STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426, 21 CVS 500085

NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS, INC.; HENRY M. MICHAUX, JR., et al.,

Plaintiffs,

REBECCA HARPER, et al.,

Plaintiffs,

v.

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

Defendants.

NCLCV PLAINTIFFS' PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE

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INTRODUCTION

This suit raises three questions.

First, this suit asks whether the North Carolina State Constitution prohibits the extreme partisan gerrymandering present in the redistricting plans for Congress, the North Carolina State Senate, and the North Carolina State House of Representatives that the General Assembly passed into law on November 4, 2021 (called here "the Enacted Plans"). Two years ago, a three-judge panel held that the North Carolina State Constitution indeed prohibits such gerrymandering. That decision accorded with decisions by the Pennsylvania and Florida Supreme Courts reaching the same result under their constitutions.

This Court should join those courts and enjoin the Enacted Plans. Our Constitution declares that "[a]ll political power is vested in and derived from the people." N.C. Const. art. I, § 2. But under gerrymandered maps, the will of the people is irrelevant. In a functioning democracy, "frequent elections" serve to hold lawmakers "directly accountable to the people." *State ex rel. McCrory v. Berger*, 368 N.C. 633, 653, 781 S.E.2d 248, 261 (2016) (Newby, J., concurring in part and dissenting in part). In partisan gerrymanders, however, competitive elections are rare. And in a healthy democracy, legislators seek out dialogue and compromise. But gerrymandered maps beget hyper-partisanship in which legislators know they never need to consider opposing views.

According to a recent poll, 72% of North Carolinians believe that gerrymandering is a problem, with nearly half (48%) saying it is a "very serious problem." PX233 at 1 (Public Policy Polling, North Carolina Survey Results). And 72% of North Carolinians—including a majority of both Democrats (76%) and Republicans (67%)—believe that state courts should aggressively limit gerrymandering. PX233 at 2, 16. Meanwhile, the *Wall Street Journal* identifies North Carolina

as a prime offender in the "ugly spectacle" of using "gerrymandering [to] build[] fences between Americans," observing that the "nonpartisan Princeton Gerrymandering Project" has "given F grades" to the General Assembly's maps. PX242 at 4 (Seib).

It is now this Court's duty to intervene. While the U.S. Supreme Court in 2019 held that federal law does not provide a remedy for partisan gerrymandering, all nine Justices agreed that such gerrymandering is "incompatible with democratic principles" and that "state constitutions can provide" a remedy. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019). And here, partisan gerrymandering violates the North Carolina State Constitution in at least three ways. It subverts the guarantee that "[a]ll elections shall be free," N.C. Const. art. I, § 10. It infringes the equal-protection guarantee of "substantially equal voting power and substantially equal legislative representation." *Stephenson v. Bartlett*, 355 N.C. 354, 379, 562 S.E.2d 377, 394 (2002) ("*Stephenson I*"). And it burdens rights to free expression and association. N.C. Const. art. I, §§ 12, 14. Indeed, partisan gerrymandering presents the very danger the North Carolina Supreme Court identified when, in 1787, it recognized that it has the power to declare the General Assembly's acts unconstitutional, because otherwise "members of the General Assembly … might … render themselves the Legislators of the State for life." *Bayard v. Singleton*, 1 N.C. 5, 7 (1787). North Carolina's residents seek relief from much the same outcome here.

Undisputed evidence showed that all three plans the General Assembly enacted in November 2021—the Enacted Congressional Plan, the Enacted Senate Plan, and the Enacted House Plan—constitute extreme partisan gerrymanders. Professor Moon Duchin, a mathematician and one of the Nation's leading districting experts, showed that all three plans guarantee the incumbent party majorities in Congress and the General Assembly, even when its candidates lose statewide by up to ***seven percentage points***, thereby all but ensuring counter-majoritarian rule.

Dr. Duchin also addressed the counterargument that the Legislative Defendants have raised: that such biased results reflect not gerrymandering but political geography. With their Verified Complaint, the NCLCV Plaintiffs provided demonstrative maps (the "NCLCV Demonstrative Maps") that show that, contrary to the Legislative Defendants' claims, fair and neutral maps can ***improve on*** compliance with state law and traditional districting criteria: Fair and neutral maps can be more compact, cross fewer county lines, and split municipalities less than the Enacted Plans. These maps thus confirm what common sense shows: When the General Assembly gerrymandered the state, carving up Democratic strongholds by (for instance) trisecting Wake, Mecklenburg, and Guilford Counties—and ***only those counties***—in the Enacted Congressional Map, it pursued partisan advantage at the expense of traditional districting principles.

Second, this suit asks whether the North Carolina State Constitution prohibits the General Assembly from diluting the voting power of its minority citizens by race, as the Enacted Plans do. The Court should answer yes. The Free Elections Clause and the Equal Protection Clause guarantee to North Carolina's minority voters the right to "substantially equal voting power" and "substantially equal legislative representation." *Stephenson I*, 355 N.C. at 379. Under the Enacted Plans, however, Black North Carolinian voters do not have equal voting power or equal legislative representation. That is because the Enacted Plans pack and crack cohesive Black communities across the State, denying them the ability to elect their candidates of choice and leveraging a history of racially polarized voting that dates to Reconstruction. Due to the Enacted Plans' packing and cracking, Black North Carolinians' legislative representation will fall well short of their share of the population. And again, the NCLCV Demonstrative Plans show that it did not have to be

this way: Those plans preserve the ability of North Carolina's Black voters to elect their candidates of choice in far more districts, while improving on traditional and neutral districting principles.

Third, this suit asks whether the General Assembly can, in the pursuit of partisan advantage and in order to dilute the voting power of its Black citizens, subvert the traditional and neutral districting principles embodied in the Whole County Provisions of the North Carolina State Constitution, as set forth in the *Stephenson*/*Dickson* line of cases. Those principles instruct the General Assembly to respect county lines and to pursue compact districts. But in the Enacted Senate Plan and the Enacted House Plan, the General Assembly repeatedly crossed more county lines than was necessary and drew districts that were less compact than they could have been. That was no accident. Repeatedly, the General Assembly violated these traditional districting principles because doing so allowed it to maximize partisan advantage and dilute Black voting power.

This Court's intervention is urgently needed. The NCLCV Plaintiffs ask this Court to find that the Enacted Plans violate the North Carolina State Constitution and enjoin the use of the Enacted Plans in any future election in order to protect the voting rights of millions of North Carolinians. Set forth below are the NCLCV Plaintiffs' Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Decree.

PROPOSED FINDINGS OF FACT

I. THE GENERAL ASSEMBLY HAS FREQUENTLY GERRYMANDERED CONGRESSIONAL AND LEGISLATIVE DISTRICTS BASED ON PARTISANSHIP AND RACE.

1. The General Assembly frequently has flouted the fair and neutral redistricting principles required by North Carolina law and gerrymandered based on party, race, or both. *See, e.g.*, *Cooper v. Harris*, 137 S. Ct. 1455, 1473 (2017); *Covington v. North Carolina*, 316 F.R.D. 117, 124 (M.D.N.C. 2016); *Gingles v. Edmisten*, 590 F. Supp. 345, 359–61 (E.D.N.C. 1984), *aff'd in part, rev'd in part sub nom. Thornburg v. Gingles*, 478 U.S. 30 (1986); *Common Cause v. Lewis*,

No. 18 CVS 014001, 2019 WL 4569584, at *4 (N.C. Super. Ct. Sept. 3, 2019).

2. Neither party's hands are clean—though recently, control of the General Assembly has rested with the Republican Party. In the 2011 redistricting cycle, the controlling party instructed its mapmaker to "ensure Republican majorities," based on claims that the majority was "'perfectly free' to engage in constitutional partisan gerrymandering." *Common Cause*, No. 18 2019 WL 4569584, at *4. In 2016, federal courts invalidated the 2011 congressional and legislative plans as racial gerrymanders.[1] But when the General Assembly redrew those maps, it created instead "[e]xtreme partisan gerrymander[s]." *Id.* at *125, *135; *see Harper*, 2019 N.C. Super. LEXIS 122, at *16–18 (N.C. Super. Ct. Oct. 28, 2019). Indeed, one legislative leader "acknowledge[d] freely that" the congressional map "would be a political gerrymander." *Harper*, 2019 N.C. Super. LEXIS 122, at *17.

3. Those maps had their intended effects. For example, in 2018 Democratic candidates won a majority of the statewide vote but carried only 3 of the 13 Congressional seats (23%), 21 of 50 Senate seats (42%), and 55 of 120 House seats (46%). *Common Cause*, 2019 WL 4569584, at *74.

4. In 2019, the three-judge panel of Judges Ridgeway, Crosswhite, and Hinton unanimously rejected the argument that incumbent officeholders are "perfectly free" to gerrymander. *Id.* at *4. The panel's opinion concluded that, under "extreme partisan gerrymander[s]," elections do not "fairly ascertain[]" the "free will of the People"; rather, "the carefully crafted will of the map drawer … predominates." *Id.* at *3. That result "violate[s] multiple fundamental rights guaranteed by the North Carolina Constitution." *Harper*, 2019 N.C.

[1] *Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016) (congressional plan), *aff'd sub nom. Cooper v. Harris*, 137 S. Ct. 1455 (2017); *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016) (legislative plans), *summarily aff'd*, 137 S. Ct. 2211 (2017).

Super. LEXIS 122, at *18. Those include the fundamental rights protected by North Carolina's Free Elections Clause, as well as the Equal Protection, Free Speech, and Free Assembly Clauses. *Id.*

5. That conclusion, the panel explained, "reflect[ed] the unanimous and best efforts of the … judges—each hailing from different geographic regions and each with differing ideological and political outlooks—to apply core constitutional principles to [a] complex and divisive topic." *Common Cause*, 2019 WL 4569584, at *1. And the panel underscored that "[p]olitical losses and partisan disadvantage are not the proper subject for judicial review, and those whose power or influence is stripped away by shifting political winds cannot seek a remedy from courts of law, but they must find relief from courts of public opinion in future elections." *Id.* at *3. The panel emphasized, however, that it is "most certainly the province of the Court to ensure that 'future elections' in the 'courts of public opinion' are ones that freely and truthfully express the will of the People." *Id.* That is because "without th[e] guarantee" that "[a]ll elections shall be free" there "is no remedy or relief at all." *Id.*

6. In addition, North Carolina has "'a long history of race discrimination generally and race-based vote suppression in particular.'" *Holmes v. Moore*, 270 N.C. App. 7, 20–21, 840 S.E.2d 244, 257 (2020) (quoting *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 223 (4th Cir. 2016)). After Black North Carolinians gained the right to vote following the Civil War and began to ally politically with white Republicans, white Democrats devised what they called the "white supremacy campaign" to break apart the new multiracial coalition by exploiting and inflaming racial tensions and encouraging white North Carolinians to vote on racial, rather than economic, lines. *Gingles*, 590 F. Supp. at 359. When Congress enacted the VRA, it looked to "North Carolina's pre-1965 history of pernicious discrimination" and made "[f]orty North

Carolina jurisdictions … covered" jurisdictions under Section 5 of the VRA based on their use of "suspect prerequisites to voting, like literacy tests." *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 215, 223 (4th Cir. 2016).

7. "[S]tate officials [have] continued in their efforts to restrict or dilute African American voting strength well after 1980 and up to the present day." *Holmes*, 270 N.C. App. at 23, 840 S.E.2d at 258. On numerous occasions, "the North Carolina legislature has attempted to suppress and dilute the voting rights of African Americans," and "the Department of Justice or federal courts have determined that the North Carolina General Assembly acted with discriminatory intent, reveal[ing] a series of official actions taken for invidious purposes." *McCrory*, 831 F.3d at 223 (quotation marks omitted).

8. In 2013 and 2018, for example, the General Assembly enacted restrictive voter-identification laws that state and federal courts struck down as "targeting voters who, based on race, were unlikely to vote" for the party controlling the General Assembly. *Id.* at 215, 223–33; *see Holmes*, 270 N.C. App. at 23, 34, 36. And in just the last decade, courts have repeatedly invalidated North Carolina's congressional and legislative maps as impermissibly discriminating against voters based on race.[2]

9. North Carolina's Black voters are targeted by race largely due to the persistence of racially polarized voting. Voting in North Carolina, both historically and today, is racially

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

polarized, which means that "the race of voters correlates with the selection of a certain candidate or candidates." *McCrory*, 831 F.3d at 214. Racial polarization in voting in North Carolina "offers a 'political payoff for legislators who seek to dilute or limit the minority vote.'" *Holmes*, 270 N.C. App. at 22, 840 S.E.2d at 258 (quoting *McCrory*, 831 F.3d at 222). The fact that "race and party are inexorably linked in North Carolina," *McCrory*, 831 F.3d at 225, creates an "incentive for intentional discrimination in the regulation of elections," *id.* at 222.

10. Dr. Moon Duchin used well-recognized ecological inference statistical tools to assess racial voting trends in North Carolina and confirmed that racial vote polarization persists today. As Dr. Duchin found, North Carolina election results from the last decade reveal "a consistent pattern of polarization," where white voters support Republican candidates at a rate of more than 61%, while Black voters support Democratic candidates at a rate of over 94%. PX150 at 11 (Duchin Report). Polarization is present even in many Democratic primary elections. PX150 at 11. Dr. Duchin found racial vote polarization in the Democratic primary particularly when a Black candidate seeks the Democratic nomination. PX150 at 11. The fact of racial vote polarization means that today, district lines can still be manipulated to dilute Black voting power in ways that violate the North Carolina State Constitution.

II. IN 2021, THE GENERAL ASSEMBLY ADOPTED AN APPROACH DESIGNED TO CONCEAL ITS PARTISAN GERRYMANDERING AND RACIAL VOTE DILUTION AND SHIELD ITS MAPS FROM SCRUTINY.

11. In 2021, when the time came to redistrict following the 2020 census, rather than conform its conduct to the constitutional prohibitions articulated in *Common Cause* and *Harper*, the General Assembly attempted to circumvent them. Instead of drawing North Carolina's districts to fairly reflect North Carolinians' preferences, the General Assembly structured its processes to conceal its aims to effect extreme partisan gerrymanders and, if possible, to shield its gerrymandered maps from scrutiny.

12. The General Assembly did so, first, in the criteria and methods adopted by the committees overseeing the redistricting process. The General Assembly formed two committees to oversee the redistricting process, the House Committee on Redistricting and the Senate Committee on Redistricting and Elections. Each was tasked with proposing maps for its own chamber and for Congress.

13. The Senate Committee on Redistricting and Elections (chaired by Defendants Hise, Daniel, and Newton) and the House Committee on Redistricting (chaired by Defendant Hall) issued proposed redistricting criteria on August 9, 2021, and, three days later, adopted them with minimal amendments. PX75 (11/9/21 Joint Comm. Mtg. Tr.); *see* PX75 6:2-8:22; PX77 88:24-25 (8/12/21 Joint Comm. Mtg. Tr.). The adopted criteria stated that "[p]artisan considerations and election results data ***shall not*** be used in the drawing of districts in the 2021 Congressional, House, and Senate plans." PX34 2 (8/12/21 Joint Redistricting Comm. Adopted Criteria).

14. This statement was clearly intended to avoid the frank admissions of partisan gerrymandering that plagued the General Assembly in *Common Cause* and *Harper*. But the statement had little substance: It meant only that the Committees' computer terminals did not contain electoral data. PX79 52:3–8 (Oct. 5, 2021 House Comm. Mtg. Tr.). Members could freely draw maps elsewhere, using whatever data they liked, and redraw them on the terminals. PX79 52:8–53:14, 55:1–11, 65:14–70:7. Indeed, "legislators were free to bring materials into and out of the hearing rooms," and Defendant Hall admitted that he had no intention of blocking members from relying on electoral data outside the committee chambers. PX79 52:24-53:14, 64:15-70:7 (10/5/21 House Redistricting Comm. Mtg. Tr.).

15. The 2021 Redistricting Criteria also state: "The Committees shall draw legislative districts within county groupings as required by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d

377 (2002) (*Stephenson I*), *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*), *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*), and *Dickson v. Rucho*, 368 N.C. 481, 781 S.E.2d 460 (2015) (*Dickson II*). Within county groupings, county lines shall not be traversed except as authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*." PX34 at 1.

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

17. In 2021, however, the General Assembly did not start by analyzing whether the VRA required the drawing of any particular districts. Instead, when the map-drawing process was beginning on October 5, Committee members were instructed to begin by selecting one of the county clusters that had been developed by an academic research group at Duke University to implement the *Stephenson*/*Dickson* framework. PX70 (Christopher Cooper et al. research). The Duke researchers explained that the clusters—16 options for the Senate plan and 8 for the House plan—were "largely algorithmically determined through an optimization procedure outlined by the NC Supreme Court in *Stephenson v. Bartlett*" using the 2020 census data. PX70 at 1. The Duke researchers cautioned, however, that the "one part of *Stephenson* … which this analysis does not reflect is compliance with the Voting Rights Act." PX70 at 1. Even so, the Committees did not account for this limitation. PX79.

18. The 2021 Redistricting Criteria did state that the "Committees will draw districts that comply with the Voting Rights Act." PX34 at 1. Those criteria, however, also stated that "[d]ata identifying the race of individuals or voters *shall not* be used in the construction or consideration of districts in the 2021 Congressional, House, and Senate plans." PX34 at 1. The Committees did not explain how they could determine whether maps could comply with the VRA without analyzing racial data. And in fact, it is impossible to determine whether maps comply with the VRA or with North Carolina law without analyzing whether voting is racially polarized and, if so, how that racial vote polarization affects election results.

19. The Committees knew that their map-drawing process did not follow the *Stephenson*/*Dickson* framework. For example, Senator Dan Blue, a Black Democrat, challenged the Committee chairs on how they could draw VRA-compliant districts without considering racial data and observed that there is racially polarized voting in North Carolina. PX77 10:24-13:1; *see also* PX77 57:7-22 (similar question by Senator Clark); PX222 (NC Policy Watch article, Yanqi Xu). Senator Blue also introduced an amendment that would have prohibited the redistricting of Black voters for partisan advantage. PX77 53:5-63:20. That amendment was rejected. PX77 63:19-20; *see also* PX73 (Amendment to Proposed Criteria).

20. Meanwhile, the General Assembly established a calendar that discouraged judicial review of its maps. Redistricting depends on census data, but the pandemic delayed the release of that data until August 2021. PX214 (Press Release, Census Bureau Statement on Redistricting Data); PX215 (Press Release, Census Bureau, 2020 Census Statistics Highlight Local Population Changes). The Executive Director of the State Board of Elections advised the General Assembly to delay the 2022 congressional and legislative primary by eight weeks—from the original date, March 8, to May 3—with second primaries on July 12. PX216 (A Look Back at North Carolina's

Historic 2020 Election & Looking Ahead at 2021). The General Assembly allowed municipalities to delay their municipal elections but refused to reschedule congressional and legislative primaries. *See* S.B. 722, S.L. 2021-56, 2021-2022 Sess. (N.C. 2021); PX212 (Running for Office).

21. As a result, North Carolina was an outlier. Forty-eight states have 2022 primaries scheduled in May or later. PX213 (Bryan Anderson). Nineteen states have scheduled 2022 primaries for August or later. *Id.* Only North Carolina and Texas set their primaries for March. *Id.*

22. North Carolina's artificially compressed redistricting schedule became a tool to limit public and expert scrutiny. During September, the Committees held 13 public hearings—but because no maps had been proposed, those hearings did not give the public or experts a meaningful opportunity to provide input. On October 6, Committee members began drawing proposed maps in the hearing rooms. PX223 (Charles Duncan). On October 21, with little notice, the Committees announced that public hearings would be held on October 25 and 26. PX224 (Gary Robertson). The Committees did not specify which of the many maps that had been posted online were final contenders, leaving the public and experts unable to identify the maps that were the Committee leaders' focus. PX224 (Gary Robertson).

23. The General Assembly moved quickly to enact the final maps, holding the first Committee hearings on the proposed maps on November 1 and enacting those maps just three days later, on November 4, each on a party-line vote. PX225 (Will Doran).

24. On November 1, the Senate Redistricting Committee held its first and only hearing to consider proposed congressional maps. The Committee considered one map proposed by Senator Ben Clark, a Black Democrat, and one map proposed by Chairs Hise, Daniel, and Newton. PX81 2:25, 47:23 (11/1/21 Senate Comm. Mtg. Tr.). The Chairs' map was favorably reported out

of the Committee; Senator Clark's map was not. The next day, the full Senate approved the map, as did the House Redistricting Committee and full House in the following two days, without amendment. On November 4, the General Assembly enacted the map as the Enacted Congressional Plan on a party-line vote. PX231 (WFAE Article).

25. Also on November 1, the House Redistricting Committee held a hearing to consider a House map proposed by Chair Hall. PX82 (Nov. 1, 2021 House Comm. Mtg. Tr.). The Committee considered no other maps, and the Chair's map passed the House Redistricting Committee, the full House, the Senate Redistricting Committee, and the full Senate in three days, with few amendments and on a party-line vote. On November 4, the General Assembly enacted the map as the Enacted House Plan. PX231.

26. On November 2, the Senate Redistricting Committee held a hearing to consider a Senate map proposed by Chairs Hise, Daniel, and Newton. PX83 (11/2/21 Senate Comm. Mtg.). The Committee considered no other maps, and the Chairs' map passed both redistricting committees and both chambers in three days, with few amendments and on a party-line vote. On November 4, the General Assembly enacted the map as the Enacted Senate Plan. PX231.

III. THE ENACTED PLANS CONSTITUTE EXTREME PARTISAN GERRYMANDERS.

27. North Carolina is a quintessential "swing state" with vigorous electoral competition in statewide elections. North Carolina voters are nearly divided in partisan identification, with Democrats only slightly outnumbering Republicans and unaffiliated voters. PX425 at 9-10 (Cooper Report). The state has a Democratic governor and attorney general, and a Republican lieutenant governor and federal senators. PX425 at 4. Since 2004, Democrats have won 29 of 50 Council of State elections, and Republicans have won 21. PX425 at 8. Consistent with these figures, statewide elections are typically competitive and often closely contested: In the last 52

partisan statewide elections, 38 were decided within a 6-point margin, and 26 were decided within a 3-point margin. PX150 at 5-6. Nine elections were decided within a single percentage point. PX150 at 6.

28. In such a state, fair maps would give a party whose candidates obtain more than half of the votes a realistic opportunity to secure half or more of the seats. PX150 at 4.

29. The Enacted Plans, however, are not fair maps. Instead, they are designed to ensure persistent Republican majorities no matter what party North Carolina voters prefer. PX150 at 5.

30. Dr. Duchin's testimony demonstrates that each of the three Enacted Plans consistently produce skewed results in favor of Republican candidates. Applying a standard technique in the field, Dr. Duchin overlayed each plan onto historical voting patterns from all 52 partisan elections since 2012—in order to show how the Enacted Plans would have performed in actual North Carolina elections. PX150 at 5-6.

31. The results reveal a striking partisan skew in close elections. PX150 at 4. For instance, the 2020 vote for Chief Justice of the North Carolina Supreme Court resulted in a virtual tie, with the Republican candidate winning by 401 votes. PX150 at 6. The Enacted Plans would have converted that near tie at the ballot box into a resounding Republican victory in seat share across the board: Republicans would have won 10 (71%) of North Carolina's congressional districts, 28 (56%) of North Carolina's Senate districts, and 58 (57%) of North Carolina's House districts. PX150 at 6. Nor is that election unusual. Table 1 illustrates how each of the Enacted Plans consistently translates close elections into Republican majorities and often Republican supermajorities:

Table 1: Outcomes in 5 Close Elections in Enacted Plans

Election (margin)	Enacted Congressional Plan	Enacted Senate Plan	Enacted House Plan
2016 Governor (0.2-pt. D win)	10 R, 4 D	30 R, 20 D	70 R, 50 D
2016 Atty General (0.5-pt. D win)	10 R, 4 D	30 R, 20 D	70 R, 50 D
2016 Super. Pub. Instr. (1.2-pt. R win)	10 R, 4 D	28 R, 22 D	69 R, 51 D
2020 President (1.4 pt.-R win)	10 R, 4 D	30 R, 20 D	70 R, 50 D
2020 Chief Justice (0.0-pt. R win)	10 R, 4 D	28 R, 22 D	68 R, 52 D

Note: Data derived from PX150 at 6.

32. Indeed, in every single one of the 52 elections decided within a 6-point margin, the Enacted Plans give Republicans an outright majority in the state's congressional delegation, the state House, and the state Senate. PX150 at 5-6. This is true even when ***Democrats*** win statewide by clear margins.

33. For example, in the 2020 gubernatorial race, although voters in that election preferred the Democratic candidate by 4.6 percentage points, the Enacted Plans translate that preference into a ***Republican*** 10-4 (71%) majority in the state's congressional delegation, a 27-23 (54%) majority in the state Senate, and a 62-58 (52%) majority in the state House—all when voters clearly prefer the other party. PX150 at 6. Table 2 illustrates how each of the Enacted Plans consistently translates Democratic ballot victories into Republican legislative victories:

Table 2: Outcomes in 5 Democratic Victories in Enacted Plans

Election (margin)	Enacted Congressional Plan	Enacted Senate Plan	Enacted House Plan
2012 Insurance Comm'r (3.7-pt. D win)	9 R, 5 D	28 R, 22 D	65 R, 55 D
2016 Secretary of State (4.5-pt. D win)	9 R, 5 D	26 R, 24 D	63 R, 57 D
2020 Governor (4.6-pt. D win)	10 R, 4 D	27 R, 23 D	62 R, 58 D
2020 Secretary of State (2.3-pt. D win)	9 R, 5 D	26 R, 24 D	67 R, 53 D
2020 Auditor (1.8-pt. D win)	10 R, 4 D	26 R, 24 D	66 R, 54 D

Note: Data derived from PX150 at 6.

34. Dr. Duchin concluded that the Enacted Plans "resiliently safeguard electoral advantage for Republican candidates," and her finding is supported by other evidence in the record. PX150 at 5. As just one example, Dr. Mattingly created a collection of tens of thousands of computer-generated congressional, Senate, and House maps that both were blind to partisanship and adhered to several non-partisan districting criteria. PX629 at 2 (Mattingly Report). He then compared the Enacted Plans against his ensemble of non-partisan maps. Dr. Mattingly confirmed that the three Enacted Plans each systematically favor the Republican Party to an extent "rarely" seen in the non-partisan collection of maps. PX629 at 2.

35. This skewed result is not an inevitable feature of North Carolina's political geography. The NCLCV Plaintiffs have offered their own maps as demonstratives showing that drawing a fair map is possible, and Dr. Duchin's analysis of those maps confirms that nothing in North Carolina's political geography compelled the skewed results that the legislature enacted. As discussed below, this is confirmed by the work of not just Dr. Mattingly, but also Dr. Chen, Dr. Pegden, and even Legislative Defendants' own expert, Dr. Barber, whose work underscores that the Enacted Plans are extreme partisan outliers when compared against the many millions of non-partisan maps that the legislature could have drawn.

A. The Enacted Congressional Plan Constitutes An Extreme Partisan Gerrymander.

36. The result of Dr. Duchin's "overlay" analysis for the Enacted Congressional Plan is clear: The plan is designed in a way that safeguards Republican majorities in any plausible election outcome, including those where Democrats win more votes by clear margins. Dr. Duchin's analysis of how the Enacted Congressional Plan would have translated voter preferences from 52 past elections into seats shows that the Enacted Congressional Plan will almost always yield 10 Republican seats and 4 Democratic seats. PX150 at 6. This includes Democratic victories, such as the 2020 gubernatorial election, where Democrats won by a margin of 4.6

percentage points, as well as close elections, such as the 2020 race for Supreme Court Chief Justice, which was decided by just 401 votes. PX150 at 6.

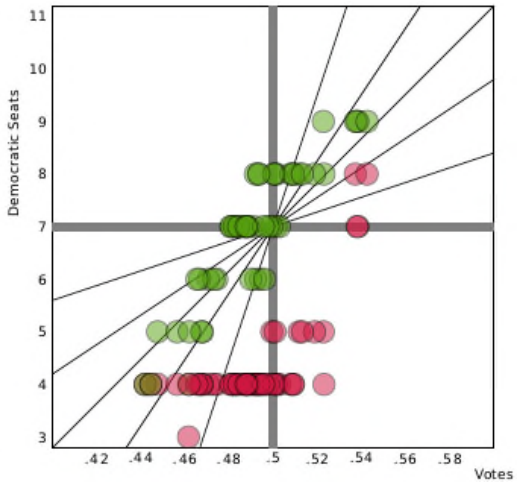
Table 3: Outcomes in 7 Elections in Enacted Congressional Map.

Election (margin)	Enacted Congressional Plan
2016 Governor (0.2-pt. D win)	10 R, 4 D
2016 Atty General (0.5-pt. D win)	10 R, 4 D
2016 Super. Pub. Instr. (1.2-pt. R win)	10 R, 4 D
2020 President (1.4 pt.-R win)	10 R, 4 D
2020 Governor (4.6-pt. D win)	10 R, 4 D
2020 Auditor (1.8-pt D win)	10 R, 4 D
2020 Chief Justice (0.0-pt. R win)	10 R, 4 D

Note: Data derived from PX150 at 6.

37. Figure 1 demonstrates the bias the Enacted Congressional Plan creates across all 52 elections that Dr. Duchin studies. It compares Democratic vote share (on the x-axis) with Democratic seat share (on the y-axis) for every election. A map that responds to voters' preferences would roughly track one of the diagonal lines crossing at the "(50, 50)" point, where a 50% vote share generates a 50% seat share. Along those lines, as either party wins more votes, it wins more seats. And if either party wins a majority of votes, it wins a majority of seats. But as Figure 1 shows, the Enacted Congressional Plan (red dots) does not come near the diagonal lines or pass anywhere close to the (50, 50) point.

Figure 1: Vote Shares and Seat Shares in Enacted & NCLCV Congressional Maps



Note: Excerpted from PX153. Data derived from 52 recent statewide general-election contests. Red dots denote results under the Enacted Congressional Plan. Green dots denote results under the NCLCV Congressional Map in the same 52 elections. The x-axis depicts the Democratic vote share; the y-axis depicts the number of Democratic seats.

38. Figure 1 shows that, under the Enacted Congressional Plan, more Democratic votes usually ***do not*** mean more Democratic seats, reflected in the flat red line near the bottom of the figure. Indeed, the bulk of the red dots are stuck on that line, where Democrats carry only 4 of 14 districts. And in each of the 12 statewide contests where the Democratic candidate won by less than seven percentage points, the winner carried only 4 or 5 of the 14 districts (these are the red dots in the lower-right quadrant, where more than half the votes generated less than half the seats for Democratic candidates). In short, the Court finds that under the Enacted Congressional Plan, a clear majority of Democratic votes does ***not*** translate into a majority of seats.

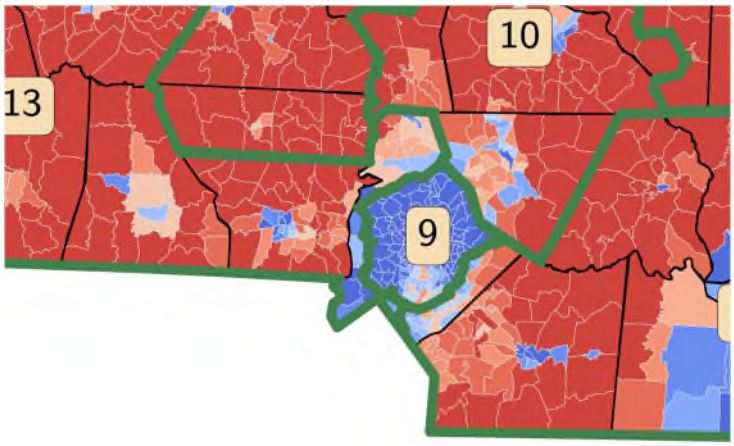
39. The Court finds that the Enacted Congressional Plan achieves these extreme results by the familiar means of "packing" and "cracking" Democratic voters across the state.

Mecklenburg County

40. The Enacted Congressional Plan fractures Mecklenburg County, home to one of North Carolina's largest concentrations of Democratic voters, across three districts.[3] District 9 is packed with Democratic voters and generates unduly large Democratic majorities—as Dr. Cooper shows, District 9 contains roughly 300,000 "excess" Democratic votes. PX425 at 20. In addition to packing Democrats into District 9, the Enacted Congressional Plan splits Mecklenburg County's remaining Democratic voters into two districts (Districts 8 and 13). Districts 8 and 13 incorporate significant populations of Republican voters from neighboring counties and—with Democrats divided between the districts—Republicans will dominate both. By way of example, roughly 57% of Congressional District 8's voters preferred President Trump to President Biden in the 2020 election; in Congressional District 13, that figure is 60%. PX425 at 21.

[3] The Court notes that that Legislative Defendants have submitted rebuttal testimony from Sean Trende, a graduate student The Ohio State University. Aff. of Sean P. Trende at 4 (Dec. 28, 2021). Mr. Trende purports to identify the parts of the Enacted Plans that are at issue in this litigation. The Court disregards Mr. Trende's testimony because reviewing complaints in this matter is not the subject of expert testimony and his testimony does not rebut any other expert witness. Moreover, Mr. Trende's testimony contains material inaccuracies. For instance, Mr. Trende claims NCLCV Plaintiffs challenge Senate Districts 47 and 50 on racial vote dilution grounds. *Id.* Ex. 2 at 4. In fact, NCLCV Plaintiffs challenge this configuration on the ground that it creates unnecessary county traversals. Similarly, Mr. Trende claims that NCLCV Plaintiffs also challenge the Enacted Senate Map's county clustering in Senate Districts in 43, 44, 46, 48, and 49 on racial grounds, when in fact this clustering is challenged on partisan gerrymandering grounds and under the Whole County Provisions. Mr. Trende further ignores the statewide nature of the racial and partisan gerrymandering claims at issue in this case. These are only a few of the many inaccuracies in Mr. Trende's testimony.

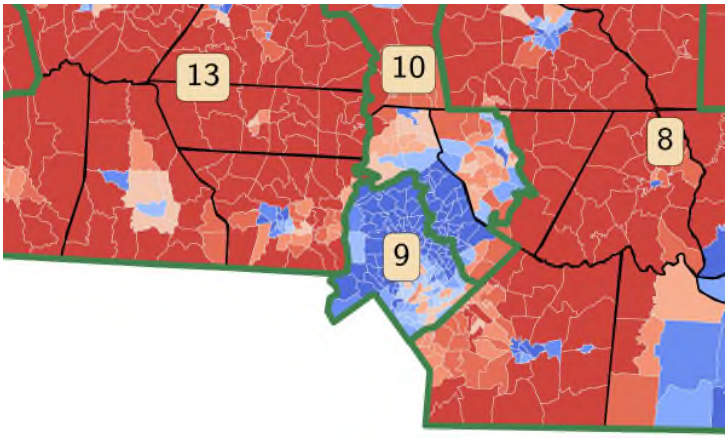
Figure 2: Enacted Congressional Districts 8, 9, 10 & 13



Source: PX177.

41. Mecklenburg County need not have been fractured three times, and District 9 need not have been "packed." The NCLCV Congressional Map, for instance, splits Mecklenburg County only once—the minimum necessary, consistent with equal-population rules. The result is one Democratic-leaning district in southern Mecklenburg County and one highly competitive district in northern Mecklenburg County that, in Dr. Duchin's analysis of 52 elections, sometimes elects Democratic candidates and sometimes elects Republican ones. PX201 (Duchin App. C), Tab "NCLCV-Cong." 11:A–11:BA.

Figure 3: NCLCV Congressional Districts 8, 9, 10 & 13



Source: PX178.

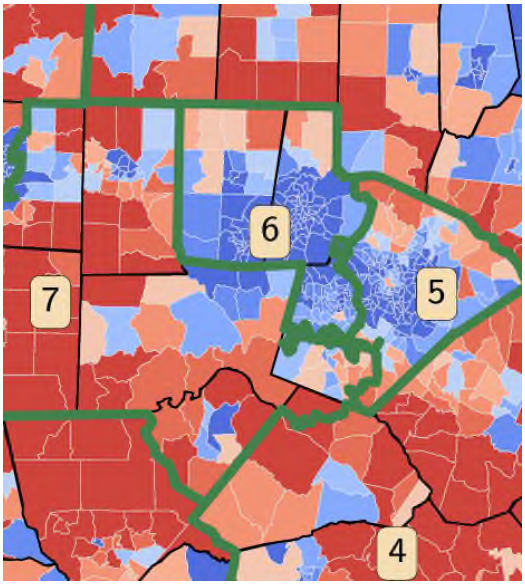
Wake County

42. The Enacted Congressional Plan also fragments Wake County, home to another large concentration of Democratic voters, across three districts to carve out an extra safe Republican seat.

43. One district (District 5) is housed entirely within Wake County and is majority Democratic. The Enacted Congressional Plan packs heavily Democratic Cary into District 6 with Democratic-dominated Durham and Orange Counties, resulting in a second heavily Democratic district. PX425 at 32. Similar to District 9 in Mecklenburg County, District 6 has more than 300,000 "excess" Democratic votes; a mere 25% of its electorate voted for President Trump in the 2020 presidential contest. PX425 at 21.

44. The result of packing of District 6 is that Wake County's remaining Democratic voters are placed into a third district, District 7. District 7 is drawn to include several heavily Republican counties while carefully avoiding concentrations of Democratic voters in Raleigh, Cary, Durham, and downtown Greensboro. PX425 at 34. The result is a district that will reliably elect Republicans to office; in Dr. Duchin's analysis of 52 elections, District 7 ***never once*** elects a Democrat. PX201 "SL-174" A8:BA8.

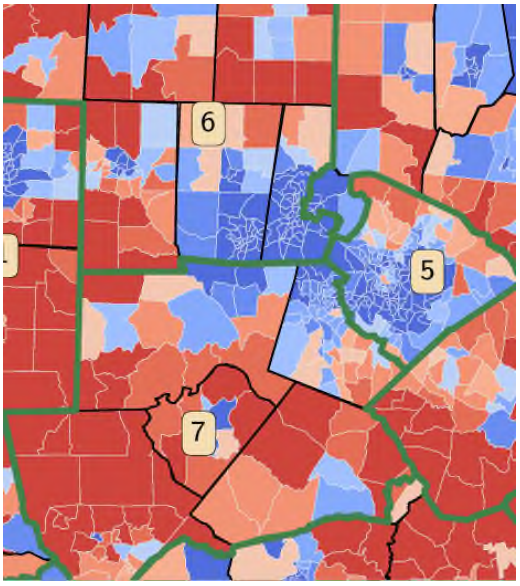
Figure 4: Enacted Congressional Districts 5, 6 & 7



Source: PX177.

45. The Court finds that it was not necessary to trisect Wake County in this manner. The NCLCV Demonstrative Map divides Wake County into only two districts. By avoiding an unnecessary division of Wake County, District 6 is less Democratic, and District 7 is highly competitive—in Dr. Duchin's analysis, District 7 elects both Democrats and Republicans and is highly responsive to shifts in voter preferences. PX201 "NCLCV-Cong." 8A:8BA.

Figure 5: NCLCV Congressional Districts 5, 6 & 7

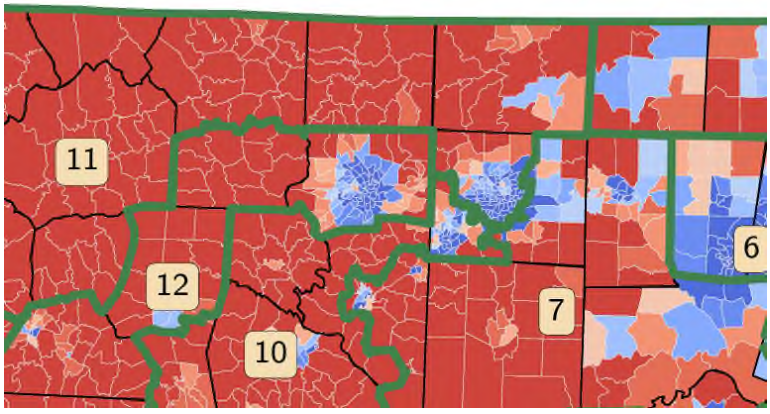


Source: PX178.

Guilford County

46. The Enacted Congressional Plan cracks Democratic voters in Guilford County, which is also split into three different congressional districts.

Figure 6: Enacted Congressional Districts 7, 10, 11 & 12



Source: PX177.

47. First, Democrats east of downtown Greensboro are cracked into Congressional District 7, which, as noted, is heavily Republican due to the partisan gerrymandering in Durham

and Wake Counties to the east. As a result of packing in Congressional District 6, and cracking in Guilford County, District 7 is far less compact than necessary under a fair map. District 7 has a Polsby-Popper compactness score of only 0.20 (on a scale of 0 to 1, where 1 is the most compact). PX150 at 14.

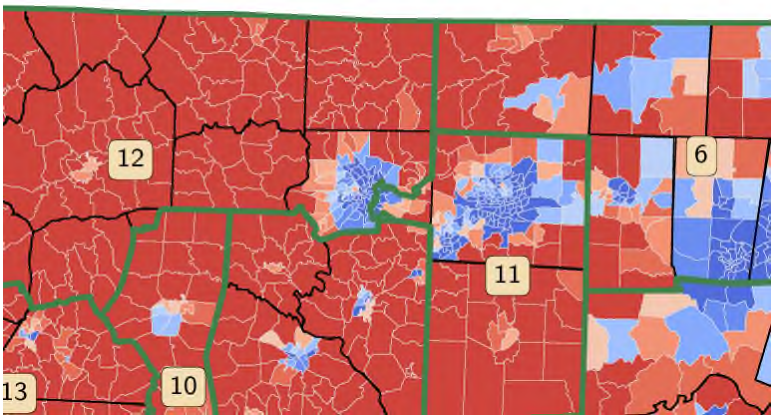
48. Second, Democrats in downtown Greensboro and to the north are cracked into the heavily Republican District 11. PX425 at 42. District 11's boundaries are designed to aggregate enough Republican votes to overcome Greensboro's Democratic voters by bending to avoid Forsyth County and stretching far west through Republican-majority counties all the way to the Tennessee border. The result is a Polsby-Popper score of just 0.21. PX150 at 14.

49. Third, Democratic voters from the High Point area are cracked into a third heavily Republican district, District 10. PX425 at 40. To overcome the voting strength of these Democratic voters, District 10 cuts west to avoid Democratic populations in central Davidson County and then turns 90 degrees to the south, bringing within its bounds Republican voters as distant as the suburbs of Charlotte. District 10 has a Polsby-Popper score of just 0.20. PX150 at 14.

50. Guilford County has the third-largest concentration of Democratic voters in the state, and it was the anchor of a Democratic-voting congressional district in the prior congressional map in effect until November 4, 2021. Nonetheless, because of the way in which the Enacted Plan divides the county's Democratic voters, Districts 7, 10, and 11 do not elect a Democrat in a single one of the 52 elections Dr. Duchin studied. PX201 "SL-174" A8:BA9, A11:BA11. The three districts voted for President Trump in 2020 by 57%, 60%, and 57%, respectively, even though just 38% of Guilford County voters did. PX425 at 21.

51. Just as with Mecklenburg and Wake Counties, there was no need to trisect Guilford County in a manner that deprived its Democratic residents of any voting power. The NCLCV Congressional Map keeps Guilford County in one district, resulting in a compact district (with a Polsby-Popper score of .53) that both keeps Greensboro and High Point together and fairly reflects the preferences of Guilford County's voters. PX150 at 14.

Figure 7: NCLCV Demonstrative Congressional Districts 11 & 12



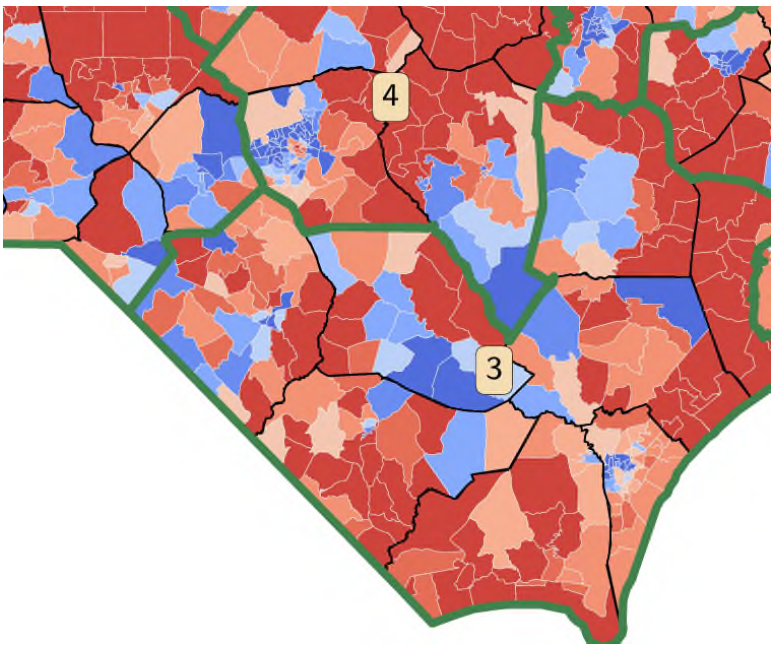
Source: PX178.

52. The Court finds it notable that the three counties with the largest Democratic populations in North Carolina—Mecklenburg, Wake, and Guilford—are the ***only*** counties trisected by the Enacted Congressional Plan, and that doing so had the effect of not only diminishing Democratic voting power, but also the number of competitive districts in the congressional map. PX150 at 20. Nothing in North Carolina law or federal law, and no traditional districting principle, required that result. Guilford County could have been placed into one district, as the NCLCV Congressional Map shows. PX178. Mecklenburg and Wake Counties each have enough population to fill roughly one-and-a-half districts and thus could have been placed in two districts each. PX178.

Southeastern North Carolina

53. The Court finds that the Enacted Congressional Plan also dilutes Democratic voting in southeastern North Carolina. Southeastern North Carolina encompasses a dispersed area of Democratic voters stretching across a large geographic area that includes Cumberland, Scotland, and Hoke Counties. The Enacted Congressional Plan divides Democrats in the area into separate districts. Cumberland County is placed in District 4, while Scotland and Hoke Counties are placed in District 8, and other Democratic precincts are placed into District 3. These districts are drawn to include areas of significant Republican voter concentration, and they all are likely to elect Republicans. PX425 at 26, 28, 36.

Figure 8: Enacted Congressional Districts 3, 4 & 8

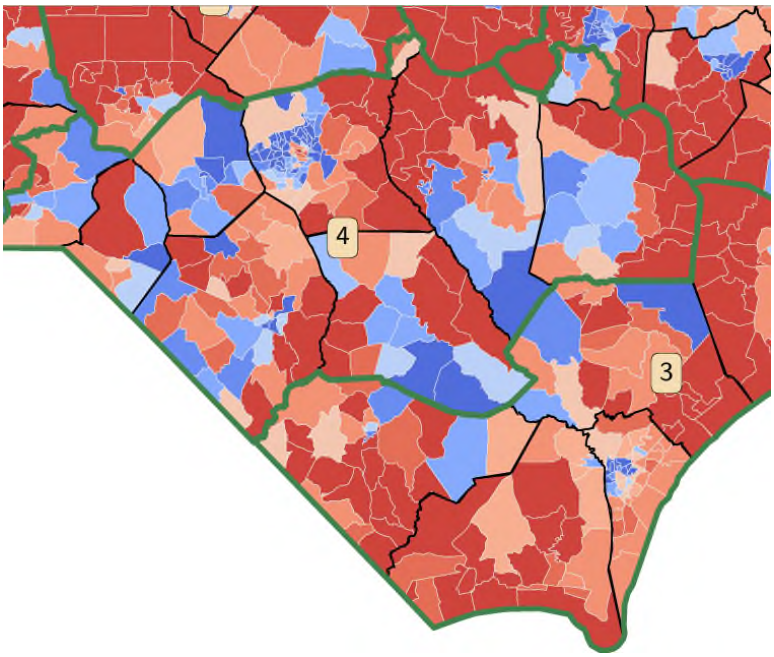


Source: PX177.

54. The Court finds that this splitting of Democrats was not necessary. The NCLCV Congressional Map illustrates that it was possible to draw districts in a way that does not dilute southeastern North Carolina's Democratic voters' electoral opportunity. When drawn to keep the

region together, the resulting district is competitive for both parties. In the 2020 presidential election, for instance, the district would have preferred President Biden to President Trump by a two-party margin of 50.1% to 49.9%. PX201 "SL-174" AO5.

Figure 9: NCLCV Congressional Districts 3, 4 & 8

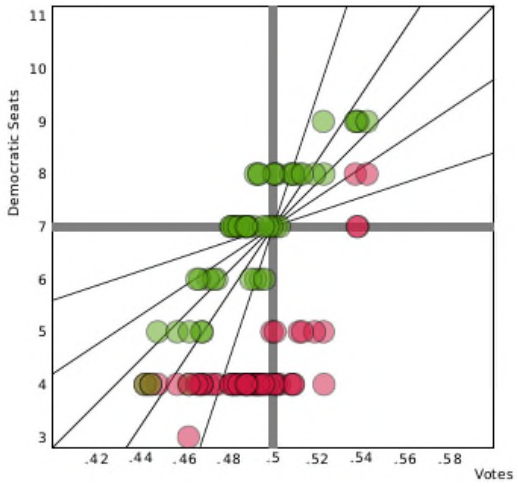


Source: PX178.

55. Based on the foregoing evidence, the Court finds that the General Assembly chose to draw a congressional plan that is skewed toward Republicans. In this regard, the NCLCV Congressional Map shows that nothing in North Carolina's political geography prevented the legislature from drawing a congressional map that produces close to 50-50 outcomes in close elections, and which responds to shifts in voter preferences. Again, Figure 10 shows how the NCLCV Congressional Map (reflected in green dots) faithfully translates North Carolinians' votes into seats, such that the party whose candidates receive more votes in elections—whether Republican or Democrat—receive more seats in North Carolina's congressional delegation. And

as Dr. Duchin shows, it does so while creating districts that are more competitive, more compact, and which create fewer municipal splits. PX150 at 13, 17, 20.

Figure 10: Vote Shares and Seat Shares in Enacted & NCLCV Congressional Maps



Note: Excerpted from PX153. Data derived from 52 recent statewide general-election contests. Red dots denote results under the Enacted Congressional Plan. Green dots denote results under the NCLCV Congressional Map in the same 52 elections. The x-axis depicts the Democratic vote share; the y-axis depicts the number of Democratic seats.

B. The Enacted Senate Plan Constitutes An Extreme Partisan Gerrymander.

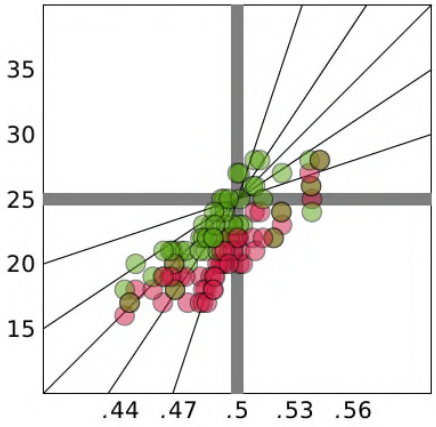
56. The Court finds that the Enacted Senate Plan effectuates the same sort of extreme partisan advantage as the Enacted Congressional Plan. The Enacted Senate Plan consistently creates Republican majorities and precludes Democrats from winning a majority in the Senate even when Democrats win more votes. As Table 4 illustrates, even in an essentially tied election, such as the 2020 Chief Justice election, or a close Democratic victory, such as the 2016 gubernatorial election, the Enacted Senate Plan gives Republicans a Senate majority, and sometimes even a veto-proof 30-seat majority. And that result holds even when Democrats win by larger margins. For instance, in the 2020 gubernatorial election, the Enacted Senate Plan gives Republicans a comfortable four-seat majority in the Senate despite a 4.6-point voter preference for ***Democratic*** candidates.

Table 4: Outcomes in 7 Elections in Enacted Senate Map

Election (margin)	Enacted Senate Plan
2016 Governor (0.2-pt. D win)	30 R, 20 D
2016 Att'y General (0.5-pt. D win)	30 R, 20 D
2016 Super. Pub. Instr. (1.2-pt. R win)	28 R, 22 D
2020 President (1.4-pt. R win)	30 R, 20 D
2020 Governor (4.6-pt. D win)	27 R, 23 D
2020 Auditor (1.8-pt D win)	26 R, 24 D
2020 Chief Justice (0.0-pt. R win)	28 R, 22 D

57. Figure 11 demonstrates the bias in the Enacted Senate Plan across all 52 recent partisan elections. Figure 11 compares Democratic vote share (on the x-axis) with Democratic seat share (on the y-axis) across the 52 elections that Dr. Duchin used to analyze the plan. A map that responds to voters' preferences would roughly track one of the diagonal lines crossing at the "(50, 50)" point, where a 50% vote share generates a 50% seat share. As with the Enacted Congressional Plan, the Enacted Senate Plan (red dots) does not come near the diagonal lines or pass anywhere close to the (50, 50) point. Instead, the Enacted Plan falls well below all of the lines on the y-axis and crosses the x-axis far to the right of the midpoint, showing a plan that consistently denies Democrats majorities even when voters clearly prefer Democratic candidates.

Figure 11: Vote Shares and Seat Shares in Enacted & NCLCV Senate Maps



Note: Excerpted from PX153. Data derived from 52 recent statewide general-election contests. Red dots denote results under the Enacted Senate Plan. Green dots denote results under the NCLCV Senate Map in the same 52 elections. The x-axis depicts the Democratic vote share; the y-axis depicts the number of Democratic seats.

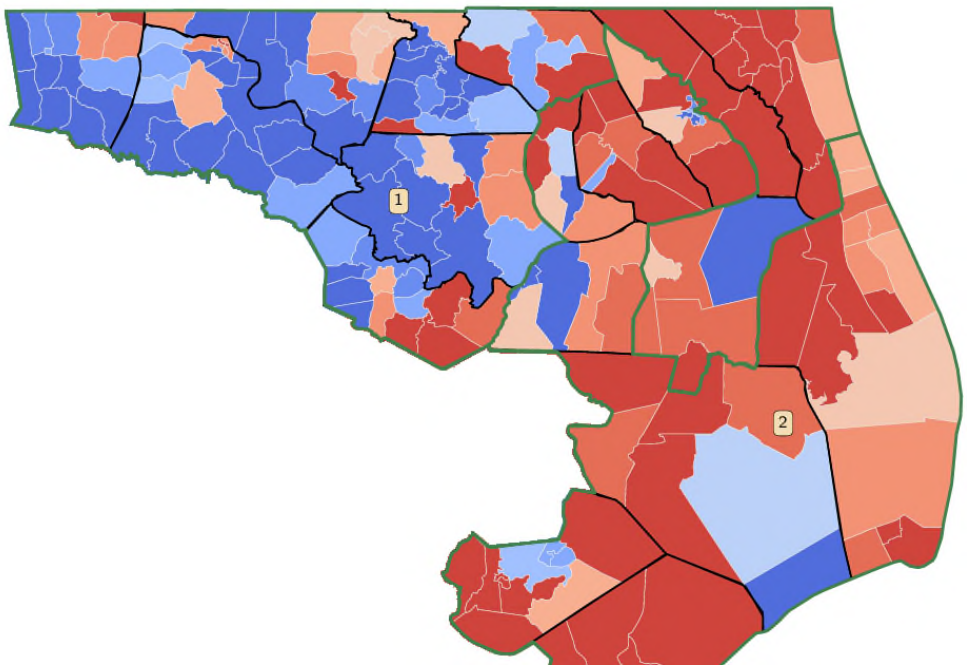
58. As with the Enacted Congressional Plan, the Enacted Senate Plan achieves its extreme partisan gerrymander by packing Democratic voters into a small number of Senate districts and then cracking the remaining Democratic voters by splitting them across other districts, where they will be regularly outvoted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

Northeastern North Carolina

59. The Court notes at the outset that the Enacted Senate Map dilutes Democratic votes not only in how districts are drawn ***within*** clusters, but also based on its ***selection*** of county clusters from the possibilities identified in the Duke study. PX425 at 50. For instance, the Enacted Senate Plan configures the 18 counties in Senate Districts 1 and 2 to crack northeastern North Carolina's Democratic votes. These 18 counties can be configured to group Bertie, Camden, Currituck, Gates, Halifax, Hertford, Martin, Northampton, Tyrrell, and Warren Counties into one district; and Carteret, Chowan, Dare, Hyde, Pamlico, Pasquotank, Perquimans, and Washington Counties into another. PX425 at 66. This clustering choice, which is shown in the NCLCV Senate Map, preserves one district that is electorally competitive. In the 2020 presidential election, for instance,

51.8% of major-party votes in the first district went for President Biden. PX201 "NCLCV-Sen." AO2. The second district would typically elect Republican candidates. PX201 "NCLCV-Sen." AO3.

Figure 12: NCLCV Senate Map Districts 1 &2



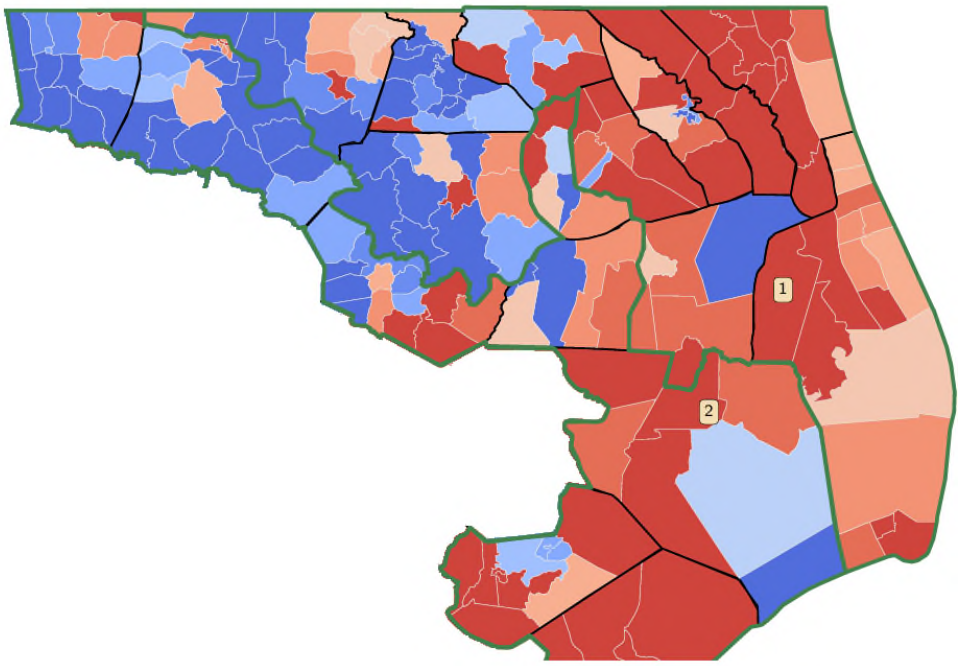
Source: PX180.

60. This configuration is preferable under state law for other reasons as well: It minimizes the number of county traversals among the 18 counties (at 23 traversals), consistent with the Whole County Provisions and the Supreme Court's directive in *Stephenson I*. It also yields more compact districts than the alternative. The lowest Polsby-Popper compactness score for either district is 0.17, and their average is .18. PX150 at 15. The NCLCV Senate Map illustrates this configuration.

61. Nonetheless, the General Assembly rejected this configuration. Instead, it grouped Bertie, Camden, Currituck, Dare, Gates, Hertford, Northampton, Pasquotank, Perquimans, and Tyrrell Counties into District 1; and Carteret, Chowan, Halifax, Hyde, Martin, Pamlico, Warren,

and Washington Counties into District 2. This configuration increases the number of county traversals to 24. It also lowers District 2's Polsby-Popper compactness score to just 0.11 and reduces the average score of both districts to 0.16. PX150 at 15. With Democratic voters divided between districts, both districts are skewed in favor of Republican candidates. PX425 at 66. For instance, in 2020, For instance, in 2020, the vote share in Enacted Senate Districts 1 and 2 favored President Trump by 8.9 points and 11.8 points respectively. PX201 "SL-173" AO2:AO3.

Figure 13: Enacted Senate Districts 1 &2



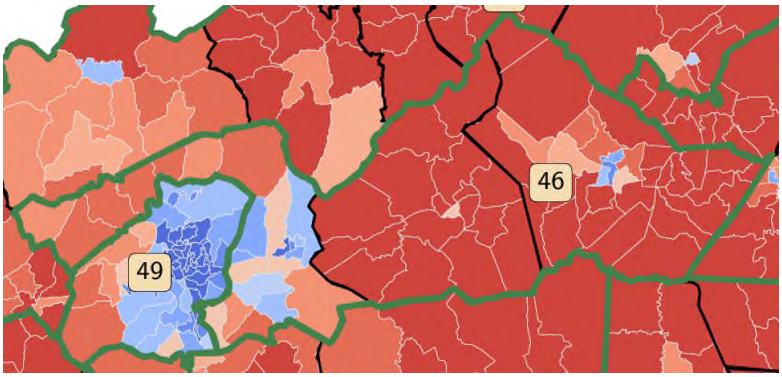
Source: PX179.

Buncombe, Burke & McDowell Counties

62. The Enacted Senate Plan also clusters counties to dilute Democratic votes in and around Buncombe County, which is home to a substantial Democratic population. The Enacted Senate Plan combines Buncombe County with heavily Republican McDowell and Burke Counties into one cluster that is divided into two districts. PX425 at 58. Within that cluster, the mapmakers then maximized Republican advantage by drawing one lopsidedly Democratic district (District

49), leaving the remaining district (District 46) reliably Republican. Notably, District 46 ***never*** elects a Democrat in any of the 52 elections in Dr. Duchin's study. PX201 "SL-173" B47:BA47.

Figure 14: Enacted Senate Districts 46 & 49



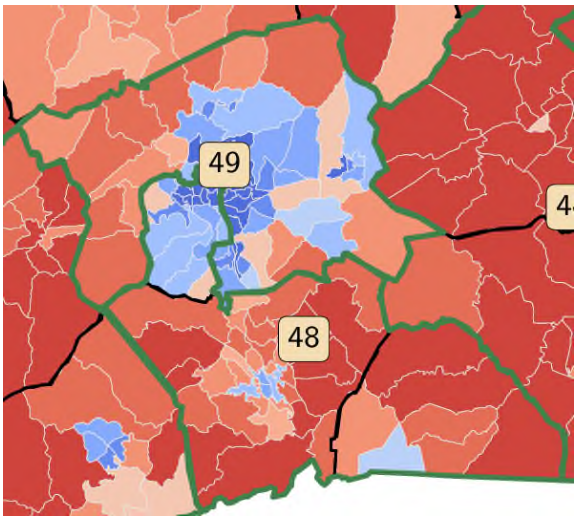
Source: PX179.

63. The Court finds that neither of these choices was necessary: Buncombe's most heavily Democratic precincts did not need to be packed into a single district, and Buncombe County did not need to be clustered with McDowell and Burke Counties. Buncombe County can instead be combined into a two-district cluster with Polk and Henderson Counties. This would be "a much more natural fit given that northern Henderson County is a "bedroom community of Asheville." PX425 at 58. Polk and Henderson Counties have larger Democratic vote shares than McDowell and Burke Counties, and clustering them with Buncombe County allows for fairer districts.

64. Drawn fairly—without packing—the district nested in Buncombe County would favor Democrats, but not as lopsidedly as District 49. PX201 "NCLCV-Sen." B50:BA50. The second district—spanning Polk, Henderson, and the remainder of Buncombe County—would be competitive, giving both Democratic and Republican voters an opportunity to elect candidates of their choice. For instance, Dr. Duchin's analysis shows the latter district is responsive to voter preferences and swings between Republican and Democratic candidates, voting for President

Trump in 2016 with a two-party share of 53.5% and for President Biden in 2020 with 50.4% of the vote. PX201 "NCLCV-Sen." B49:BA49.

Figure 15: NCLCV Senate Districts 48 & 49



Source: PX180.

65. The Court finds it notable that its pursuit of Republican partisan advantage in western North Carolina, the Enacted Senate Plan unnecessarily traverses county boundaries. Had Buncombe County been grouped with Henderson and Polk Counties to create more competitive districts, Burke, Gaston, and Lincoln Counties would have been grouped in a two-district cluster, and Cleveland, McDowell, and Rutherford Counties would have been grouped in a one-district cluster. PX180. This configuration would have resulted in just six traversals altogether. PX180.

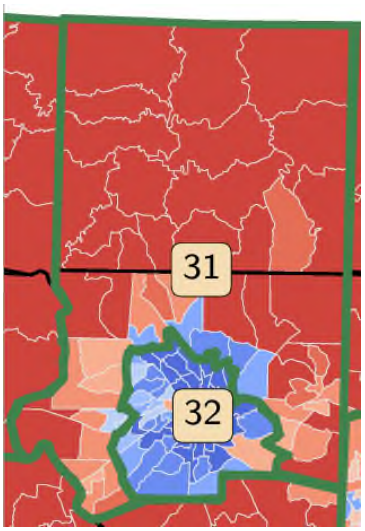
66. Instead, grouping Buncombe County with Burke and McDowell Counties required grouping Henderson, Polk, and Rutherford together into a one-district cluster and grouping Cleveland, Gaston, and Lincoln Counties into a two-district cluster. This arrangement, which maximizes Republican advantage, requires at least seven traversals. PX179. And in fact, the Enacted Senate Plan adds an unnecessary county traversal in the cluster with, Cleveland, Gaston,

and Lincoln Counties. PX179. That yields eight traversals in the nine-county region, instead of six under the fairer configuration. PX179.

Forsyth & Stokes Counties

67. The Court finds that the Enacted Senate Plan also unnecessarily packs Democratic voters in Forsyth County. The legislature chose to group Forsyth County, one of the state's most populous and most Democratic counties, into a two-district cluster with Stokes County, a heavily Republican county with a far smaller population. PX425 at 53. Within this cluster, the Enacted Plan concentrates Forsyth County's Democratic voters into one district—District 32—where Democratic candidates will win elections by more than 30-point margins. PX201 "SL-173" B33:BA33. District 32's design foreordains electoral outcomes in Senate District 31, which is safely Republican and never once elects a Democrat in any of the 52 elections Dr. Duchin studies. PX201 "SL-173" B32:BA32.

Figure 16: Enacted Senate Districts 31 & 32



Source: PX179.

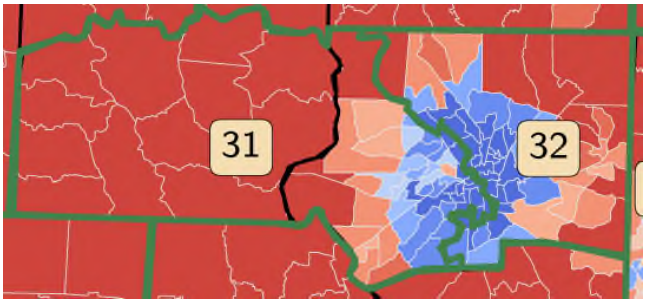
68. The Court finds that the Republican advantage in District 31 was the product of both a clustering decision and a drawing decision. As Dr. Cooper explains, and as the NCLCV

Senate Map makes clear, Forsyth County could have been paired with Yadkin County. PX425 at 63. State law gave the legislature a strong reason to select this clustering because it reduces traversals: Grouping Forsyth County with Stokes County requires creating a one-district cluster of Alexander, Surry, Wilkes, and Yadkin Counties. PX179. There is a minimum of one traversal in the Forsyth-Stokes cluster, and a minimum of four traversals in the Alexander-Surry-Wilkes-Yadkin cluster, for a total of five. PX179. By contrast, grouping Forsyth and Yadkin Counties together reduces the minimum of traversals in the six-county area to four: one in the Forsyth-Yadkin cluster and only three in the Alexander-Stokes-Surry-Wilkes cluster. PX180. The Court notes that Yadkin County has a lower Republican vote share than Stokes County, and the legislature's choice of the traversal-maximizing cluster "helped tip the scales toward a Republican advantage" in District 31. PX425 at 63.

69. The Court further finds that District 32 is drawn to "pack" all of Winston-Salem's most Democratic areas into one district. As an initial matter, Districts 31 and 32 clearly could have been configured such that Senate District 32 is not "packed" with Democrats. As the NCLCV Senate Map shows, the result would render District 32 more competitive, and District 31 would be a responsive swing district capable of electing both Republicans and Democrats, depending upon candidate strength and shifts in voter preferences.[4] PX201 "NCLCV-Sen." B32:BA33.

[4] The Court notes that although NCLCV Districts 31 and 32 divide Winston-Salem, the Enacted Senate Plan divides Winston-Salem strategically to maximize Republican advantage by placing the city's less-Democratic precincts into District 31. PX425 at 65.

Figure 17: NCLCV Senate Districts 31 & 32



Source: PX180.

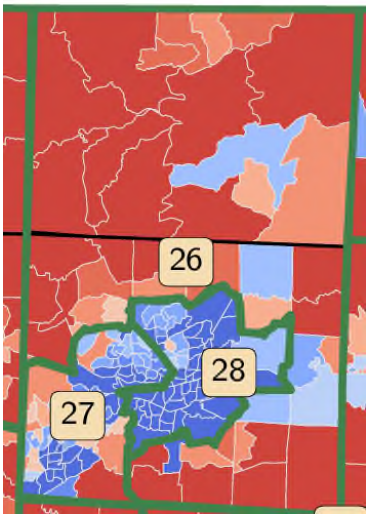
70. Even granting the map-drawers their clustering choice, the Republican advantage in District 31 is a significant partisan outlier. In this regard, the Court credits the analysis of Dr. Mattingly. Dr. Mattingly studied roughly 80,000 non-partisan computer-generated maps in the Forsyth-Stokes cluster that are consistent with traditional districting criteria and concluded that the Enacted Plan's configuration of Districts 31 and 32 represent "an extreme outlier" in that it is "maximally non-responsive" and was "chosen to maximize the number of Democrats in the more [D]emocratic district and the number of [R]epublicans in the most Republican district." PX629 at 59. Dr. Mattingly finds that less than 1% of the 80,000 computer-generated maps had as low a fraction of Democrats in District 31 as the Enacted Plan. PX629 at 59.

Guilford & Rockingham Counties

71. Under the Duke study's implementation of the *Stephenson*/*Dickson* algorithm, Guilford County must be grouped into a three-district Democratic-leaning county cluster with Rockingham County. The Enacted Senate Plan packs most of the cluster's Democratic voters into two districts—Senate District 27 and Senate District 28, where they generate large Democratic vote margins. In the 2020 presidential election, 61% of District 27's major-party voters voted for President Biden. In District 28, that figure was 76%. PX201 "SL-173" AO28:AO29. By wasting these surplus Democratic votes, the Enacted Senate Plan ensures that Senate District 26 will

reliably vote for Republican candidates: In the same race, only 37% of District 26's major-party voters cast their ballots for President Biden. PX201 "SL-173" AO27:AO29; PX422 at 53. This gerrymandering departs from traditional redistricting principles and reduces the compactness of these districts: The average Polsby-Popper score of the three districts is 0.33. PX150 at 15.

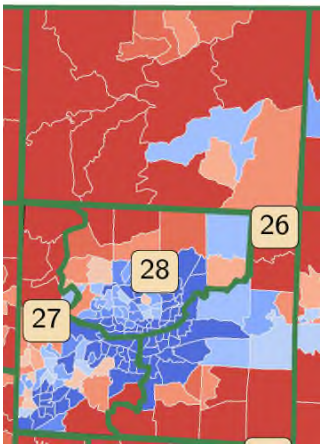
Figure 18: Enacted Senate Districts 26, 27 & 28



Source: PX179.

72. As the NCLCV Senate Map shows, these districts could have been designed to be more compact (with an average Polsby-Popper score of 0.37) and fairer, such that Senate District 27 and Senate District 28, while still Democratic-leaning, are more competitive, and Senate District 26 can swing in favor of either party. PX150 at 15; PX201 "NCLCV-Sen." B27:BA29.

Figure 19: NCLCV Senate Districts 26, 27 & 28



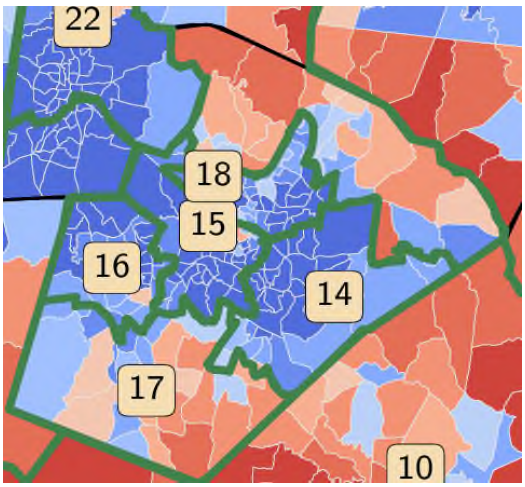
Source: PX180.

73. The Court finds that choosing the less compact, and more Republican-favoring construction of these districts produced an Enacted Plan that is an extreme partisan outlier. As in Forsyth and Stokes Counties, Dr. Mattingly studied thousands of computer-generated non-partisan maps of the Guilford-Rockingham cluster and found that Enacted District 28 has an exceptionally high share of Democratic voters, and that Enacted District 26 has an unusually low percentage of Democratic voters. PX629 at 63. Indeed, ***none*** of the computer-simulated non-partisan maps has a lower fraction of Democrats in District 26 than the Enacted Plan. PX629 at 63.

Wake County & Granville Counties

74. Senate Districts 13 and 17 are also configured to maximize Republican advantage through packing of Democrats. PX425 at 51. Based on the Duke study's implementation of the *Stephenson*/*Dickson* algorithm, the cluster comprising Wake and Granville Counties must contain six Senate districts. Under the Enacted Senate Plan, Wake County's large Democratic population is artificially "packed" into four overwhelmingly Democratic districts—Senate Districts 14, 15, 16, and 18. PX425 at 51. As a result, District 13 and District 17 favor Republicans in nearly all elections in Dr. Duchin's sample. PX201 "SL-173" B14:BA19.

Figure 20: Enacted Senate Districts 14, 15, 16, 17 & 18

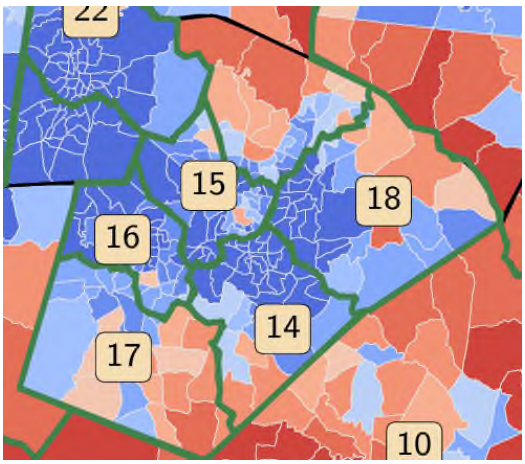


Source: PX179.

75. Tellingly, drawing Districts 13 and 17 to favor Republicans produced a map that is a significant partisan outlier. Again, Dr. Mattingly examined tens of thousands of non-partisan computer-generated maps of Wake and Granville Counties and concluded that ***not a single non-partisan map*** had as many Democrats packed in Districts 14, 15, 16, and 18 as the Enacted Plan does. PX629 at 57. Similarly, no non-partisan map had as low a fraction of Democrats in the analogues to Districts 13 and 17. PX629 at 57.

76. Drawing the districts in this manner also contradicted the state-law requirement that state legislative districts be reasonably compact: The average Polsby-Popper score of Districts 13, 14, 15, 16, 17, and 18 is 0.31. PX150 at 15. Drawing more compact districts in Wake and Granville Counties would have generated more competitive districts in the cluster. The NCLCV Senate Map, for example, creates five compact districts with an average Polsby-Popper score of 0.44. PX150 at 15. The result of doing so is that Districts 13 and 17 regularly flip between Democrats and Republicans in Dr. Duchin's set of 52 elections: District 13 elects a Democrat in 19 of those 52 elections, and District 17 elects a Democrat in 23 elections. PX201 "NCLCV-Sen." B14:BA14, B18:BA18.

Figure 21: NCLCV Senate Districts 14, 15, 16, 17 & 18

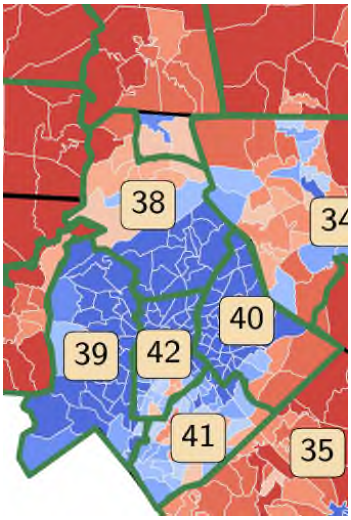


Source: PX180.

Mecklenburg & Iredell Counties

77. Mecklenburg County forms a six-district cluster with Iredell County. As the NCLCV Senate Map shows, drawing compact districts within the cluster yields one Republican district (District 37, in Iredell County and northern Mecklenburg County), one swing district that elects Republican and Democratic candidates (District 41), and four Democratic districts. PX201 "NCLCV-Sen." B38:BA43. The average Polsby-Popper score of the NCLCV Demonstrative Map's districts in Mecklenburg and Iredell Counties is 0.46. PX150 at 15.

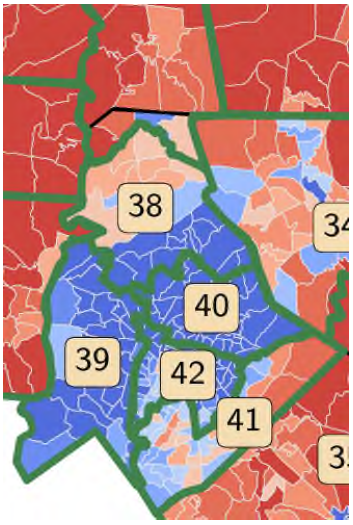
Figure 22: NCLCV Senate Districts 37, 38, 39, 40, 41 & 42



Source: PX180.

78. However, the Enacted Senate Plan, shown below, unnecessarily packs Democratic voters in Mecklenburg County into Senate Districts 38, 39, 40, and 42, converting District 41 from a swing district into a district that will usually elect Republican candidates. PX425 at 56. Enacted District 41 joins Republican voters in the far east and south of Mecklenburg County, while carefully avoiding heavily Democratic precincts that are pushed into District 42. The result is a far lower average compactness score of 0.33 than the NCLCV Senate Map, PX150 at 15, as well as a significant improvement in Republican performance: Enacted District 41 elected a Democrat in only 13 of the 52 studied elections, whereas NCLCV District 41 elected a Democrat in 28 elections. PX201 "SL-173" B42:BA42; PX201 "NCLCV-Sen." B42:BA42.

Figure 23: Enacted Senate Districts 37, 38, 39, 40, 41 & 42



Source: PX179.

79. Tellingly, Dr. Mattingly found that when compared against the roughly 80,000 non-partisan Senate maps for Mecklenburg and Iredell Counties, District 41 contained "unusually few" Democrats, and "***none*** of the approximately 80,000 plans in [the] ensemble [of maps] had as low a fraction of Democrats in the two most Republican districts" in the cluster. PX629 at 55.

80. The Court finds that in crafting a districting map that maximized partisan advantage, the legislature's mapdrawers created excess county traversals. The configuration of Senate Districts 1 and 2, and Senate Districts 43, 44, 46, 48, and 49, creates extra traversals directly attributable to partisan gerrymandering. PX179. In addition, Senate Districts 47 and 50 are configured to create four extra traversals; it is possible to draw these districts to cross county boundaries only 19 times, instead of 23. PX179.

C. The Enacted House Plan Constitutes An Extreme Partisan Gerrymander.

81. The Court finds that the Enacted House Plan is gerrymandered to systematically prevent Democrats from gaining a tie or a majority in the House. As Table 5 illustrates, in close elections, the Enacted Senate Plan always gives Republicans a substantial House majority. That

Republican majority is resilient and persists even when voters clearly express a preference for Democratic candidates.

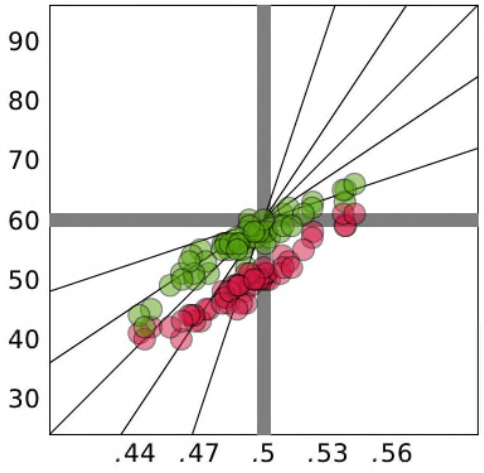
Table 5: Outcomes in 7 Elections in Enacted House Map

Election (margin)	Enacted House Plan
2016 Governor (0.2-pt. D win)	70 R, 50 D
2016 Att'y General (0.5-pt. D win)	70 R, 50 D
2016 Super. Pub. Instr. (1.2-pt. R win)	71 R, 49 D
2020 President (1.4-pt. R win)	70 R, 50 D
2020 Governor (4.6-pt. D win)	62 R, 58 D
2020 Auditor (1.8-pt D win)	66 R, 54 D
2020 Chief Justice (0.0-pt. R win)	68 R, 52 D

Source: PX150 at 6.

82. Figure 24 plots Democratic vote share against Democratic seats across all 52 recent partisan elections. Again, the Enacted House Plan (red dots) does not pass anywhere close to the (50, 50) point. Instead, the Enacted Plan falls well below the block trendlines on the y-axis and crosses the x-axis far to the right of the midpoint, showing a plan that consistently denies Democrats majorities or even a tie.

Figure 25: Vote Shares and Seat Shares in Enacted & NCLCV House Maps



Note: Excerpted from PX153. Data derived from 52 recent statewide general-election contests. Red dots denote results under the Enacted House Plan. Green dots denote results under the NCLCV House Map in the same 52 elections. The x-axis depicts the Democratic vote share; the y-axis depicts the number of Democratic seats.

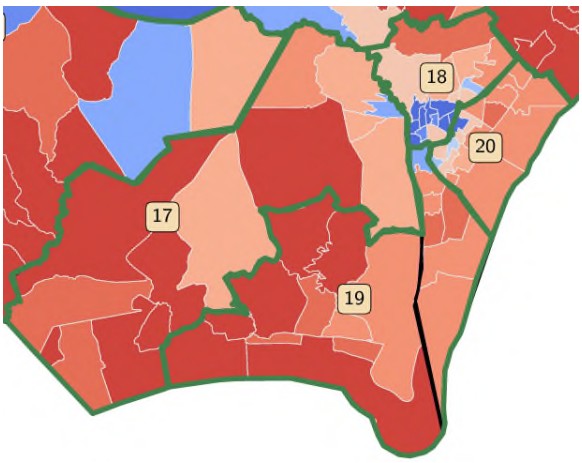
83. As with the Enacted Congressional Plan and the Enacted Senate Plan, the Enacted House Plan achieves this resilient pro-Republican bias by the familiar mechanisms of packing and cracking Democratic voters.

New Hanover & Brunswick Counties

84. New Hanover and Brunswick Counties are grouped together in a four-district cluster that encompasses the heavily Democratic city of Wilmington. The Enacted House Plan creates three Republican districts in this cluster: House Districts 17, 19, and 20. PX425 at 96; PX201 "SL175" B18:BA21. The Plan accomplishes this result by splitting Wilmington in a way that aggregates the city's most Democratic voting districts in a single district—District 18. PX425 at 96.

85. As Professor Mattingly found, District 18 has an abnormally high Democratic vote share when compared to the thousands of non-partisan computer-generated maps that Dr. Mattingly evaluated. PX629 at 52. This packing, in turn, artificially reduces the Democratic vote share in neighboring districts. As Dr. Mattingly explains, the fraction of computer-generated maps where the Democratic vote share in the second and third most Republican districts is smaller than the Enacted House Plan is less than 0.5%. PX629 at 52. These results are consistent with the findings of Dr. Pegden, who concluded that the Enacted House Plan's arrangement of districts in the cluster was more partisan than 89.4% of randomly generated maps. PX523 at 24.

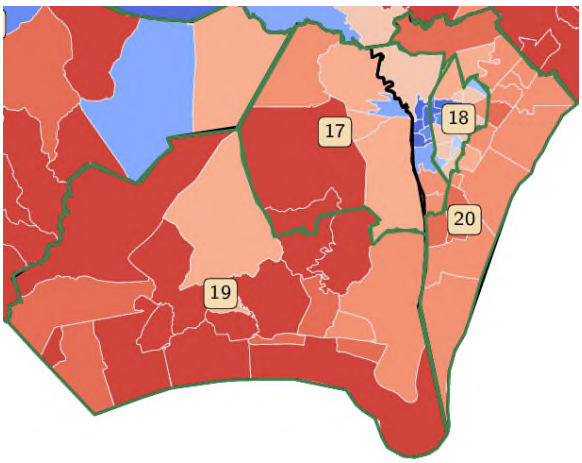
Figure 26: Enacted House Districts 17, 18, 19 & 20



Source: PX181.

86. The NCLCV House Map confirms that it is possible to draw these districts in a way that avoids packing Democrats. Under the NCLCV Map, Districts 17 and 18 are both Democratic-leaning and more competitive than their analogues in the Enacted House Plan, occasionally electing Republicans in Dr. Duchin's sample of 52 elections. PX201 "NCLCV-House" B18:BA19.

Figure 27: NCLCV House Districts 17, 18, 19 & 20

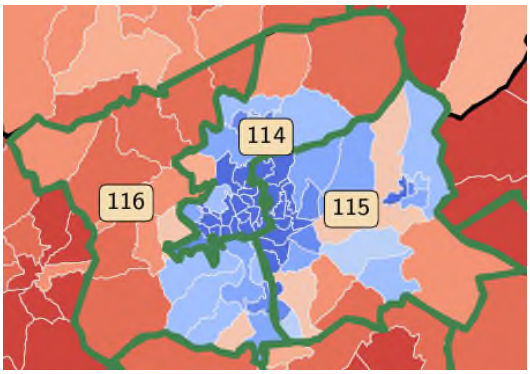


Source: PX182.

Buncombe County

87. Buncombe County is an overwhelmingly Democratic county that is currently represented by three Democratic House members. PX425 at 80. In the Enacted House Plan, Buncombe County retains three House districts, but packs Democrats into District 114 to carve out a safe C-shaped Republican seat in District 116. PX425 at 80. District 116 is the least compact district in the entire Enacted House Plan and is designed such that it never elects a Democrat in the entire set of 52 elections compiled by Dr. Duchin. PX150 at 16; PX201 "SL-175" B118:BA118.

Figure 28: Enacted House Districts 114, 115 & 116



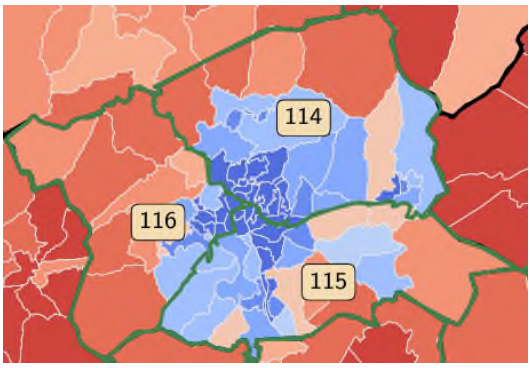
Source: PX181.

88. The Court finds that this degree of packing was not necessary. Dr. Mattingly finds that District 114 has a higher Democratic vote share than 95% of computer-generated non-partisan plans. PX629 at 38. Consistent with this finding, District 116 has a lower Democratic vote share than all but 1.2% of the computer-generated non-partisan plans. PX629 at 38. Dr. Pegden came to a similar finding, concluding that the way in which the Buncombe House districts are organized is more partisan than 99.979% of randomly generated district maps. PX523 at 16.

89. The NCLCV House Map demonstrates that it is possible to draw more compact districts in Buncombe County. The NCLCV House Map's districts in Buncombe County raise the

average Polsby-Popper score in the County from 0.23 to 0.36, and do not carve out undue advantage for either party. PX150 at 16.

Figure 29: NCLCV House Districts 114, 115 & 116

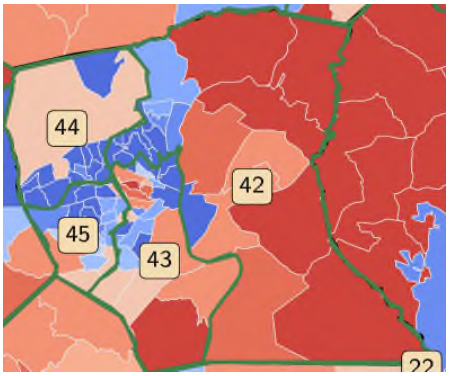


Source: PX182.

Cumberland County

90. The Enacted Senate Plan also packs Democrats in Cumberland County, which hosts four House districts. Cumberland County is heavily Democratic, and drawing compact districts in the county will generally create three or four Democratic House districts. PX425 at 90; PX629 at 48. The NCLCV House Map, for example, has an average Polsby-Popper score in Cumberland County of 0.42, and contains two Democratic-leaning districts and two Democratic districts. PX150 at 16; PX201 "NCLCV-House" B43:BA44.

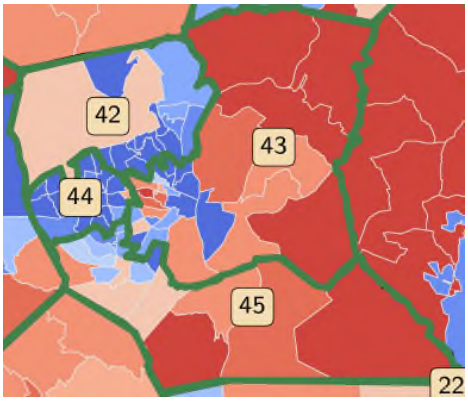
Figure 30: NCLCV House Districts 42, 43, 44 & 45



Source: PX182.

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

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



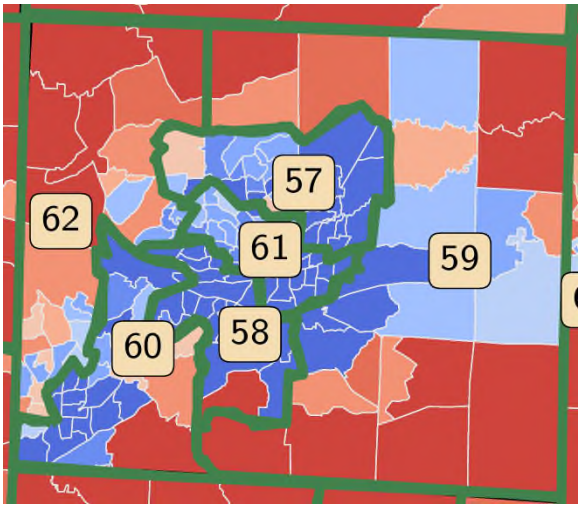
Source: PX181.

92. The Court takes note of Dr. Mattingly's analysis, which shows that in his simulations, at least one of the Enacted Plan's Republican districts in this cluster ***always*** has a greater Democratic vote share. PX629 at 48. Similarly, Dr. Pegden finds that Enacted Districts 42, 43, 44, and 45 are more partisan than 83.5% of alternative districting plans. PX523 at 27.

Guilford County

93. Guilford County hosts six House districts. The Enacted House Plan draws those districts in a way that packs Democrats into four Districts—57, 58, 60, and 61. PX425 at 77. This packing creates two districts—Districts 59 and 62—that favor Republican candidates. District 62 never elected a Democrat in Dr. Duchin's 52-election sample, and District 59 did so only once. PX201 "SL-175" B60:BA60, B53:BA63.

Figure 32: Enacted House Districts 57, 68, 59, 60, 61 & 62

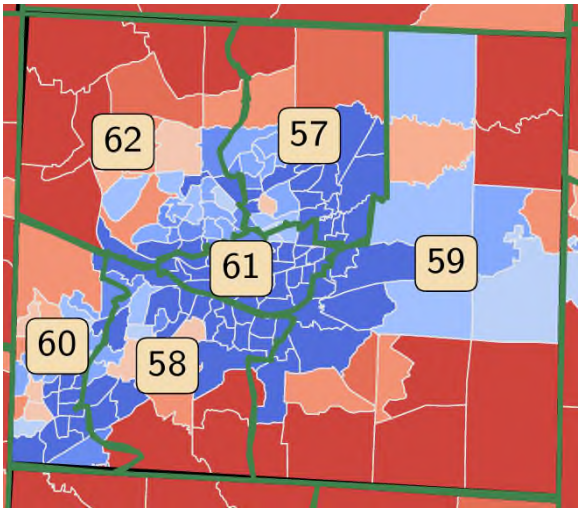


Source: PX181.

94. The partisan advantage for Republicans in Guilford County is extreme. There is not a single map among the roughly 80,000 non-partisan maps in Dr. Mattingly's ensemble that has a higher Democratic vote share in Districts 57, 58, 60, and 61, or a lower Democratic vote share in Districts 59 and 62. PX629 at 36. As Dr. Mattingly concludes, "this cluster shows more cracking and packing of Democrats than every single plan in the nonpartisan ensemble." PX629 at 36. Likewise, Dr. Pegden found that the arrangement of the Guilford House districts in the Enacted Plan are in the most partisan 0.000029% of possible districtings. PX523 at 19.

95. Again, the NCLCV House Map shows that it is possible to draw more neutral districts that adhere to traditional districting criteria and state law. The NCLCV House Map substantially improves on the average Polsby-Popper score for the cluster in the Enacted House Map, raising it from 0.30 to 0.47. PX150 at 16.

Figure 33: NCLCV House Districts 57, 68, 59, 60, 61 & 62



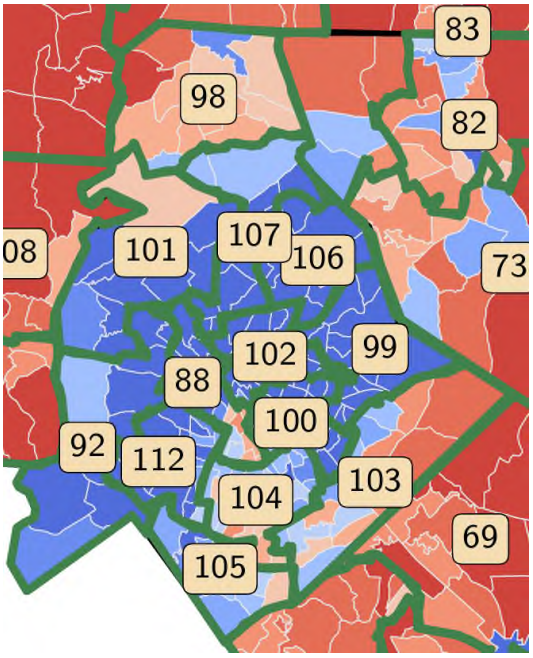
Source: PX182.

Mecklenburg County

96. Mecklenburg County hosts thirteen House districts, which are arranged to maximize Republican advantage. PX425 at 69. Although the County is one of the most Democratic in North Carolina, the Enacted House Map carves out three districts that Republicans will ordinarily win—Districts 98, 103, and 104. PX201 "SL-175" B99:BA99, B104:BA105. As Dr. Mattingly notes, these two districts have "exceptionally few Democrats" when compared with the corresponding districts in his non-partisan ensemble. PX629 at 29.

97. This, in turn, is the result of packing Democrats to limit their influence: As Dr. Mattingly finds, this is achieved by packing Democrats into three districts, making the plan an "extreme outlier" among possible non-partisan Mecklenburg maps. PX629 at 629. Dr. Mattingly's conclusions are substantiated by those of Dr. Pegden, who independently finds that the Enacted House Map in Mecklenburg is in the most partisan 1.7% of possible districting plans. PX523 at 20.

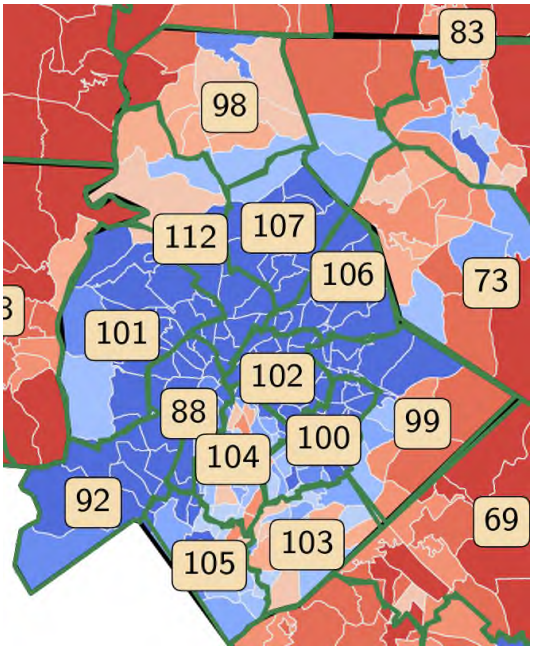
Figure 34: Enacted House Districts 88, 92, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 112



Source: PX181.

98. Again, the NCLCV House Map confirms that it is possible to comply with traditional districting criteria while avoiding an undue partisan skew. Notably, the NCLCV Map raises the average compactness score in Mecklenburg County from 0.33 to 0.42, and produces more competitive Districts 103 and 104 that, based on performance during the last 52 partisan statewide elections, are more likely to swing between parties and thus respond to shifts in voter preferences. PX201 "NCLCV-House" B104:BA105; PX201 "SL-175" B104:BA105.

Figure 35: NCLCV House Districts 88, 92, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 112

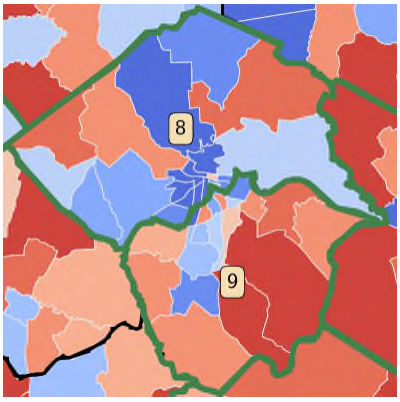


Source: PX182.

Pitt County

99. Pitt County hosts two House districts and currently is represented by two Democrats in the state House. PX425 at 82. The Enacted House Plan reconfigures the existing Pitt County House districts to create a Republican seat. PX425 at 82. The Enacted House Plan carefully divides Greenville in a way that places all of its most heavily Democratic precincts in House District 8, while keeping its most heavily Republican precincts in District 9. PX425 at 82-84. As a result, District 9 will likely elect a Republican; District 9 voted for President Trump in the 2020 election by a 6-point two-party margin. PX201 "SL-175" AO10.

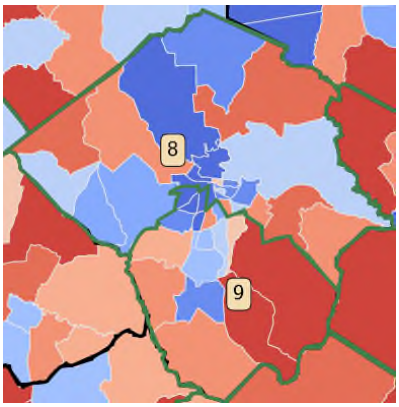
Figure 36: NCLCV House Districts 8 & 9



Source: PX182.

100. In analyzing how the Enacted House Plan compares against the thousands of computer-generated non-partisan maps in Dr. Mattingly's ensemble, Dr. Mattingly found that District 8 has a higher proportion of Democratic voters than nearly 95% of all other computer-generated maps. PX629 at 40. Likewise, Dr. Pegden concluded that the configuration of Districts 8 and 9 were more partisan than 96.3% of alternative randomly generated configurations. And again, the NCLCV House Map, which creates more balanced districts, shows that the districting choice in the Enacted Plan is not inevitable.

Figure 37: NCLCV House Districts 8 & 9

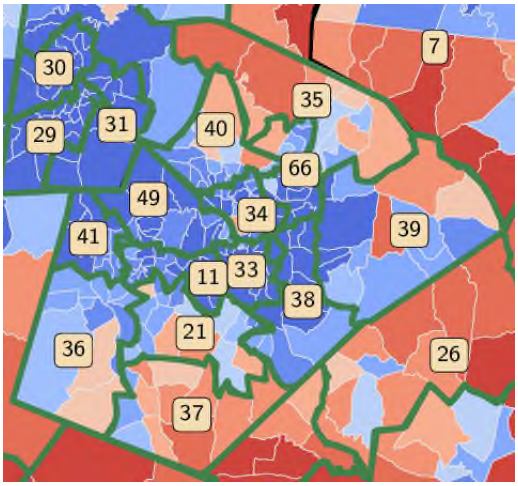


Source: PX181.

Wake County

101. Wake County hosts thirteen House districts. The county is heavily Democratic, and there are no Republicans on the county commission. PX425 at 71. The Enacted House Plan packs Democrats into as few districts as possible. The result is that under the Enacted House Plan, District 35 and District 37 are more Republican than they would be under a map drawn without regard to partisanship.

Figure 38: Enacted House Districts 11, 21, 33, 34, 35, 36, 37, 38, 39, 40, 41, 49, 66



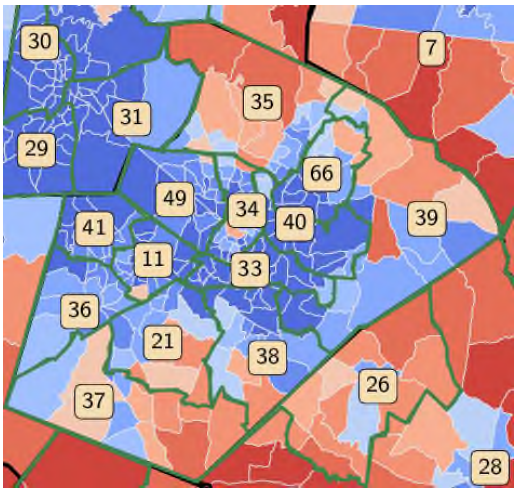
Source: PX181.

102. Dr. Mattingly explains that across all non-partisan maps in his ensemble, no more than 1.2% of them have a lower share of Democratic votes in Districts 35 and 37 than the Enacted House Map. PX629 at 32. Dr. Pegden found that the Wake House cluster is in the most partisan 0.72% of districtings. PX523 at 22. The result, as Dr. Mattingly explains, is to slightly shift Districts 35 and 37 such that they are safer for Republicans.

103. By way of example, in the NCLCV House Plan, Districts 35 and 37 are more compact, and still tend to vote Republican. PX150 at 16. However, using Dr. Duchin's analysis of 52 past elections, the districts are more competitive in terms of partisanship and are more likely

to "flip" to elect a Democrat, making them more responsive to shifts in voter opinion than their counterparts in the Enacted House Plan. PX201 "SL-175" B:36:BA36, B38:BA38; PX201 "NCLCV-House" B:36:BA36, B38:BA38.

Figure 39: NCLCV House Districts 11, 21, 33, 34, 35, 36, 37, 38, 39, 40, 41, 49, 66



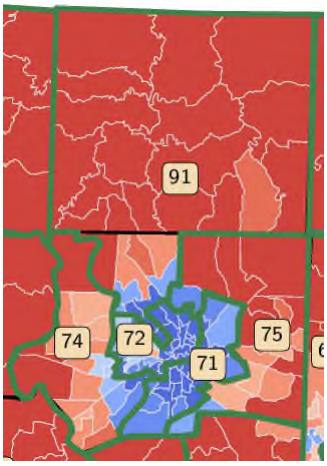
Source: PX182.

Forsyth & Stokes Counties

104. Forsyth and Stokes Counties form a House cluster that comprises five districts. These districts are configured in such a way as to ensure that Republicans will typically win three of them, despite the large Democratic population of the area. PX425 at 75. For instance, Districts 71 and 72 are carefully drawn to include most of Winston-Salem's most Democratic precincts. However, to preserve District 74's Republican lean, District 91—which is heavily Republican and at no risk of electing a Democrat—cuts into Winston Salem to pick up those Democratic precincts that cannot be incorporated into Districts 71 and 72. The result is a finger that cuts to the core of Winston-Salem and preserves Republican advantage in District 74. PX201 "SL-175" B75:BA75, B80:BA80. As Dr. Mattingly notes, less than 0.02% of the plans in his non-partisan ensemble have a lower Democratic vote share in the three most Republican districts. PX629 at 34. And

again, Dr. Pegden supports the same conclusion: Dr. Pegden concluded that the districting was in the most partisan of 0.087% of districts in his randomly generated plans for the cluster. PX523 at 18.

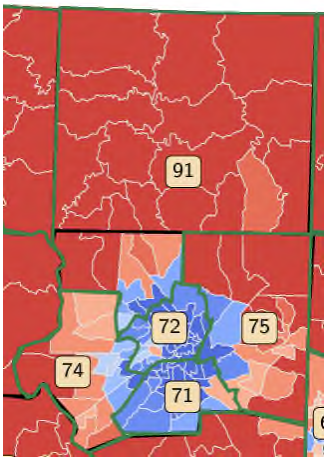
Figure 40: Enacted House Districts 71, 72, 74, 75, 91



Source: PX181.

105. This configuration comes at a significant cost of compactness. The Enacted House Plan in Forsyth and Stokes Counties has an average Polsby-Popper score of 0.33. PX150 at 16. The same score for the NCLCV House Map, which eliminates the finger and has a more competitive District 74, is 0.49. PX150 at 16; PX201 "SL-175" B75:BA75; PX201 "NCLCV-House" B75:BA75.

Figure 41: NCLCV House Districts 71, 72, 74, 75, 91



Source: PX182.

Onslow & Pender Counties

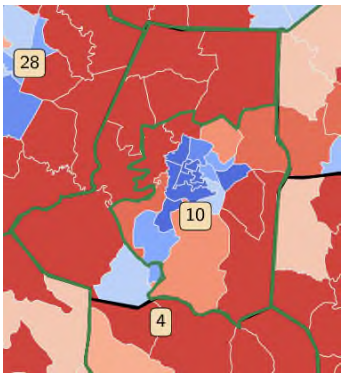
106. Onslow County is in a three-district cluster with Pender County, comprising Districts 14, 15, and 16. As the NCLCV House Map demonstrates, one of the districts in this cluster—District 15—could have centered around Jacksonville, such that the district would be highly competitive and would give the region's Democratic voters an opportunity to elect candidates of their choice. In Dr. Duchin's analysis of 52 recent statewide elections, District 15 in the NCLCV configuration would elect a Democrat in 23 elections, and would elect a Republican in 29 elections. PX201 "NCLCV-House" B16:BA16.

107. The General Assembly, however, instead split the Jacksonville area's Democrats between two districts—House Districts 14 and 15—in order to create three heavily Republican districts that prevent Onslow County's Democratic voters from having any meaningful say in elections. PX201 "SL-175" B15:BA16. This, again, came at the cost of compactness: The NCLCV House Map's average compactness score for Districts 14, 15, and 16 is 0.33; the same average for the Enacted House Plan is 0.30. PX150 at 16.

Duplin & Wayne Counties

108. The Enacted House Plan groups Duplin and Wayne Counties into a two-district cluster. PX425 at 88. Wayne County contains a large population of Democratic voters in the city of Goldsboro and southern Wayne County. As the NCLCV House Map demonstrates, the General Assembly could have drawn one House district to keep these communities of Democratic voters together, which would have given Democratic voters the opportunity to elect candidates of their choice in a highly competitive District 10. PX201"NCLCV-House" B11:BA11.

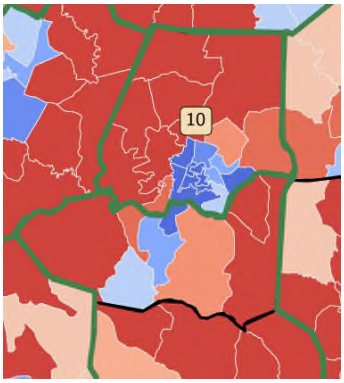
Figure 42: NCLCV House Districts 4 & 10



Source: PX182.

109. Instead, the Enacted House Plan cracks Wayne County's Democratic voters between House Districts 4 and 10, creating two districts that will nearly always elect Republican candidates. PX425 at 88.

Figure 43: Enacted House Districts 4 & 10

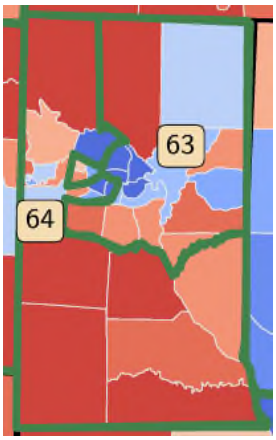


Source: PX181.

Alamance County

110. In Alamance County, the General Assembly altered the boundaries of prior District 63, where the incumbent is currently a Democrat. PX425 at 92. With these changes, the district is strangely shaped, does not follow municipal boundaries or communities of interest, and, at one point, passes through a gap in District 64 that is merely three blocks wide. PX425 at 92.

Figure 44: Enacted House Districts 63 & 64



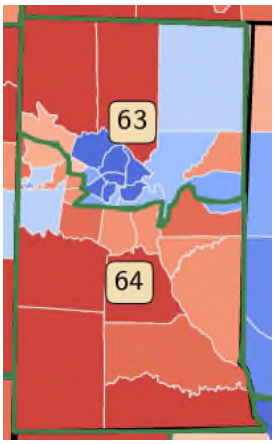
Source: PX181.

111. The changes make the district more favorable to Republicans, without endangering the Republican majority in surrounding House District 64. Dr. Duchin's analysis of 52 past

elections indicates that District 63 thus configured has elected a Republican more often than not. PX201 "SL-175" B64:BA64.

112. As the NCLCV House Map shows, it is possible to draw Districts 63 and 64 such that they are more compact and keep the Burlington area in one district. Although the NCLCV configuration substantially raises the Polsby-Popper score of the cluster's districts from .31 to 0.50, doing so also substantially increases the likelihood that a Democrat will win District 63. PX201 "NCLCV-House" B64:BA64.

Figure 45: Enacted House Districts 63 & 64



Source: PX182.

113. The Court finds that like the Enacted Senate Plan, the Enacted House Plan increases the number of county traversals beyond what is necessary. In particular, House Districts 1 and 79 could have been reconfigured so that the cluster would have three fewer county traversals.

D. The General Assembly Acted Intentionally In Creating Its Extreme Partisan Gerrymanders.

114. As the Court explains below, partisan gerrymandering violates the Free Elections Clause without a need to show intent. Here, however, evidence of intent abounds.

115. ***First***, the Enacted Plans' extreme partisan skew is itself strong evidence of partisan intent. As the U.S. Supreme Court has explained, it "is most unlikely that the political impact of

… a [grossly gerrymandered] plan would remain undiscovered by the time it was proposed or adopted, in which event the results would be both known and, if not changed, intended." *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973); *accord In re Senate Joint Res. of Legis. Apportionment 1176*, 83 So. 3d 597, 641 (Fla. 2012).

116. ***Second***, the Court finds strong evidence of intent in the fact that the Enacted Congressional, Senate, and House Plans apply different rules to different parts of the state. The General Assembly's approach is consistent only in maximizing Republican partisan advantage. For instance, in heavily Democratic areas where Republicans are aided by drawing ***non***compact districts that carve out Republican or competitive districts from Democratic areas, the Enacted Plans draw such districts, no matter the cost to compactness.

117. In Buncombe County, for example, the mapdrawers created House District 116—the least compact district in the entire Enacted House Plan—by reducing the compactness of neighboring districts. A compact districting plan in Buncombe County would have yielded three Democratic or Democratic-leaning seats. The same is true of House Districts 35 and 37 in Wake County; House Districts 43 and 45 in Cumberland County; House Districts 59 and 62 in Guilford County; House District 74 in Forsyth County; House Districts 103 and 104 in Mecklenburg County; Senate Districts 13 and 17 in Wake County; Senate District 26 in Guilford and Rockingham Counties; and Senate District 41 in Mecklenburg County.

118. But the Enacted Plans fail to create Democratic-leaning districts in Republican parts of the State, even when those districts would be more compact. For instance, House District 15 in Onslow County can be drawn such that it improves compactness throughout the cluster and creates a swing district in Jacksonville. The General Assembly chose not to draw the district in this manner, and instead drew District 15 as a safe Republican district.

119. Similarly, the Enacted House Plan emphasizes municipal preservation and communities of interest when beneficial to Republican candidates, and ignores them when not. For instance, Legislative Defendants argue that districts like Senate District 32 in Forsyth County preserve city cores. But in the very same area, the Enacted ***House*** Plan needlessly cuts into the heart of Winston Salem with a finger from House District 91, which helps to maximize Republican advantage in House District 74.

120. Likewise, ostensibly to protect communities of interest in Greensboro and High Point, the Enacted Senate Plan packs Senate Districts 27 and 28 with Democrats, thereby preserving Republican advantage in District 26. But the Enacted ***Congressional*** Plan needlessly slices and dices Greensboro and High Point into three separate congressional districts as doing so dilutes Democratic votes.

121. The Court simply cannot credit the General Assembly's pretextual explanations; instead, it finds that the General Assembly's only consistent principle was maximizing partisan advantage.

122. ***Third***, and relatedly, the General Assembly did not follow state law or their own criteria. For instance, the NCLCV Demonstrative Maps show that the Enacted Senate and House Plans contain unnecessary county traversals. The NCLCV Maps also show that the Enacted Plans are less compact than necessary. The Enacted Congressional, Senate, and House Plans have average Polsby-Popper scores of 0.30, 0.34, and 0.35, respectively. The same scores for the NCLCV Maps are 0.38, 0.37, and 0.41, respectively. PX150 at 13.

123. In finding that the General Assembly did not adhere to its own criteria, the Court finds persuasive the analysis of Dr. Jowei Chen. Dr. Chen ran 1,000 random computer-simulated maps that adhered to the same non-partisan districting criteria that the legislature adopted for the

Enacted Congressional Plan—namely, population equality, contiguity, minimizing county splits, minimizing precinct splits, and increasing compactness. PX482 at 6. Dr. Chen found that the Enacted Congressional Plan splits more counties than all 1,000 of the non-partisan maps PX482 at 14; splits more precincts than all 1,000 of the non-partisan maps, PX482 at 16; and has a Polsby-Popper compactness score lower than all 1,000 of the non-partisan maps PX482 at 17.

124. And again, these departures often coincided with decisions that increased Republican advantage. For instance, Congressional Districts 7, 10, and 11 are the three least compact districts in the entire map, with Polsby-Popper scores of just .20, .20, and .21 each. The reason for this noncompactness is that Districts 7, 10, and 11 each carefully combine Democratic areas in Guilford County with enough rural Republican votes to ensure Republican majorities. As the shapes of the districts makes clear, this result required snaking across the State to avoid other Democratic areas that could yield competitive districts. As another example, the only three counties to be trisected in the Enacted Congressional Map are the counties with the largest concentrations of Democratic voters—Wake, Mecklenburg, and Guilford. And several decisions that maximized traversals, such as the decision to break up Northeastern North Carolina's Democrats into Senate Districts 1 and 2, served to increase Republican voting power.

125. ***Fourth***, record evidence shows that the Enacted Plans are extreme partisan outliers that cannot have been created without partisan intent. Using electoral data from two Republican-favorable election cycles, Dr. Chen found that the Enacted Congressional Plan creates more Republican districts than ***97%*** of his simulated plans. PX482 at 32–34. Using Democratic-favorable elections, Dr. Chen found that the 2021 Enacted Plan gives Republicans more districts than ***every single one*** of the 1,000 randomly generated maps. PX482 at 34–36.

126. Dr. Mattingly sampled 79,997 randomly generated non-partisan congressional districting plans that complied with traditional districting criteria, such as compact districts and respect for municipal integrity. PX629 at 72. He then analyzed how those various maps would have translated sixteen historical statewide elections into seats, and compared those results with the Enacted Congressional Map. PX629 at 74. Dr. Mattingly found that "under historic elections in which Democrats win 46% to 53% of the statewide vote," the maps in his ensemble "shift from around 4 Democrats" in the congressional delegation to around 8 Democrats. PX629 at 74. The Enacted Congressional Map, however, is an "extreme outlier" because it "sticks at only 4 Democrats in North Carolina's congressional delegation under nearly all" elections. PX629 at 75.

127. Dr. Mattingly also examined the mechanism for this aberrant behavior: The two most Democratic districts in the Enacted Congressional Plan are more Democratic than almost every single one of the 79,997 non-partisan maps in the ensemble, reflecting the extreme packing of Democratic voters into Congressional Districts 6 and 9. PX629 at 75–76. This corresponds with a lower-than-average Democratic vote share in districts closer to the median of partisanship. PX629 at 75. Moreover, the two ***most*** Republican districts in the Enacted Congressional Map are more Democratic than the analogous districts in ***every single one*** of the 79,997 non-partisan maps, showing the intentional cracking of Democratic voters into Republican districts where their votes will have no effect. PX629 at 75–76.

128. Dr. Mattingly came to the same conclusion about the Senate and House Plans. As noted above, Dr. Mattingly examined the partisan-outlier status of individual clusters, and he performed the same analysis on the Senate and House Plans as a whole. Dr. Mattingly concluded that depending on which election is used to evaluated partisan outcomes, the Enacted Senate Map "ranges between titled to the Republican party to being an extreme partisan outlier." PX629 at 21.

He further found that essentially all of the districts between the 15th most Republican and the 33rd most Republican have "abnormally few Democrats" when compared to the non-partisan maps as a whole, and that this is "compensated by packing abnormally many Democrats [into] the 35th to the 47th most Republican districts." PX629 at 24. In other words, the Enacted Senate Map transfers an abnormal number of Democrats from districts where they could have affected electoral outcomes to districts where they cannot.

129. Dr. Mattingly drew the same conclusion about the Enacted House Plan, and found that the plan acts as an extreme partisan outlier ***especially*** when Republicans are likely to lose control of the chamber in ordinary non-partisan maps. PX629 at 11. And he found that the Democrats "missing" from competitive districts were transferred to either "packed" safe Democratic districts or strong Republican districts. PX629 at 16.

130. Dr. Pegden, too, conducted analyses on the Enacted Congressional, Senate, and House Plans. Dr. Pegden first made small random map changes to generate trillions of possible districting maps and concluded that the 99.9999968% of randomly generated congressional maps had less Republican bias than the Enacted Congressional Map. PX523 at 13. He further found that the Enacted Senate Map and Enacted House Map were more partisan than 99.978% and 99.999918% of randomly generated maps, respectively. PX523 at 14–15.

131. The Court is aware that Legislative Defendants' expert, Dr. Barber, also generated comparator maps to evaluate the outlier status of the Enacted Senate and House Plans and that Dr. Barber uses those maps to aver that, at the cluster level, the Enacted Senate and House Plans are not extreme partisan outliers. By contrast, Dr. Barber claims that the NCLCV Maps are partisan outliers. The Court does not credit Dr. Barber's findings and opinions, for five reasons.

132. ***First***, Dr. Barber uses a map-sampling methodology that has not been confirmed through the process of peer review. PX234 at 5. While the Court takes no position on the accuracy of Dr. Barber's methodology, it hesitates to rely on an unverified method.

133. ***Second***, the Court notes that Dr. Barber does not account for the possibility that alternative clustering arrangements exist; his analysis is limited to reviewing possibilities ***within*** a cluster. PX234 at 5.

134. ***Third***, Dr. Barber removes any map from his non-partisan sample if the map is not as compact as the Enacted Plan or if the map has more traversals than the Enacted Plan. This is an arbitrary culling mechanism that skews the sample to more closely resemble the Enacted Plan, and thus also makes the NCLCV Demonstrative Maps appear as outliers. As a result, the Court finds that Dr. Barber's conclusions are not reliable. PX234 at 5–6.

135. ***Fourth***, and most important, Dr. Barber's cluster-level analysis does not address whether the plans ***as a whole*** reflect partisan gerrymandering. As the Court has explained, individual district-level choices can, working together, produce a districting plan that is an extreme partisan gerrymander. PX234 at 5.

136. Though Dr. Barber's report does not speak to the outlier status of the Enacted Senate and House Plans as a whole (or the Enacted Congressional Plan at all), his data do. Dr. Duchin assembled Dr. Barber's cluster-level data into a statewide histogram. And that analysis reveals that, statewide, the Enacted Senate Plan and the Enacted House Plan ***are*** extreme partisan outliers. More specifically, Dr. Duchin shows that (again, using Dr. Barber's own data) the Enacted House Map "is in the most extreme 0.00133 fraction of the Barber ensemble" and that the Enacted Senate Map "is in the most extreme .007 fraction of the Barber ensemble." PX234 at 7. Dr. Duchin also found that, statewide, the NCLCV House and Senate Maps are well within the

normal distribution of Dr. Barber's ensembles. PX234 at 7. The Court finds it telling that Dr. Barber did not himself report the results of this statewide analysis.

Figure 46: "Democratic-Leaning" Seats in Dr. Barber's Senate Ensemble

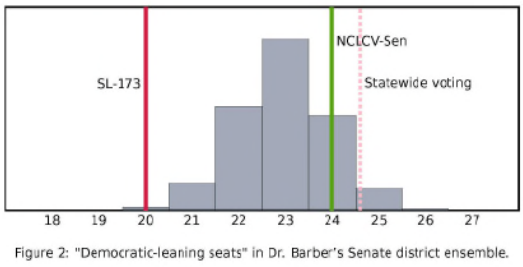


Figure 2: "Democratic-leaning seats" in Dr. Barber's Senate district ensemble.

Source: PX237.

Figure 47: "Democratic-Leaning" Seats in Dr. Barber's House Ensemble

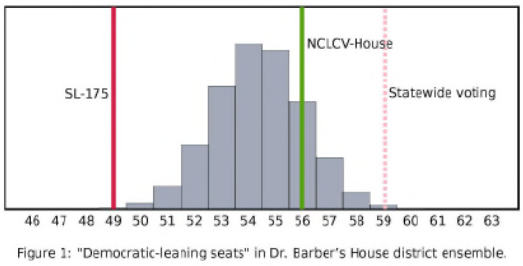


Figure 1: "Democratic-leaning seats" in Dr. Barber's House district ensemble.

Source: PX236.

137. Finally, the Court notes that Dr. Barber performed no analysis of the Enacted Congressional Plan, and Legislative Defendants have offered no other expert to opine on the plan. Again, the Court notes Dr. Duchin's work, which applies Dr. Barber's script and methodology to the Enacted Congressional Plan. Again, Dr. Barber's own methods show that the Enacted Congressional Plan is an extreme partisan outlier, and that the NCLCV Congressional Map is in the center of the distribution of Dr. Barber's ensemble maps. PX234 at 8.

Figure 48: "Democratic-Leaning" Seats in Congressional Map Using Barber Methodology

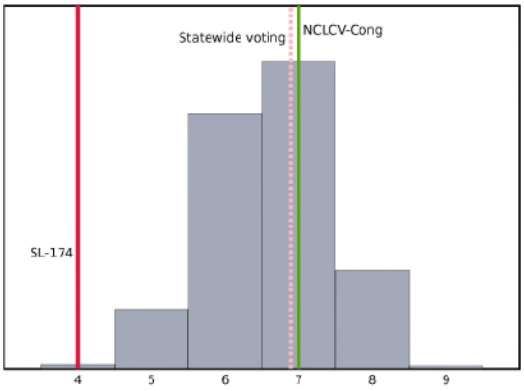


Figure 3: "Democratic-leaning seats" in a Congressional ensemble created with Dr. Barber's code, following his specifications.

Source: PX238.

138. The process that the General Assembly adopted underscores that it intended to engage in partisan gerrymandering, while doing everything it could to shield its actions from scrutiny.

139. That is particularly true of the Committees' rule prohibiting the use or consideration of partisan data, which the Court finds was a mere pretext designed to give the General Assembly plausible deniability. This rule meant only that the mapmaking computer terminals in the legislative hearing rooms did not contain partisan data and election results.[5] But legislators and their staffs were free to draw maps outside the hearing rooms, using whatever data they liked, and then to redraw them on the public terminals. Indeed, the House Redistricting Committee Chair, Defendant Hall, admitted at the October 5 hearing that he had no intention of taking any measures

[5] PX79 51:23-52:8 ("REP HARRISON: [W]hen you were talking about us being bound by the criteria of not using race or partisan data, so any individual can -- any member of the House can draw a district, will they be bound by the same criteria? CHAIRMAN HALL: Yes. So to be clear, only a map that's drawn in this room is going to be considered by this committee. 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.").

to prevent members from drawing maps outside the committee rooms using partisan or election data and bringing those maps into the committee rooms to reproduce on the computers.[6]

140. And in fact, Defendant Hall has now testified that ***he himself*** relied on "concept maps" drawn by his then-General Counsel Dylan Reel, outside of the legislative hearing rooms, while Defendant Hall was drawing the proposed House plan that would eventually be enacted. PX145 at 122:22-155:10 (Dec. 27, 2021 Rep. Hall Dep. Tr.). Defendant Hall testified that in between his sessions at the public mapmaking terminal, he met with Mr. Reel and Defendant Speaker Moore's Chief-of-Staff Neil Inman to review "concept maps" of various county groupings in "strategy sessions." PX145 122:22-128:6, 141:20-148:9. In at least "a couple" of instances, Mr. Reel accompanied Defendant Hall into the legislative hearing room and displayed an image of a "concept map" on his phone while Defendant Hall drew the district lines on the public terminal. PX145 221:12-223:2. Defendant Hall testified that, to the best of his recollection, he relied on these concept maps for "around five" House county clusters in total, including Wake County, Pitt County, the Forsyth-Stokes county cluster, and potentially Mecklenburg County. PX145 132:18-139:11. Defendant Hall made no effort to verify that the "concept maps" had not been drawn using election data or racial data. PX145 150:2-152:4, 153:17-154:1.

[6] PX79 52:18-53:14 ("REP 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 -- I just didn't know if there was some way to enforce that, or how do you plan to do that? CHAIRMAN HALL: Well, you know, I don't plan to search every member who comes into this committee room, nor do I want to do that."); *id.* at 54:13-55:11 ("CHAIRMAN HALL: . . . I, as the chair of this committee, I'm not going to police who folks are talking to."); PX79 65:14-67:24 ("CHAIRMAN HALL: . . . [T]he members of this committee really want the public's comment. And, you know, those members of the public may say, "Representative Reives, I want you to draw the district this way and I want you to do this precinct." And that's up to you to determine how you want to handle doing that.")..

141. Defendant Hall, moreover, did all this ***after*** announcing at the October 5 Committee hearing that only maps drawn at the mapmaking terminals in the legislative hearing rooms would be considered by the committee. Oct. 5, 2021 House Redistricting Comm. Hrg. Tr. 4:15-24. Remarkably, Defendant Hall justified this rule in the name of transparency, explaining that it would serve to ensure that every map considered by the committee would be a "matter of public record" because it would have been drawn on the computers in the committee room. PX79 4:25-5:4. Yet just days before trial, the Legislative Defendants revealed in response to an order from this Court that the "concept maps" that Mr. Reel had drawn for Defendant Hall were "not saved, are currently lost and no longer exist." Dec. 30, 2021, Legislative Defendants' Supplemental Objections & Responses to Plaintiffs' Second Set of Interrogatories at 3-4. The Court finds this conduct—taken in violation of preservation obligations—to be powerful evidence of improper intent.

142. The Legislative Defendants knew that the Enacted Plans were egregious partisan gerrymanders prior to enacting them, yet adopted the plans anyway. During the mapdrawing process, the Legislative Defendants were repeatedly told by Democratic legislators, members of the public, and even the press that their proposed plans constituted egregious and unjustified partisan gerrymanders.[7] At the November 1, 2021 Senate Redistricting Committee hearing, for instance, Senator Wiley Nickel detailed the characteristics of the congressional plan that made it an extreme partisan gerrymander and the harms that would result.[8] Nevertheless, the General

[7] *E.g.*, PX224 (Gary D. Robertson) ("'It's not coincident that it's only in the urban areas that you subject these counties to that kind of treatment,' Senate Minority Leader Dan Blue of Wake County told Republican colleagues."); *accord* PX227 (Will Doran & Brian Murphy); PX228 (Gary D. Robertson); PX230 (Charles Duncan); PX225 (Will Doran).

[8] PX81 14:17-17:9; *see also* PX1464 10:25-12:19 (statement by Rep. Reives protesting the extreme partisan gerrymandering that the Enacted Congressional Map perpetuates).

Assembly proceeded to enact the gerrymandered plans. The Court finds that the General Assembly did so because it intended the partisan gerrymandering that the Enacted Plans inflict.[9]

143. Based on the partisan skew of the Enacted Plans; the partisan manner in which the mapdrawers selectively applied traditional districting principles; the fact that the mapdrawers relied on "concept maps" drawn outside of the committee room and then failed to retain those "concept maps" or the data upon which they relied; evidence that the General Assembly did not actually enforce the non-partisan districting criteria they adopted; evidence showing that the Enacted Plans result in extreme partisan outliers; and the aberrant legislative history of the enactment of the 2021 plans, the Court finds that the General Assembly intentionally and deliberately enacted extreme partisan gerrymanders in approving each of the Enacted Plans.

IV. THE ENACTED PLANS DILUTE VOTING STRENGTH BASED ON RACE.

144. The Court also finds that the Enacted Plans egregiously dilute the voting power of North Carolina's minority voters—by packing and cracking Black voters into congressional, Senate, and House districts in a manner that deprives Black voters of the ability to elect their candidates of choice. North Carolina's Black voters constitute sufficiently large and geographically compact populations that should have the opportunity to elect their candidates of choice in many areas of the State. But the General Assembly has leveraged racially polarized voting to pack and crack these voters so that they are unable to elect their candidates of choice.

[9] Because of the paper prohibition on the consideration of partisan and electoral data, legislators, members of the public, and the press frequently relied on third-party analyses of the plans, such as analyses by the nonpartisan Princeton Gerrymandering Project, to underscore the plans' extreme skew. These analyses were referenced in statements by legislators in committee hearings and on the floor of the House and the Senate, as well as in public and outside commentary. PX1464 Tr. 10:25-12:19 (statement by Rep. Reives explaining that "because none of us are using partisan data or anything of that sort, we have to depend on what outside groups have looked at" and that the extreme partisan gerrymander effectuated by what became the Enacted Congressional Map had been "rated an F" by the Princeton Gerrymandering Project").

145. Black voters account for 21.4% of North Carolina's population, and the Black population is growing in the State. PX150 at 11. But the Enacted Plans limit North Carolina's Black citizens to just 2 effective Congressional districts, as few as 8 effective Senate districts, and 24 effective House districts—well short of the number of districts that would allow Black voters to elect their candidates of choice consistent with their proportional share of the State's adult population. PX150 at 12. And like the Enacted Plans political gerrymandering, this racial dilution is not an inevitable result of the application of traditional, neutral districting principles to North Carolina's political geography and demographics. It is a choice the General Assembly made. This is clear from examining the NCLCV Demonstrative Maps, which ***do better*** on the traditional and neutral redistricting criteria mandated by North Carolina law while creating significantly more districts that are effective for Black voters (i.e., districts in which Black voters have an effective opportunity to elect their candidates of choice). Specifically, the NCLCV Demonstrative Maps contain 4 effective Congressional districts (Districts 2, 4, 9, and 11 in the NCLCV Congressional Map), 12 effective Senate districts (Districts 1, 5, 11, 14, 18, 19, 26, 27, 32, 38, 39, 40 in the NCLCV Senate Map), and 36 effective House districts (Districts 2, 8, 9, 10, 23, 24, 25, 27, 31, 32, 33, 38, 39, 40, 42, 43, 44, 45, 48, 57, 58, 59, 60, 61, 63, 66, 71, 88, 92, 99, 100, 101, 102, 106, 107, 112 in the NCLCV House Map. *Id.*

A. Primary and General Elections In North Carolina Exhibit Racially Polarized Voting

146. Racially polarized voting opens the door to dilutive districting maps: When voting is racially polarized—that is, "where '[B]lack and white voters vote differently"—maps can dilute the strength of minority voters by cracking them among majority voters who vote as a block to defeat the minority voters' preferred candidates. *Gingles*, 478 U.S. at 54 n.21.

147. Here, the Court finds that the NCLCV Plaintiffs showed that racially polarized voting exists across the State, which the General Assembly leveraged to dilute the voting power of Black voters. Racial polarization has a long history in North Carolina. *See generally* Expert Report of James L. Leloudis II; *see id.* at 58 (stating that "by the early 2000s, North Carolina voters had become as racially polarized as they were at the end of the nineteenth century" and outlining Democratic and Republican Party demographics). Dr. Duchin used well-recognized ecological inference statistical tools to assess racial voting trends in North Carolina and confirmed that racial vote polarization persists today. As Dr. Duchin found, North Carolina's Black voters are politically cohesive—and North Carolina election results from the last decade reveal "a consistent pattern of polarization," where white voters support Republican candidates at a rate of more than 61%, while Black voters support Democratic candidates at a rate of over 94%. PX150 at 11. Dr. Duchin further found that racial polarization is present even in many Democratic primary elections, particularly when a Black candidate seeks the Democratic nomination. PX150 at 11.

B. The Enacted Congressional Plan Unnecessarily Dilutes Black Voting Strength.

148. The Enacted Congressional Plan dilutes Black voting strength by packing and cracking Black voters in multiple areas across the state. To identify districts where Black voters can elect their candidates of choice, Dr. Duchin analyzed eight recent elections—four general elections and four primary elections—that she identified as particularly probative (as often involving Black candidates, significant polarization, and with vote shares that were close enough to produce variation at the district level). PX150 at 11. Dr. Duchin analyzed these elections using ecological inference tools that are standard in the field of voting analysis in order to determine whether districts were effective in allowing Black voters to nominate and elect their candidates of

choice (i.e., "Black-effective districts"). PX150 at 11.[10] And using this methodology, she identified districts as effective if the Black candidate of choice would prevail in at least six of the eight elections and if at least 25% of the voting age population in the district is Black. *Id.* Her analysis identifies significant racial vote dilution in the Enacted Plans.

Guilford and Forsyth Counties

149. The Enacted Congressional Plan strips the cohesive, large, and compact Black voting-age population in Guilford and Forsyth Counties of the ability to nominate and elect candidates of their choice by cracking the Black communities in these counties into a district dominated by white Republican voters. Under the previous congressional map, the Black voting age population in this area was primarily contained within the prior Congressional District 6, which encompassed large swathes of the Black communities in the three major cities of the Piedmont Triad region—Greensboro, High Point, and Winston-Salem, which are in large part in Guilford and Forsyth Counties. The Enacted Congressional Plan shatters this community and divides it into separate districts. Specifically, the Enacted Congressional Plan cracks Black voters in the Triad region as follows:

150. The Enacted Congressional Plan cracks Black voters who live east of downtown Greensboro into Congressional District 7, which is a significantly Republican district that is far less compact than necessary. PX150 at 14

151. The Enacted Congressional Plan cracks Black voters in downtown Greensboro and in northern Guilford County into the heavily Republican Congressional District 11, which is drawn

[10] The primary elections were: 2020 Superintendent (Sutton/Mangrum); 2020 Agricultural Commissioner (Smith/Wadsworth); 2016 Attorney General (Williams/Stein); 2016 Lieutenant Governor (Coleman/others). PX150 at 11. The General Elections were 2020 Lieutenant Governor (Holley/Robinson); 2020 U.S. Senate (Cunningham/Tillis); 2016 Lieutenant Governor (Coleman/Forest); 2016 Treasurer (Blue/Folwell). PX150 at 11.

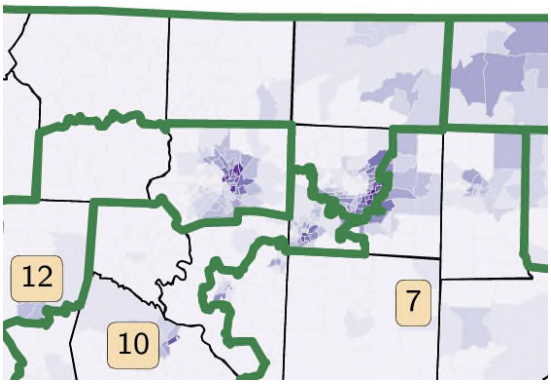
to ***exclude*** Democratic-leaning Forsyth County just to the west but ***include*** Republican-majority counties all the way to the Tennessee border. Like Congressional District 7, District 11 is far less compact than is necessary. PX150 at 14.

152. The Enacted Congressional Plan cracks Black voters in the High Point area into yet another, third heavily Republican Congressional District that the General Assembly carved out of this region—Congressional District 10. District 10 stretches from southwestern Guilford County through northern Davidson County and into Davie, Rowan, Cabarrus, and even southern Iredell Counties. Even a cursory examination of the underlying partisan and racial makeup of these areas reveals that the General Assembly drew the district to skirt Democratic populations in Davidson County and to bring within its bounds white Republican voters located in precincts as far off as the Charlotte suburbs. The effect is to dilute the voting strength of the Black communities in the Triad region, who now cannot elect their candidates of choice. Again, District 10 is less compact than necessary. PX150 at 14.

153. The General Assembly also cracks Black voters in Winston-Salem into District 12, which encompasses Forsyth, Yadkin, northern Iredell, Catawba, and Lincoln Counties, whereas some of these voters could have been joined in a district with Black voters in Guilford County. District 12, too, is less compact than necessary. PX150 at 14.

154. As a result of this cracking, the Enacted Congressional Plan deprives Black voters of an effective district in Guilford and Forsyth Counties where Black voters constitute a sufficiently large and geographically compact community that should have the opportunity to elect its candidate of choice.

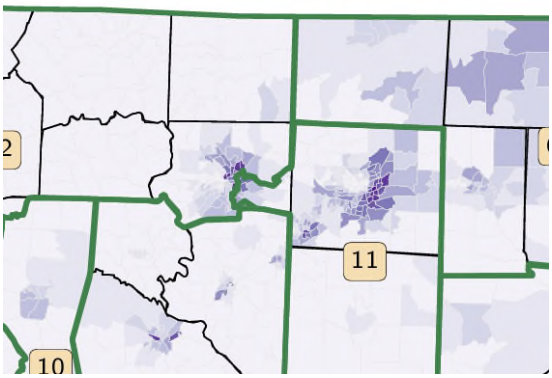
Figure 49: Enacted Congressional Districts 7, 10, 11 & 12



Source: PX183. Darker purple indicates areas with a higher proportion of black voting age population.

155. The NCLCV Congressional Map shows that the General Assembly ***chose*** to create this racial vote dilution. As this map shows, Guilford County can be included in a more compact single district that includes part of Forsyth County. As Dr. Duchin explains, this district would provide Black voters with the opportunity to elect candidates of their choice. *See* PX150 at 12, 23.

Figure 50: NCLCV Congressional Districts 7, 10, 11 & 12



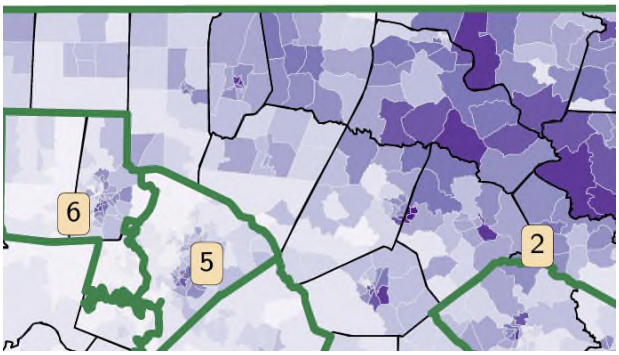
Source: PX184.

Durham County

156. The Enacted Congressional Plan also dilutes Black voting strength in Durham County through cracking. The plan combines Durham County's Black population into one heavily

Democratic district—Congressional District 6—that is dominated by white Democratic voters. Although Congressional District 6 is likely to vote for a Democratic candidate in the general election, Black voters in Durham will not have the opportunity to nominate and elect candidates of their choice because of racially polarized voting in the Democratic primary.

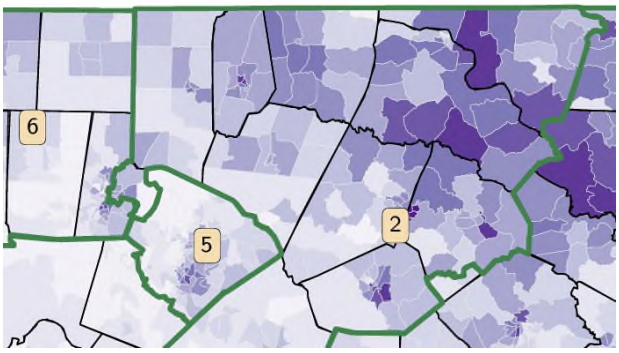
Figure 51: Enacted Congressional Districts 2, 5 & 6



Source: PX183.

157. As the NCLCV Congressional Map and Dr. Duchin's analysis show, this result could have been avoided by combining Durham's Black communities with Black communities in northeastern North Carolina in Congressional District 2. *See* PX150 at 12, 23.

Figure 52: NCLCV Congressional Districts 2, 5 & 6

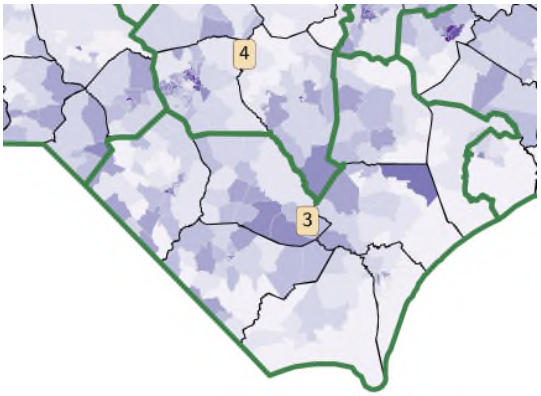


Source: PX183.

Southeastern North Carolina

158. The Enacted Congressional Plan splits most of the Black population in southeastern North Carolina across three separate districts. The Black communities in Bladen, Cumberland, Duplin, Hoke, Richmond, Robeson, Sampson, and Scotland Counties are divided across Congressional Districts 3, 4, and 8. As Dr. Duchin shows, all three districts are likely to elect white-preferred Republican candidates. PX150 at 12.

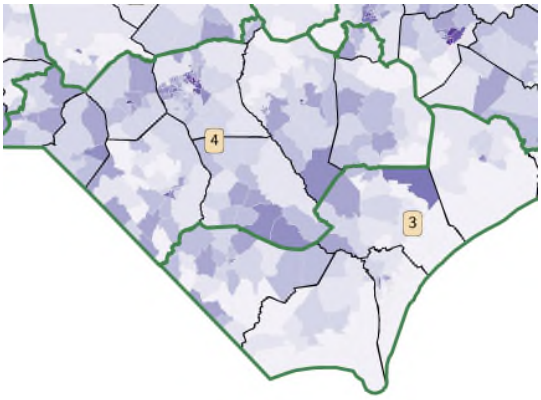
Figure 53: Enacted Congressional Districts 3, 4 & 8



Source: PX184.

159. As the NCLCV Congressional Map and Dr. Duchin's analysis show, these districts could have been drawn to preserve Black voters' opportunity to nominate and elect candidates of their choice, as shown in NCLCV District 4. *See* PX150 at 12, 23. Doing so simply requires, principally, ***avoiding cracking***, by not dividing Black communities in Robeson, Bladen, Sampson, Duplin, Cumberland, Hoke, and Scotland Counties.

Figure 54: NCLCV Congressional Districts 3 & 4



Source: PX184.

160. The Enacted Congressional Plan provides Black voters with the opportunity to nominate and elect their preferred candidates in only *two* of the state's fourteen congressional districts—namely, Congressional Districts 2 and 9. PX150 at 12. That is far less than Black citizens' share of North Carolina's voting age population. PX150 at 11.

161. The NCLCV Congressional Map makes clear that this dilution is ***not*** compelled by North Carolina's political geography or by any other traditional neutral redistricting principle or state-law requirement. Simply put, it is possible to draw an alternative map that complies with these principles and requirements and does ***not*** effectuate this sort of racial vote dilution. As Dr. Duchin's analysis of the NCLCV Congressional Map shows, at least two more Black-effective Congressional districts (in the Piedmont Triad and in southeastern North Carolina) could have been drawn. PX150 at 11-12. In these areas, Black voters constitute a sufficiently large, geographically compact, and politically cohesive population that they would have been able to elect the candidates of their choice. PX150 at 11–12. But instead, the General Assembly cracked Black votes to dilute their voting strength.

C. The Enacted Senate Plan Unnecessarily Dilutes Black Voting Strength.

162. The Enacted Senate Plan also dilutes Black voting power by packing and cracking Black voters to diminish their ability to nominate and elect their candidates of choice. As in the Enacted Congressional Plan Dr. Duchin evaluated the number of districts in the Enacted Senate Plan that in which Black voters have a meaningful opportunity elect the candidate of their choice. She found that of 50 Senate districts, Black voters have such opportunity in only eight districts, far lower than the number of districts that would be proportionate to Black voters' share of the state's citizen voting age population. PX150 at 11–12. There are several areas where the Enacted Senate Plan dilutes Black votes to decrease Black voting power, including:

Northeastern North Carolina:

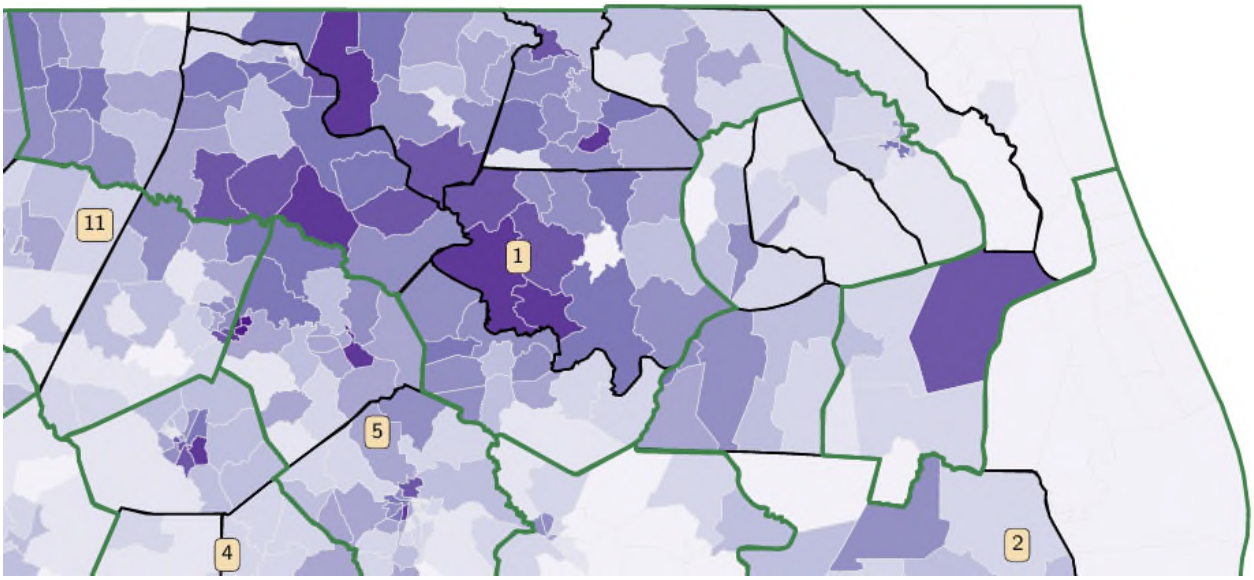
163. Northeastern North Carolina is home to a historical, significant, politically cohesive community of Black voters. This community was one of the earliest targets of racial gerrymandering and racial vote dilution efforts in North Carolina: After the Civil War, it was packed into the "Black Second" congressional district to dilute Black voting strength.[11] The Enacted Senate Plan continues this legacy of limiting Black voting strength in northeastern North Carolina by cracking the sufficiently large, geographically compact, and politically cohesive Black community in this region between Senate Districts 1 and 2.

164. As already noted, northeastern North Carolina hosts two Senate districts. As the NCLCV Senate Map demonstrates, these districts can be configured such that Carteret, Chowan, Dare, Hyde, Pamlico, Pasquotank, Perquimans, and Washington Counties are in one district, which would favor white-preferred Republican candidates; and Bertie, Camden, Currituck, Gates,

[11] ERIC ANDERSON, RACE AND POLITICS IN NORTH CAROLINA 1872–1901: THE BLACK SECOND 3–4, 141 (1981).

Halifax, Hertford, Martin, Northampton, Tyrrell, and Warren Counties would be grouped into a second district, which would contain much of the region's Black voting age population and preserve these Black voters' opportunity to nominate and elect candidates of their choice. PX150 at 12, 23. This configuration limits county traversals, and results in relatively compact districts. *Supra* pp. 31–33.

Figure 55: NCLCV Senate Districts 1 & 2

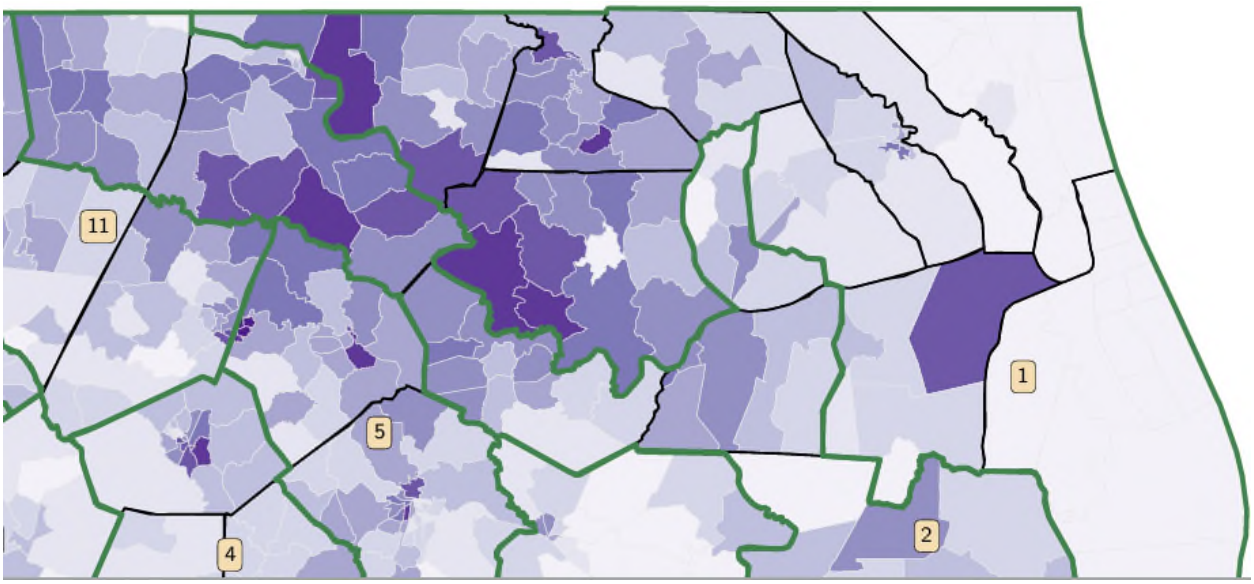


Source: PX185.

165. The General Assembly, however, rejected this configuration. Instead, the General Assembly chose to split northeastern North Carolina's Black community between two districts. Under the Enacted Senate Plan, Bertie, Camden, Currituck, Dare, Gates, Hertford, Northampton, Pasquotank, Perquimans, and Tyrrell Counties are grouped into District 1; and Carteret, Chowan, Halifax, Hyde, Martin, Pamlico, Warren, and Washington Counties are grouped into District 2. This configuration dilutes the voting strength of Black voters in the area to such an extent that both districts will reliably nominate and elect the white-preferred Republican candidates. PX150 at 12,

23. This configuration increases the number of county traversals, and decreases the overall compactness of districts in the region. *Supra* pp. 31–33.

Figure 56: Enacted Senate Districts 1 & 2



Source: PX185.

166. The General Assembly knew that adopting the Enacted Senate Plan's configuration would dilute Black voting power in this region—and yet it did so anyway. Senator Blue warned, both in committee and on the floor, that adopting this configuration would dilute Black voting strength by cracking Black voters who had previously been together a district electing their candidate of choice into two adjoining districts. Senator Blue offered an amendment to avoid this result by using the first configuration instead of the second.[12] But the Committee rejected Senator

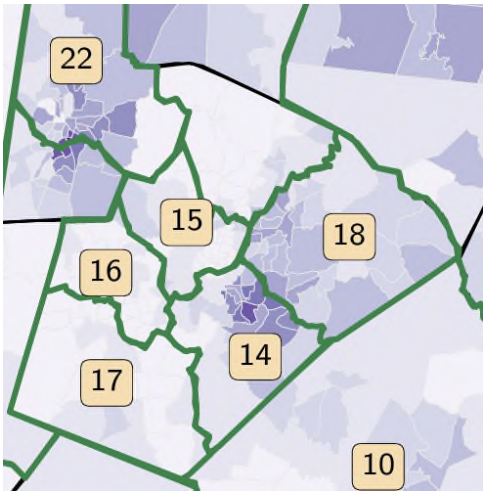
[12] PX83 41:21-56:11. In offering this amendment, Senator Blue explained that the history and demographics of the region justified the need for Black-effective districts—which the Enacted Senate Plan (then proposed) deliberately disregarded. Senator Blue explained that the "seven or eight counties along the North Carolina-Virginia border" are historically considered the "Black belt of North Carolina because they're majority black counties, and you don't need to consider race or statistics to know that," since this is common knowledge in North Carolina. PX83 42:17-24. (This point, on its own, refutes the Legislative Defendants' unsupported argument that it was impossible to have taken race into consideration in the absence of a formal racial data on the mapmaking terminals in the legislative hearing rooms.) Senator Blue then explained how court

Blue's amendment,[13] and the General Assembly adopted the plan that denies Black voters the opportunity to nominate and elect their candidates of choice.

Wake County:

167. Wake County has a sizeable Black population both in Raleigh and the northeast corner of the county. As the NCLCV Senate Map shows, when compact districts are drawn within the Wake-Granville Senate cluster, two of those districts are effective for Black voters, giving Black voters a realistic opportunity of electing their candidates of choice. PX150 at 12, 23. The average Polsby-Popper score of the NCLCV Senate districts in this cluster is 0.44, and both Senate Districts 14 and 18 are effective for Black candidates. PX150 at 12.

Figure 57: NCLCV Senate Districts 13, 14, 15, 16, 17, & 18



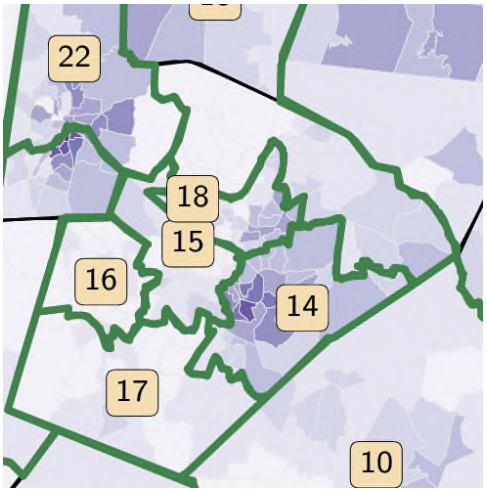
Source: PX186.

cases had determined that because of the history of racially polarized voting in the northeastern North Carolina region, white voters tended not to vote for Black candidates. PX83 44:1-19. Senator Blue explained that his amendment would "put[] those counties back together naturally, because that's how they've been and they have elected a minority from that district I think since it was created." PX83 45:1-6. Senator Blue explained that it was possible to draw a more compact district in this region that nonetheless preserved its Black effectiveness, and that such a district has been "drawn in the past." *See* PX83 49:23-50:14.

[13] PX83 70:5-12.

168. The Enacted Senate Plan (shown below) reduces the number of Black effective districts in Wake County to one. Senate District 14 is drawn such that it captures most of eastern Wake County's Black voters, pushing the district's Democratic vote share to more than 70%. PX201 "SL-173" B15:BA15. The remaining Black voters who would have enjoyed electoral opportunity under the NCLCV Map are split between Districts 18 and Districts 13. White voters in these two districts will consistently be able to defeat Black voters' candidates of choice, denying Black voters the electoral opportunity they would have enjoyed in a more compact map. PX150 at 12. Under the Enacted Senate Plan, the average Polsby-Popper score of Districts 13, 14, 15, 16, 17, and 18 is 0.31. PX150 at 15.

Figure 58: Enacted Senate Districts 13, 14, 15, 16, 17, & 18



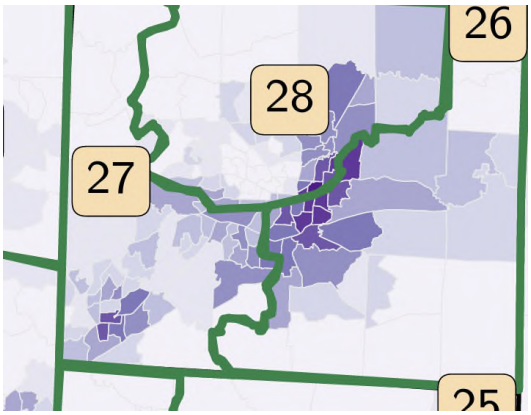
Source: PX185.

Guilford & Rockingham Counties:

169. The Enacted Senate Plan engages in the same type of vote dilution in the Guilford-Rockingham Senate cluster. As the NCLCV Map shows, had Guilford County been drawn with compact districts, the county's Black residents would have had the opportunity to elect candidates

of their choice in two districts—NCLCV Districts 26 and 27. PX150 at 12. This configuration would have had a Polsby-Popper score of 0.37. PX150 at 14.

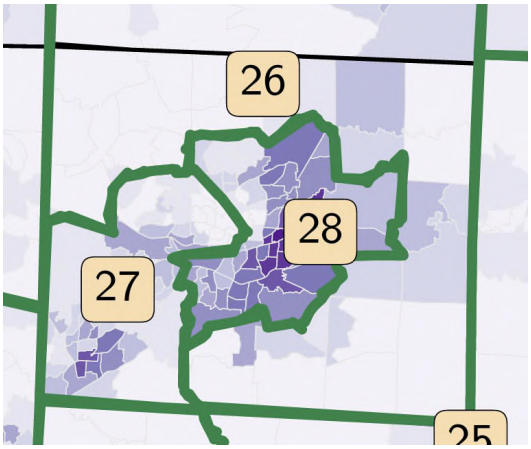
Figure 59: NCLCV Senate Districts 26, 27 & 28



Source: PX186.

170. The Enacted Senate Plan, however, arranges Districts 27 and 28 in such a way that deprives Black voters north of High Point of an opportunity to elect candidates of their choice. Although District 27 will reliably vote Democratic, it is drawn to exclude Black voters southeast of downtown Greensboro, which permits white voters to defeat Black-preferred candidates in the Democratic primary. PX150 at 12. And again, this arrangement comes at the cost of compactness: The average Polsby-Popper score of Enacted Districts 26, 27, and 28 is only 0.33. PX150 at 15.

Figure 60: Enacted Senate Districts 26, 27 & 28



Source: PX185.

171. Overall, the Enacted Senate Plan provides Black voters with the opportunity to nominate and elect their preferred candidates in only eight of the state's Senate districts. PX150 at 12. That is far less than the number of districts that would be proportionate to Black citizens' share of North Carolina's voting age population. PX150 at 11. As the NCLCV Map shows, a map that better complied with state law, by drawing more compact districts with fewer county traversals, would enhance Black voters' electoral opportunities and preserve Black voters' ability to participate meaningfully in the electoral process.

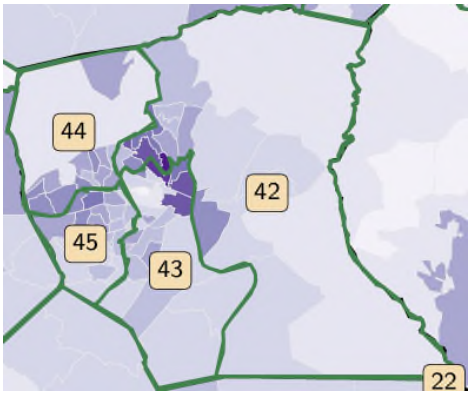
D. The Enacted House Plan Unnecessarily Dilutes Black Voting Strength.

172. The Enacted House Plan has 24 districts where the Black-preferred candidate has a fair opportunity to win both the Democratic primary and the general election. PX150 at 12. Again, and as the NCLCV House Map shows, this number is far lower than would be generated by a more compact map that complied with state law. PX150 at 12. The Enacted House Plan manages to lower the number of Black effective districts by the same dilutive tactics as before—packing Black voters in some districts and cracking them in others.

Cumberland County

173. Cumberland County has a large Black population of roughly 39% that is distributed across most of the eastern and southern part of the county. *See* PX187. Drawing compact districts in the county, as the NCLCV Map does, produces four districts where Black voters have an opportunity to elect candidates of their choice—NCLCV Districts 42, 43, 44 and 45 all preserve fair opportunity for Black voters. The average Polsby-Popper score of these districts is 0.42.

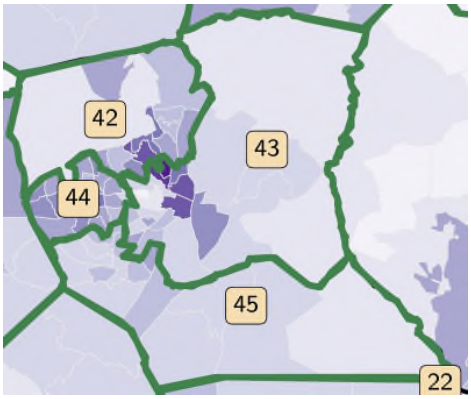
Figure 61: NCLCV House Districts 42, 43, 44 & 45



Source: PX188.

174. The Enacted House Plan, however, concentrates Black voters into District 44, which has the effect of diluting the Black voting population of District 43 and District 45. *See* PX187. Strikingly, this has the effect of depriving Cumberland County's most concentrated Black community, in and around downtown Fayetteville, of their voting power. And again, this comes at the cost of district compactness; the Enacted House Plan's average Polsby-Popper score for Cumberland County drops to 0.34. PX150 at 16.

Figure 62: Enacted House Districts 42, 43, 44 & 45

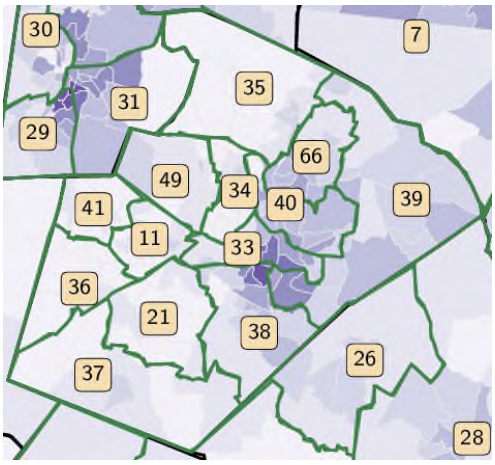


Source: PX187.

Wake County

175. The Enacted House Plan dilutes Black voting strength in the thirteen-district Wake County House Plan in much the same manner. The NCLCV House Map illustrates how Wake County's House districts can be drawn in a compact way, with an average Polsby-Popper score of 0.39. PX150 at 16. This configuration preserves five House districts—33, 38, 39, 40, and 66—that give Black voters a realistic opportunity to elect their candidates of choice. PX150 at 12.

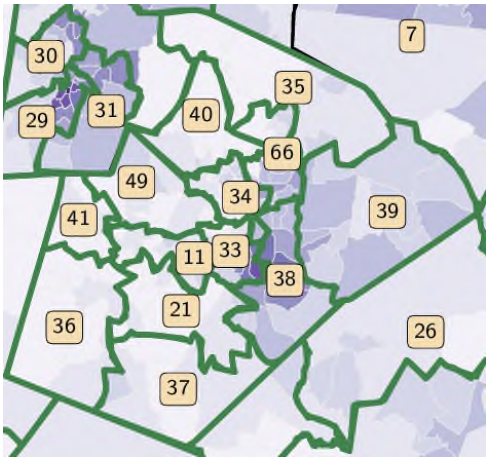
Figure 63: NCLCV House Districts 11, 21, 33, 34, 35, 36, 37, 38, 39, 40, 41, 49 & 66



Source: PX188.

176. In the Enacted House Map, however, Black voters are concentrated in fewer districts, such that only three districts—Districts 38, 39, and 66—are effective for Black voters. PX150 at 12. The concentration of Black voters in these districts deprives Black voters in other parts of the county of their voting strength and reduces the overall compactness of the cluster to a Polsby-Popper score of 0.34. PX150 at 16.

Figure 64: Enacted House Districts 11, 21, 33, 34, 35, 36, 37, 38, 39, 40, 41, 49 & 66

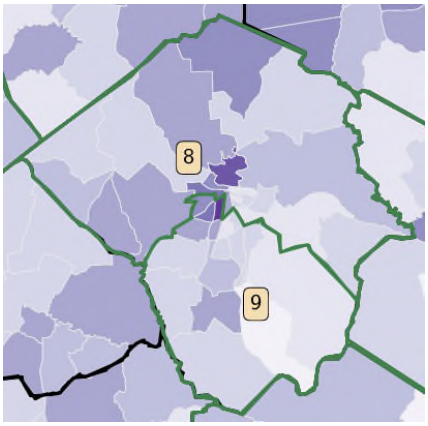


Source: PX187.

Pitt County

177. Pitt County hosts two House districts—Districts 8 and 9. The NCLCV Map's configuration of Districts 8 and 9 illustrates two compact districts, with a Reock score of 0.57 and a Polsby-Popper score of 0.37. PX150 at 16. This configuration preserves Black electoral opportunity: As Dr. Duchin shows, both District 8 and District 9 give Black voters a fair opportunity to elect their candidates of choice. PX150 at 12.

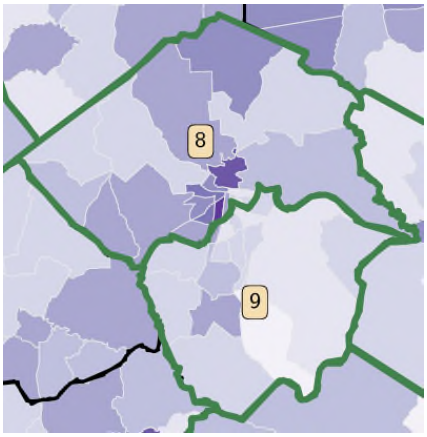
Figure 65: NCLCV House Districts 8 & 9



Source: PX188.

178. The Enacted House Plan for Pitt County reduces the compactness of districts by splitting Greenville such that several of the city's white-populated precincts are included in District 9, while its heavily Black populated precincts are kept out of District 9 and in District 8. This subtle change has significant implications for Black voters; as Dr. Duchin notes, the change renders District 9 ineffective for Black voters, meaning that Black-preferred candidates have a poor chance of winning elections due to racially polarized voting. PX150 at 12. The change also reduces District 8 and 9's average Reock score to 0.49. PX150 at 16.

Figure 66: Enacted House Districts 8 & 9

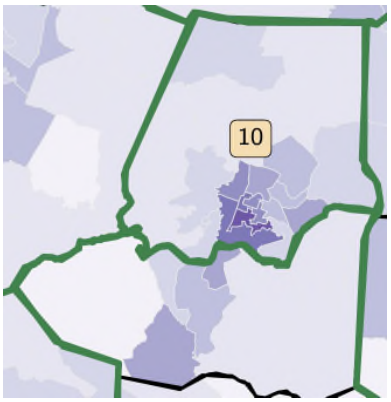


Source: PX187.

Wayne County

179. The Enacted House Plan also disregards communities of interest in diluting Black voting power. In Wayne County, for instance, the Enacted Plan cuts the longstanding Black community in the heart of the county such that Black voters in Goldsboro are cut off from Black voters just to the south in Brogden. This result harms Black voters' participation; under the Enacted House Map, neither District 10 nor District 4 to the south are effective for Black voters. PX150 at 12.

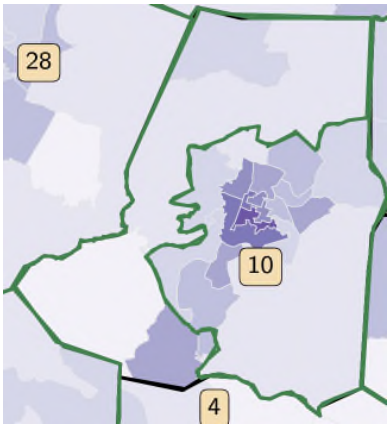
Figure 67: Enacted House Districts 4 & 10



Source: PX187.

180. The NCLCV Plan, by contrast, illustrates how voting power would change if the Goldsboro-area Black community were kept together in one district. In this configuration, shown below, House District 10 would be effective for Black voters, giving them a reasonable chance to elect their candidates of choice. PX150 at 12.

Figure 68: Enacted House Districts 4 & 10



Source: PX188.

181. Looking at the Enacted House Plan as a whole, the Court finds that the plan is less compact on average than necessary (with a Polsby-Popper score of 0.35, compared with 0.41 for the NCLCV Map), creates more municipal splits than is necessary (292 splits, compared to 201 in the NCLCV Map), and only selectively protects communities of interest. PX150 at 12, 17. Accordingly, the Legislative Defendants cannot claim that it was necessary to deprive Black voters of their voting strength across the State in order to comply with districting criteria such as compactness, respect for political subdivisions, or preservation of communities of interest. The NCLCV House Plans shows this explanation is not true. PX150 at 12.

E. The Enacted Plans Do Not Protect Black Voters From Dilution.

182. Relying on testimony from Dr. Jeffrey Lewis, the Legislative Defendants deny that the Enacted Plans dilute Black citizens' voting power. Dr. Lewis performs his own effectiveness analysis by drawing from a more indiscriminate range of elections than Dr. Duchin does, and then "relaxing" Dr. Duchin's requirements and counting as "effective" districts that do not satisfy Dr. Duchin's criteria. Report of Jeffrey B. Lewis at 3, 6–7 (Dec. 28, 2021). For example, Dr. Lewis finds that when he relaxes the definition of effectiveness to include districts with a Black voting

age population of less than 25%, and reduces the required win rate for Black candidates to just 50%, then the Enacted Congressional, Senate, and House Plans have up to 11, 40, and 88 Black-effective districts, respectively. *Id.* at 7.

183. The Court deems Dr. Lewis's methodology unreliable and does not credit his testimony. That is so for at least four reasons.

184. The first reason is Dr. Lewis's decision to loosen the criteria around the elections he analyzes. Dr. Lewis includes all elections, regardless of competitiveness. He thus includes not only lopsided elections that lack predictive value, but also elections where the Black-preferred candidate is ***running unopposed***. This approach skews his analysis by artificially boosting the rate at which Black-preferred candidates appear to win districts.

185. The second reason is that Dr. Lewis lacks any mechanism to ensure that the Black-preferred candidates are sometimes able to win general elections. By way of illustration, if Black-preferred candidates generally win Democratic primary elections, but rarely or never the general election, Dr. Lewis would count this district as effective for Black voters even when that district does not actually elect Black-preferred candidates.

186. The third reason is Dr. Lewis's unjustified "relaxation" of Dr. Duchin's effectiveness criteria. By requiring that a district's voting-age population be at least 25% Black, Dr. Duchin's approach ensures that the district is actually effective for ***Black*** voters. Dr. Lewis's approach, by contrast, identifies as Black-effective districts whose voting-age population is just ***3.5% Black***. Meanwhile, Dr. Lewis's proposal to relax the win rate to 66% or 50% exacerbates the problems associated with Dr. Lewis's identification of districts as Black-effective even though Black-preferred candidates in practice cannot win elections.

187. Finally, Dr. Lewis's overall conclusions underscore that his method cannot be correct. Dr. Lewis concludes that ***11 congressional districts*** are "effective" for Black voters. [Lewis at 7.] But Dr. Duchin's data—which Dr. Lewis does not dispute—show that Republican candidates will nearly always win the general elections in 10 Congressional districts. PX201 SL-174 B2:BA15. Republican candidates are almost never the Black-preferred candidate, as Dr. Lewis does not dispute. The Court will not credit the testimony of an expert whose results so flout reality.

F. The General Assembly Intended To Dilute Black Voting Strength.

188. Although the NCLCV Plaintiffs' racial vote-dilution claims do not require showing intent (as explained below), here evidence of intent to dilute the voting strength of Black voters is abundant. Simply put, when the General Assembly designed and approved the Enacted Plans, it acted intentionally and deliberately to dilute Black voting strength.

189. ***First***, the egregious packing and cracking detailed above is itself strong evidence of intent. *See Cox v. Larios*, 542 U.S. 947, 950 (2004) (Stevens, J., concurring) (explaining that the design of district boundaries can be evidence of the intent to redistrict on the basis of illegitimate factors). That is because legislators typically have detailed knowledge of the political and racial characteristics of districts across the state. So when they pack and crack, they know what they are doing. Defendant Hall's deposition testimony illustrated the point. When shown maps of different areas of the State—including areas outside his district, such as Mecklenburg County—Defendant Hall exhibited a detailed knowledge of the geography and makeup of those areas. He readily described, without labels on the maps themselves, which municipalities in which precincts he had drawn into one district or another in the Enacted House Plan. *See* PX145 177:7-180:23 (Defendant Hall describing decisions made in drawing district lines in Mecklenburg County); PX145 181:1-183:17 (similar for districting decisions in and around Buncombe County).

190. ***Second***, the General Assembly adopted a process designed to avoid scrutiny of how its maps would dilute Black voting strength, in further strong evidence of intent. Even though the first step of the *Stephenson*/*Dickson* framework requires analyzing whether the VRA requires particular districts, the General Assembly declined to undertake this step or to conduct any analysis of racially polarized voting in North Carolina. Indeed, it did so even though it was repeatedly told that its approach would violate North Carolina law, and even though legislators and members of the public alike pleaded with the General Assembly to reverse course.[14] The reason the General Assembly adopted this approach, the Court finds, is that it desired to limit public scrutiny of how its maps diluted Black voting strength.

191. The same is true of the General Assembly's redistricting criterion putatively barring considering of racial data in drawing district lines.[15] This criterion did not ***actually*** prevent consideration of race, for the same reason that the similar criterion did not prevent consideration

[14] PX83 48:24–49:10 ("SENATOR BLUE: . . . And that's what the letters to the chairs and to all of the members were trying to get at; the preliminary evidence shows that you have a responsibility to inquire as to whether or not there is further need for a Voting Rights Act district. The burden of making the inquiry is on the legislature, not on citizens out here because when citizens do it, they sue you because you haven't done it. And *Stephenson* says that you will make that analysis before you do all of the clustering and all of the other things.").

[15] On this front, the Committee Chairs took a series of contradictory and indecipherable positions during the redistricting process. On one hand, the Committees adopted the redistricting criterion prohibiting consideration of racial data—which, according to Defendant Hall, led him to decide not to even open an email from a member of the public that he thought might contain racial data. PX145 248:21–249:16. (Notably, Defendant Hall was simultaneously relying on "concept maps" drawn by his staff that may have relied on racial or partisan data, which he deliberately chose not to ask about. PX145 150:2–152:4, 153:17–154:1.) On the other hand, Defendant Hall testified at his deposition that the Committee Chairs would have welcomed data demonstrating the need to draw district boundaries that did not discriminate against voters on the basis of race. PX145 244:12–17. And yet, when the Committees received requests to direct the General Assembly's nonpartisan staff to conduct the racially polarized voting analysis required to make these districting decisions, the Committee Chairs rebuffed those requests based on the criterion prohibiting consideration of race. *See, e.g.*, PX79 26:19–28:2, 28:22–29:9, 30:13–32:11; PX77 57:7–22. Taken together, this evidence underscores that the paper prohibition on considering racial data was no more than a convenient pretext.

of partisanship. As Defendant Hall openly acknowledged in a redistricting committee meeting in early October, the paper prohibition did not stop legislators from consulting racial data outside the committee rooms, did not stop legislators' staffs from consulting racial data, did not stop legislators from receiving input from other individuals and sources concerning racial data, and did not stop legislators from utilizing their own racial data to draw districts. Oct. 5, 2021 House Redistricting Comm. Hrg. Tr. 51:23–53:14, 55:1–11, 65:14–70:7. Instead, this criterion only served to limit public scrutiny of the Enacted Plans' severe racial vote dilution.[16]

192. ***Third***, the General Assembly persisted with its approach despite repeated warnings that its approach would unlawfully dilute Black voting strength. The record is replete with instances in which the General Assembly was told that the redistricting criteria and methods that it had adopted would unlawfully dilute Black voting strength. *E.g.*, PX219 (Lucille Sherman, 8/11/21 article); PX221 (Lucille Sherman, 8/13/21 article); PX222 (Yanqi Xu, 8/13/21 article). Then, when the redistricting committees proposed maps, members of the public, the press, and legislators again warned that these maps would unlawfully dilute Black voting strength. PX227 (Will Doran & Brian Murphy, 11/3/21 article); PX228 (Gary D. Robertson, 11/4/21 article). Indeed, in the November 3 House Redistricting Committee hearing, Representative Pricey Harrison of Guilford County explained that the proposed Congressional plan divided the Triad

[16] For example, whenever the redistricting committees heard concerns that their maps packed and cracked Black voters, they refused to engage with these concerns by pointing to the prohibition on considering racial data. *See, e.g.*, PX82 53:3–17 ("REP. HAWKINS: But one of the things that I want to make sure of, of course, is, again, sort of being familiar with the landscape and even in Pitt County, we know that voters live on different sides of town. And so are you concerned about sort of packing and sort of the ways that one district seems pretty -- potentially pretty heavy with African American voters? I know you did not take this into consideration due to our rules and what we voted on, but I do want to make sure that if we find out that this is the case, how do we approach that? CHAIRMAN HALL: I have not looked at race at all, Representative Hawkins, and so I can't answer that question.").

region "very significantly in ways that are splitting up the large African-American populations and communities of interest," in part by extending Congressional District 11 from "downtown Greensboro all the way to the Tennessee border," which "just doesn't seem to make a lot of sense" and was contrary to the "very strong commentary – and recommendation" from the public "to keep Guilford whole and to keep the Triad whole."[17] Nevertheless, the General Assembly enacted plans that carved up the Triad's Black communities—like Black communities statewide—into districts where they could not elect their candidates of choice.[18]

193. The Court thus finds that the General Assembly acted intentionally to dilute Black voting strength.

V. THE GENERAL ASSEMBLY VIOLATED THE WHOLE COUNTY PROVISIONS AND THE *STEPHENSON/DICKSON* FRAMEWORK BY UNNECESSARILY TRAVERSING COUNTY LINES AND BY DRAWING UNNECESSARILY NONCOMPACT DISTRICTS.

194. The Court finds that the Enacted Senate Plan unnecessarily traverses county boundaries. As explained above, the configuration of Senate Districts 1 and 2, Senate Districts 43, 44, 46, 48, and 49, and Senate Districts 47 and 50 create unnecessary traversals of county boundaries. PX179. As a result, the Enacted Senate Plan traverses county boundaries 97 times. PX150 at 17. By changing the configuration of Senate Districts 1 and 2, and Senate Districts 47 and 50, and by grouping Buncombe County with Henderson and Polk Counties, the NCLCV Senate Map traverses county boundaries only 89 times. PX150 at 17.

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[17] PX84 26:12–25.

[18] *See also* PX84 28:1-11 ("REP. HARRISON: And I think that it was a problem for us not to consider, as I said, on the Senate maps and the House maps the Voting Rights Act implications for this because I think you have a serious violation here with the African American populations in Greensboro that are all divided up. I just don't understand it. I think it's a terrible congressional map. The partisan analysis shows this as a possible 11-3 in a 50/50 state, and that's just flat wrong.").

195. The Court also finds that the Enacted House Plan unnecessarily traverses county boundaries. As the NCLCV House Map demonstrates, House Districts 1 and 79 could have been reconfigured so that the cluster would have three fewer county traversals. In total, the Enacted House Plan traverses county boundaries 69 times, whereas the NCLCV House Map traverses county boundaries 66 times. PX150 at 17.

196. Likewise, the Enacted Senate Plan and Enacted House Plan are needlessly non-compact. The Enacted Senate Plan has an average Polsby-Popper score of 0.34 and an average Reock score of 0.42. PX150 at 13. (In both cases, a perfectly compact district would receive a score of 1.0. PX150 at 13.) The NCLCV Senate Plan, by contrast, has an average Polsby-Popper score of 0.37 and an average Reock score of 0.43. PX150 at 13. The Enacted House Plan has an average Polsby-Popper score of 0.35, and an average Reock score of 0.44. The NCLCV House Map improves upon both of these, with an average Polsby-Popper score of 0.41 and an average Reock score of 0.47.

197. In sum, the Court finds that the Enacted Senate and House Plans traverse county boundaries more often than necessary and fail to draw compact districts where doing so is reasonably possible.

VI. THE ENACTED PLANS HARM THE NCLCV PLAINTIFFS.

A. The Enacted Plans Harm The NCLCV And Its Members

198. Redistricting is central to the mission and purposes of Plaintiff NCLCV. As Elizabeth Redenbaugh, the NCLCV's President of the Board of Directors, testified: "Few issues are more important to NCLCV than redistricting." PX203 ¶ 4 (Redenbaugh Affidavit). NCLCV's core mission is to build a world with clean air, clean water, clean energy, and a safe climate, all protected by a just and equitable democracy. PX203 ¶ 3. And as Ms. Redenbaugh explains, NCLCV carries out this mission via the electoral process: "NCLCV helps elect legislators and

other officeholders who share its values, to build a pro-environment majority across the state of North Carolina," and "works to hold elected officials accountable for their votes and actions." PX203 ¶ 3.

199. The Court finds that the Enacted Plans hamstring the NCLCV in carrying out those goals. By effectively predetermining the results of elections and entrenching one party in power, the Enacted Plans impair the NCLCV's ability to engage in effective advocacy for candidates, frustrate the NCLCV's efforts to build a pro-environment majority, and undermine the NCLCV's ability to hold legislators accountable. PX203 ¶ 6. When election results have been effectively predetermined, as under the Enacted Plans, pro-environment candidates will often be unable to win individual elections and certainly will not be able to attain majorities. PX203 ¶ 6. Meanwhile, when incumbent legislators know that their seats (and the majorities held by their party) are safe regardless of their votes on legislation, NCLCV cannot hold legislators accountable. PX203 ¶ 6.

200. The Enacted Plans harm the NCLCV in other ways as well. First, NCLCV aims to "establish[] a pipeline of pro-environment candidates at all levels of government." PX203 ¶ 7. When potential pro-environment candidates do not believe that they can win elections (and, indeed, cannot win elections), that pipeline dries up and NCLCV cannot recruit pro-environment candidates. PX203 ¶ 7. Second, the Enacted Plans will diminish the effectiveness of NCLCV's finite resources. When gerrymandering predetermines election results, the resources NCLCV expends are less likely to result in the election of pro-environment legislators or pro-environment majorities. PX203 ¶ 8. Moreover, given the risk the Enacted Plans create of relegating pro-environment candidates to super-minority status—in which a legislature that opposes sound environmental policies could enact legislation even over the veto of a pro-environmental Governor—the NCLCV will have to expend even more resources on elections just to avoid that

worst case scenario. PX203 ¶ 8. Third, the Enacted Plans will make it more difficult for NCLCV to raise funds and other resources—because if people perceive that election results are predetermined, they will be less willing to donate funds or time aimed at impacting election results. PX203 ¶ 9.

201. The Enacted Plans, by diluting the voting power of Black voters, also impede NCLCV's mission of fighting pollution and climate change with "an intentional focus on systematically excluded communities of color." PX203 ¶ 12. Historically, redistricting has been used to exclude communities of color from representation. *Id.* And the Enacted Plans perpetuate that unfortunate legacy. They dilute the voting power of Black North Carolinians, including voters who are members of NCLCV, and undermine NCLCV's efforts to address environmental harms suffered by systematically excluded communities of color. PX203 ¶ 12.

202. The Enacted Plans also harm many NCLCV members by diluting their votes and frustrating their ability to express their preferences for sound environmental policy at the ballot box and through their legislators. NCLCV has shown that it has members across the state who are Democratic registered voters, including one in each district in the Enacted Congressional, Senate, and House Plans. PX203 ¶ 13 & Ex. 1. Hence, in every one of the unlawfully drawn districts, the NCLCV has Democratic-registered members whose votes have been unlawfully targeted.

203. Moreover, Dr. Duchin has shown that in every identified congressional district and legislative cluster in which the NCLCV Demonstrative Maps show that a lawful map could improve the effectiveness of Democratic votes, NCLCV has a registered Democratic member who would have more electoral opportunity in his or her district under the NCLCV Demonstrative Maps. PX203 ¶ 13 & Ex. 1. Gerrymandering directly harms these members because, absent the General Assembly's unlawful conduct, these individuals' votes could be effective. In particular,

in the following districts, the NCLCV has Democratic-registered members whose votes would be more effective under the NCLCV Demonstrative Maps: Congressional Districts 1, 3, 4, 7, 8, 10, 11, 12, and 13; Senate Districts 1, 2, 8, 13, 17, 26, 31, 36, 41, 46, and 48; and House Districts 4, 9, 10, 14, 15, 19, 20, 37, 43, 45, 47, 59, 62, 63, 64, 74, 98, 103, 104, 116. *See* PX203 Ex. 1; PX150 at 22, 24–26.

204. The NCLCV has also shown that the NCLCV has Black members who are registered to vote in virtually every district in the in the Enacted Congressional, Senate, and House Plans. PX203 ¶ 14 & Ex. 2. In particular, the NCLCV has shown that it has such members in every Congressional district, every Senate district except for Senate Districts 46, 47, 48, and 50 (which also means the NCLCV has such members in all but two Senate clusters), and every House district except for House Districts 1, 36, 55, 70, 85, 86, 87, 93, 95, 110, 113, 117, 118, 119, and 120 (which also means the NCLCV has such members in all but three House clusters). *See* PX203 Ex. 2; PX150 at 23–26.

205. Moreover, Dr. Duchin has shown that the NCLCV has Black members who are registered to vote in areas in each identified district and cluster in which the NCLCV Demonstrative Maps show that a lawful map could give Black voters the opportunity to elect their candidates of choice. PX203 Ex. 2; PX150 at 23–26. The Enacted Plans' unlawful vote dilution directly harms these members because, absent the General Assembly's unlawful conduct, these individuals' votes could be effective. In particular, the NCLCV has Black registered members in the following districts who would not have an effective opportunity to elect their candidates of choice under the Enacted Plans, but would have such an opportunity under the NCLCV Demonstrative Maps: Congressional Districts 3, 4, 6, 7, 8, 10, 11, 12; Senate Districts 2, 13, 17, 27; and House Districts 9, 10, 35, 37, 43, and 45.

206. The Court finds that pursuing this suit on behalf of NCLCV's Democratic-registered and Black-registered members is germane to the NCLCV's purposes and goals detailed above, particularly given NCLCV's focus on both electoral politics and racial justice.

B. The Enacted Plans Harm The Individual Plaintiffs

207. The Enacted Plans also harm the Individual Plaintiffs. The Individual Plaintiffs in this suit include registered Democratic voters in Congressional Districts 2, 4, 11, and 13; Senate Districts 2, 12, 27, and 37; and House Districts 6, 27, 58, and 98. PX150 at 24–26; PX207 (Lewis Affidavit); PX211 (Jerman Affidavit); PX209 (Wells Affidavit); PX210 (Chartier Affidavit); PX208 (Williams Affidavit). And they include registered Black voters in Congressional Districts 2, 4, and 11; Senate Districts 2, 12, and 27; and House Districts 6, 27, and 58. PX150 at 24–26; PX207; PX211; PX209; PX208. These Individual Plaintiffs in general consistently vote for Democratic candidates. PX207; PX211; PX210; PX209; PX208.

208. The Enacted Plans harm the Individual Plaintiffs who are registered Democratic voters by diluting the voting power of members of party with which they seek to associate. And the Enacted Plans harm the Individual Plaintiffs who are registered Black voters by diluting the voting power of Black voters.

209. Moreover, Dr. Duchin has shown that several Individual Plaintiffs live in areas where their votes would be more effective under NCLCV Demonstrative Plans—underscoring that the Enacted Plans harm these Individual Plaintiffs personally by rendering their votes less effective than they could be under lawful maps. These include Democratic-registered Plaintiff Lewis (Congressional District 11, Senate District 27), Plaintiff Jerman (Senate District 2), Plaintiff Williams (Senate District 2), and Plaintiff Chartier (Congressional District 13). PX150 at 24–26; PX207; PX211; PX210; PX208.

210. In addition, several Individual Plaintiffs are active in Democratic politics, including Plaintiffs Michaux, Wells, and Williams. PX206; PX208; PX209. The Enacted Plans burden these Individual Plaintiffs' ability to associate with other Democratic voters and to work to elect Democratic candidates.

PROPOSED CONCLUSIONS OF LAW

I. THE NCLCV PLAINTIFFS HAVE STANDING

1. The North Carolina State Constitution provides that "[a]ll courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay." N.C. Const. art. I, § 18. "[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*, 258 N.C. App. 223, 225, 811 S.E.2d 725, 727 (2018). "Matters which are justiciable under North Carolina state law are much broader than under federal law. . . . Generally, the North Carolina Constitution grants standing on anyone who suffers harm." *Boyce v. N. Carolina State Bar*, 258 N.C. App. 567, 574 (2018) (internal citations omitted); *see Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 376 N.C. 558, 608, 853 S.E.2d 698, 733 (2021) (explaining that "[w]hen a person alleges the infringement of a legal right" under the state constitution, "the legal injury itself gives rise to standing"). Under North Carolina's more liberal rules of standing, plaintiffs need show only "(1) the presence of a legally cognizable injury; and (2) a means by which the courts can remedy that injury." *Davis*, 258 N.C. App. at 225, 811 S.E.2d at 727.

2. The NCLCV Plaintiffs have made this showing on two independent grounds. First, the NCLCV Plaintiffs have standing to challenge the Enacted Plans based on partisan and racial vote dilution in the districts and clusters where NCLCV members or Individual Plaintiffs reside. Second, the NCLCV Plaintiffs have standing based on the statewide harms the Enacted Plans inflict on NCLCV members and Individual Plaintiffs.

A. The NCLCV Plaintiffs Have Standing To Challenge Partisan Gerrymandering And Racial Vote Dilution In The Districts And Clusters Where NCLCV Members Or Individual Plaintiffs Reside.

3. Under North Carolina law, plaintiffs have standing to challenge the districts and clusters in which they reside on the grounds that those district boundaries dilute their right to vote on partisan and racial grounds. By the same token, an association like NCLCV may bring partisan gerrymandering and racial vote dilution claims to challenge the districts or clusters in which its members reside.

4. As North Carolina courts have explained, "in light of the less stringent standing requirements in our State," plaintiffs may challenge not only their own districts but also the clusters and overall maps within which those districts are located on both partisan and racial vote dilution grounds. *Common Cause*, 2019 WL 4569584, at *108. As the *Common Cause* court explained, "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 same grouping," under North Carolina state law, voters have standing to "challenge … the entire county grouping." *Id.* This is sufficient to establish that plaintiffs have the "necessary 'personal stake in the outcome of the controversy'" to establish standing under state law. *Id.* (quoting *Goldston v. State*, 361 N.C. 26, 30, 637 S.E.2d 876, 879 (2006)).

5. This reasoning applies equally to challenges brought against the full Congressional map. Because of the stringent equal-population requirements for Congressional districts, the decision to draw the boundaries of a district in a particular way affects the bounds of its neighboring districts. Decisions to draw district lines on one side of the State affect district lines throughout the State. *Accord Erfer v. Commonwealth*, 794 A.2d 325, 330 (Pa. 2002) (explaining that a "reapportionment plan acts as an interlocking jigsaw puzzle, each piece reliant upon its neighbors to establish a picture of the whole" and that an "allegation that a litigant's district was

improperly gerrymandered necessarily involves a critique of the plan beyond the borders of this district" and "declin[ing] to find that a litigant challenging a reapportionment scheme must confine his attack to the drawing of the lines of his own district"), *abrogated on other grounds by League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737 (Pa. 2018).

6. An association, like NCLCV, has standing "to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *River Birch Assocs. v. City of Raleigh*, 326 N.C. 100, 130, 388 S.E.2d 538, 555 (1990). As explained, NCLCV's members have standing to challenge their districts and clusters in their own right. Moreover, the interests NCLCV seeks to vindicate in this suit are "germane to [its] purpose." *Id.* NCLCV seeks to elect legislators and statewide candidates who share its values, to build a pro-environment majority across North Carolina, and to hold elected officials accountable for their votes and actions. PX203 ¶ 3. Challenging the Enacted Plans' partisan gerrymanders—which will thwart this pro-environment majority and make it impossible to hold officials to account—is "germane" to these purposes. And NCLCV's racial vote-dilution claims are likewise clearly "germane" to its purposes given NCLCV's "intentional focus on systematically excluded communities of color" and its efforts to address environmental harms suffered by systematically excluded communities of color. PX203 ¶ 12. Finally, just as in *Common Cause*, the "declaratory and injunctive relief" sought here does not "require[] the participation of individual … members in this lawsuit." 2019 WL 4569584, at *107.

7. In light of these principles, it is clear that under North Carolina law, the NCLCV Plaintiffs have demonstrated standing to challenge the Enacted Plans for creating severe partisan

gerrymanders and engaging in racial vote dilution in violation of the North Carolina State Constitution. The Individual Plaintiffs hale from congressional districts and Senate and House clusters from across the State,[19] and NCLCV's membership spans every corner of the State, thereby establishing the organization's standing to sue over the harms inflicted by the Enacted Plans' severe partisan gerrymanders on NCLCV's diverse and geographically widespread membership. Specifically, NCLCV has established that it has members who are registered Democratic voters in all 14 districts under the Enacted Congressional Plan, all 50 districts under the Enacted Senate Plan, and all 120 districts under the Enacted House Plan. PX203 ¶ 13; *Common Cause*, 2019 WL 4569584, at *107 (explaining that the organizational plaintiff had standing because its members included "registered Democratic voters located in every" district in the state).[20] Indeed, NCLCV has shown even more than that. As Dr. Duchin's testimony explains, NCLCV has members who are registered Democrats in areas in each district and cluster in question in which the NCLCV Demonstrative Maps show that an alternative map would remedy the partisan gerrymandering. *Supra* pp. 101–03.[21] The Enacted Plans' unlawful partisan gerrymandering harms these NCLCV members in a direct and personal way in each key area of the State—and the relief the NCLCV Plaintiffs seek from this Court would alleviate those injuries. This establishes standing under North Carolina law. *See Davis*, 258 N.C. App. at 225, 811 S.E.2d at 727.

8. Likewise, the NCLCV Plaintiffs have established their standing to challenge the Enacted Plans for diluting Black voting strength in violation of the North Carolina State

[19] The Individual Plaintiffs reside in, among others, Enacted Congressional Districts 2, 4, 11, and 13; Senate Districts 2, 12, 27, and 37; and House Districts 6, 27, 58, and 98. PX150 at 24–26; PX207; PX211; PX209; PX210; PX208.

[20] This alone is sufficient to establish standing for each of the NCLCV Plaintiffs' claims.

[21] The same is true of several Individual Plaintiffs. *Supra* pp. 103–04.

Constitution. Again, several Individual Plaintiffs who identify as Black live in districts affected by unlawful racial vote dilution, including Congressional District 11, Senate District 2, and Senate District 27. PX150 at 24–26; PX207; PX211; PX210; PX208. And again, the NCLCV has Black members who are registered Democratic voters in every Congressional district and nearly every Senate and House district across the State, including every district and cluster that the NCLCV Plaintiffs have identified as drawn in such a way as to dilute Black voting strength. PX203 Ex. 2. Moreover, Dr. Duchin has demonstrated that the NCLCV has members who are registered Black voters in every area which the NCLCV Plaintiffs have challenged as diluting Black voting strength, and where the NCLCV's Demonstrative Maps show that an alternative map could remedy the racial vote dilution and allow Black voters to elect their candidates of choice. *Supra* pp. 101–03.[22]

9. All of this is more than sufficient to establish the NCLCV Plaintiffs' standing to challenge the Enacted Plans on partisan gerrymandering and racial vote dilution grounds under North Carolina law.

B. The NCLCV Plaintiffs Have Standing Based On The Statewide Injuries They Suffer From The Enacted Plans' Partisan Gerrymandering.

10. The NCLCV Plaintiffs have also established their standing based on the statewide harm to the Individual Plaintiffs and NCLCV from the Enacted Plans' severe partisan gerrymanders, which burden their ability to pursue their goals, to associate with candidates and other concerned citizens, and to further the public good.

11. In *Common Cause*, the association Common Cause had standing "to sue on its own behalf" to redress similar harms. 2019 WL 4569584, at *107. That was so because "one of [its] central missions … is to … hold [legislators] accountable"—and when partisan gerrymandering

[22] The same is true of several Individual Plaintiffs. *Supra* pp. 103–04.

renders "legislative seats … preordained," it "impede[s] [that] mission." *Id.* at *77. The same is true of NCLCV, which similarly works to hold elected officials accountable and suffers the same sort of harm when partisan gerrymanders predetermine election results. *Supra* pp. 99–100. More than that, the Enacted Plans impair NCLCV's ability to engage in effective advocacy for candidates, harms NCLCV's ability to create a pipeline of pro-environmental candidates, and will force NCLCV to expend additional funds and other resources to counteract their gerrymandered effects. *Supra* pp. 99–100. Case after case has recognized such "non-dilutionary" harms as sufficient to support statewide standing for organizations like NCLCV (including the North Carolina League of Women Voters and Common Cause), including in many cases cited with approval in *Common Cause*.[23]

12. Many of the Individual Plaintiffs suffer similar harms. Many consistently vote for Democratic candidates, and several are active in Democratic politics, work to elect Democratic candidates, and support Democratic causes. *Supra* pp. 103–04. When gerrymandering "infring[es] on 'the ability of like-minded people across the State to affiliate in a political party and carry out that organization's activities and objects,'" such individuals have standing to

[23] *E.g.*, *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 829 (M.D.N.C. 2018) (three-judge panel) (recognizing that partisan gerrymandering inflicts "injuries … such as infringing on 'the ability of like-minded people across the State to affiliate in a political party and carry out that organization's activities and objects'" and that such harms have "'nothing to do with the packing or cracking of any single district's lines'" and instead "'the injury [is] statewide.'" (quoting *Gill v. Whitford*, 138 S. Ct. 1916, 1939 (2018) (Kagan, J., concurring))), *vacated and remanded on other grounds*, 139 S. Ct. 2484 (2019); *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 1076 (S.D. Ohio) (three-judge panel) (Ohio A. Philip Randolph Institute and the League of Women Voters of Ohio had standing because gerrymandered map "negative[ly] impact[ed] … their ability effectively to associate to advance their belief in active and informed voter participation in the democratic process"), *vacated and remanded on other grounds*, 140 S. Ct. 101 (2019); *League of Women Voters of Mich. v. Johnson*, 352 F. Supp. 3d 777, 802 (E.D. Mich. 2018) (three-judge panel) (League of Women Voters of Michigan had standing because gerrymandered maps "made [the League's] mission of education and engagement much harder in a variety of ways."), *rev'd and remanded on other grounds*, No. 18-2383, 2018 WL 10096237 (6th Cir. Dec. 20, 2018).

challenge it.[24]

II. NORTH CAROLINA LAW REQUIRES REDISTRICTING ACCORDING TO FAIR PRINCIPLES THAT AVOID PARTISAN GERRYMANDERING AND RACIAL VOTE DILUTION.

13. After every federal decennial census, the General Assembly must draw new legislative districts. N.C. Const. art. II, §§ 3, 5. The North Carolina State Constitution imposes several limits on that authority, including that (1) each Senator and Representative "shall represent, as nearly as may be, an equal number of inhabitants"; (2) each district "shall at all times consist of contiguous territory"; (3) "[n]o county shall be divided in the formation of a senate district … [or] a representative district" (the "Whole County Provisions"); and (4) "[w]hen established, the senate [and representative] districts and the apportionment of [legislators] shall remain unaltered until the return of another decennial census." *Id.*

14. Redistricting also must comply with other constitutional requirements, including North Carolina's Free Elections Clause, Equal Protection Clause, Free Speech Clause, and Free Assembly Clause. *Common Cause*, 2019 WL 4569584, at *108–24; *Harper*, 2019 N.C. Super. LEXIS 122, at *7–14. Federal law—including the one-person, one-vote requirement and the Voting Rights Act of 1965—imposes additional requirements.

15. In a line of cases beginning with *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) (*Stephenson I*), our Supreme Court set forth a mandatory, nine-step framework that explains how to apply certain aspects of North Carolina redistricting law governing state legislative maps—in particular, the Whole County Provisions—consistent with federal law. *See id.*; *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*); *Dickson v. Rucho*,

[24] *Common Cause*, 318 F. Supp. 3d at 829; *accord League of Women Voters of Mich.*, 352 F. Supp. 3d at 801; *Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d at 1075.

367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*); *Dickson v. Rucho*, 368 N.C. 481, 781 S.E.2d 404 (2015) (*Dickson II*). The *Stephenson/Dickson* framework provides that "[f]irst, 'legislative districts required by the VRA shall be formed' before non-VRA districts." *Dickson II*, 368 N.C. at 530, 781 S.E.2d at 438. Next, "[i]n forming new legislative districts, any deviation from the ideal population for a legislative district shall be at or within plus or minus five percent" to ensure "compliance with federal 'one-person, one-vote' requirements." *Id.*

16. Steps three through nine provide detailed instructions about how to implement the Whole County Provisions consistent with other federal and state law requirements. When one county can form exactly one non-VRA district consistent with equal-population requirements, or when one county can be divided into multiple non-VRA districts, all of which comply with equal-population requirements, the framework (in steps three and four) requires forming compact districts that do not traverse these whole counties. *Id.* Where that is ***not*** possible, the framework (in steps five and six) requires the formation of "clusters" of contiguous counties that, when combined, can be divided into compact districts that all comply with equal-population requirements. *Id.* at 530–31, 781 S.E.2d at 438–39. Within these clusters, the framework requires the General Assembly to minimize unnecessary "traversals" of county lines. *Id.* Steps four, five, seven, and nine of the framework require that the districts be compact. *Id.*

III. THE ENACTED PLANS ARE PARTISAN GERRYMANDERS THAT VIOLATE THE NORTH CAROLINA STATE CONSTITUTION

17. The North Carolina Constitution prohibits extreme partisan gerrymandering. Specifically, the Court finds that extreme partisan gerrymandering violates North Carolina's Free Elections Clause, Equal Protection Clause, Free Speech Clause, and Free Assembly Clause. The Court further concludes that the extreme partisan gerrymandering present in the Enacted Plans violates the constitutional rights of the NCLCV Plaintiffs under the Free Elections Clause, Equal

Protection Clause, Free Speech Clause, and Free Assembly Clause—and indeed, does so beyond any reasonable doubt. *Cf. Stephenson I*, 355 N.C. at 386, 562 S.E.2d at 398 (invalidating districting plan without addressing whether it was unconstitutional beyond a reasonable doubt).

A. The North Carolina State Constitution Prohibits Partisan Gerrymandering.

18. In North Carolina, no value is more fundamental than that elections be free and fair. The framers of North Carolina's Constitution affirmed, in its very first clause, that "[a]ll political power is vested in and derived from the people." N.C. Const. of 1776, Declaration of Rights, § I. Thus, "[o]ur government is founded on the will of the people." *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875). And "[t]heir will is expressed by the ballot." *Id.* Reflecting those bedrock principles, our Supreme Court has emphasized the "compelling interest" in "in having fair, honest elections," *State v. Petersilie*, 334 N.C. 169, 184, 432 S.E.2d 832, 840 (1993), and reaffirmed that "fair and honest elections are to prevail in this state," *McDonald v. Morrow*, 119 N.C. 666, 673, 26 S.E. 132, 134 (1896).

19. North Carolina courts stand vigilant guard over those principles. On the one hand, the North Carolina Supreme Court has emphasized that "all acts providing for elections, should be liberally construed, that tend to promote a fair election or expression of this popular will." *Id.* And on the other, the Court has not hesitated to intervene when laws threaten to thwart fair elections. The Court did so, notably, in *Stephenson I*—which held that the use of single- and multi-member districts in the same plan violates the North Carolina Equal Protection Clause by depriving some voters of "substantially equal voting power," even though the ***federal*** Constitution permits such an electoral regime. *Stephenson I*, 355 N.C. at 379, 562 S.E.2d at 394.

20. Now, the people of North Carolina need protection from the scourge of extreme partisan gerrymandering, which over the past decade has only become more sophisticated and more corrosive to these foundational principles. When the incumbent party gerrymanders itself

into a majority, "political power" does not "derive[] from the people." Power begets power. And when skewed maps rig elections, "the ballot" no longer expresses the "will of the people." The ballot becomes pretext. Indeed, when the North Carolina Supreme Court first held in 1787 that it has the power of judicial review, it emphasized that otherwise, "the members of the General Assembly … might … render themselves the Legislators of the State for life." *Bayard v. Singleton*, 1 N.C. 5, 7 (1787). *Common Cause* correctly interpreted the North Carolina State Constitution to prohibit the General Assembly from effecting that result via partisan gerrymandering, consistent with the conclusion of the Supreme Court of Pennsylvania interpreting its similar constitution. *League of Women Voters v. Commonwealth*, 645 Pa. 1, 135, 178 A.3d 737, 825 (2018).

1. The Free Elections Clause Prohibits Partisan Gerrymandering.

21. North Carolina's prohibition on partisan gerrymandering flows, first, from its Free Elections Clause—as *Common Cause* correctly held, based on a scholarly analysis of text and history. 2019 WL 4569584, at *2. That clause declares that "[a]ll elections shall be free." N.C. Const. art. I, § 10. It derives from the 1689 English Bill of Rights and is "one of the clauses that makes the North Carolina Constitution more detailed and specific than the federal Constitution." *Common Cause*, 2019 WL 4569584, at *109 (citing *Corum v. Univ. of N.C.*, 330 N.C. 761, 783, 413 S.E.2d 276, 290 (1992)).

22. The Free Elections Clause protects the "fundamental role of the will of the people in our democratic government." *Id.* In particular, it protects the ability of a *majority* of the people to translate votes into governing power: Because "this is a government of the people, … the will of the people—the majority—legally expressed, must govern." *Quinn*, 120 N.C. at 428, 26 S.E. at 638. Hence, "the object of all elections" must be "to ascertain, fairly and truthfully, the will of the people—the qualified voters." *Hill v. Skinner*, 169 N.C. 405, 415, 86 S.E. 351, 356 (1915). And in every instance, the Free Elections Clause mandates that elections in North Carolina must

be "free from interference or intimidation" by the government. JOHN V. ORTH & PAUL M. NEWBY, THE NORTH CAROLINA STATE CONSTITUTION 55–57 (2d ed. 2013); *see Common Cause*, 2019 WL 4569584, at *111.

23. The Free Elections Clause therefore bars laws that seek to manipulate future elections and interfere with the "will of the people." *Quinn*, 120 N.C. at 428, 26 S.E. at 638. In *Clark v. Meyland,* the Supreme Court struck down a law that required voters seeking to change their party affiliation to take an oath supporting the party's nominees "in the next election and … thereafter." 261 N.C. 140, 141, 134 S.E.2d 168, 169 (1964). This attempt to manipulate the outcome of future elections, the Court held, "violate[d] the constitutional provision that elections shall be free." *Id.* at 143, 134 S.E.2d at 170.

24. Partisan gerrymandering effects this same evil. Under gerrymandered maps, elections do not "ascertain, fairly and truthfully, the will of the people." *Hill*, 169 N.C. at 415, 86 S.E. at 356. Instead, it "is the will of the map drawers … that prevails." *Common Cause*, 2019 WL 4569584, at *110. And that result violates the "core principle of republican government"—"namely, that the voters should choose their representatives, not the other way around." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 824 (2015). Indeed, partisan gerrymandering "represent[s] an abuse of power that, at its core, evinces a fundamental distrust of voters, serving the self-interest of the political parties at the expense of the public good." *LULAC v. Perry*, 548 U.S. 399, 456, 126 S. Ct. 2594, 2631 (2006) (Stevens, J., concurring in part and dissenting in part).

25. There can be no dispute that partisan gerrymandering thwarts these core democratic principles, or that state constitutions may provide a remedy. In 2004, all nine Justices agreed that "an excessive injection of politics" in redistricting is "unlawful." *Vieth v. Jubelirer*, 541 U.S. 267,

292–93 (2004) (plurality op. of Scalia, J.); *see id.* at 316 (Kennedy, J., concurring) (noting the plurality's agreement that severe partisan gerrymandering is unlawful). And in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), all nine Justices again agreed that partisan gerrymanders are "incompatible with democratic principles." *Id.* at 2506; *see also id.* at 2512 (Kagan, J., dissenting) (detailing unanimous rejection by all Members of the Court of extreme partisan gerrymandering). While the United States Supreme Court ultimately found that partisan gerrymandering claims are nonjusticiable in federal court, Chief Justice Roberts emphasized that the Court's opinion did not "condemn complaints" about "excessive partisan gerrymandering" to "echo into a void." *Id.* at 2507 (majority op.). Instead, state courts can find prohibitions on such gerrymandering in "state constitutions." *Id.* Indeed, he specifically approved the Florida Supreme Court's decision to "stri[ke] down that State's congressional districting plan as a violation of … the Florida Constitution." *Id.* He emphasized that "[p]rovisions in state statutes and state constitutions can provide standards and guidance," which he found absent from the federal Constitution, "for state courts to apply." *Id.*

26. *Common Cause*'s holding—that North Carolina's Constitution provides such standards—is deeply rooted in the Free Election Clause's history. In 17th-century England, the King undertook "to manipulate parliamentary elections, including by changing the electorate in different areas to achieve 'electoral advantage.'" *Common Cause*, 2019 WL 4569584, at *111 (quoting J.R. Jones, The Revolution of 1688 in England 148 (1972)). Those abuses "led to a revolution" and, thereafter, a provision in the 1689 English Bill of Rights specifying that "election of members of parliament ought to be free." *Id.* (quoting Bill of Rights 1689, 1 W. & M. c. 2 (Eng.)). That clause aimed, directly, at the King's gerrymandering. *Id.* At the Founding, several states adopted free-elections clauses modeled on the 1689 English Bill of Rights. *Id.* In turn, the

framers of the North Carolina Declaration of Rights drew inspiration from these states, including Pennsylvania. *Id.* As early as the 1860s, the Pennsylvania Supreme Court explained "that elections are made equal by 'laws which shall arrange all the qualified electors into suitable districts, and make their votes equally potent in the election; so that some shall not have more votes than others, and that all shall have an equal share in filling the offices of the Commonwealth." *League of Women Voters*, 178 A.3d at 814 (quoting *Patterson v. Barlow*, 60 Pa. 54, 75 (1869)). And recently, the Pennsylvania Supreme Court held that its free-elections clause prohibits partisan gerrymandering by protecting each citizen's right to "an equally effective power to select the representative of his or her choice" and "bar[ring] the dilution of the people's power to do so" via gerrymandering. *Id.*

27. *Common Cause* correctly interpreted the North Carolina State Constitution the same way. Indeed, in the intervening centuries, North Carolina has only strengthened the protection that the Free Elections Clause provides. Its original 1776 constitution closely paralleled the English Bill of Rights and provided that "elections ought to be free." *Common Cause*, 2019 WL 4569584, at *111 (emphasis added). In 1971, North Carolina amended the clause to specify that "'[a]ll elections ***shall*** be free.'" *Id.* (emphasis added by the panel). As our Supreme Court has emphasized, that change "ma[d]e [it] clear" that the Free Elections Clause is a "command[] and not mere admonition[]." *N.C. State Bar v. DuMont*, 304 N.C. 627, 635, 639, 286 S.E. 2d 89, 94, 97 (1982).[25]

[25] The *Common Cause* panel also held that partisan gerrymanders violate a right that is a close corollary to the Free Elections Clause. The Declaration of Rights provides that "[f]or redress of grievances and for amending and strengthening the laws, elections shall be often held." N.C. Const. art. I, § 9. This clause, together with the Free Elections Clause, "mandates that elections in North Carolina must be 'free from interference or intimidation' by the government, so that all North Carolinians are freely able, through the electoral process, to pursue a 'redress of grievances and for amending and strengthening the laws.'" *Common Cause*, 2019 WL 4569584, at *111

28. The Legislative Defendants go badly wrong with their attempt to turn the Free Elections Clause back into a mere admonition. *Stephenson I* did not approve of partisan gerrymandering when it stated, in dicta, that the General Assembly "may consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions." *Stephenson I*, 355 N.C. at 371, 562 S.E.2d at 390. First, there is a world of difference between "consider[ing] partisan advantage"—for example, by drawing a new Congressional district to accommodate the Speaker of the state House[26]—and gerrymandering districts across the State "to systematically prevent [one party] from obtaining a majority." *Common Cause*, 2019 WL 4569584, at *116. Second, the Legislative Defendants ignore the caveat that *Stephenson I* appended to its statement that redistricters may consider "partisan advantage": They "must do so in conformity with the State Constitution," which includes the Free Elections Clause and the other clauses that NCLCV Plaintiffs invoke. *Stephenson I*, 355 N.C. at 371, 562 S.E.2d at 390. Third, the case that *Stephenson I* cited to support its statement that redistricters may account for partisanship—*Gaffney v. Cummings*, 412 U.S. 735 (1973)—was about partisan fairness. The entire point of *Gaffney* is that states can take political considerations into account to achieve "politically fair" maps." *Id.* at 753. Indeed, *Gaffney* held that "judicial interest should be at its lowest ebb when a State purports fairly to allocate political power to the parties in accordance with their voting strength." *Id*. at 754. That is the *opposite* of how the General Assembly has taken partisan advantage into account here. *Stephenson I* did not intend, by citing *Gaffney*, to condone

(quoting ORTH & NEWBY, *supra*, at 56). But when gerrymanders entrench one party in power, and prevent the other party from winning elections, voters cannot "meaningfully seek to redress their grievances or amend the laws consistent with their policy preferences"—because these voters are unable to "obtain a majority" of seats, even with a majority of votes. *Id.* at *112.

[26] Danielle Battagla et al., Cawthorn announces he'll change districts for 2022, shaking up NC elections, The News & Observer (Nov. 12, 2021), https://www.newsobserver.com/news/politics-government/election/article255751151.html

gerrymandering to thwart the popular will.

2. The Equal Protection Clause Prohibits Partisan Gerrymandering.

29. *Common Cause* also correctly held that the North Carolina State Constitution's Equal Protection Clause proscribes partisan gerrymandering. As our Supreme Court has explained, "[t]he right to vote is one of the most cherished rights in our system of government." *Blankenship v. Bartlett*, 363 N.C. 518, 522, 681 S.E.2d 759, 762 (2009). And partisan gerrymandering violates the Equal Protection Clause by diluting the votes of some North Carolinians based on the party they support.

30. Like the Free Elections Clause, North Carolina's Equal Protection Clause provides broader protections than the federal Constitution—in a manner directly relevant here. *Common Cause*, 2019 WL 4569584, at *113. In *Stephenson I*, the Supreme Court invalidated the simultaneous use of single-member and multimember districts in a redistricting plan. *Stephenson I*, 355 N.C. at 387, 562 S.E.2d at 396. The Court found that although such a scheme does not violate the federal Equal Protection Clause, it burdens a "fundamental right under the State Constitution": namely, the right to "substantially equal voting power and substantially equal legislative representation." *Id.* "Equal voting power for all citizens," the North Carolina Supreme Court explained, "is the goal." *Id.* at 380, 562 S.E.2d at 395 (quoting *Kruidenier v. McCulloch*, 258 Iowa 1121, 1147-48, 142 N.W.2d 355, 370-71 (1966)). And in holding that multi-member districts violated this principle, *Stephenson I* focused on their pragmatic effects. If a citizen lives in a 20,000-person district with one representative, he or she may have the same formal voting power as a citizen who lives in a 100,000-person district with five representatives. *Id.* In practice, however, these citizens cannot translate their votes into "substantially equal legislative representation": The citizen in the multi-member district has an "unfair and unequal advantage" because he or she can approach all five representatives. *Id.* (quotation marks omitted).

31. The Court applied the same principle in *Blankenship*. That case held that North Carolina's Equal Protection Clause "mandates one-person, one-vote in judicial elections, even though the United States Constitution does not." *Common Cause*, 2019 WL 4569584, at *114 (citing *Blankenship*, 363 N.C. at 522–24, 681 S.E.2d at 762–64). And *Blankenship* reached that conclusion by applying the same broad principle that *Stephenson I* invoked: In North Carolina, the "right to vote ***on equal terms*** in representative elections—a one-person, one-vote standard—is a fundamental right," and one that receives greater protection under the North Carolina State Constitution than under the federal Constitution. *Blankenship*, 363 N.C. at 522, 681 S.E.2d at 762-63. The same principle was applied in *Northampton County Drainage District Number One v. Bailey*, which struck down a voting scheme for drainage districts on the ground that it violated the "fundamental right" to "vote on equal terms." 326 N.C. 742, 746–47, 392 S.E.2d 352, 356 (1990). These decisions, as well as others, recognize that North Carolina's Constitution broadly protects "political equality": Thus, "[t]he concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality among th[em]," and "every voter [must be] equal to every other voter in his State, when he casts his ballot." *Stephenson I*, 355 N.C. at 391, 562 S.E.2d at 402.

32. *Common Cause* correctly held that partisan gerrymandering denies individuals "the equal protection of the laws." N.C. Const. art. I, § 19. As in *Stephenson I*, *Blankenship*, and *Northampton*, such gerrymandering deprives North Carolina's citizens of "substantially equal voting power." *Stephenson I*, 355 N.C. at 387, 562 S.E.2d at 396. By "seeking to diminish the electoral power of supporters of a disfavored party," partisan gerrymandering deprives those supporters of "equal" voting power. *Common Cause*, 2019 WL 4569584, at *113. There is, obviously, "nothing 'equal' about the 'voting power' of Democratic voters when they have a vastly

less realistic chance of winning a majority." *Id.* at *116. And as in *Stephenson I*, partisan gerrymandering also deprives voters from the disfavored party of "substantially equal legislative representation." *Id.* That is because "[p]artisan gerrymandering insulates legislators from popular will and renders them unresponsive to portions of their constituencies." *Id.* As *Stephenson I* explained, the "political reality" is that "legislators are much more inclined to listen to and support a constituent than an outsider." 355 N.C. at 380, 562 S.E.2d at 395. And "[w]hen a district is created solely to effectuate the interests of one group, the elected official from that district is 'more likely to believe that their primary obligation is to represent only the members of that group.'" *Common Cause*, 2019 WL 4569584, at *116 (quoting *Shaw v. Reno*, 509 U.S. 630, 648 (1993)).

33. Partisan gerrymandering impinges on the fundamental right to vote because it results in the unequal weighting of votes, even if it does not outright deny the opportunity to vote. That is the principle the North Carolina Supreme Court applied in *Stephenson I* and it governs this case.

3. The Free Speech And Free Assembly Clauses Prohibit Partisan Gerrymandering.

34. Finally, *Common Cause* correctly held that partisan gerrymanders violate North Carolina's Free Speech and Free Assembly Clauses. 2019 WL 4569584, at *118–24; *see Harper*, 2019 N.C. Super. LEXIS 122, at *11–14. They do so by targeting votes for the disfavored party—which constitute core political speech—and making them less effective, and by preventing members of the disfavored party from effectively assembling and instructing their representatives.

35. First, partisan gerrymandering violates the Free Speech Clause by targeting speech based on viewpoint. The Free 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. And "[v]oting … constitutes a form of protected speech." *Common Cause*, 2019 WL

4569584, at *119 (citing *Buckley v. Valeo*, 424 U.S. 1, 21, 96 S. Ct. 612, 635 (1976)). Indeed, there "is no right more basic in our democracy than the right to participate in electing our political leaders—including … the right to vote." *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 191 (2014) (plurality op. of Roberts, C.J.). True, a vote carries a legal effect. But as Justice Alito explained, the "act of voting is not drained of its expressive content when the vote has a legal effect." *Nev. Comm'n on Ethics v. Carrigan*, 564 U.S. 117, 134 (2011) (Alito, J., concurring).

36. Applying decades of North Carolina law, *Common Cause* properly recognized that a law violates the Free Speech Clause when "it renders disfavored speech ***less effective***, even if it does not ban such speech outright"—because the "government may not restrict a citizen's 'ability to ***effectively*** exercise' their free speech rights." *Common Cause*, 2019 WL 4569584, at *121 (emphasis added) (quoting *Heritage Vill. Church & Missionary Fellowship, Inc. v. State*, 40 N.C. App. 429, 451, 253 S.E.2d 473, 486 (1979), *aff'd*, 299 N.C. 399, 263 S.E.2d 726 (1980)). Laws can violate the Free Speech Clause ***even when*** they do not expressly prohibit any speech.

37. In *Heritage Village Church*, for example, the Court of Appeals invalidated limits on campaign expenditures and explained that, even though these limits ban no speech, they were invalid because they "seriously hamper[ed] plaintiffs ability to effectively exercise their [speech] rights." 40 N.C. App. at 451, 253 S.E.2d at 486. Myriad decisions are in accord. *E.g.*, *McCullen v. Coakley*, 573 U.S. 464, 489–90 (2014) (law violated First Amendment rights of pro-life protestors, even though "petitioners [could] still be 'seen and heard,'" because the law "effectively stifled [their] message"); *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 736 (2008) (restrictions on self-financed candidates violated the First Amendment by "diminish[ing] the effectiveness" of speech); *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 747 (2011) (scheme violated the First Amendment by rendering "speech … less effective").

38. Partisan gerrymandering violates those principles by making some votes—votes for the disfavored party—less effective based on viewpoint. It is "axiomatic" that the government may not infringe on protected activity based on an individual's "viewpoint." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995); *see Common Cause*, 2019 WL 4569584, at *120. Indeed, "political speech" has "such a high status" that, for such speech, free speech protections have their "fullest and most urgent application." *Winborne v. Easley*, 136 N.C. App. 191, 198, 523 S.E.2d 149, 154 (1999). Hence, "[v]iewpoint discrimination is *most* insidious where the targeted speech is political." *Common Cause*, 2019 WL 4569584, at *120. As the U.S. Supreme Court has explained, in "the context of political speech, … [b]oth history and logic" demonstrate the perils of permitting the government to "identif[y] certain preferred speakers" while burdening "disfavored speakers." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340 (2010). The government may not burden the "speech of some [speakers] in order to enhance the relative voice of others." *McCutcheon*, 572 U.S. at 207.

39. That is what partisan gerrymandering does. Indeed, the Supreme Court has emphasized that rigorously enforcing the Free Speech Clause is ***especially*** necessary where, as here, federal law does not provide a remedy. In *Corum v. University of North Carolina*, the Supreme Court noted that the plaintiff had "no other remedy … for alleged violations of [his] speech rights," and that therefore North Carolina "law guarantees plaintiff a direct action under the State constitution for alleged violations of his constitutional freedom of speech rights." 330 N.C. at 783, 413 S.E.2d at 290. In *Vieth* and *Rucho*, the U.S. Supreme Court found that extreme partisan gerrymandering may well ***violate*** the federal Constitution but held that the federal Constitution provides no ***remedy*** for those violations. As in *Corum*, that is all the more reason to recognize an action under North Carolina's Free Speech Clause.

40. Partisan gerrymandering violates free speech and free assembly rights by preventing voters and supporters of the disfavored party from effectively associating. *Common Cause*, 2019 WL 4569584, at *120. The Free Assembly Clause specifies that the "people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances." N.C. Const. art. I, § 12. This guarantee encompasses a "right to freedom of association." *Feltman v. City of Wilson*, 238 N.C. App. 246, 253, 767 S.E.2d 615, 620 (2014). Indeed, North Carolina courts have "recognized the right to associate in order to express one's views is inseparable from the right to speak freely"—because "[a]n individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed." *Id.* (quoting *Edwards v. City of Goldsboro*, 178 F.3d 231, 249 (4th Cir. 1999)); *accord Libertarian Party of N.C. v. State*, 365 N.C. 41, 48, 707 S.E.2d 199, 204 (2011).

41. In particular, *Common Cause* explained that "[j]ust as voting is a form of protected expression, banding together with likeminded citizens in a political party is a form of protected association." 2019 WL 4569584, at *120. That is because individuals form parties to "express their political beliefs and to assist others in casting votes in alignment with those beliefs." *Libertarian Party*, 365 N.C. at 49, 707 S.E.2d at 204. Indeed, for "elections to express the popular will, the right to assemble and consult for the common good must be guaranteed." *Common Cause*, 2019 WL 4569584, at *120 (quoting JOHN V. ORTH, THE NORTH CAROLINA STATE CONSTITUTION 48 (1995)); *accord* ORTH & NEWBY, *supra*, at 58.

42. Individuals and associations like NCLCV build political associations *in order to* "obtain … majorities" in the legislature and further their views. *Common Cause*, 2019 WL

4569584, at *76. When partisan gerrymandering "diminishes the effectiveness" of those efforts, by targeting individuals based on the party with which they seek to associate, gerrymandering severely burdens associational rights. *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 736 (2008); *see Bennett*, 564 U.S. at 736; *accord Common Cause*, 2019 WL 4569584, at *122 (partisan gerrymandering "violate[s] … associational rights by" weakening the ability of political associations to "carry out [their] core functions and purposes." (quoting *Gill v. Whitford*, 138 S. Ct. 1916, 1939 (2018) (Kagan, J., concurring)).

43. Finally, partisan gerrymanders constitute impermissible retaliation. The government may not retaliate against individuals based on protected speech and expression. *McLaughlin v. Bailey*, 240 N.C. App. 159, 172, 771 S.E.2d 570, 580 (2015), *aff'd*, 368 N.C. 618, 781 S.E.2d 23 (2016). Indeed, retaliation or patronage based on "belief and association is inimical to the process which undergirds our system of government and is at war with the deeper traditions of democracy embodied in the First Amendment." *Elrod v. Burns*, 427 U.S. 347, 357, 96 S. Ct. 2673, 2682, 49 L. Ed. 2d 547 (1976). The government thus may not single out some citizens for adverse treatment based on the "political faith" they have chosen to express. *Id.* Partisan gerrymandering does just that by targeting certain voters based on the political party that they have chosen to speak in favor of and associate with.

B. The Enacted Plans Violate The North Carolina State Constitution Because They Create Extreme Partisan Gerrymanders.

44. The Court concludes that the extreme partisan gerrymandering in the Enacted Plans yields the same violations of the Free Elections, Equal Protection, and Free Speech and Free Assembly Clauses unanimously found in *Common Cause* and *Harper*.

1. The Extreme Partisan Gerrymanders In The Enacted Plans Violate The Free Elections Clause.

45. The Enacted Plans do the same thing as the maps that *Common Cause* invalidated

as violating the Free Elections Clause. They were "designed, specifically and systematically, to maintain Republican majorities" in Congress and the General Assembly. *Common Cause*, 2019 WL 4569584, at *112. And they are "gerrymandered to be most resilient in electoral environments where Democrats could win majorities … under nonpartisan plans." *Id.* The detailed evidence described above, *supra* pp. 13–72, shows exactly that. Indeed, the Enacted Plans' effect is strikingly undemocratic:

- In closely divided elections, the Enacted Plans guarantee Republican candidates a 6-seat advantage in the congressional delegation, a 6-seat advantage in the Senate, and a 16-seat advantage in the House. *Supra* p. 15.
- Even when Democratic candidates win the statewide vote by significant margins, the Enacted Plans guarantee Republican candidates 9 seats in Congress, 26 Senate seats, and 62 House seats. *Supra* p. 15.
- Democrats cannot obtain majorities unless they win the statewide vote by at least 7 percentage points, which is highly unlikely. *Supra* pp. 18, 30, 44.

46. In short, as in *Common Cause* and *Harper*, the majority party has "manipulated district boundaries, to the greatest extent possible, to control the outcomes of individual races so as to best ensure [its] continued control." *Common Cause*, 2019 WL 4569584, at *112; *Harper*, 2019 N.C. Super. LEXIS 122, at *8–9, *16–18. Because of the Enacted Plans, it is now "nearly impossible for the will of the people—should that will be contrary to the will of the partisan actors drawing the maps—to be expressed through their votes." *Common Cause*, 2019 WL 4569584, at *112.

47. No more is needed to violate the Free Elections Clause. When a law implicates the Free Elections Clause, "it is the effect of the act, and not the intention of the Legislature, which renders it void." *Van Bokkelen*, 73 N.C. at 225–26; *see Common Cause*, 2019 WL 4569584, at *112–13. True, the *Common Cause* panel found that the General Assembly acted intentionally in drawing the maps there. *E.g.*, 2019 WL 4569584, at *129. But it did not hold that intent is

necessary to violate the Free Elections Clause, and for good reason: If the General Assembly violates the bedrock command that "elections shall be free," *id.* at *3, it is no answer to insist that the General Assembly did not ***mean*** to prevent the "will of the people" from governing, *id.* at *112.

48. Regardless, the NCLCV Plaintiffs have shown that the General Assembly intended to manufacture the unconstitutional gerrymander the Enacted Plans yield. Intent "may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one [group] than another." *Holmes v. Moore*, 270 N.C. App. 7, 17, 840 S.E.2d 244, 255 (2020) (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976)); *see Common Cause*, 2019 WL 4569584, at *114. Here, as is detailed above, the "circumstantial … evidence of intent" is overwhelming. *Holmes*, 270 N.C. App. at 16, 840 S.E.2d at 254; *supra* pp. 61–72.

2. The Extreme Partisan Gerrymanders In The Enacted Plans Violate The Equal Protection Clause.

49. The Enacted Plans violate the North Carolina State Constitution's Equal Protection Clause. As *Common Cause* held, a partisan gerrymander violates that clause when (1) a "'predominant purpose'" of the map drawers was to "'entrench [their party] in power'"; and (2) the maps "have the intended effect" and "'substantially' dilute [the disfavored party's] votes." *Common Cause*, 2019 WL 4569584, at *114 (quoting *Ariz. State Legis.*, 135 S. Ct. at 2658). Here, the Enacted Plans do both those things, for reasons already explained: They are "carefully crafted to favor Republicans" and "intentionally and systematically pack and crack Democratic voters," *id.* at *115—so that the incumbent Republican Party will retain majorities in the congressional delegation, the Senate, and the House for a decade even if voters prefer the other party by significant margins.

50. Nor can Defendants "provide a legitimate, non-partisan justification" for the

Enacted Plans. The General Assembly could have drawn maps that comply with state law and traditional, neutral redistricting principles while avoiding an unconstitutional gerrymander. *Supra* pp. 27–28, 43, 61. And as discussed above, the General Assembly's Republican majority declined to enact such maps precisely because it ***desired*** to entrench itself. *Supra* pp. 61–66. "Advantaging a particular political party or discriminating against voters based on how they vote for the purposes of entrenching a political party's power is not a compelling government interest." *Common Cause*, 2019 WL 4569584, at *117.

3. The Extreme Partisan Gerrymanders In The Enacted Plans Violate The Free Speech And Free Assembly Clauses.

51. The Enacted Plans violate the Free Speech and Free Assembly Clauses.

52. ***First***, the Enacted Plans constitute "viewpoint discrimination" (as well as retaliation) against certain voters and dilute their votes, based on the viewpoints they express—namely, that they favor the Democratic Party, which the Enacted Plans seek to exclude from power. *Common Cause*, 2019 WL 4569584, at *121, *123. A law "need not explicitly mention any particular viewpoint to be impermissibly discriminatory." *Id.* at *121 (citing *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015)). Instead, as under the Equal Protection Clause, discriminatory intent may be inferred from circumstantial evidence, including the "impulse behind [a law], or the lack of any plausible [alternative] explanation." *Id.* (quoting *State v. Bishop*, 368 N.C. 869, 875, 787 S.E.2d 814, 819 (2016)). Here, that evidence compels the same conclusion as above: The Enacted Plans intended to target, and retaliate against, supporters of the disfavored party. *Supra* pp. 61–66.

53. ***Second***, the Enacted Plans violate associational rights in all the ways explained above. *Supra* pp. 124–25. They prevent "Democratic voters who live in cracked districts [from] instruct[ing] their representatives or obtain[ing] redress from their representatives"; they make it

harder for the disfavored parties and for politically oriented associations to "carry out [their] core functions and purposes"; and they force these organizations "to drain and divert resources … merely to avoid being relegated to a superminority." *Common Cause*, 2019 WL 4569584, at *122–23. And the Enacted Plans do so because of the viewpoints that these organizations, through these activities, express.

54. Such burdens on core political rights trigger "strict scrutiny." *Bishop*, 368 N.C. at 875, 787 S.E.2d at 819; *accord Common Cause*, 2019 WL 4569584, at *121. But again, Defendants have offered "no credible justification for their partisan discrimination." *Common Cause*, 2019 WL 4569584, at *123. "Nor could they have," as the *Common Cause* three-judge panel observed: "Discriminating against citizens based on their political beliefs does not serve any legitimate government interest." *Id.*

C. Partisan Gerrymandering Claims Are Justiciable Under The North Carolina State Constitution.

55. Partisan gerrymandering claims are justiciable under the North Carolina State Constitution. In order to find a matter nonjusticiable, there must be "a textually demonstrable constitutional commitment of the issue to a coordinate political department." *Bacon v. Lee*, 353 N.C. 696, 717, 549 S.E.2d 840, 854 (2001).

56. This case, however, does not implicate the political-question doctrine. Although the Constitution indeed charges the General Assembly with the primary responsibility to "revise" state legislative districts, *see* Art. II, sec. 3 & 5, the NCLCV Plaintiffs are not "seeking to have the judicial branch interfere with an issue committed to the sole discretion of the General Assembly." *Cooper v. Berger*, 370 N.C. 392, 409 (2018). They are instead "seeking to have the Court undertake the usual role performed by a judicial body, which is to ascertain the meaning of an applicable legal principle." *Id*. That is the quintessential function of the courts: "it is emphatically

the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

57. Here, the applicable legal principles the NCLCV Plaintiffs ask this Court to ascertain the meaning of are the Free Elections Clause, Equal Protection Clause, Free Speech Clause, and Free Assembly Clause.

58. Thus, this Court has "the authority to decide this case because the General Assembly's authority pursuant to" Article II, Sections 3 and 5 "is necessarily constrained by the limits placed upon that authority by other constitutional provisions." *Cooper*, 370 N.C. at 410. Indeed, there are numerous cases adjudicating the constitutional limits on the General Assembly's Article II authority to "revise" districts. As the *Common Cause* court explained, "North Carolina courts have adjudicated claims that redistricting plans violated the Whole County Provisions, the mid-decade redistricting bar, the Equal Protection Clause, and other provisions of the North Carolina Constitution." *Common Cause*, 2019 WL 4569584, at *124 (citing cases).

59. That a particular power is constitutionally delegated to the General Assembly does not preclude this Court from finding that the General Assembly has exercised that constitutionally delegated power in ways that violate other constitutional prohibitions. For example, the North Carolina Supreme Court has held that "the General Assembly's exclusive authority to enact criminal statutes…does not authorize the enactment of ex post facto laws in violation of Article I, Section 16." *Cooper*, 370 N.C. at 411. Likewise, the Supreme Court has held that "the General Assembly's exclusive authority to classify property for taxation-related purposes does not allow more favorable tax classification treatment for one religious organization as compared to another in light of the constitutional guarantees of religious liberty and equal protection." *Id.* (citing *Heritage Village Church & Missionary Fellowship, Inc., v. State*, 299 N.C. 399, 406 n. 1, 263

S.E.2d 726, 730 n. 1 (1980)). The role of the judiciary in this context is no different. The political question doctrine is not relevant here.

D. The Federal Elections Clause Does Not Bar Claims Concerning The Enacted Congressional Plan.

60. The federal Elections Clause provides: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." U.S. Const., Art. I, § 4, cl. The Legislative Defendants have argued that the Elections Clause bars relief as to the Enacted Congressional Map. They claim that the Elections Clause vests plenary power in state legislatures and forbids state courts from reviewing congressional districting plans for compliance with the state constitution. The U.S. Supreme Court, however, has squarely rejected that argument.

61. The Supreme Court did so most recently in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 135 S. Ct. 2652, 2673 (2015). It explained that "[n]othing in [the Elections] Clause instructs, nor has this Court ever held, that a state legislature may prescribe regulations on the time, place, and manner of holding federal elections in defiance of provisions of the State's constitution." *Id.* Instead, the Court affirmed that redistricting must be "performed in accordance with the State's prescriptions for lawmaking." *Id.* at 2668. And the Court rejected the notion that the "Elections Clause renders the State's representative body the sole component of state government authorized to prescribe regulations for congressional redistricting." *Id.* at 2673.

62. *Arizona State Legislature* accords with myriad other U.S. Supreme Court decisions, including *Growe v. Emison*, 507 U.S. 25 (1993). There, a Minnesota state court had issued an injunction adopting a remedial congressional map based on the legislature's violations of state law.

And when a federal court blocked that injunction from taking effect, the U.S. Supreme Court reversed and held that the federal court had erred "in not deferring to the state court's efforts to redraw Minnesota's … federal congressional districts." *Id.* at 42. It emphasized that "[t]he power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged." *Id.* at 33. Again and again, the U.S. Supreme Court has reiterated that state courts have a role to play in ensuring that redistricting plans comply with state law.[27]

63. *Arizona State Legislature* accords with myriad other Supreme Court decisions, including *Growe v. Emison,* 507 U.S. 25 (1993). There, a Minnesota state court had issued an injunction adopting a remedial congressional map based on the legislature's violations of state law. And when a federal court blocked that injunction from taking effect, the Supreme Court reversed and held that the federal court had erred "in not deferring to the state court's efforts to redraw Minnesota's … federal congressional districts." *Id.* at 42. It emphasized that "The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has

[27] 507 U.S. at 33 ("In the reapportionment context, the Court has required federal judges to defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself." (emphasis in original)); *id.* at 34 ("[T]he Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts. We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature *or other body*, rather than of a federal court." (emphasis added)); *id.* ("[T]he District Court's December injunction of state-court proceedings … was clear error. *It seems to have been based upon the mistaken view that federal judges need defer only to the Minnesota Legislature and not at all to the State's courts*. Thus, the January 20 deadline the District Court established was described as a deadline for the legislature, ignoring the possibility and legitimacy of state judicial redistricting. And the injunction itself treated the state court's provisional legislative redistricting plan as 'interfering' in the reapportionment process. But the doctrine of Germano prefers both state branches to federal courts as agents of apportionment." (emphasis added)); *id.* ("The Minnesota [court's] issuance of its plan (conditioned on the legislature's failure to enact a constitutionally acceptable plan in January), far from being a federally enjoinable 'interference,' was precisely the sort of state judicial supervision of redistricting we have encouraged.").

not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged." *Id.* at 33. And again and again, the Court reiterated that state courts have a role to play in ensuring that redistricting plans comply with state law.[28]

64. Indeed, the Legislative Defendants' position would render incoherent the Supreme Court's recent decision in *Rucho*. That decision, as noted above, held that federal courts may not entertain partisan-gerrymandering claims. But Chief Justice Roberts' opinion for the Court also held, unambiguously, that "state courts" may do so—and he approved, in particular, the Florida Supreme Court's decision "striking down that State's congressional districting plan as a violation of the" Florida Constitution. 139 S. Ct. at 2507. *Rucho* could not have reached that result if, as the Legislative Defendants argue, the Election Clause bars state courts from reaching such decisions.

65. The Legislative Defendants have cited *Smiley v. Holm*, 285 U.S. 355 (1932) to argue that the word "Legislature" in the Elections Clause refers only to the General Assembly. *Smiley*, however, held the very opposite. It rejected a lower court's holding that the word

[28] 507 U.S. at 33 ("In the reapportionment context, the Court has required federal judges to defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself." (emphasis in original)); *id.* at 34 ("[T]he Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts. We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature *or other body*, rather than of a federal court." (emphasis added)); *id.* ("[T]he District Court's December injunction of state-court proceedings … was clear error. *It seems to have been based upon the mistaken view that federal judges need defer only to the Minnesota Legislature and not at all to the State's courts*. Thus, the January 20 deadline the District Court established was described as a deadline for the legislature, ignoring the possibility and legitimacy of state judicial redistricting. And the injunction itself treated the state court's provisional legislative redistricting plan as 'interfering' in the reapportionment process. But the doctrine of Germano prefers both state branches to federal courts as agents of apportionment." (emphasis added)); *id.* ("The Minnesota [court's] issuance of its plan (conditioned on the legislature's failure to enact a constitutionally acceptable plan in January), far from being a federally enjoinable 'interference,' was precisely the sort of state judicial supervision of redistricting we have encouraged.").

"Legislature" in the Elections Clause referred solely to the "legislative body" of the state, and explained that the word refers instead to the "method which the state has prescribed for legislative enactments," including the "check[s] in the legislative process" imposed by the state constitution. *Id.* at 367-68.

IV. THE ENACTED PLANS DILUTE BLACK VOTERS' VOTING STRENGTH IN VIOLATION OF THE NORTH CAROLINA STATE CONSTITUTION.

A. The Free Elections Clause And The Equal Protection Clause Protect North Carolina's Minority Voters Against The Dilution Of Their Voting Strength.

66. Under North Carolina's Free Elections Clause, "the object of all elections is to ascertain, fairly and truthfully the will of the people." *Hill*, 169 N.C. at 415.

67. Under North Carolina's Equal Protection Clause, North Carolina's citizens—including its minority voters—have "a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.'" *White v. Pate*, 308 N.C. 759, 768, 304 S.E.2d 199, 205 (1983). In particular, North Carolina's minority voters have a right to "substantially equal voting power" and "substantially equal legislative representation." *Stephenson I*, 355 N.C. at 379.

68. A redistricting plan violates these clauses when it dilutes the voting strength of minority voters, such that they have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. In such circumstances, minority voters do not have "substantially equal voting power" nor "substantially equal legislative representation," in violation of the Equal Protection Clause. *Id.* And in such circumstances, the redistricting plan "dilute[s] and devalue[s] votes of some citizens compared to others," in violation of the Free Elections Clause. *Common Cause*, 2019 WL 4569584, at *110.

69. The North Carolina State Constitution's guarantees of "substantially equal voting power," "substantially equal legislative representation," and free elections are violated when a

redistricting plan deprives minority voters of "a fair number of districts in which their votes can be effective," measured based on "the minority's rough proportion of the relevant population." *Bartlett v. Strickland*, 556 U.S. 1, 28-29 (2009) (Souter, J., dissenting) (reaching similar conclusion under VRA § 2). Whether such a plan cracks minority voters "'into districts in which they constitute an ineffective minority of voters,'" or packs them "'into districts where they constitute an excessive majority,' so as to eliminate their influence in neighboring districts," that type of plan violates rights guaranteed by the North Carolina State Constitution. *Id.* (quoting *Gingles*, 478 U.S. at 46 n.11).

70. A redistricting plan can deprive minority voters of the opportunity to elect candidates of their choice under the North Carolina State Constitution when (1) the minority group is sufficiently large and geographically compact to elect its candidates of choice in a single-member district; (2) the minority group is politically cohesive; and (3) the majority votes sufficiently as a bloc to enable it to usually defeat the minority-preferred candidate. *Cf. Thornburg v. Gingles*, 478 U.S. 30, 31 (1986) (similar requirements under VRA § 2, which also protects the right of minority voters to substantially equal voting power and substantially equal legislative representation).

71. In measuring whether the minority group is sufficiently large and geographically compact to elect its candidates of choice in a single-member district, the question is whether the group's voters can be ***effective*** in electing candidates of their choice, whether or not the minority group constitutes a majority in that district. *Bartlett*, 556 U.S. at 28-29 (Souter, J., dissenting). Any other rule would invite the packing of minority voters into districts where they constitute an excessive majority and would make it more difficult to achieve an "opportunity to elect" that corresponds with "the minority's rough proportion of the relevant population." *Id.*

72. Hence, the North Carolina State Constitution requires examining, in a given redistricting plan, the number of districts where minority voters can effectively elect their candidates of choice relative to their share of the voting-age population. This comparison looks to the entire statewide redistricting plan to determine whether it creates an insufficient number of minority-effective districts in the state as a whole.

73. These principles flow from longstanding North Carolina law, and specifically, the Free Elections Clause and the Equal Protection Clause in the North Carolina Constitution, which prohibit—independently and together—racial vote dilution.

74. The Free Elections Clause "guarantees that all elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the People and that this is a fundamental right of North Carolina citizens, a compelling governmental interest, and a cornerstone of our democratic form of government." *Common Cause*, 2019 WL 4569584, at *2. "The North Carolina Supreme Court has long and consistently held that 'the object of all elections is to ascertain, fairly and truthfully the will of the people.'" *Hill*, 169 N.C. at 415. A redistricting plan violates the Free Elections Clause when it "specifically and systematically design[s] the contours of the election districts" in a way that makes it "nearly impossible for the will of the people . . . to be expressed through their votes." *Common Cause*, 2019 WL 4569584, at *112.

75. The Equal Protection Clause guarantees the right to "substantially equal voting power." *Stephenson I*, 355 N.C. at 379; *see also White*, 308 N.C. at 768, 304 S.E.2d at 205 (explaining that the Equal Protection Clause "guarantees the 'equal right to vote,'" which means that each "'citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction'" (citations omitted)); *State ex rel. Martin v. Preston*, 325 N.C. 438, 455, 385 S.E.2d 473, 481 (1989) (same). The "right to vote on equal terms" is a

"fundamental right." *Stephenson I*, 355 N.C. at 378. And as explained above, North Carolina's Equal Protection Clause affords broader protections than its federal counterpart. *See Common Cause*, 2019 WL 4569584, at *113; *see also Stephenson I*, 355 N.C. 354, 381 n.6 (quoting *State v. Carter*, 322 N.C. 709, 713, 370 S.E.2d 553, 555 (1988)); *Blankenship v. Bartlett*, 363 N.C. 518, 522–28 (2009).

76. North Carolina's Equal Protection Clause prohibits racial vote dilution with even greater force. A district map engages in racial vote dilution when it dilutes the voting power of certain voters on the basis of race. Racial vote dilution violates the Equal Protection Clause in two ways. First, it denies voters the "equal protection of the laws" based on their race, and second, it violates the fundamental right to "substantially equal voting power" which the Equal Protection Clause guarantees to all voters.

77. A district map that engages in racial vote dilution cannot withstand strict scrutiny and therefore violates the Equal Protection Clause, consistent with the traditional "equal protection analysis." *Stephenson I*, 355 N.C. at 377 (citing *Dep't of Transp. v. Rowe*, 353 N.C. 671, 675, 549 S.E.2d 203, 207 (2001), *cert. denied*, 534 U.S. 1130 (2002)). When strict scrutiny applies, "a challenged government action is unconstitutional if the State cannot establish that it is narrowly tailored to advance a compelling government interest." *Stephenson I*, 355 N.C. at 377-78 (citing *Northampton Cnty.*, 326 N.C. at 746, 392 S.E.2d at 355). By definition, a district map dilutes the voting strength of minority voters when the minority group is placed in a district where the majority votes sufficiently as a bloc to enable it to defeat the minority-preferred candidates precisely because the minority group is politically cohesive.

78. Under a district map that dilutes minority voting strength, voters who are members of a minority group are ***not*** able to elect their candidates of choice, while voters who are members

of the majority group ***are***—simply because of the way district boundaries are drawn. Such a plan "specifically and systematically design[s] the contours of the election districts" in a way that makes it "nearly impossible for the will of the people . . . to be expressed through their votes." *Common Cause*, 2019 WL 4569584, at *112. No compelling governmental interest requires these burdens on the fundamental "right to vote on equal terms." *See, e.g.*, *Stephenson I*, 355 N.C. at 379. Thus, a district map that dilutes minority voting strength violates both the Free Elections Clause and the Equal Protection Clause.

B. The Enacted Plans Violate The North Carolina State Constitution Because They Unlawfully Dilute Black Voting Strength In Violation Of The Free Elections Clause And The Equal Protection Clause.

79. Here, the Court finds that the NCLCV Plaintiffs have shown that the Enacted Plans unlawfully dilute Black voting strength in violation of the Free Elections Clause and the Equal Protection Clause (and again, do so beyond any reasonable doubt). *Cf. Stephenson I*, 355 N.C. at 386, 562 S.E.2d at 398 (invalidating districting plan without addressing whether it was unconstitutional beyond a reasonable doubt).

80. First, the Enacted Plans deprive minority voters of "a fair number of districts in which their votes can be effective," measured based on "the minority's rough proportion of the relevant population." *Bartlett*, 556 U.S. at 28–29 (Souter, J., dissenting). North Carolina's Black citizens account for at least 21.4% of the State's population—and growing. PX150 at 11. The Enacted Plans, however, limit North Carolina's Black citizens to just 2 effective Congressional districts, as few as 8 effective Senate districts, and as few as 24 effective House districts—well short of rough proportionality. *Supra* p. 73. And the Enacted Plans effect this result via classic techniques of packing and cracking, as described above. *Supra* pp. 75–93.

81. Moreover, the Court finds that the NCLCV Plaintiffs have satisfied all of the elements of a racial vote dilution claim under the Free Elections and Equal Protection Clauses. In

particular, they have shown that North Carolina's Black voters are sufficiently large and geographically compact to elect their candidates of choice in single-member districts; that North Carolina's Black voters are politically cohesive; and that the majority votes sufficiently as a bloc to enable it to usually defeat the minority-preferred candidate. In particular, the NCLCV Plaintiffs have shown that cohesive groups of Black voters could elect their candidates of choice in 4 Congressional districts (Districts 2, 4, 9, and 11 in the NCLCV Congressional Map), 12 Senate districts (Districts 1, 5, 11, 14, 18, 19, 26, 27, 32, 38, 39, 40 in the NCLCV Senate Map), and 36 House districts (Districts 2, 8, 9, 10, 23, 24, 25, 27, 31, 32, 33, 38, 39, 40, 42, 43, 44, 45, 48, 57, 58, 59, 60, 61, 63, 66, 71, 88, 92, 99, 100, 101, 102, 106, 107, 112 in the NCLCV House Map)—but that racially polarized block voting prevents Black-preferred candidates from winning elections under the Enacted Plans in rough proportion to their share of the population. *Supra* p. 73. Indeed, Dr. Duchin has shown that racially polarized voting exists across the state, including affecting all of the districts just described. *Supra* p. 74.

C. The General Assembly Intended the Racial Vote Dilution In The Enacted Plans.

82. A violation of the Free Elections Clause does not require intent. *See supra* p. 126. And under the Equal Protection Clause, it is enough that the legislature intended the foreseeable consequences of its actions (regardless of whether it acted with animus). When the North Carolina Supreme Court invalidated multi-member districts in *Stephenson I* or the voting scheme for drainage districts in *Northampton*, for example, the Court focused on the dilutive ***effects*** of the legislature's actions and did not inquire into whether the legislature acted with malice. *Stephenson I*, 355 N.C. at 391, 562 S.E.2d at 402; *Northampton*, 326 N.C. at 746–47, 392 S.E.2d at 356.

83. Nevertheless, the record is clear that here the General Assembly acted intentionally in diluting the voting power of Black North Carolinians. A law can violate North Carolina's Equal Protection Clause if discriminatory purpose was "a motivating factor." *Holmes*, 270 N.C. App. at

16 (quoting *N.C. State Conference of NAACP v. McCrory*, 831 F.3d 204, 220-21 (4th Cir. 2016)); *see also Stephenson I*, 355 N.C. at 377, 562 S.E.2d at 393 (quoting *White*, 308 N.C. at 766, 304 S.E.2d at 204) (strict scrutiny is triggered under North Carolina's Equal Protection Clause when it creates a "classification" that "operates to the peculiar disadvantage of a suspect class")). And whether discriminatory purpose was a motivating factor can be "inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another." *Holmes*, 270 N.C. App. at 17. To determine whether this is true, the court may weigh the law's historical background, the sequence of events leading up to the law, departures from normal procedure, legislative history, and the law's disproportionate impact. *Id.* at 17.

84. "[I]ntentionally targeting a particular race's *access* to the franchise because its members vote for a particular party, in a predictable manner, constitutes discriminatory purpose," *even in the absence of* "any evidence of race-based hatred." *N.C. State Conference*, 831 F.3d at 222-23. It is not necessary to show that "any member of the General Assembly harbored racial hatred or animosity toward any minority group." *Id.* at 233.

85. Here, as detailed above, evidence of intent abounds—in the Enacted Plans' severe dilutive effects, in the General Assembly's rushed and unlawful process designed to shield its actions from scrutiny, and in the General Assembly's refusal to change course when confronted with its plans' dilutive effects, particularly set against the backdrop of the General Assembly's long history of targeting Black voters. *See supra* pp. 95–97.

86. Once discriminatory purpose is established as a motivating factor, "the burden shifts to the law's defenders to demonstrate that the law would have been enacted without this factor." *Holmes*, 270 N.C. App. at 17. Here, Defendants can advance no compelling or legitimate state interest to justify the racial vote dilution effectuated by the Enacted Plans.

V. THE ENACTED PLANS VIOLATE THE WHOLE-COUNTY PROVISION, AS APPLIED IN THE *STEPHENSON*/*DICKSON* CASES.

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

88. In *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*, the North Carolina Supreme Court interpreted the Whole County Provisions to harmonize them with other provisions of federal and state law and required adherence to a specific nine-step framework for drawing boundaries for state Senate and House districts. *Stephenson I*, 355 N.C. at 383–84, 562 S.E.2d at 397–98; *see Dickson II*, 368 N.C. at 489–91, 781 S.E.2d at 412–13. Adherence to this framework is mandatory. *See Pender County v. Bartlett*, 361 N.C. 491, 510, 649 S.E.2d 364, 376 (2007), *aff'd sub nom. Bartlett v. Strickland*, 556 U.S. 1 (2009).

89. The *Stephenson*/*Dickson* framework requires the General Assembly to "'combin[e] or group[] the minimum number of whole, contiguous counties necessary to comply with the at or within plus or minus five percent 'one-person, one-vote' standard.'" *Dickson II*, 368 N.C. at 490, 781 S.E.2d at 413 (quoting *Stephenson*, 355 N.C. at 383). "'[W]ithin any such contiguous multi-county grouping, compact districts shall be formed, consistent with the [one-person, one-vote] standard, whose boundary lines do not cross or traverse the "exterior" line of the multi-county grouping.'" *Id.* (quoting *Stephenson I*, 355 N.C. at 383–84, 562 S.E.2d at 397 (alteration in original)). "'[T]he resulting interior county lines created by any such groupings may be crossed or traversed in the creation of districts within said multi-county grouping but only to the extent necessary to comply with the at or within plus or minus five percent "one-person, one-vote" standard.'" *Id.* (quoting *Stephenson I*, 355 N.C. at 384, 562 S.E.2d at 397). The

Stephenson/*Dickson* framework also requires that districts be compact. Indeed, steps four, five, seven, and nine of the nine-step framework consider whether districts are compact. *Id.* at 490–91, 781 S.E.2d at 413.

90. In order to dilute the voting strength of Black voters, and to gerrymander in favor of the incumbent Republican Party, the Enacted Plans violate the *Stephenson*/*Dickson* algorithm, and the Whole County Provisions, by unnecessarily traversing county boundaries and by forming districts that, because they are drawn to favor Republican interests, are less compact than they could be under a fair map. *Supra* p. 142. Indeed, they do so beyond any reasonable doubt. *Cf. Stephenson I*, 355 N.C. at 386, 562 S.E.2d at 398 (invalidating districting plan without addressing whether it was unconstitutional beyond a reasonable doubt).

91. These violations of the Whole County Provisions and the *Stephenson/Dickson* framework harm the NCLCV Plaintiffs by contributing to the unconstitutional partisan gerrymandering and racial vote dilution described above.

VI. THE COURT WILL ENJOIN THE USE OF THE ENACTED PLANS.

A. The Court Will Enjoin The Use Of The Enacted Plans.

92. Because the Enacted Plans unconstitutionally gerrymander by party, dilute the voting strength of Black voters, and violate the Whole County Provisions and the *Stephenson*/*Dickson* framework, the Court will permanently enjoin Defendants from preparing for, administering, or conducting elections under any of the Enacted Plans.

93. Such an injunction is well-warranted. The loss of constitutional rights, "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). In particular, "[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th

Cir. 2014). That is because 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).

94. Federal and state courts in North Carolina have repeatedly applied these principles to enjoin unlawful redistricting maps. In *Harris v. McCrory*, the court enjoined maps that were racial gerrymanders because "[t]o force the plaintiffs to vote … under the unconstitutional plan … constitutes irreparable harm." No. 1:13CV949, 2016 WL 6920368, at *1 (M.D.N.C. Feb. 9, 2016). In *Covington v. North Carolina*, the court enjoined another gerrymander because the court would not "forc[e] North Carolina voters to cast ballots under unconstitutional maps." No. 1:15CV399, 2018 WL 604732, at *6 (M.D.N.C. Jan. 26, 2018) (three-judge panel). And in *Harper*, the Court enjoined an unconstitutional partisan gerrymander because "[t]he loss to Plaintiffs' fundamental rights guaranteed by the North Carolina constitution will undoubtedly be irreparable if … elections" are allowed to proceed under unlawful maps. *Harper*, 2019 N.C. Super. LEXIS 122, at *14. Indeed, in *Common Cause*, the Court *sua sponte* declined to grant a stay pending appeal because such a stay would force "Plaintiffs and other North Carolina voters" to "cast their ballots under unconstitutional district plans." 2019 WL 4569584, at *134.

95. The balance of equities and the public interest also favor injunctive relief. On the one side, Plaintiffs' claims concern "fundamental right[s] … enshrined in our Constitution's Declaration of Rights, a compelling governmental interest, and a cornerstone of our democratic form of government." *Common Cause*, 2019 WL 4569584, at *110. The Supreme Court has thus mandated that "fair and honest elections are to prevail in this state." *Id.* at *128 (quoting *McDonald v. Morrow*, 119 N.C. 666, 673, 26 S.E. 132, 134 (1896)). That can occur ***only*** if the Court enjoins the use of the unlawful Enacted Plans. As in *Harper*, "if the injunction is not

granted," the "people of our State will lose the opportunity to participate in congressional elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people." *Harper*, 2019 N.C. Super. LEXIS 122, at *20.

96. On the other side, granting an injunction will not impose harm. The North Carolina Supreme Court has already delayed the 2022 primary elections until May 17, 2022. And the State Board has made clear that it can feasibly conduct those elections under new maps so long as it receives them by the week of February 14, 2022.

B. Jurisdiction Over Further Proceedings In This Case, And Any Remedial Process, Will Reside In The Supreme Court.

97. The North Carolina Supreme Court's December 8, 2021 preliminary-injunction order specified that, after this Court "reach[es] a ruling on the merits of plaintiffs' claims," any party wishing to appeal that decision "must file a Notice of Appeal within two business days … in the trial court and with [the North Carolina Supreme] Court." Dec. 8, 2021 Order at 4. This Court reads that Order to hold that once this Court reaches a "merits" ruling on liability, further proceedings—including any proceedings concerning remedy—will occur in the North Carolina Supreme Court and that this Court will be divested of jurisdiction by the filing of the notice of appeal.

C. North Carolina Courts Are Not Required To Give The General Assembly An Opportunity To Redraw Maps In The First Instance.

98. Although courts typically afford state legislatures the first opportunity to remedy unlawful districts, courts have declined to do so where the legislature has repeatedly violated the law in drawing redistricting plans and otherwise shown bad faith in the redistricting process. *E.g.*, *Hays v. State*, 936 F. Supp. 360, 371-72 (W.D. La. 1996) (court refused to "turn a blind eye on the record of the Legislature" in enacting two unlawful plans and thus implemented its own remedial plan instead); *Terrazas v. Slagle*, 789 F. Supp. 828, 838, 840-41 (W.D. Tex. 1991) (court adopted

its own remedial state legislative plans in the first instance after concluding, in light of the legislature's recent redistricting actions, that there was "no real hope that further deference to the legislature at this time would yield any result other than continued protection of some members' self-interests").

99. The General Assembly's history would justify that same approach here. During the past 10 years, the General Assembly has repeatedly violated the North Carolina State Constitution and the federal Constitution in drawing Congressional and legislative districts. In drawing the state House and Senate districts in 2011, Legislative Defendants engaged in unlawful racial gerrymandering. *See Covington*, 316 F.R.D. 117. After those plans were struck down, the General Assembly intentionally created unconstitutional partisan gerrymanders in violation of the North Carolina State Constitution, and in *Common Cause* and *Harper*, three-judge panels enjoined the maps for Congress, the state Senate, and the state House. A three-judge panel also held that the General Assembly violated the North Carolina State Constitution's ban on mid-decade redistricting during the 2017 redistricting as well. *See NAACP v. Lewis*, No. 18 CVS 2322. The Enacted Plans constitute only the most recent example of the General Assembly's unwillingness to conform its districting decisions to the law.

100. It is not only congressional and state legislative districts for which the General Assembly has passed unconstitutional redistricting laws. In just the last five years, the General Assembly has committed constitutional violations in redistricting everything from congressional districts to school boards to city councils. *See Raleigh Wake Citizens Ass'n v. Wake Cty. Bd. of Elecs.*, 827 F.3d 333 (4th Cir. 2016); *Greensboro City Council City of Greensboro v. Guilford Cty. Bd. of Elecs.*, 251 F. Supp. 3d 935 (M.D.N.C. 2017).

101. Nor is the General Assembly's disregard of the law limited to redistricting. In the

last decade, the General Assembly has passed myriad election laws that courts have invalidated on state or federal constitutional grounds.

- In 2013, the General Assembly passed an omnibus law that "target[ed] African Americans with almost surgical precision." *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016). The law "restricted voting and registration in five different ways, all of which disproportionately affected African Americans." *Id.*
- In 2017, just months after a similar law was enjoined by the courts, the General Assembly enacted a new law that unconstitutionally sought to limit the Governor's power to appoint members of the State Board of Elections, to cement the State Board's Executive Director in this role, and to require Republican Party leadership of County Boards of Elections. *Cooper v. Berger*, 370 N.C. 392, 809 S.E.2d 98 (2018); Order, *Cooper v. Berger*, No. 18 CVS 3348 (N.C. Super. Oct. 16, 2018).
- In 2018, the General Assembly unconstitutionally attempted to change the party registration listed on the ballot for a candidate for the North Carolina Supreme Court. *See Anglin v. Berger*, No. 18-CVS-9748 (N.C. Super. Aug. 13, 2018).
- In 2018, Legislative Defendants enacted a law that unconstitutionally removed candidates from the Constitution Party from the ballot. *Poindexter v. Strach*, 324 F. Supp. 3d 625, 627 (E.D.N.C. 2018).

102. Given this history, "the Legislature has left us no basis for believing that, given yet another chance, it would produce a constitutional plan." *Hays*, 936 F. Supp. at 372.

PROPOSED DECREE

1. The Court declares that the Enacted Congressional Plan is unconstitutional and invalid because it violates the rights of Plaintiffs and other North Carolina voters under North Carolina's Free Elections Clause, Equal Protection Clause, Free Speech Clause, and Free Assembly Clause and that all of its districts are affected by unconstitutional partisan gerrymandering, racial vote dilution, or both.

2. The Court declares that the Enacted Senate Plan is unconstitutional and invalid because it violates the rights of Plaintiffs and other North Carolina voters under North Carolina's Free Elections Clause, Equal Protection Clause, Free Speech Clause, and Free Assembly Clause and that all of its districts are affected by unconstitutional partisan gerrymandering, racial vote dilution, or both.

3. The Court declares that the Enacted House Plan is unconstitutional and invalid because it violates the rights of Plaintiffs and other North Carolina voters under North Carolina's Free Elections Clause, Equal Protection Clause, Free Speech Clause, and Free Assembly Clause and that all of its districts are affected by unconstitutional partisan gerrymandering, racial vote dilution, or both.

4. The Court declares that the Enacted Senate Plan and Enacted House Plan are unconstitutional and invalid because they violate the Whole County Provisions of the North Carolina State Constitution (Article II, Sections 3(3) & 5(3)), as interpreted in the *Stephenson*/*Dickson* cases, by unnecessarily traversing county lines and by forming districts that are less compact than they could be under a fair map.

5. The Court hereby enjoins Defendants, their officers, agents, servants, employees, attorneys, successors in office, and all persons in active concert or participation with them, from

preparing for, administering, or conducting any election (including the 2022 primary and general elections) under the Enacted Congressional Plan, the Enacted Senate Plan, or the Enacted House Plan, or any other congressional or legislative redistricting plan that violates the North Carolina State Constitution.

6. The North Carolina Supreme Court's December 8, 2021 preliminary-injunction order specified that, after this Court "reach[es] a ruling on the merits of plaintiffs' claims," any party wishing to appeal that decision "must file a Notice of Appeal within two business days … in the trial court and with [the North Carolina Supreme] Court." Dec. 8, 2021 Order at 4. This Court reads that Order to contemplate that, once this Court reaches a "merits" ruling on liability, further proceedings—including concerning remedy—will occur in the North Carolina Supreme Court and that this Court will be divested of jurisdiction by the filing of the notice of appeal.

7. The Court orders that any citizen having established his or her residence in a Senate or House district modified by any remedial redistricting plan approved by the North Carolina Supreme Court, as of the closing day of the candidate filing period for the 2022 election in that district, shall be qualified to serve as Senator or Representative if elected to that office, notwithstanding the requirements of Sections 6 or 7 of Article II of the North Carolina State Constitution, which provide that each Senator and Representative, at the time of his or her election, shall have resided "in the district for which he is chosen for one year immediately preceding his election."

Dated: December 31, 2021

Respectfully submitted,

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This 31st day of December, 2021.

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