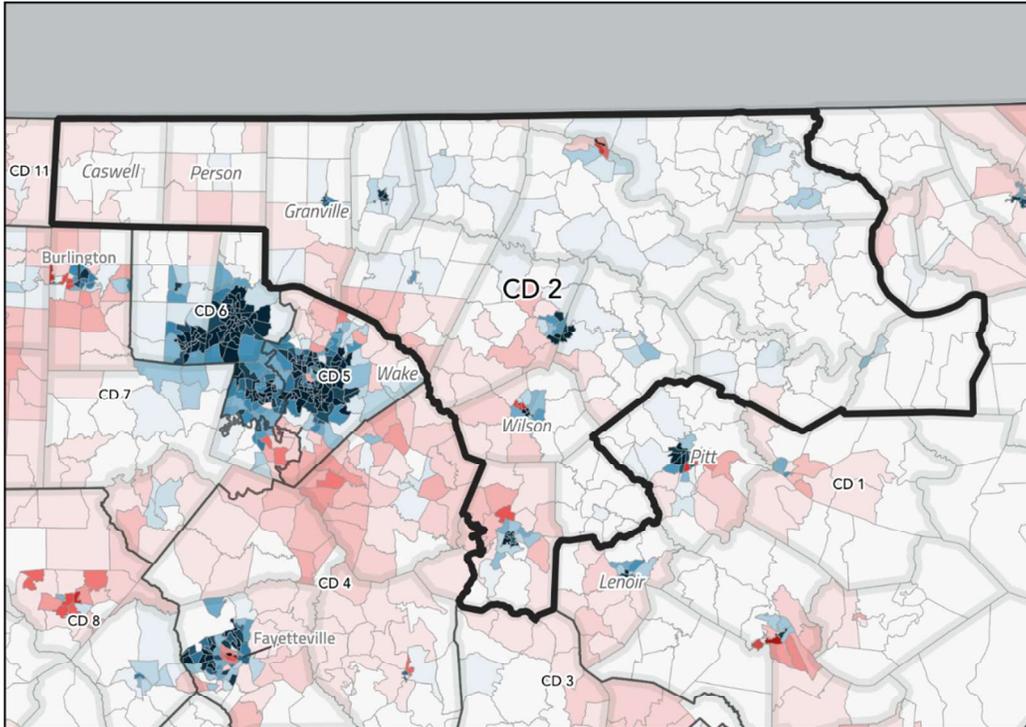
**Congressional District 2**

District 2 was a Democratic district under both the 2016 and 2019 Plans. The 2021 Plan significantly improves Republicans’ voting strength in the district by removing the Democratic stronghold of Greenville from Congressman Butterfield’s district and placing it into the new District 1. Legislative Defendants further undermined Democratic voting strength in this district by expanding the boundaries of its predecessor westward, stretching nearly 200 miles from the east to encompass the Republican strongholds of Caswell and Person Counties. In addition to

---

<sup>4</sup> PVI refers to the Cook Political Report’s Partisan Voting Index, a standard bipartisan metric of the expected “lean” of a district using a composite of past elections. Cooper Rep. at 4.

producing a clear partisan shift toward Republicans, “the district is difficult to understand from a communities of interest perspective,” as it “no longer includes any of Pitt County nor the campus of East Carolina University, which provided much of the economic engine of the [predecessor] district, and now stretches from the Albemarle Sound to the Raleigh Durham-Chapel Hill MSA.” *Id.* at 10. Dr. Cooper concludes that the new district “splits communities in important ways.” *Id.*

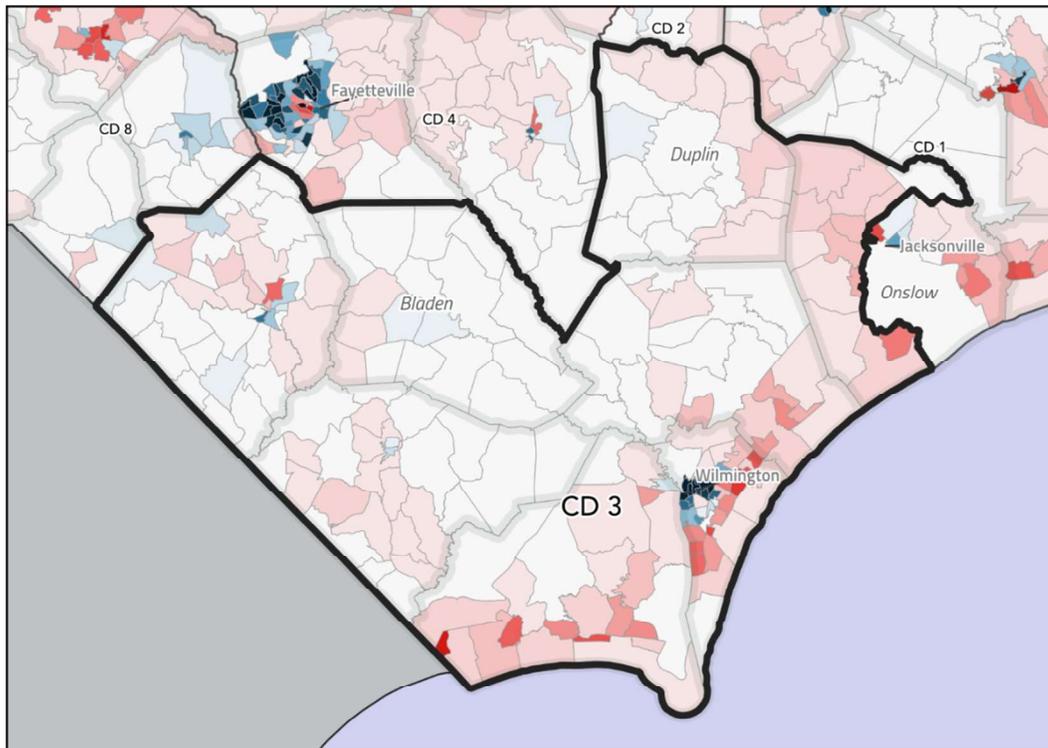


Legislative Defendants succeeded in eliminating a Democratic district: While the prior congressional district in this area had a D+12 PVI, making it a safe Democratic seat, the PVI of the new District 2 is “even.” *Id.* at 10.

### **Congressional District 3**

Ignoring the repeated calls of constituents to place the competitive Sandhills region in a single congressional district, the 2021 Plan splits it across Districts 3, 4, and 8. The plan creates a safe Republican seat in District 3 by combining the eastern part of the region with counties along the southeastern coastline. *Id.* at 12. The eastern boundary hews around the relatively Democratic

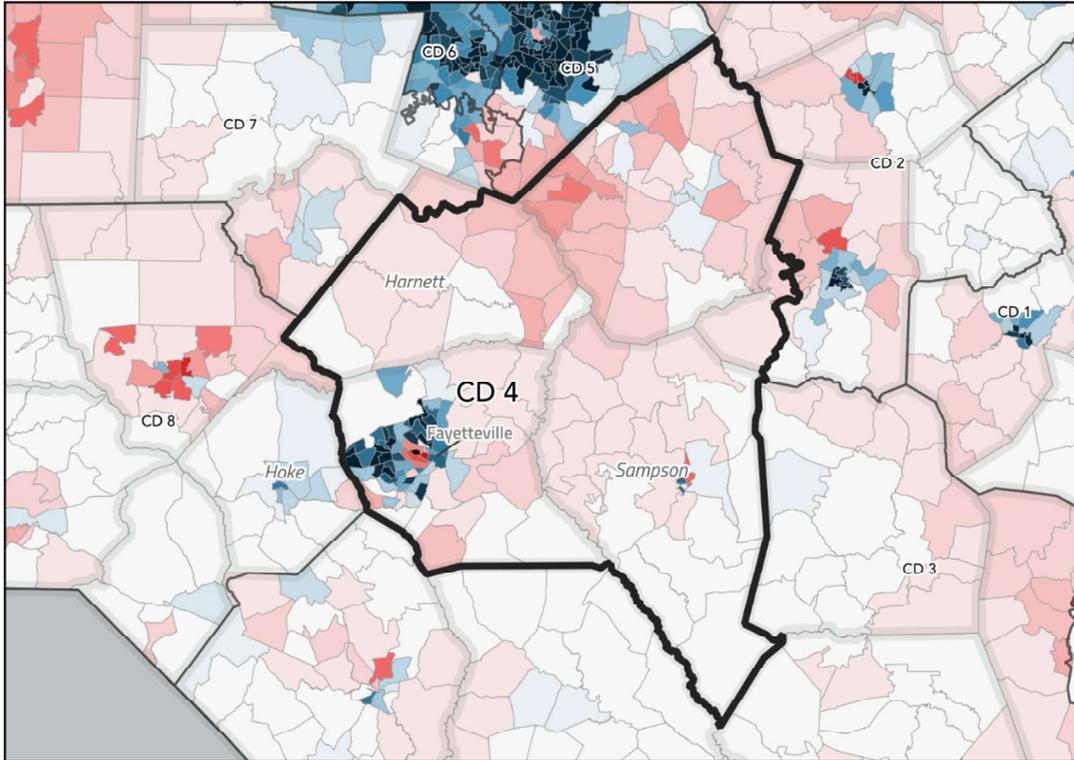
city of Jacksonville, which is instead placed in District 1 where its residents have no realistic prospect of electing a Democratic candidate.



District 3 is indeed a safe Republican seat: The PVI of District 3 is R+10 and Donald Trump won the district with more than 58% of the vote in 2020. *Id.* at 12.

#### **Congressional District 4**

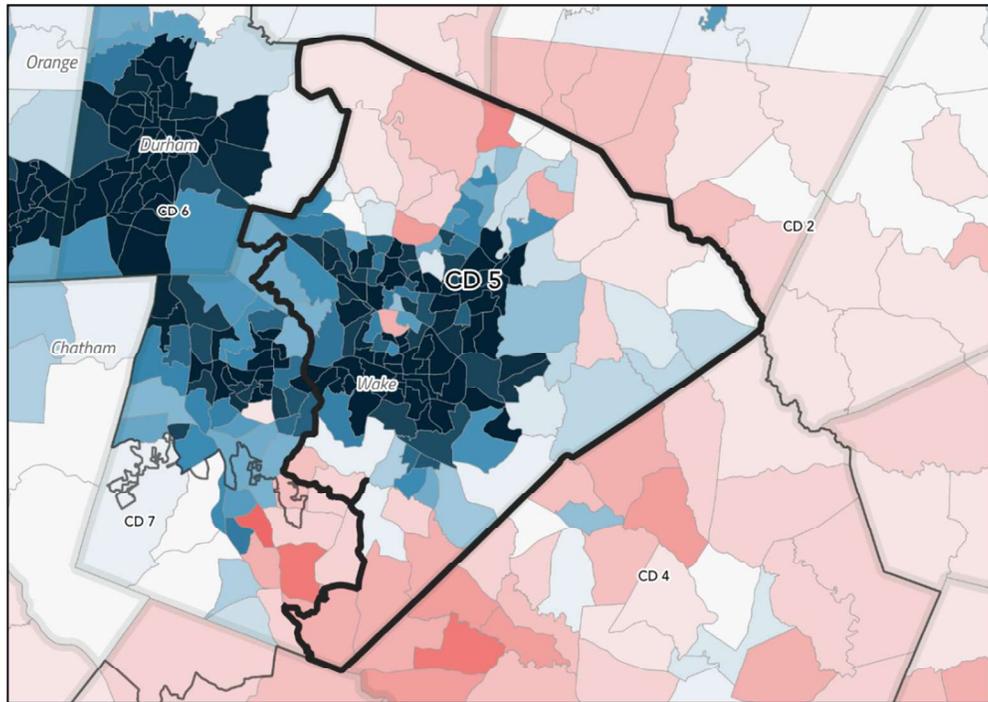
Legislative Defendants likewise engineered District 4 to be a safe Republican seat that destroys the voting power of Democrats in Cumberland County—home to Fayetteville and Fort Bragg. District 4 combines the Democratic stronghold of Cumberland County with overwhelmingly Republican counties of Johnston and Harnett. The district also picks up Republican VTDs in Wayne County. *Id.* at 12.



As expected, the new District 4 is a Republican district. District 4 has a PVI of R+5, and Donald Trump won 53% of the vote in the 2020 Presidential Election. *Id.* at 4, 14.

### **Congressional District 5**

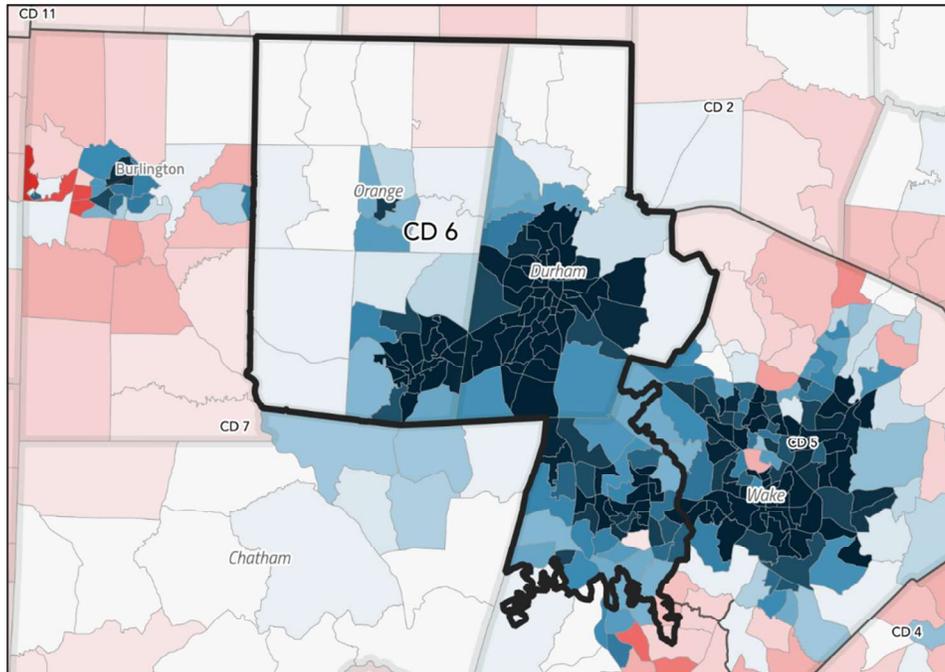
District 5 is the result of flagrant packing and cracking of Democratic voters in the largest Democratic stronghold in the state—Wake County. The 2021 Plan packs these voters by creating a single, safe Democratic district—District 5—out of most of Wake County, including all of its most Democratic VTDs. It then splits the remaining Wake County Democratic voters into two neighboring districts to dilute their power: Voters in Cary and Apex are packed into the safe Democratic District 6, which contains heavily Democratic Orange and Durham Counties, while the remaining population is roped into the overwhelmingly Republican District 7, which stretches west across the state to pick up heavily Republican Randolph County and parts of Davidson and Guilford Counties. Wake County is split between three districts, “despite the fact that there is no population-based reason to divide” it three times. *Id.* at 3; *see also id.* at 16, 18, 20.



Legislative Defendants succeeded in creating an overwhelmingly safe Democratic district in which Republican voters have no meaningful chance to elect a candidate of their choice: District 5 has a PVI of +12 and Donald Trump won only 34% of the vote here in the 2020 presidential election. *Id.* at 4, 16.

### **Congressional District 6**

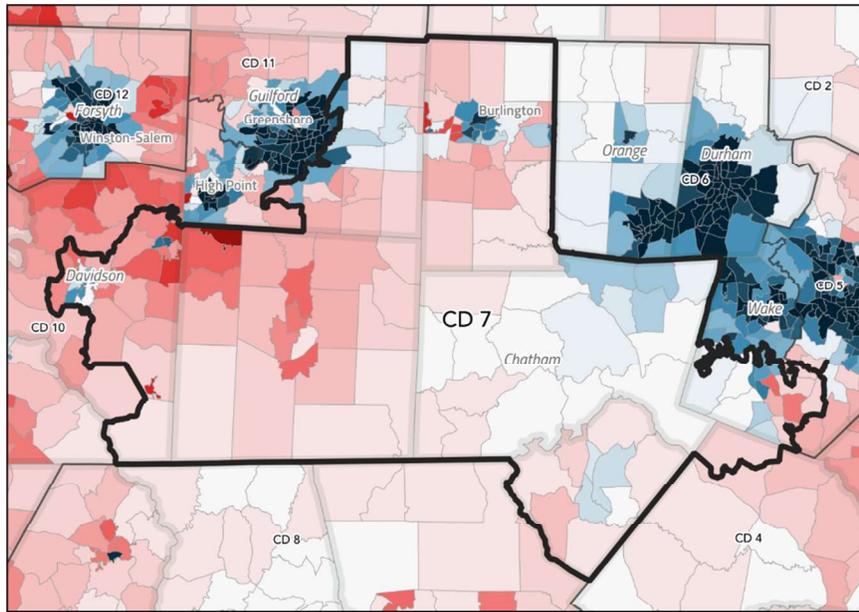
Legislative Defendants packed Democratic voters into District 6 to create a safe Democratic seat. They did so by combining the heavily Democratic Orange and Durham Counties into a single district. District 6 also includes a heavily Democratic swath of voters from the fractured Wake County. *Id.* at 18. This pairing is comparable to the way in which these areas were packed in the 2016 plan. “This district packs a greater proportion of Democratic voters in a single district than any district from” the 2019 Plan. *Id.* at 18.



Republicans have no chance to win this district, and Republican voters in this district have no chance of representation from a member of their own party. District 6 is a D+22 district, and Donald Trump won only 25% of the vote here in 2020. *Id.* at 18.

### **Congressional District 7**

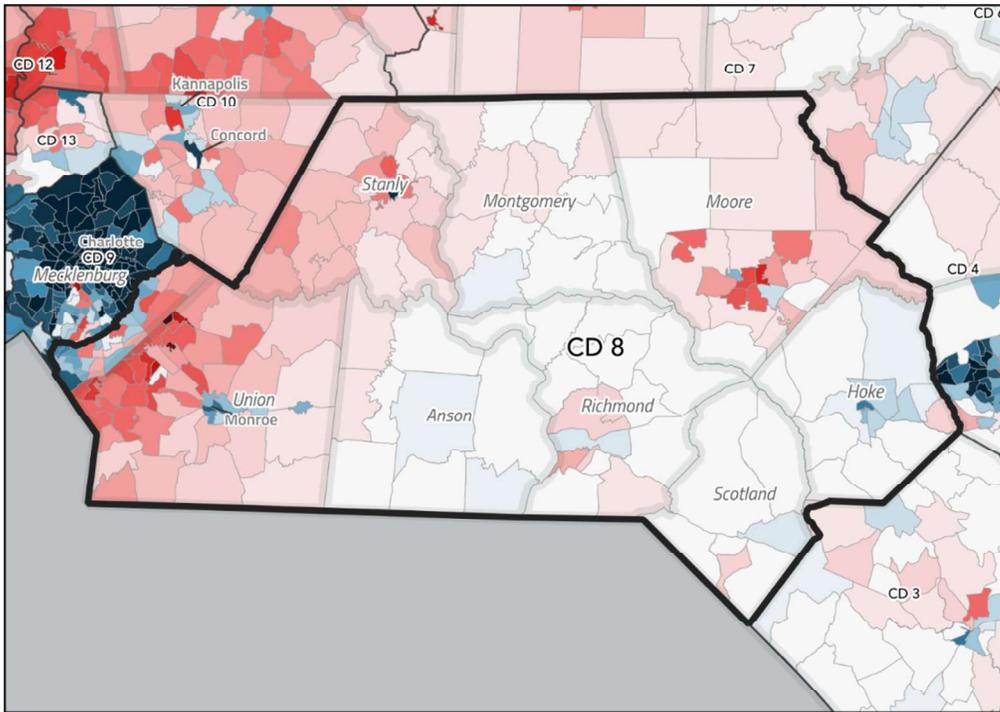
Legislative Defendants created a safe Republican seat in District 7 by fracturing the Democratic stronghold of Guilford County. District 7 stitches together Democratic voters from the southeastern portion of Greensboro and Guilford County, along with Chatham County and Democratic-leaning voters from the fractured Wake County, with heavily Republican Randolph, Alamance, and Lee Counties. District 7 also borrows heavily Republican VTDs from Davidson County in the western part of the district. “Despite including portions of two of the most Democratic counties in North Carolina, the district studiously avoids the Democratic-leaning areas of both counties.” *Id.* at 20.



Democrats have no meaningful chance of electing a candidate of their choice in the new District 7: District 7 has a PVI of R+11 and Donald Trump won 57% of the vote in this district during the 2020 presidential election. *Id.* at 20.

### **Congressional District 8**

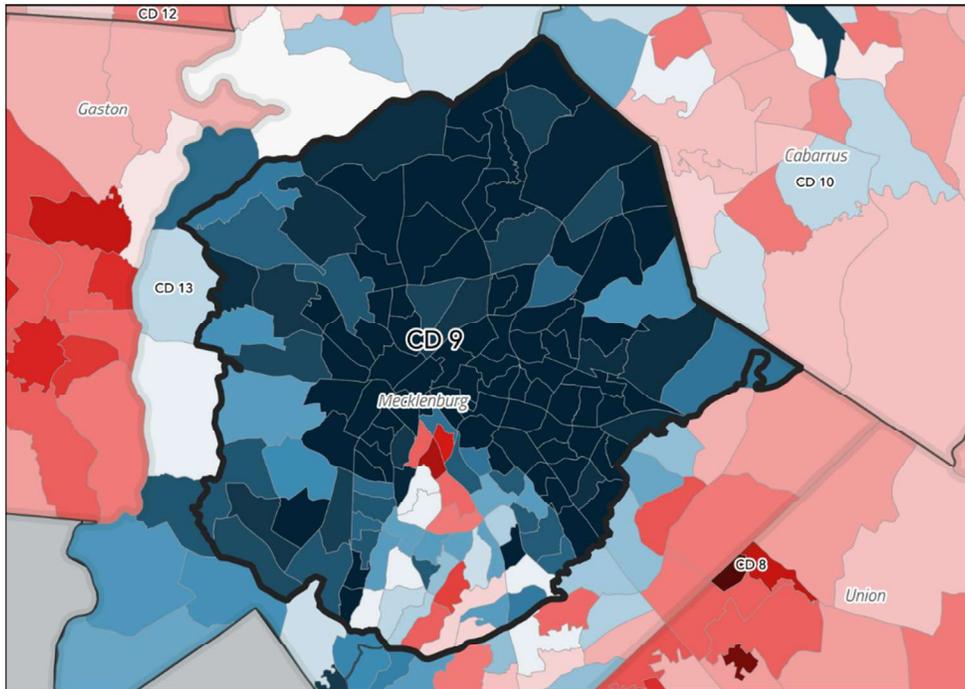
Legislative Defendants created a safe Republican seat in District 8 by combining Democratic-leaning Hoke and Anson Counties with heavily Republican Union, Moore, Montgomery, and Stanly Counties. As discussed in greater detail below, Legislative Defendants also included portions of heavily Democratic Mecklenburg County in District 8, splitting Charlotte and ensuring that Democratic votes in that county would be wasted in this safe Republican seat. *Id.* at 22.



District 8 performs as expected: The Cook Political Report calls it an R+11 District, and Donald Trump won 57% of the vote in the new District 8. *Id.* at 14, 22.

### **Congressional District 9**

District 9, a guaranteed Democratic district capturing a carefully hewn chunk of Charlotte, reflects flagrant packing of Democratic voters in heavily Democratic Mecklenburg County. As discussed earlier, Legislative Defendants divided this Democratic stronghold into three districts: many (but not all) of Mecklenburg County’s most Democratic VTDs are packed into District 9. The rest of Mecklenburg’s Democratic voters are meticulously cracked between District 8 and District 13. *Id.* at 24.

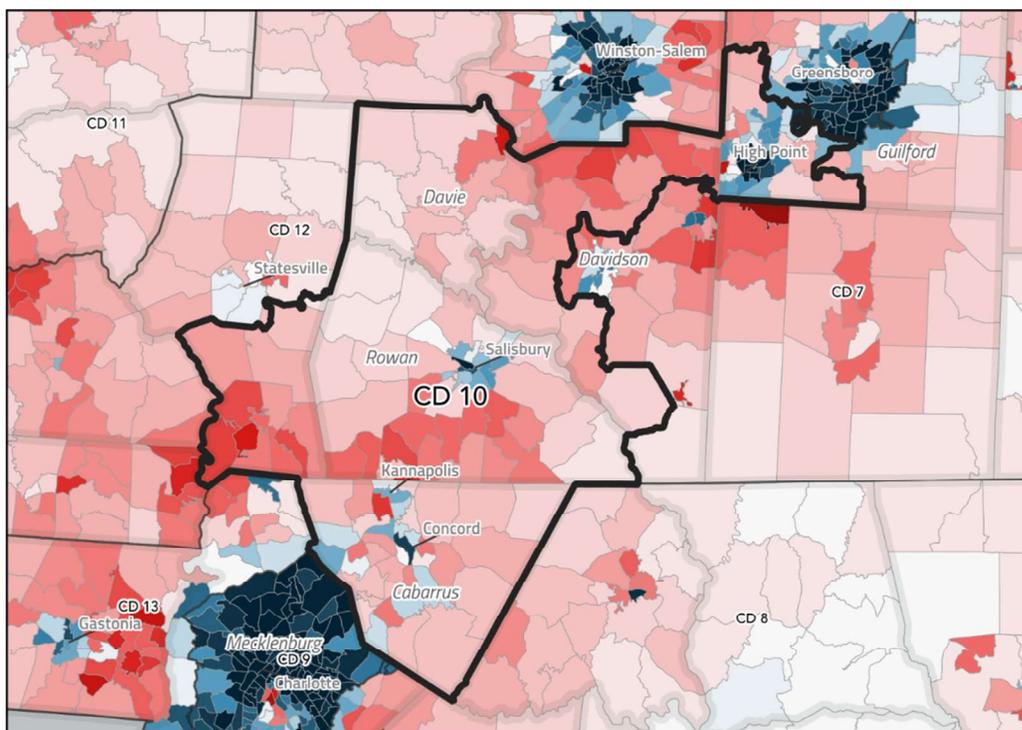


By creating a safe Democratic seat in District 9, “Republican voters will be more efficiently distributed across other districts, where they can affect the outcome.” *Id.* at 24. But that also “has the effect of ensuring that Republican voters in [District 9] have no chance of securing representation from a member of their own party.” *Id.* Donald Trump won 25% of the vote in this district in 2020. *Id.* at 24.

### **Congressional District 10**

As discussed, Legislative Defendants cracked Guilford County—one of the largest Democratic counties in the state—among three safe Republican districts, ensuring that all Democratic votes in Guilford County are wasted. District 10, the southeastern district in the tripartite split, groups the heavily Democratic voters in High Point with the overwhelmingly Republican neighboring counties of Davidson, Cabarrus, Rowan, and Davie. District 10 in the 2021 Plan thus closely resembles District 13 in the 2016 Plan, which similarly paired High Point and other Democratic Guilford County voters with several of the same Republican counties to the west. As Dr. Cooper explains: “The enacted NC-10 includes High Point, while NC-11 includes

most of Greensboro and NC-12 contains Winston-Salem, meaning that the enacted map splits all three points of North Carolina’s Piedmont Triad into separate congressional districts that favor Republicans. In the current map, this community of interest is together in NC-6, represented by Democrat Kathy Manning.” *Id.* at 26. Confirming that this area constitutes a well-recognized community of interest, the Piedmont Triad shares an airport, a local television market with common local news channels, and a weekly newspaper—the Triad Business Journal—that focuses on business developments in Greensboro, High Point, and Winston-Salem.<sup>5</sup>



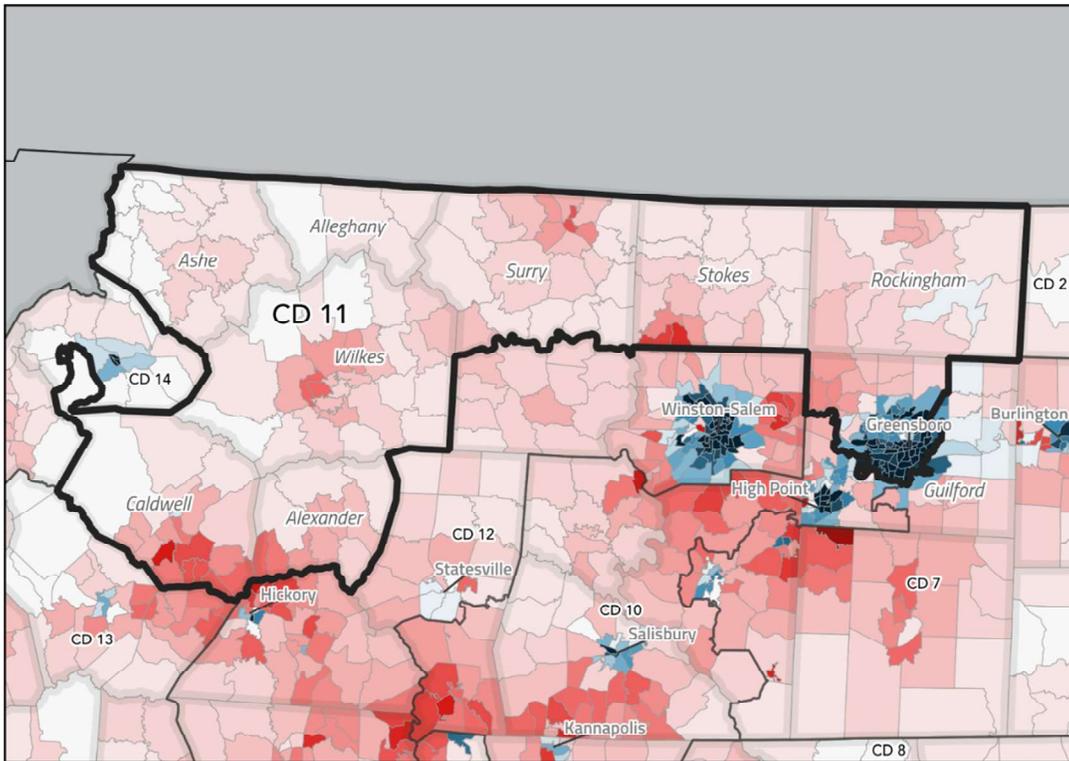
Legislative Defendants succeeded in creating another seat where Democratic voters in High Point, Salisbury, Kannapolis, Concord, and Cabarrus have no realistic possibility of electing a member of their own party: District 10 has an R+14 PVI and Donald Trump won over 60% of the Presidential vote here in 2020. *Id.* at 26.

<sup>5</sup> See Greensboro/Winston-Salem/High-Point News, Triad Bus. J (last accessed Nov. 30, 2021), available at <https://www.bizjournals.com/triad/news/>.

## Congressional District 11

Evoking a handgun aiming eastward, District 11 takes the third portion of the fractured Guilford County—including much of the heavily Democratic city of Greensboro—and combines it with heavily Republican counties in the northwestern part of the state, dividing the communities of interest in the Piedmont Triad while ensuring that Greensboro’s Democratic voters have no influence in this safe Republican district. District 11 also cuts out a bizarre, boot-like bit of Watauga County to encompass the residential address of Republican incumbent Congresswoman Virginia Foxx, placing her in the same district as Congresswoman Manning. District 11 thus takes the same basic approach as District 5 in the 2016 Plan, but swaps Guilford’s Democratic voters in for those in Forsyth County.

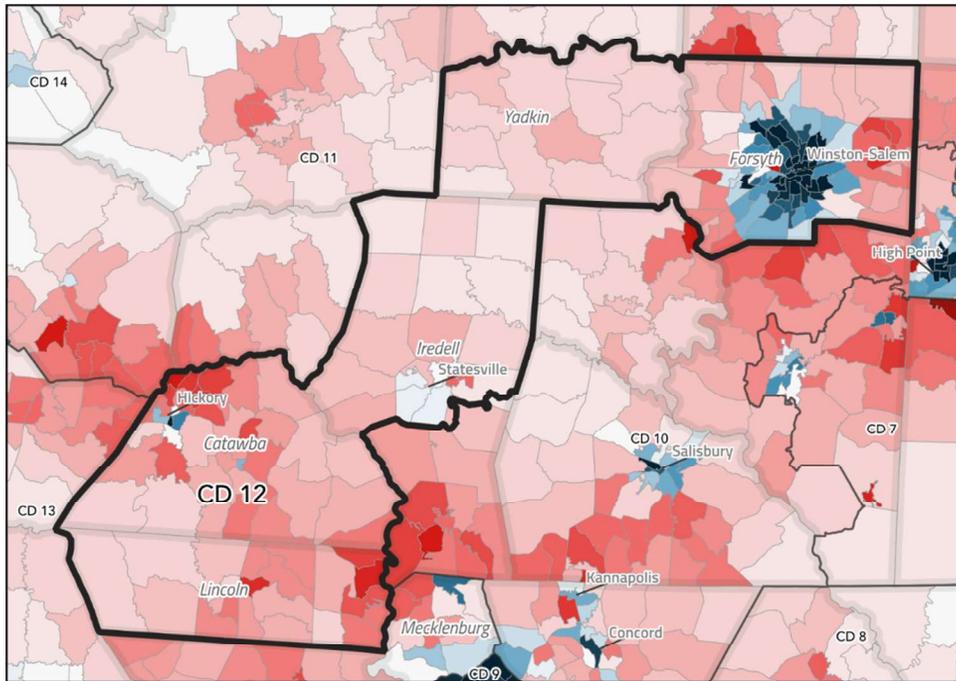
District 11 has little in the way of shared interests: “Geographically, [District 11] span[s] radically different parts of the state.” *Id.* at 28. “The corners of the district have different area codes, are served by different media markets, and share virtually no characteristics in common other than the fact that they are both within North Carolina.” *Id.*



As expected, the new District 11 is a safe Republican seat: The PVI is R+9 and Donald Trump won 57% of the vote here in 2020. *Id.* at 28.

### **Congressional District 12**

District 12 pieces together heavily Democratic Forsyth County, including Winston-Salem, with four heavily Republican counties to the south and west. District 12 also splits Iredell County in half with District 10, and fences in the Democratic cities of Statesville and Hickory. The result is a safe Republican district that effectively guarantees that Democratic voters in Winston-Salem, Statesville, and Hickory cannot elect a candidate of their choice.

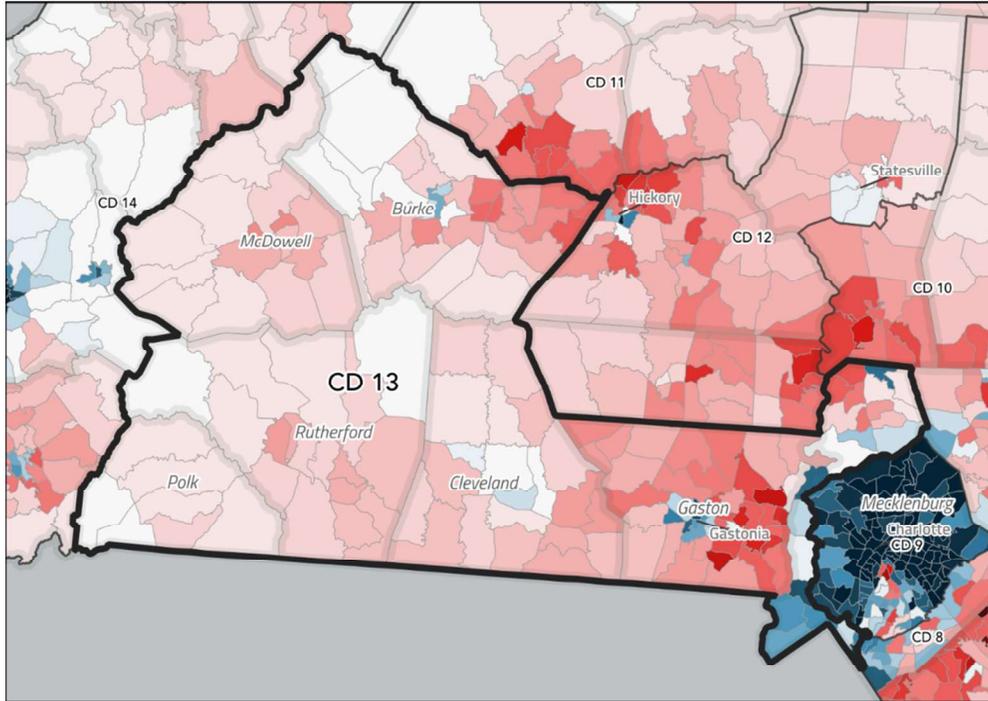


The PVI of District 12 is R+9 and Donald Trump won over 56% of the vote here in 2020.

*Id.* at 30.

### **Congressional District 13**

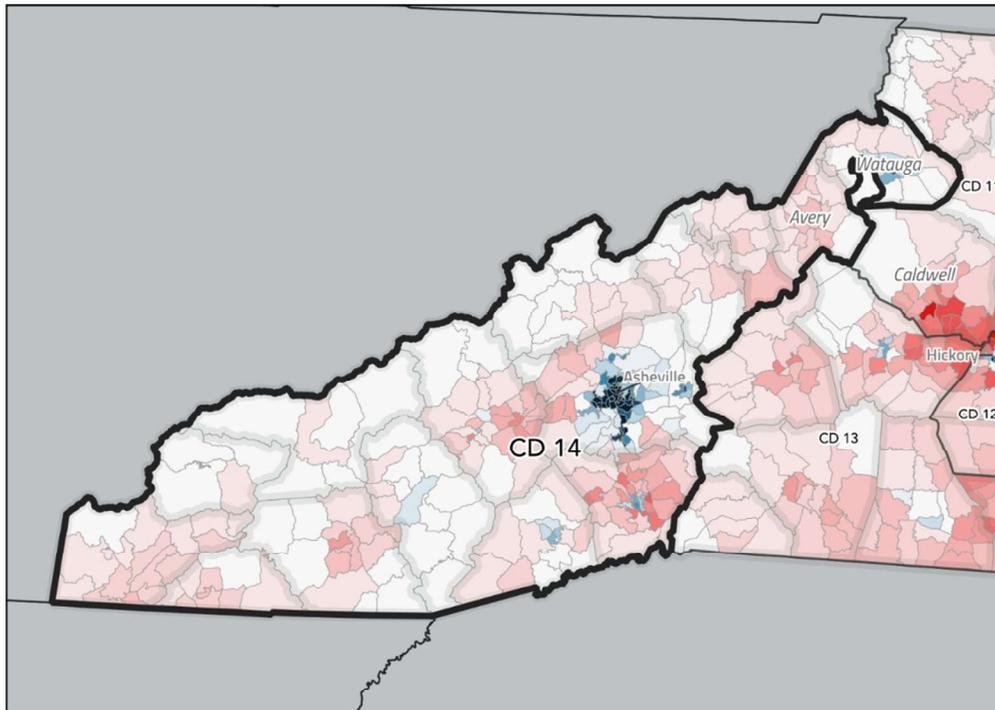
Akin to District 10 in the 2016 Plan, Legislative Defendants created a safe Republican seat in District 13 by combining voters from the cracked Mecklenburg County and from Gastonia with heavily rural and Republican counties to the west. While two incumbents are double banded in neighboring District 11, no incumbent resides in District 13, which includes Defendant Speaker Moore’s residence. Republican Congressman Madison Cawthorne recently announced he would run in District 13, prompting Speaker Moore to announce that he would stay in the General Assembly. *Id.* at 32.



The new District 13 performs as expected: The District has a PVI of R+13 and Donald Trump won 60% of the vote here in the 2020 election. *Id.* at 32.

#### **Congressional District 14**

Finally, similar to District 11 in the 2016 Plan, Legislative Defendants created a safe Republican seat in District 14 by capturing heavily Republican counties in the western part of the state, pairing them with Asheville’s Democratic voters to ensure that they cannot elect a candidate of their choice. District 14 pairs Watauga County and Buncombe for the first time since the 1870s and meticulously avoids the Watauga County boot covering Republican incumbent Virginia Foxx. *Id.* at 34.



Democrats have little chance of electing a candidate of their choice here: Donald Trump won 53% of the vote here in 2020 and District 14 has an R+7 PVI. *Id.* at 4, 34.

**E. The 2021 Plan is an intentional extreme partisan gerrymander.**

Expert analysis confirms that the 2021 Plan is an intentional, extreme partisan gerrymander that dilutes Democratic votes and prevents Democratic voters from electing candidates of their choice. Dr. Cooper concluded:

After analyzing the characteristics of the map as a whole as well as the characteristics of each district in isolation, it is clear that the enacted map will increase the number of Republican members of Congress and decrease the number of Democratic members of Congress in North Carolina’s congressional delegation. Democratic voters in the vast majority of the districts will have no chance at representation from a member of their own party and Republican voters in the districts that pack Democrats will have no chance of representation from a member of their own party. This is not a result of natural packing, or geographic clustering, but rather because the congressional district lines shifted in ways that, taken together, benefit the Republican Party. Not only does the enacted map create a substantial partisan advantage for which there is no apparent explanation other than gerrymandering, but it unnecessarily splits communities of interest and will alters representational linkages in ways that, in some cases, have never been seen in North Carolina’s history.

Cooper Rep. at 36.

Expert statistical analysis is in accord:

**Dr. Jowei Chen**

Dr. Jowei Chen is a professor of political science at the University of Michigan. He is one of the “foremost political science scholars on the question of political geography and how it can impact the partisan composition of a legislative body,” and “helped pioneer the methodology of using computer simulations to evaluate the partisan bias of a redistricting plan.” *Common Cause*, 2019 WL 4569584, at \*15. Dr. Chen produced a set of computer-simulated plans for North Carolina’s congressional districts by following the 2021 Adopted Criteria. Madduri Decl., Ex. H, Expert Rep. of Jowei Chen at 4 (“Chen Rep.”). “By randomly drawing districting plans with a process designed to strictly follow non-partisan districting criteria, the computer simulation process gives us an indication of the range of districting plans that plausibly and likely emerge when map-drawers are not motivated primarily by partisan goals.” *Id.* at 5. And by comparing the 2021 Plan against the simulated plans with respect to partisan measurements, Dr. Chen was able to determine the extent to which a map-drawer’s subordination of nonpartisan districting criteria, such as geographic compactness and preserving political subdivision boundaries, was motivated by partisan goals. *Id.* at 5. Dr. Chen employed a similar analysis in *Common Cause*, and the court gave “great weight to Dr. Chen’s findings” and adopted his conclusions. *Common Cause*, 2019 WL 4569584, at \*18.

Dr. Chen found that the Enacted Plan fails to follow three of the 2021 Adopted Criteria’s mandated districting principles—minimizing county splits, minimizing voting district splits, and maximizing district compactness—and produces levels of partisan bias that are an extreme

statistical anomaly when compared against the 1,000 computer-simulated maps that were randomly generated in accordance with the 2021 Adopted Criteria. Specifically, the Enacted Plan contains 14 county splits, which is more than are contained in any of the 1,000 computer-simulated maps. Chen Rep. at 11. The Enacted Plan splits 25 voting districts, which is nearly double the 13 voting district splits achieved by all 1,000 computer-simulated maps. *Id.* at 14. And of the two common measurements of district compactness, the Enacted Plan scores worse than 100% of simulated maps on the Polsby-Popper score and worse than 97.7% of the simulated maps on the Reock score. *Id.* at 16.

These deviations from the 2021 Adopted Criteria helped enable severe levels of partisan bias that are apparent by any measure. Dr. Chen found that seven of the districts in the Enacted Plan have a more extreme partisan distribution than was observed in 100% of their corollary districts in the simulated maps, and three additional districts have a more extreme partisan distribution than was observed in at least 95% of the simulated maps. *Id.* at 27-28. Notably, for *each* of these 11 outlier districts, the extreme partisan distribution occurs in the direction that benefits Republicans. *Id.*. What's more, the Enacted Plan contains ten districts that are safely Republican without being excessively packed with Republican voters—that is, they contain a Republican vote share between 52.9% and 61.2%. *Id.* at 28. Of the 1,000 simulated plans created using the partisan-blind computer algorithm, *none* create 10 seats within this coveted range; instead, the vast majority of simulated maps create only between two to six seats with this favorable vote share. *Id.* at 29. Consistent with these results, Dr. Chen found the Enacted Plan contains fewer competitive districts than 94.2% of the simulated maps, and fewer Democratic districts than 96.6% of the simulated maps. *Id.* at 30-32.

Finally, Dr. Chen compared the Enacted Plan to the 1,000 plans produced by his computer simulations along common measures of partisan bias, including the mean-median difference (which measures how skewed the median-performing district is in favor of the advantaged party), the efficiency gap (which measures how many more votes are “wasted” by the disadvantaged party), and the lopsided margins measure (which measures the extent to which the disadvantaged party’s voters are packed into a small number of districts that are won by a lopsided margin). *Id.* at 34-44. Analysis of each of these measures demonstrates that the Enacted Plan is an extreme statistical outlier in its bias toward the Republican Party, which is unexplainable by North Carolina’s political geography or by compliance with the 2021 Adopted Criteria. *Id.* Based on these findings, Dr. Chen concluded that partisanship predominated in the drawing of the Enacted Plan and subordinated the prescribed districting criteria of avoiding county splits, minimizing voting district splits, and achieving geographic compactness. *Id.*

#### **Dr. Wesley Pegden**

Dr. Wesley Pegden is an associate professor in the Department of Mathematical Sciences at Carnegie Mellon University, and an expert in probability. Dr. Pegden employs a mathematically rigorous form of sensitivity analysis to determine whether a map is carefully crafted to achieve a particular partisan outcome, and to determine the likelihood that mapmakers who were not considering partisanship would have landed on that map. Dr. Pegden’s method works by starting with the enacted plans, using a computer algorithm making a sequence of billions or trillions of small random changes to the maps—i.e., swapping precincts at the edge of each district—while respecting nonpartisan districting principles, and then evaluating the partisan characteristics of the resulting comparison maps. Madduri Decl., Ex. I, Expert Rep. of Wesley Pegden at 2-3 (“Pegden Rep.”). Dr. Pegden has described his method, and the mathematical theorems proving that the

method can rigorously identify outliers, in multiple peer-reviewed publications. Dr. Pegden applied this same analysis to North Carolina's legislative maps in *Common Cause v. Lewis*, and the court gave "great weight to Dr. Pegden's testimony, analysis, and conclusions." 2019 WL 4569584, at \*42. The basic intuition behind Dr. Pegden's work is that if a map was not intentionally crafted to maximize partisan advantage, making tiny random changes around the edges should not significantly decrease the plan's partisan bias.

For his initial analysis, Dr. Pegden did 32 runs starting from the initial map, making 34 billion random changes for each run. Pegden Rep. at 2, 4-5. He required the maps generated by his random changes to have comparable population deviation and compactness, and no more precinct splits and county traversals than the enacted map. *Id.* at 2. Dr. Pegden then did 3 more sets of 32 runs, adding additional conditions, including protecting the same incumbents as the enacted plan. *Id.* at 5-6. Dr. Pegden compared the partisan characteristics of the enacted map to the partisan characteristics of his generated maps by calculating the number of seats Republicans would win in each map, on average, if a random "uniform swing" was repeatedly applied to the 2020 Attorney General results. *Id.* at 3. The idea, well known and widely used by redistricting experts, is to take a basic historical distribution of votes across the state and then uniformly swing the votes in each precinct in favor of the Republicans or Democrats to account for how a map would perform in better and worse years for each party.

In each of Dr. Pegden's 32 initial runs using the criteria of compactness, population equality, precinct splits, and county traversals, the enacted map showed more pro-Republican partisan bias than 99.9989% of the comparison maps generated by the algorithm making tiny random changes. The results were similar for his runs using additional conditions. *Id.* at 5-6.

For the next step of analysis, Dr. Pegden used mathematical theorems he developed and published in peer-reviewed journals to translate the results described above into a rigorous statement about how the enacted plan compares against *all* other possible districtings of North Carolina satisfying the nonpartisan districting criteria. *Id.* at 2, 3. Applying those theorems, Dr. Pegden found that, for each of his four sets of 32 runs, the enacted map is more carefully crafted for partisan advantage than at least 99.9935% of all possible plans. *Id.* at 5-6. On the basis of this analysis, Dr. Pegden concluded that the 2021 Plan “is optimized for Republican partisan bias to an extreme degree, more so than 99.99% of all alternative districtings satisfying the” nonpartisan redistricting criteria. *Id.* at 6.

**F. The 2021 Plan harms plaintiffs and other Democratic voters.**

Plaintiffs in this action are North Carolina voters who reside in Congressional districts gerrymandered under the 2021 Plan. Each Plaintiff consistently votes for Democratic congressional candidates. *See* Madduri Decl., Exs. J-U, Plaintiff Affidavits. The 2021 Plan harms Plaintiffs and other Democratic voters in North Carolina by packing and cracking them to reduce their electoral influence.

Plaintiffs Jackson Thomas Dunn and Virginia Walters Brien each reside in District 9 under the 2021 Plan. *See* Madduri Decl., Ex. L. Plaintiffs John Anthony Balla and Rebecca Harper reside in Districts 5 and 6 under the 2021 Plan, respectively. *See id.* Madduri Decl., Exs. J, P. The 2021 Plan dilutes the voting power of these Plaintiffs and other Democratic voters by placing them into these packed districts. *See supra* pp. 8-23. The 2021 Plan dilutes the voting power of the remaining Plaintiffs—Amy Clare Oseroff, Donald Rumph, Richard R. Crews, Lily Nicole Quick, Gettys Cohen, Jr., Shawn Rush, Mark S. Peters, Kathleen Barnes, and David Dwight Brown—by placing them into cracked districts. *See* Madduri Decl., Exs. K, M, N, O, Q, R, S, T, U. The 2021 Plan

fractures Democratic voters across these cracked districts to ensure that each district will remain reliably Republican.

## ARGUMENT

### I. Legal Standard

A preliminary injunction should issue if (1) the plaintiff can “show likelihood of success on the merits of his case,” (2) the plaintiff “is likely to sustain irreparable loss unless the injunction is issued,” and (3) a “balancing of the equities” supports injunctive relief. *Triangle Leasing Co. v. McMahan*, 327 N.C. 224, 227, 393 S.E.2d 854, 856-57 (1990); *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 400, 302 S.E.2d 754, 759 (1983). The Court in *Harper I* applied these standards to grant a preliminary injunction barring the use of the 2016 Plan in the 2020 elections. *Harper I*, slip op. at 11-14.

When assessing the preliminary injunction factors, the Court “should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted.” *Id.* at 11 (quoting *Williams v. Greene*, 36 N.C. App. 80, 86 (1978)). “In effect, the harm alleged by the plaintiff must satisfy a standard of relative substantiality as well as irreparability.” *Id.*

As set forth in greater detail below, preliminary relief should issue here just as it did in 2019. Legislative Defendants have enacted another extreme gerrymander in defiance of the *Harper I* court’s directive that “future maps [be] crafted through a process worthy of public confidence and a process that yields elections that are conducted freely and honestly to ascertain fairly and truthfully the will of the people.” *Harper I* Summ. J. Hr’g Tr. at 9:3-8. Like in 2019, administrative deadlines for the upcoming elections are fast approaching. And like in 2019, “the case is urgent and the right is clear.” *Auto Dealer Res., Inc. v. Occidental Life Ins. Co.*, 15 N.C. App. 634, 639, 190 S.E.2d 729, 732 (1972).

**II. Plaintiffs are likely to succeed on the merits of their claims that the 2021 Plan violates the North Carolina Constitution.**

Plaintiffs are likely to succeed on their claims in this case for the same reasons that led the *Harper I* court to grant a preliminary injunction against the 2016 Plan. The 2021 Plan plainly violates the North Carolina Constitution’s Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Assembly Clauses.

**A. The 2021 Plan violates North Carolina’s Free Elections Clause.**

The Free Elections Clause of the North Carolina Constitution declares that “[a]ll elections shall be free.” N.C. Const., art. I, § 10. The Free Elections Clause, which has no parallel in the U.S. Constitution, reflects that “[o]ur government is founded on the will of the people. Their will is expressed by the ballot.” *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875). It traces back to a similar provision of the 1689 English Bill of Rights, which sought to prevent the King from manipulating the electorate to achieve “electoral advantage” in parliamentary elections. J.R. Jones, *The Revolution of 1688 in England* 148 (1972). But North Carolina’s version is stronger than its historical analogue. After initially providing that elections “ought to be free,” the state in 1968 amended the Clause to direct that all elections “shall” be free, “mak[ing] clear” that the right to free elections, like the other rights secured to the people by the Declaration of Rights, “are commands and not mere admonitions.” *N.C. State Bar v. DuMont*, 304 N.C. 627, 635, 639, 286 S.E.2d 89, 97 (1982) (internal quotations omitted).

North Carolina courts have thus interpreted the Free Elections Clause to require “that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Common Cause*, 2019 WL 4569584, at \*110. And in interpreting the state constitution, the North Carolina Supreme Court has directed that courts “should keep in mind that this is a

government of the people, in which the will of the people—the majority—legally expressed, must govern.” *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 428, 26 S.E. 638, 638 (1897).

“[P]artisan gerrymandering ... strikes at the heart of” these principles. *Common Cause*, 2019 WL 4569584, at \*112. Extreme partisan gerrymanders—i.e., “redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others”—are “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.” *Harper I*, slip op. at 7. The *Harper I* court applied these principles to hold that Plaintiffs were likely to succeed on the merits of their claim that the 2016 Plan—which was designed to ensure 10 safe Republican seats and 3 safe Democratic seats—was an extreme partisan gerrymander that prevented congressional elections from reflecting the popular will. *Id.* at 7, 12-13.

The 2021 Plan, too, violates the Free Elections Clause. North Carolina is one of the most closely divided states in the country. Yet the 2021 Plan guarantees a lopsided Republican congressional delegation no matter how the people vote. The plan “is expected to produce 3 Democratic wins, 10 Republican wins, and 1 competitive seat.” Cooper Rep. 1-2; *see also* Princeton Gerrymandering Project, North Carolina 2021 CST-13 Final Congressional Map (similar, and giving the 2021 Plan an overall grade of “F” for Partisan Fairness).<sup>6</sup> The margin in this new congressional plan is virtually identical to the 2016 Plan that was preliminarily enjoined in *Harper I*, which was designed to produce 3 Democratic seats and 10 Republican seats. *Harper I*, slip op. at 12-13. And critically, the 2021 Plan is designed to guarantee a Republican majority even if there are major shifts in the political wind. *See* Cooper Rep. at 3; Chen Rep. at 28.

---

<sup>6</sup> Available at <https://gerrymander.princeton.edu/reforms/NC>.

Entrenchment of that magnitude violates “the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Harper I*, slip op. at 7.

This extreme partisan advantage is the result of deliberate packing and cracking of Democratic voters throughout the state. The 2021 Plan dilutes Democratic voting power principally by splitting each of the three largest counties in North Carolina—which are also the three most heavily Democratic areas in the state—across three districts, “despite the fact that there is no population-based reason to split them this many times.” Cooper Rep. at 1. And the packing and cracking in the 2021 Plan is not limited to these three Democratic strongholds. As discussed, *supra* pp. 8-23, the lines of *every district* are carefully manipulated to ensure that Republican voters are efficiently distributed throughout the state while Democratic voters are distributed in a manner that largely wastes their votes. Cooper Rep. at 3-20. “Given that nothing has changed since the last map in terms of electoral behavior or political geography, it is difficult to understand how these changes could be a result of anything other than gerrymandering.” *Id.* at 1.

That conclusion is reinforced by the expert analyses of Dr. Jowei Chen and Dr. Wes Pegden. Dr. Chen found the Enacted Plan unnecessarily deviates from at least three of the 2021 Adopted Criteria’s requirements and achieves severe levels of partisan bias that are extremely rare—and often non-existent—in simulated plans that are drawn without regard to partisan advantage. *See supra* pp. 23-28; Chen Rep. at 45. For example, the 2021 Plan includes more Republican voters in the six districts that should be most competitive than is seen in nearly 100% of the simulated maps. Chen Rep. at 24. As a result, he found that “[b]y subordinating traditional districting criteria, the General Assembly’s Enacted Plan was able to achieve partisan goals that could not otherwise have been achieved under a partisan-neutral districting process that follows

the Adopted Criteria.” *Id.* Thus Dr. Chen concluded that the Enacted Plan is “an extreme partisan outlier.” *Id.* Dr Pegden’s simulations similarly showed that the 2021 Plan showed more partisan bias than 99.99% or more of the comparison maps generated by making tiny random changes, and indeed more partisan bias than 99.99% of *all* possible plans satisfying the nonpartisan redistricting criteria. *See supra* p. 24; Pegden Rep. at 6. As Dr. Pegden concluded, the 2021 Plan “is optimized for Republican bias to an extreme degree.” Pegden Rep. at 6.

Like in *Harper I*, Legislative Defendants obtained this outcome by engineering a redistricting process at the committee level to guarantee that the General Assembly would enact a partisan gerrymander. The *Harper I* court observed that Legislative Defendants adopted criteria requiring map-drawers to “use . . . political data to draw a map that would maintain the existing partisan makeup of the state’s congressional delegation” of “10 Republicans and 3 Democrats.” *Harper I*, slip op. at 13. And it found persuasive that “the redistricting committee, and ultimately the General Assembly as a whole, approved the 2016 congressional districts by party-line vote.” *Id.*

Legislative Defendants knew this time that they could not adopt redistricting criteria explicitly stating that “[t]he partisan makeup of the congressional delegation under the enacted plan is 10 Republicans and 3 Democrats,” *id.* (quoting *Rucho*, 318 F. Supp. 3d at 805), and could not openly load partisan data into public terminals. *See also id.* at 13 (Chair of the House Redistricting Committee admitting that he “propose[d] that [the Committee] draw the maps to give a partisan advantage to 10 Republicans and 3 Democrats because [he] d[id] not believe it [would be] possible to draw a map with 11 Republicans and 2 Democrats.”). So they devised a workaround. *See Griffin v. Cty. Sch. Bd. of Prince Edward Cty.*, 377 U.S. 218, 223 (1964). Although political data was not loaded onto the computer terminals at which legislators drew and

submitted maps, Legislative Defendants allowed legislators to sit down at those terminals and simply copy maps drawn by outside political consultants using prohibited political data. *See supra* pp. 6-8.

In addition to rendering the criterion against the use of political data meaningless, Legislative Defendants also enacted new criteria designed to facilitate a partisan gerrymander. While the adopted criteria for the 2016 Plan prevented lawmakers from “divid[ing] a county into more than two districts,” 2016 Adopted Criteria at 2, Legislative Defendants removed this requirement for 2021. *See generally* 2021 Adopted Criteria. Taking advantage of this newfound freedom, Legislative Defendants proceeded to trisect three heavily Democratic counties (Mecklenburg, Wake, and Guilford), profoundly diluting the voting power of these counties’ Democratic residents. Cooper Rep. at 3. No other county is split three times under the 2021 Plan. Chen Rep. at 11. And just like the 2016 Plan enjoined in *Harper I*, the gerrymandered nature of the 2021 Plan is reflected in the fact that it was approved on strict party-line votes.<sup>7</sup>

This redistricting process and the congressional plan that resulted make clear that the 2021 Plan is an extreme partisan gerrymander. Similar to the 2016 Plan that was enjoined in *Harper I*, it is designed to produce 10 to 11 Republican seats no matter how the people vote. This sort of gerrymander “entrench[es] politicians in power” and ensures that congressional elections will not “be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Harper*

---

<sup>7</sup> The Senate and House Committees approved the 2021 Plan on November 1 and 3, respectively, with all Republicans on both committees voting in favor and all Democrats voting against. The full Senate and House then passed the 2021 Plan on November 2 and November 3, respectively, again on strict party line votes. *See* Charles Duncan, *Redistricting in NC: New Maps Approved, Favoring GOP*, Spectrum News 1 (Nov. 4, 2021), available at <https://spectrumlocalnews.com/nc/charlotte/politics/2021/11/04/redistricting-in-n-c---new-maps-approved--favoring-gop>.

*I*, slip op. at 7. And as such Plaintiffs are likely to succeed on their claim that it violates the Free Elections Clause.

**B. The 2016 Plan violates North Carolina’s Equal Protection Clause.**

The North Carolina Constitution’s Equal Protection Clause declares that “[n]o person shall be denied the equal protection of the laws.” N.C. Const., art. I, § 19. This clause provides greater protection for voting rights than its federal counterpart. *Harper I*, slip op. at 7. Specifically, North Carolina’s Equal Protection Clause protects “the fundamental right of each North Carolinian to *substantially equal voting power.*” *Id.* (citing *Stephenson v. Bartlett*, 355 N.C. 354, 3379, 562 S.E.2d 377, 394 (2002) (emphasis in original)). “It is well settled in this State that ‘the right to vote on equal terms is a fundamental right.’” *Common Cause*, 2019 WL 4569584, at \*113 (citing *Stephenson*, 355 N.C. at 378, 562 S.E.2d at 393 (quoting *Northampton Cnty.*, 326 N.C. at 747, 392 S.E.2d at 356)). “These principles apply with full force in the redistricting context.” *Id.* As *Harper I* explained, “partisan gerrymandering runs afoul of the State’s obligation to provide all persons with equal protection of law because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party.” *Harper I*, slip op. at 8. In *Common Cause*, the court held that extreme partisan gerrymandering infringes upon a “fundamental right,” because “the classification of voters based on partisanship in order to pack and crack them into districts is an impermissible distinction among similarly situated citizens aimed at denying equal voting power.” *Common Cause*, 2019 WL 4569584, at \*113 (internal quotation marks omitted).

In evaluating whether an alleged partisan gerrymander violates North Carolina’s Equal Protection Clause, this Court applies a three-part test. *Harper I*, slip op. at 8. First, plaintiffs challenging a districting plan must prove that state officials’ predominant purpose in drawing

district lines was to entrench their party in power by diluting the votes of citizens favoring their rival. *Id.* (citing *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm’n*, 135 S. Ct. 2652, 2658 (2015)). Second, plaintiffs must establish that the lines drawn in fact have the intended effect by “substantially” diluting their votes. *Id.* (citing *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 861 (M.D.N.C. 2018)). Finally, if the plaintiffs make those showings, “the State must provide a legitimate, non-partisan justification (*i.e.*, that the impermissible intent did not cause the effect) to preserve its map.” *Id.* (citing *Rucho v. Common Cause*, 139 S. Ct. 2484, 2516 (2019) (Kagan, J., dissenting)). The 2021 Plan fails at every step.

*First*, as discussed above, the General Assembly intentionally entrenched Republicans in power through the 2021 Plan. To determine whether discriminatory intent is at play, “a court must undertake a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Holmes v. Moore*, 270 N.C. App. 7, 16–17, 840 S.E.2d 244, 254–55 (2020) (citing *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 266 (1977)). Discriminatory purpose need not be “the sole or even a primary motive,” but rather just “a motivating factor.” *Id.* (internal quotation marks and citation omitted). And discriminatory purpose can be inferred from the totality of the relevant facts. *Id.* In determining intent in other contexts, North Carolina courts have looked to the *Arlington Heights* factors. *Id.* These include: “[t]he historical background of the [challenged] decision”; “[t]he specific sequence of events leading up to the challenged decision”; “[d]epartures from normal procedural sequence”; the legislative history of the decision; and of course, the disproportionate “impact of the official action.” *Id.* (citing *Arlington Heights*, 429 U.S. at 266-67).

As to the historical background of redistricting in North Carolina, there can be no dispute that the General Assembly has repeatedly and intentionally discriminated against both Black North

Carolinians and Democratic voters in redistricting. *See supra* pp. 3-4. Additionally, the process of enacting the 2021 Plan is replete with evidence demonstrating intentional discrimination. In violation of its own guidelines, and *Harper I*'s clear instruction that legislators should not “seek[] to diminish the electoral power of supporters of a disfavored party,” *Harper I*, slip op. at 8, the Committees’ process flagrantly allowed map drawers to consider partisan data and draw a plan that favors Republicans. Legislators intentionally turned a blind eye towards map drawers submitting maps that had been drawn using partisan data, and Defendant Hall openly admitted that he had no desire to prevent legislators from introducing partisan data into maps. Oct. 5, 2021 H. Redistricting Comm. Hr’g Tr. at 52:18-53:13. Moreover, the Committee constructed its guidelines to enable the packing and cracking of voters in all the State’s largest and most Democratic counties and went on to do just this, trifurcating Mecklenburg, Wake, and Guilford Counties. *See* 2021 Adopted Criteria (eliminating the criterion from the 2016 Adopted Criteria that “reasonable efforts shall be made not to divide a county into more than two districts”); 2016 Adopted Criteria. And Legislators excluded Democratic communities from public hearings and ignored the limited input they allowed these communities to offer. Cooper Rep. at 8. Finally, like its predecessor, the plan passed through committees and the full General Assembly on strict party-line votes. *Harper I*, slip op. at 13.

Expert evidence also confirms that the 2021 Plan was intended to entrench the Republican party in power. Dr. Pegden’s analysis concludes that the 2021 Plan is more favorable to Republicans than 99.98% of plans generated by making small changes to district boundaries. The likelihood of that happening by chance, as opposed to by intent, is infinitesimal. Of the 1,000 maps that Dr. Chen generated, every single one complied more closely with the 2021 Adopted Criteria

compared to the Enacted Plan, and none of the computer-simulated maps conveyed such significant advantages to the Republican Party across a broad range of statistical measures.

*Second*, the 2021 Plan has had its “intended effect” of diluting the votes of Plaintiffs and other Democratic voters, depriving them of substantially equal voting power and the right to vote on equal terms. As detailed above, Dr. Chen’s and Dr. Cooper’s analyses confirm that Legislative Defendants succeeded in their goal of creating 10-11 Republican seats. *See supra* pp. 23-28. The 2021 Plan achieves this result by “packing and cracking Democratic voters” across the 14 districts, just like the 2016 Plan enjoined in *Harper I* and the 2017 state legislative plans struck down under the Equal Protection Clause in *Common Cause. Harper I*, slip op. at 18; *Common Cause*, 2019 WL 4569584, at \*116. As under those plans, the margins of victory under the 2021 Plan—and not just the seat counts—confirm the vote dilution. Assuming a statewide vote breakdown in line with recent elections, Democrats under the 2021 Plan would win four districts with an average of 65.4% of the vote, while Republicans would average 57.3% in the remaining 10 districts—a margin of 8.1%, an outcome never generated in Dr. Chen’s 1000 simulated maps. *Chen Rep.* at 42-43. “This packing and cracking diminishes the ‘voting power’ of Democratic voters” in all 14 districts. *Common Cause*, 2019 WL 4569584, at \*116. Thus, Democratic voters in the three packed districts “are substantially less likely to ultimately matter in deciding the election results” when compared to Republican voters in the remaining districts. *Id.*

The 2021 Plan “not only deprive[s] Democratic voters of equal voting power in terms of electoral outcomes, but also deprive[s] them of substantially equal [congressional] representation.” *Id.* at \*116. “When a district is created solely to effectuate the interests of one group”—as the process and Dr. Chen’s analyses make clear, *see Chen Rep.* 45,—“the elected official from that district is more likely to believe that their primary obligation is to represent only the members of

that group, rather than their constituency as a whole.” *Common Cause*, 2019 WL 4569584, at \*116 (internal quotation marks omitted).

Dr. Chen’s analysis in this case independently confirms that the 2021 Plan deprives Plaintiffs of substantially equal voting power and the right to vote on equal terms. Dr. Chen concluded that five Plaintiffs would be in more Democratic leaning or more competitive districts under a map that was not drawn to maximize Republican advantage and that three Plaintiffs would be in less packed Democratic districts, in plans drawn using traditional nonpartisan criteria. Chen Rep. at 48.

*Finally*, there is no legitimate, nonpartisan justification for the 2021 Plan’s extreme partisan bias. Legislative Defendants cannot conceivably show that the 2021 Plan is narrowly tailored to achieve a compelling government interest. Indeed, Legislative Defendants designed the 2021 Adopted Criteria to allow them to crack the State’s three Democratic strongholds for partisan gain, and even then, they failed to follow other of their own criteria for partisan ends.

In short, in drawing the 2021 Plan, Legislative Defendants engaged in the “intentional ‘classification of voters’ based on partisanship in order to pack and crack them into districts” and to “deprive [them] of the right to vote on equal terms.” *Common Cause*, 2019 WL 4569584, at \*117. Plaintiffs are likely to succeed on their Equal Protection Clause claim.

**C. The 2021 Plan violates North Carolina’s Freedom of Speech and Assembly Clauses.**

The 2021 Plan burdens protected expression and association by making Democratic votes less effective and by preventing Democratic voters from associating with one other to elect and instruct representatives. Because Legislative Defendants cannot establish that the 2021 Plan was narrowly tailored to achieve a compelling government interest, it fails strict scrutiny.

**1. The 2021 Plan unconstitutionally discriminates against protected expression and association.**

The North Carolina Constitution’s Freedom of Speech Clause 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. The Freedom of Assembly Clause provides in relevant part that “[t]he people have a right to assemble together for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.” *Id.* § 12. These clauses provide greater protection for speech and association than their federal counterparts. *Common Cause*, 2019 WL 4569584, at \*118-19.

*Common Cause* held that “[v]oting for the candidate of one’s choice and associating with the political party of one’s choice are core means of political expression protected by” these clauses. *Id.* “Voting provides citizens a direct means of expressing support for a candidate and his views,” and “is no less protected ‘merely because it involved the act’ of casting a ballot.” *Id.* at \*119 (quoting *State v. Bishop*, 368 N.C. 869, 874, 787 S.E.2d 814, 818 (2016)). Similarly, “[c]itizens form parties to express their political beliefs and to assist others in casting votes in alignment with those beliefs.” *Id.* at \*120 (quoting *Libertarian Party of N.C. v. State*, 365 N.C. 41, 49, 707 S.E.2d 199, 204-05 (2011)). “[B]anding together with likeminded citizens in a political party” thus “is a form of protected association.” *Id.* As the *Harper I* Court recognized, those holdings apply in the context of congressional elections just as they did in the context of state legislative elections in *Common Cause*. See *Harper I*, slip op. at 10-11.

a. A districting plan is subject to strict scrutiny where it burdens protected expression based on viewpoint by discriminatorily making the votes cast for one party’s candidates less effective. “The guarantee of free expression ‘stands against attempts to disfavor certain subjects or viewpoints.’” *Id.* at 9 (quoting *Citizens United v. FEC*, 558 U.S. 310, 340 (2010)). Notably, a

plan “need not explicitly mention any particular viewpoint to be impermissibly discriminatory.” *Common Cause*, 2019 WL 4569584, at \*121. And “[v]iewpoint discrimination is *most* insidious where the targeted speech is political.” *Harper I*, slip op. at 9. “When a legislature engages in extreme partisan gerrymandering, it identifies certain preferred speakers (e.g. Republican voters) while targeting certain disfavored speakers (e.g. Democratic voters) because of disagreement with the views they express when they vote.” *Id.* at 10.

The 2021 Plan replicates features that led the *Common Cause* Court to conclude that the 2017 state legislative plans violated the Freedom of Speech Clause. Here too, the Legislative Defendants “singled out [Democratic voters] for disfavored treatment by packing and cracking them into districts with the aim of diluting their votes and, in the case of cracked districts, ensuring that these voters are significantly less likely, in comparison to Republican voters, to be able to elect a candidate who shares their views.” *Common Cause*, 2019 WL 4569584, at \*120.

As in *Common Cause*, it “changes nothing” that “Democratic voters can still cast ballots under gerrymandered maps.” *Id.* at 121. “The government unconstitutionally burdens speech where it renders disfavored speech *less effective*, even if it does not ban such speech outright.” *Id.* Like the invalidated 2017 state legislative plans, the 2021 Plan’s “sorting of Plaintiffs and other Democratic voters based on disfavor for their political views has burdened their speech by making their votes less effective.” *Id.* “Plaintiffs and other Democratic voters live in districts where their votes are guaranteed to be less effective—either because the districts are packed such that Democratic candidates will win by astronomical margins or because the Democratic voters are cracked into seats that are safely Republican.” *Id.*

b. The 2021 Plan independently violates Article I, § 12 by burdening the ability of Democratic voters to associate effectively. As *Harper I* explained, “a legislature that engages in

extreme partisan gerrymandering burdens the associational rights of disfavored voters.” *Harper I*, slip op. at 10. The *Common Cause* court held that a districting plan is subject to strict scrutiny where it burdens disfavored association by restricting “the ability of like-minded people across the State to affiliate in a political party and carry out [their] activities and objects.” *Common Cause*, 2019 WL 4569584, at \*122 (internal quotation marks omitted); *see also Harper I*, slip op. at 8-11. The *Common Cause* court concluded that under the 2017 state legislative plans, “Democratic voters who live in cracked districts have little to no ability to instruct their representatives or obtain redress from their representatives on issues important to those voters.” *Id.* The same is true under the 2021 Plan. The 2021 Plan places Democrats in ten cracked districts that diminish their voting strength. The Democratic voters in these cracked districts have virtually no chance of successfully banding together to elect a candidate of their choice, and their Republican representatives have little incentive to consider the views of Democratic constituents.

c. The 2021 Plan fails strict scrutiny—and indeed any scrutiny. “Discriminating against citizens based on their political beliefs does not serve any legitimate government interest.” *Common Cause*, 2019 WL 4569584, at \*123. “Blatant examples of partisanship driving districting decisions are unrelated to any legitimate legislative objective.” *Id.* at \*115 (internal quotation marks omitted). “[P]artisan gerrymanders are incompatible with democratic principles” and are “contrary to the compelling governmental interests established by the North Carolina Constitution ‘in having fair, honest elections,’ where the ‘will of the people’ is ascertained ‘fairly and truthfully.’” *Id.* at \*115-16 (quoting *Petersilie*, 334 N.C. at 182, 432 S.E.2d at 840, and *Skinner*, 169 N.C. at 415, 86 S.E.2d at 356)).

**2. The 2021 Plan unconstitutionally retaliates against protected expression and association.**

The 2021 Plan independently violates the Freedom of Speech and Assembly Clauses by retaliating against voters based on their protected speech and association. “In addition to forbidding discrimination,” North Carolina’s Freedom of Speech and Assembly Clauses “also bar *retaliation* based on protected speech” or conduct. *Id.* at \*123. “Courts carefully guard against retaliation by the party in power.” *Harper I*, slip op. at 10. To prevail on a retaliation theory, a plaintiff must show that “(1) the [challenged plan] take[s] adverse action against them, (2) the [plan] w[as] created with an intent to retaliate against their protected speech or conduct, and (3) the [plan] would not have taken the adverse action but for that retaliatory intent.” *Common Cause*, 2019 WL 4569584, at \*123.

Like the 2017 state legislative plans invalidated in *Common Cause*, the 2021 Plan satisfies all three of these requirements. As to adverse action, “[i]n *relative* terms, Democratic voters under the [2021 Plan] are far less able to succeed in electing candidates of their choice than they would be under plans that were not so carefully crafted to dilute their votes. And in *absolute* terms, Plaintiffs are significantly foreclosed from succeeding in electing preferred candidates.” *Id.* As to intent, highly probative circumstantial evidence confirms that the 2021 Plan “intentionally targeted Democratic voters based on their voting histories.” *Id.* at \*124; *see supra* pp. 33-34. And as to causation, “[t]he adverse effects described above would not have occurred if Legislative Defendants had not cracked and packed Democratic voters and thereby diluted their votes.” *Common Cause*, 2019 WL 4569584, at \*124. As he did in *Common Cause*, Dr. Chen “compared the districts in which the Individual Plaintiffs currently reside under the enacted plan[] with districts in which they would have resided under each of his simulated plans,” and found that eight

of the Plaintiffs reside in districts that have a more extreme partisan distribution than was observed in at least 95% of the simulated maps. *Id.*; see Chen Rep. 48.

**D. All Plaintiffs have established a likelihood of standing.**

All thirteen Plaintiffs have established a likelihood of standing to sue in this case. “[B]ecause North Carolina courts are not constrained by the ‘case or controversy’ requirement of Article III of the United States Constitution, our State’s standing jurisprudence is broader than federal law.” *Davis v. New Zion Baptist Church*, 811 S.E.2d 725, 727 (N.C. Ct. App. 2018) (internal quotation marks omitted); accord *Goldston v. State*, 361 N.C. 26, 35, 637 S.E.2d 876, 882 (2006) (“While federal standing doctrine can be instructive as to general principles ... , the nuts and bolts of North Carolina standing doctrine are not coincident with federal standing doctrine.”). “At a minimum, a plaintiff in a North Carolina court has standing to sue when it would have standing to sue in federal court.” *Common Cause*, 2019 WL 4569584, at \*105.

“The North Carolina Supreme Court has broadly interpreted Article I, § 18 to mean that ‘[a]s a general matter, the North Carolina Constitution confers standing on those who suffer harm.’” *Id.* at \*106 (quoting *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 642, 669 S.E.2d 279, 281 (2008)). The “gist” of standing under North Carolina law involves “whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.” *Goldston*, 361 N.C. at 30, 637 S.E.2d at 879 (quotation marks omitted). Although the North Carolina Supreme Court “has declined to set out specific criteria necessary to show standing in every case, the Supreme Court has emphasized two factors in its cases examining standing: (1) the presence of a legally cognizable injury; and (2) a means by which the courts can remedy that injury.” *Davis*, 811 S.E.2d at 727-28. Moreover, to obtain a preliminary injunction, a plaintiff need only show “a likelihood

that plaintiff has standing.” *Action NC v. Strach*, 216 F. Supp. 3d 597, 630 (M.D.N.C. 2016) (internal quotation marks omitted).

The *Harper I* court recognized these Plaintiffs have standing to challenge their gerrymandered congressional districts. *Harper I*, slip op. at 5. Indeed, as to the second factor, previous remedial orders in *Harper I* and in *Common Cause* demonstrate that this Court is fully capable of remedying partisan gerrymandering. And as to the first, Plaintiffs have suffered legally cognizable injuries in the drawing of their individual districts. In *Common Cause*, this Court held that the plaintiffs had standing where they had introduced “district-specific evidence that [they] live in ... districts that are outliers in partisan composition relative to the districts in which they live under Dr. Chen’s nonpartisan simulated plans.” *Common Cause*, 2019 WL 4569584.

Here, Dr. Chen has performed precisely the same district-specific analysis that he performed in *Common Cause*. Dr. Chen created computer simulations for North Carolina’s congressional districts that, like the simulations he created in *Common Cause*, strictly adhere to the nonpartisan traditional redistricting criteria within the 2016 Adopted Criteria. Chen Rep. at 5. Using these simulations, Dr. Chen has identified the extent to which each Plaintiff here lives in a congressional district that is a partisan outlier relative to the district in which he or she would live under neutral maps. *Id.* at 48. Dr. Chen finds that eight of the Plaintiffs reside in districts that have a more extreme partisan distribution than was observed in at least 95% of the simulated maps. *See* Chen Rep. at 48. In *Common Cause*, the court held that a plaintiff with standing to challenge his or her individual district necessarily had standing to challenge his or her entire county grouping “because the manner in which one district is drawn in a county grouping necessarily is tied to the drawing of some, and possibly all, of the other districts within that grouping.” *Common Cause*, 2019 WL 4569584, at \*108. But congressional districts in North Carolina are not drawn in county

groupings—the entire statewide map is a single grouping. The drawing of *every* congressional district therefore “is tied to the drawing of some, and possibly all, of the other” districts. *See also Erfer v. Commonwealth*, 794 A.2d 325, 330 (Pa. 2002), *abrogated on other grounds by League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018) (holding that individual voters have standing to challenge entire congressional plan, because a congressional plan “acts as an interlocking jigsaw puzzle, each piece reliant upon its neighbors to establish a picture of the whole”). As Dr. Cooper explains, “[w]hile the district-by-district analysis is key to understanding the ways in which the current map is gerrymandered, the map itself is best thought of as a single organism, rather than 14 separate districts—when one district moves in one direction, another district must move in response.” Cooper Rep. at 2. Therefore, all 13 Plaintiffs have standing to challenge the entire 2021 Plan.

### **III. Plaintiffs are likely to suffer irreparable harm absent a preliminary injunction.**

Absent a preliminary injunction, Plaintiffs are “likely to sustain irreparable loss.” *Triangle Leasing*, 327 N.C. at 227, 393 S.E.2d at 856-57. As the *Harper I* court explained in ruling on Plaintiffs’ request for preliminary relief regarding the 2016 Plan, “[t]he loss to Plaintiffs’ fundamental rights guaranteed by the North Carolina Constitution will undoubtedly be irreparable if congressional elections are allowed to proceed under the 2016 congressional districts.” *Harper I*, slip op. at 14. Thus, “issuance [of preliminary relief] is necessary for the continued protection of Plaintiffs’ fundamental rights guaranteed by the North Carolina Constitution during the course of the litigation.” *Id.*

So too here. If an injunction does not issue, Plaintiffs will be forced to vote in 2022 in unlawful districts that violate multiple fundamental rights guaranteed by the North Carolina Constitution. That alone is irreparable injury. The loss of constitutional rights, “for even minimal periods of time, unquestionably constitutes irreparable injury,” *Elrod v. Burns*, 427 U.S. 347, 373

(1976), and an infringement of “voting and associational rights . . . cannot be alleviated after the election.” *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 883 (3d Cir. 1997); *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“Courts routinely deem restrictions on fundamental rights irreparable injury.”).

Indeed, North Carolinians have been forced to vote in districts that a court later held unconstitutional in nearly every congressional election since the 2010 decennial census. Once again, only a nonpartisan remedial plan can ensure that Plaintiffs no longer live in districts that were not the product of illegal discrimination by their government.

#### **IV. There is adequate time to implement a remedy before the 2022 primaries.**

There is more than enough time to establish a remedial plan for use in the March 2022 primaries. This is not a matter of speculation—the remedial processes in *Harper I* and in *Common Cause* in 2019 confirms it. After the court in *Harper I* issued a preliminary injunction enjoining use of the 2016 Plan, the General Assembly established new congressional districts just two and a half weeks later. The General Assembly moved even faster in *Common Cause*, passing both the state House and state Senate remedial plans in less than two weeks.

*Common Cause*, moreover, involved *more than five times* as many districts than are at issue here. That court invalidated a total of 77 districts across 21 different county groupings in two different legislative bodies. This case involves just one statewide map consisting of 14 districts, and does not require application of the complicated Whole County Provision that applies to state legislative districts. The events of 2019 prove the General Assembly can pass remedial maps quickly, and well in advance of the March 2022 primaries.

Deadlines leading up to the March 2022 primaries can be moved as necessary to provide effective relief, which Defendants have previously admitted. *Harper I*, slip op. at 15. The State Board of Elections has authority “to make reasonable interim rules and regulations” to move

administrative deadlines in the event that any North Carolina election law “is held unconstitutional or invalid by a State or federal court.” N.C. Gen. Stat. § 163A-742. And this Court has remedial authority to move deadlines related to the 2022 congressional primary elections, if necessary. Indeed, in 2019, the *Harper I* court enjoined the candidate filing period to adjudicate Plaintiffs’ motion for summary judgment. Order Enjoining Filing Period at 1-2. Like in *Harper I*, this Court can enjoin the candidate filing period for congressional candidates only, or it could enjoin the filing period for candidates for all races. *Id.*

Moreover, if needed, the Court could move the congressional primaries. *See Common Cause*, 2019 WL 4569584, at \*135. One possibility would be to move the congressional primaries to the “Second Primary” date on April 26, 2022, that has taken place in every recent election cycle for primary run-offs.

There is precedent for doing so. In 2016, after a federal court enjoined the State’s congressional plan as an unconstitutional racial gerrymander, the General Assembly moved only the congressional primaries, while leaving other primaries on the originally scheduled date. *See* N.C. Sess. Law 2016-2 § 1(b). Such changes are not necessary at this stage, however, as sufficient time remains for the Court to receive briefing and argument, issue a preliminary injunction, and oversee a remedial process well in advance of the March 2022 primaries.

**V. The balance of equities strongly favors a preliminary injunction.**

Finally, “a careful balancing of the equities,” *A.E.P. Indus.*, 308 N.C. at 400, 302 S.E.2d at 759, weighs decidedly in favor of an injunction. Plaintiffs seek to vindicate interests of the highest importance. Just as with the 2016 Plan, absent an injunction now “the people of [North Carolina] will lose the opportunity to participate in congressional elections conducted freely and honestly.” *Harper I*, slip op. at 15. And “[f]air and honest elections are to prevail in this state.” *Common Cause*, 2019 WL 4569584, at \*128 (quoting *McDonald v. Morrow*, 119 N.C. 666, 673, 26 S.E.

132, 134 (1896)). The North Carolina Supreme Court “has elevated this principle to the highest legal standard, noting that it is a ‘compelling interest’ of the State ‘in having fair, honest elections.’” *Id.* (quoting *State v. Petersilie*, 334 N.C. 169, 184, 432 S.E.2d 832, 840 (1993)). Plaintiffs’ claims implicate “fundamental right[s] ... enshrined in our Constitution’s Declaration of Rights, a compelling governmental interest, and a cornerstone of our democratic form of government.” *Id.*, 2019 WL 4569584, at \*109.

In contrast, Defendants will suffer no comparable harm. Like in 2019, the primary possible interest Legislative Defendants have in conducting elections under the 2021 Plan (aside from unfair partisan advantage) is a vague and generalized one in “effectuating an act of the General Assembly.” *Harper I*, slip op. at 15. As the Court held before, this, nor any other concerns over disruption, confusion, or uncertainty of the electoral process outweigh the specific and grave harm to Plaintiffs “from the irreparable loss of their fundamental rights guaranteed by the North Carolina Constitution.” *Id.*

This case is about the rights not just of Plaintiffs, but of *all* North Carolina citizens to vote in lawful districts that will reveal, “fairly and truthfully, the will of the people.” *Id.* Absent a preliminary injunction, Plaintiffs and their fellow citizens will be forced to cast their ballots in invalid, unconstitutional congressional districts in 2022. It would be inequitable in the extreme to force them do so.<sup>8</sup>

---

<sup>8</sup> This Court should not require Plaintiffs to post a bond. North Carolina Rule of Civil Procedure 65(c) provides that “[n]o ... preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the judge deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined.” But it is well settled that there are “some instances when it is proper for no security to be required of a party seeking injunctive relief.” *Staton v. Russell*, 151 N.C. App. 1, 12, 565 S.E.2d 103, 110 (2002) (quotation marks omitted). This is just such an instance. There is no prospect that any party to this case will be “wrongfully enjoined” or incur any recoverable “costs or

**CONCLUSION**

For the foregoing reasons, the Court should enter a Preliminary Injunction in substantially the form of the attached proposed order.

Dated: November 30, 2021

By: Burton Craige

**PATTERSON HARKAVY LLP**

Burton Craige, NC Bar No. 9180  
Narendra K. Ghosh, NC Bar No. 37649  
Paul E. Smith, NC Bar No. 45014  
100 Europa Dr., Suite 420  
Chapel Hill, NC 27517  
(919) 942-5200  
bcraige@pathlaw.com  
nghosh@pathlaw.com  
psmith@pathlaw.com

*Counsel for Plaintiffs*

**ELIAS LAW GROUP LLP**

Marc E. Elias\*  
Aria C. Branch\*  
Lalitha D. Madduri\*  
Jacob D. Shelly\*  
Graham W. White\*  
10 G Street NE, Suite 600  
Washington, D.C. 20002  
Phone: (202) 968-4490  
Facsimile: (202) 968-4498  
MElias@elias.law  
ABranch@elias.law  
LMadduri@elias.law  
JShelly@elias.law  
GWhite@elias.law

Abha Khanna\*  
1700 Seventh Avenue, Suite 2100  
Seattle, Washington 98101  
Phone: (206) 656-0177  
Facsimile: (206) 656-0180  
AKhanna@elias.law

---

damages” therefrom. And no security is required where, as here, “one purpose of the ... injunction is to preserve the court’s jurisdiction.” 151 N.C. App. at 13, 565 S.E.2d at 110.

**ARNOLD AND PORTER  
KAYE SCHOLER LLP**

Elisabeth S. Theodore\*  
R. Stanton Jones\*  
Samuel F. Callahan\*  
601 Massachusetts Avenue NW  
Washington, DC 20001-3743  
(202) 954-5000  
elisabeth.theodore@arnoldporter.com

*Counsel for Plaintiffs*

\* *Pro hac vice* application forthcoming

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing to counsel for Defendants North Carolina State Board of Elections and its members via *e-mail*, and served a copy of the foregoing to the remaining defendants by *U.S. mail*, addressed to the following persons at the following addresses which are the last addresses known to me:

Warren Daniel  
300 N. Salisbury Street  
Rm. 627  
Raleigh, N.C. 27603

Paul Newton  
300 N. Salisbury Street  
Rm. 312  
Raleigh, N.C. 27603

David R. Lewis  
16 West Jones Street  
Rm. 2301  
Raleigh, N.C. 27601

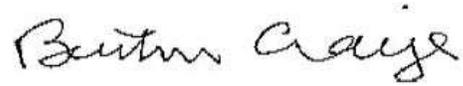
Ralph E. Hise  
300 N. Salisbury St.  
Rm. 300-A  
Raleigh, N.C. 27603

Timothy K. Moore  
16 West Jones Street

Rm. 2304  
Raleigh, N.C. 27601

Philip E. Berger  
16 West Jones Street  
Rm. 2007  
Raleigh, N.C. 27601

This the 30th day of November, 2021.

A handwritten signature in cursive script that reads "Burton Craige".

---

Burton Craige, NC Bar No. 9180

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
No. 21 CVS 500085

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL  
CAPACITY AS SENIOR CHAIR OF THE HOUSE  
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

**CORRECTED CERTIFICATE OF SERVICE OF PLAINTIFFS' MOTION FOR A  
PRELIMINARY INJUNCTION**

I hereby certify that I have this day served a copy of Plaintiffs' Motion for a Preliminary Injunction *by U.S. mail*, addressed to the following persons at the following addresses which are the last addresses known to me:

Destin Hall  
16 West Jones Street  
Rm. 2301  
Raleigh, NC 27601

Philip E. Berger  
16 West Jones St.  
Rm. 2007  
Raleigh, NC 27601

Warren Daniel  
300 N. Salisbury St.  
Rm. 6  
Raleigh, NC 27603

Ralph E. Hise, Jr.  
300 N. Salisbury St.  
Rm. 3  
Raleigh, NC 27603

Timothy K. Moore  
16 West Jones St.  
Rm. 2304

Raleigh, NC 27601

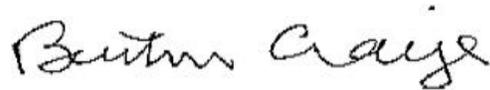
Paul Newton  
300 N. Salisbury St.  
Rm. 3  
Raleigh, NC 27603

Katelyn Love  
General Counsel  
NC State Board of Elections  
430 N. Salisbury St.  
Suite 3128  
Raleigh, NC 27603

A copy of Plaintiffs' Motion for a Preliminary Injunction was also sent by *U.S. Mail* to the Attorney General as agent for defendants Philip E. Berger, Timothy K. Moore, Paul Newton, Ralph Hise, Destin Hall, and Warren Daniel, addressed as follows:

Josh Stein  
Attorney General  
114 West Edenton Street  
Raleigh, NC 27603

This the 30th day of November, 2021.

A handwritten signature in cursive script that reads "Burton Craige".

Burton Craige, NC Bar No. 9180