

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF WAKE

NORTH CAROLINA LEAGUE OF  
CONSERVATION VOTERS, INC., *et al.*,  
*Plaintiffs*

and

COMMON CAUSE,  
*Plaintiff-Intervenor,*

v.

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

Case No. 21 CVS 015426

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.*

Case No. 21 CVS 500085

**PLAINTIFF COMMON CAUSES'  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

*Note from Counsel: These Proposed Findings of Fact and Conclusions of Law are submitted pursuant to the Court's December 13, 2021 Order setting forth a December 31, 2021 "Deadline for submission to the Court of proposed findings of fact and conclusions of law." As this document was drafted and submitted prior to the beginning of trial on January 3, 2021 (and thus prior to any trial testimony), Plaintiff Common Cause has included herein Proposed Findings of Fact based upon evidence it reasonably believes will be admitted at trial. Accordingly, Plaintiff Common Cause has provided herein citation to materials (including fact affidavits) disclosed by the parties prior to trial, as well as deposition testimony, which form the basis for the belief this information will be admitted in evidence at trial.*

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## INTRODUCTION

At issue in this case is whether House Bill 976 (2021 N.C. Sess. Law 175) (“House maps”), Senate Bill 739 (2021 N.C. Sess. Law 173) (“Senate maps”), and Senate Bill 740 (2021 N.C. Sess. Law 174) (“congressional maps”) were enacted with intent to discriminate against African-American voters in violation of the Equal Protection Clause of the North Carolina Constitution. Also at issue are whether the House maps, Senate maps, and Congressional maps are extreme partisan gerrymanders in violation of the North Carolina Constitution. Finally, at issue is whether the redistricting process undertaken by the General Assembly in 2021 violated state Constitutional Requirements, as interpreted by the North Carolina Supreme Court in the decisions *Stephenson v. Bartlett*, 355 N.C. 354 (2002) (*Stephenson I*) and *Stephenson v. Bartlett*, 357 N.C. 301 (2003) (*Stephenson II*).

After carefully considering all of the evidence, we conclude that the House maps, Senate maps, and Congressional maps were enacted with discriminatory racial intent in violation of the Equal Protection Clause of Article I, § 19 of the North Carolina Constitution and are extreme partisan gerrymanders in violation of Article I, Sections 10, 12, 14, and 19 of the North Carolina Constitution. We also conclude that the process undertaken by the General Assembly violated state Constitutional Requirements, and specifically the direction of the North Carolina Supreme Court that “to ensure full compliance with federal law, legislative districts required by the [Voting Rights Act (“VRA”)] shall be formed prior to the creation of non-VRA districts.” *Stephenson I*, 355 N.C. at 383.

Based on the evidence presented, the Court now makes the following findings of fact and conclusions of law.

## FINDINGS OF FACT

### I. History of Litigation.

1. On August 12, 2021, the North Carolina Legislature adopted its final criteria for redrawing the House, Senate and congressional maps for the 2021 redistricting cycle. PX34 (Final Adopted Criteria).

2. On October 29, 2021, Plaintiff Common Cause, along with the North Carolina State Conference of the NAACP, Marilyn Harris, Gary Grant, Joyah Bulluck, and Thomasina Williams brought suit against Phillip E. Berger, Timothy K. Moore, Ralph E. Hise Jr., Warren Daniel, Paul Newton, Destin Hall, the State of North Carolina, the North Carolina State Board of Elections, Damon Circosta, Stella Anderson, Stacy Eggers IV, Jeff Carmon III, Tommy Tucker, and Karen Brinson Bell, challenging the process that the North Carolina Legislature used to draw House, Senate, and Congressional maps. *NAACP v. Berger*, No. 21-CVS-014476 (N.C. Super. Ct. Dec. 3, 2021). Plaintiffs asked for a preliminary injunction requiring defendants to undertake a redistricting process that accorded with the North Carolina Constitution and delaying the Statewide Primary elections until at least May 3, 2022.

3. On November 4, 2021, four business days after the *NAACP v. Berger* plaintiffs filed suit, the North Carolina Legislature hastily enacted H.B. 976, S.B. 739, and S.B. 740. PX12, PX8, PX4 (Bill Summary Pages for H.B. 976, S.B. 739, and S.B. 740). The maps passed along partisan lines with no support from any Democratic legislators. PX14, PX1425, PX10, PX11, PX6, PX7 (Third Reading Vote Summaries for H.B. 976, S.B. 739, and S.B. 740); Marcus Aff. ¶ 14.

4. On November 30, 2021, the parties had a hearing before Judge Graham Shirley in the Superior Court of Wake County, who denied Plaintiffs' motion for a preliminary injunction.

5. On December 6, 2021, Plaintiffs gave notice of appeal with the Court of Appeals of North Carolina. On December 8, 2021, the North Carolina Supreme Court dismissed the Petition for Discretionary Review.

6. Meanwhile, Plaintiffs North Carolina League of Conversation Voters (NCLCV), Henry M. Michaux Jr., Dandrielle Lewis, Timothy Chartier, Talia Fernós, Katherine Newhall, R. Jason Parsley, Edna Scott, Roberta Scott, Yvette Roberts, Jereann King Johnson, Reverend Reginald Wells, Yarbrough Williams, Jr., Reverend Deloris L. Jerman, Viola Ryals Figueroa, and Cosmos George filed suit against Representative Destin Hall, Senator Warren Daniel, Senator Ralph E. Hise Jr., Senator Paul Newton, Representative Timothy K. Moore, Senator Philip E. Berger, the State of North Carolina, the North Carolina State Board of Elections, Stella Anderson, Jeff Carmon III, Stacy Eggers IV, Tommy Tucker, and Karen Brinson Bell on November 16.

7. The NCLCV Plaintiffs' Amended Complaint, filed November 16, 2021, alleges that the 2021 districting plans for Congress, the North Carolina Senate, and the North Carolina House of Representatives violate the North Carolina Constitution by establishing severe partisan gerrymanders in violation of the Free Elections Clause, Art. I, § 10, the Equal Protection Clause, Art. I, § 19, and the Freedom of Speech and Assembly Clauses, Art. I, §§ 12, 14; by engaging in racial vote dilution in violation of the Free Elections Clause, Art. I, § 10, and the Equal Protection Clause, Art. I, § 19; and by violating the Whole County Provisions, Art. II, §§ 3(3), 5(3). Joint Stip. ¶ 3.

8. Plaintiffs Rebecca Harper, May Clare Oseroff, Donald Rumph, John Anthony Balla, Richard R. Crews, Lily Nicole Quick, Gettys Cohen Jr., Shawn Rush, Jackson Thomas Dunn, Jr., Mark S. Peters, Kathleen Barnes, Virginia Walters Brien, and David Dwight Brown also sued Representative Destin Hall, Senator Warren Daniel, Senator Ralph Hise, Senator Paul Newton,

Representative Timothy K. Moore, Senator Philip E. Berger, the North Carolina State Board of Elections, Damon Circosta, Stella Anderson, Jeff Carmon III, Stacy Eggers IV, and Tommy Tucker on November, 18, 2021.

9. Harper Plaintiffs' Amended Complaint, filed December 12, 2021, alleges that the 2021 districting plans for Congress, the North Carolina Senate, and the North Carolina House of Representatives violate the North Carolina Constitution—namely its Free Elections Clause, Art. I, § 10; its Equal Protection Clause, Art. I, § 19; and its Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12, 14. Joint Stip. ¶ 4.

10. On December 8, 2021, in response to Plaintiffs' Discretionary Review Prior to Determination by the Court of Appeals, Motion to Suspend Appellate Rules to Expedite a Decision, and Motion to Suspend Appellate Rules and Expedite Schedule, the Supreme Court of North Carolina granted a preliminary injunction delaying the Statewide Primaries until May 17, 2022 and directed the Wake County Superior Court to decide the merits of challenges to the enacted House, Senate, and congressional maps on or before January 11, 2021.

11. On December 13, 2021, following the Supreme Court of North Carolina's acknowledgement of its right to intervene, Plaintiff Common Cause moved to intervene in the consolidated cases of *Harper v. Hall*, No. 21 CVS 50085 (N.C. Super Ct., Wake County) and *North Carolina League of Conservation Voters, Inc. v. Hall*, No. 21 CVS 015426 (N.C. Super. Ct., Wake County), which challenged the enacted House, Senate, and congressional maps as partisan gerrymanders.

12. On December 19, 2021, the North Carolina Superior Court in Wake County granted Common Cause's motion to intervene.

13. Plaintiff Common Cause’s Complaint, filed December 16, 2021, alleges that the 2021 districting plans for Congress, the North Carolina Senate, and the North Carolina House of Representatives violate the North Carolina Constitution—namely its Equal Protection Clause, Art. I, § 19; its Free Elections Clause, Art. I, § 10; and its Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12, 14—and seeks, among other relief, a declaratory ruling under the Declaratory Judgment Act. Joint Stip. ¶ 5.

14. The plaintiffs in this action are:

- (a) North Carolina League of Conservation Voters, Inc.; Henry M. Michaux, Jr.; Dandrielle Lewis; Timothy Chartier; Talia Fernos; Katherine Newhall; R. Jason Parsley; Edna Scott; Roberta Scott; Yvette Roberts; Jereann King Johnson; Reverend Reginald Wells; Yarbrough Williams, Jr.; Reverend Deloris L. Jerman; Viola Ryals Figueroa; and Cosmos George (collectively the “NCLCV Plaintiffs”).
- (b) Rebecca Harper; Amy Clare Oseroff; Donald Rumph; John Anthony Balla; Richard R. Crews; Lily Nicole Quick; Gettys Cohen Jr.; Shawn Rush; Jackson Thomas Dunn, Jr.; Mark S. Peters; Kathleen Barnes; Virginia Walters Brien; Eileen Stephens; Barbara Proffitt; Mary Elizabeth Voss; Chenita Barber Johnson; Sarah Taber; Joshua Perry Brown; Lauren Floor; Donald M. MacKinnon; Ron Osborne; Ann Butzner; Sondra Stein; Bobby Jones; Kristiann Herring; and David Dwight Brown (collectively the “Harper Plaintiffs”).
- (c) Common Cause. Joint Stip. ¶ 1.



15. The defendants in this action are as follows:

- (a) Destin Hall, in his official capacity as Chairman of the House Standing Committee on Redistricting; Ralph E. Hise, Jr., Warren Daniel, Paul Newton, in their official capacities as Co-Chairmen of the Senate Committee on Redistricting and Elections; Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate; Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives (collectively “Legislative Defendants”);
- (b) The State of North Carolina; The North Carolina State Board of Elections; Damon Circosta, in his official capacity as Chair of the State Board of Elections; Stella Anderson, in her official capacity as Secretary of the State Board of Elections; Stacy Eggers IV, in his official capacity as Member of the State Board of Elections; Jeff Carmon III, in his official capacity as Member of the State Board of Elections; Tommy Tucker, in his official capacity as Member of the State Board of Elections; Karen Brinson Bell, in her official capacity as Executive Director of the State Board of Elections (collectively “State Defendants”). Joint Stip. ¶ 2.

14. Defendant Ralph E. Hise, Jr. is a Republican member of the North Carolina Senate, representing Senate District 47, and the Chairman of the Senate Standing Committee on Redistricting and Elections. Defendant Hise is sued in his official capacity only. Defendant Hise resides in Senate District 47 in the 2021 districting plan. Joint Stip. ¶ 6.

15. Defendant Warren Daniel is a Republican member of the North Carolina Senate, representing Senate District 46, and the Chairman of the Senate Standing Committee on

Redistricting and Elections. Defendant Daniel is sued in his official capacity only. Defendant Daniel resides in Senate District 46 in the 2021 districting plan. Joint Stip. ¶ 7.

16. Defendant Paul Newton is a Republican member of the North Carolina Senate, representing Senate District 36, and the Chairman of the Senate Standing Committee on Redistricting and Elections. Defendant Newton is sued in his official capacity only. Defendant Newton resides in Senate District 34 in the 2021 districting plan. Joint Stip. ¶ 8.

17. Representative Destin Hall is Republican member of the North Carolina House of Representatives, representing House District 87, and the Chairman of the House Standing Committee on Redistricting. Defendant Hall is sued in his official capacity only. Defendant Hall resides in House District 87 in the 2021 districting plan. Joint Stip. ¶ 9.

18. Defendant Timothy K. Moore is a Republican member and the Speaker of the North Carolina House of Representatives, representing House District 111. Defendant Moore is sued in his official capacity only. Defendant Moore resides in House District 111 in the 2021 districting plan. Joint Stip. ¶ 10.

19. Defendant Philip E. Berger is a Republican member and the President Pro Tempore of the North Carolina Senate, representing Senate District 30. Defendant Berger is sued in his official capacity only. Defendant Berger resides in Senate District 26 in the 2021 districting plan. Joint Stip. ¶ 11.

20. All parties stipulate and agree that any party may cite, discuss, and otherwise rely on as admitted evidence, publicly available legislative records from the website of the North Carolina General Assembly concerning SB 739,<sup>1</sup> SB 740,<sup>2</sup> HB 976,<sup>3</sup> and Legislative and Congressional

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<sup>1</sup> S.L. 2021-173, <https://www.ncleg.gov/BillLookup/2021/S739>.

<sup>2</sup> S.L. 2021-174, <https://www.ncleg.gov/BillLookup/2021/S740>.

<sup>3</sup> S.L. 2021-175, <https://www.ncleg.gov/BillLookup/2021/H976>.

Redistricting,<sup>4</sup> including all materials from the House Standing Committee on Redistricting,<sup>5</sup> the Senate Standing Committee on Redistricting and Elections<sup>6</sup> (together, with the House Standing Committee on Redistricting, the “Redistricting Committees”), and the Redistricting Committees jointly concerning the aforementioned redistricting plans and the 2021 redistricting cycle. *Id.* ¶ 45.

21. All parties stipulate and agree that any party may cite, discuss, and otherwise rely on as admitted evidence, all transcriptions, audio and/or video recordings of: (1) the committee meetings of the House Standing Committee on Redistricting, the Senate Standing Committee on Redistricting and Elections, and the Joint Redistricting Committee, including public hearings hosted by any of those committees concerning the 2021 redistricting process, (2) the House and Senate floor votes concerning SB 739, SB 740, and HB 976, and (3) the publicly available House and Senate map drawing sessions related to SB 739, SB 740, and HB 976. *Id.* ¶ 46.

22. All parties stipulate and agree to the accuracy and admissibility of historical election results publicly available on the website of the North Carolina State Board of Elections, including all election results from 2000 to 2020, sorted by precinct, available on the North Carolina State Board of Elections website.<sup>7</sup> *Id.* ¶ 47.

23. All parties stipulate and agree to the accuracy and admissibility of the publicly available Public Law 94-171 redistricting data released by the United States Census Bureau in 2021,

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<sup>4</sup> *Legislative and Congressional Redistricting*, NORTH CAROLINA GENERAL ASSEMBLY, <https://www.ncleg.gov/Redistricting>.

<sup>5</sup> *Redistricting House Standing Committee*, NORTH CAROLINA GENERAL ASSEMBLY, <https://www.ncleg.gov/Committees/CommitteeInfo/HouseStanding/182>.

<sup>6</sup> *Redistricting and Elections Senate Standing Committee*, NORTH CAROLINA GENERAL ASSEMBLY <https://www.ncleg.gov/Committees/CommitteeInfo/SenateStanding/154>.

<sup>7</sup> U.S. Census Bureau, *Historical Election Results Data*, <https://www.ncsbe.gov/results-data/election-results/historical-election-results-data> (last visited Dec. 31, 2021); North Carolina State Board of Elections, <https://dl.ncsbe.gov> (last visited Dec. 31, 2021).

including data from the United States Census Bureau’s 2020 Census (Public Law 94-171) “Redistricting Data Summary Files” and “TIGER/Line Shapefiles.”<sup>8</sup> *Id.* at ¶ 48.

**II. North Carolina Has a Long History of Drawing Unconstitutional Maps that Violate Both the North Carolina Constitution and the United States Constitution.**

24. This suit is the latest in a long line of cases that have challenged the constitutionality of the legislative maps enacted by the North Carolina Legislature. Leloudis Report at 52, 63-64, 71-74. Unfortunately, the North Carolina Legislature has an extensive history of repeatedly violating both the North Carolina Constitution and the United States Constitution by engaging in intentional racial discrimination, racial gerrymandering, and partisan gerrymandering. Leloudis Report at 63-64, 71-74.

25. Following each decennial census, the North Carolina General Assembly must redraw the districts for the North Carolina House of Representatives, the North Carolina Senate, and the North Carolina Congressional map. Joint Stip. ¶ 12.

26. In North Carolina, legislative redistricting is performed exclusively by the General Assembly. The Governor of North Carolina has no power to veto redistricting bills. *Id.* ¶ 13. Amending the Constitution to achieve a different redistricting process can only be accomplished by the Legislature; there is no ballot process that the people can pursue to do so. Taylor Dep.<sup>9</sup>

27. Between 1870 and 2010, Democrats at all times controlled one or both houses of the General Assembly. *Id.* ¶ 15.

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<sup>8</sup> U.S. Census Bureau, *2020 Census: Redistricting File (Public Law 94-171) Dataset* (Aug. 12, 2021), <https://www.census.gov/data/datasets/2020/dec/2020-census-redistricting-summary-file-dataset.html>; S. Census Bureau, *TIGER/Line Shapefiles* (Oct. 7, 2021) <https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-line-file.html>; U.S. Census Bureau (Aug. 12, 2021), [https://www2.census.gov/programs-surveys/decennial/2020/data/01-Redistricting\\_File--PL\\_94-171/North\\_Carolina/](https://www2.census.gov/programs-surveys/decennial/2020/data/01-Redistricting_File--PL_94-171/North_Carolina/).

<sup>9</sup> As this deposition occurred in the afternoon of December 31, 2021, specific deposition cites are unavailable.

28. After the 2010 election, for the first time since 1870, Republicans constituted a majority of both the North Carolina House of Representatives and the North Carolina Senate. *Id.* ¶ 16.

29. Republicans have constituted a majority in both the North Carolina House of Representatives and the North Carolina Senate from 2010 to present day and have therefore controlled each of the last two cycles of redistricting in North Carolina. *Id.* ¶ 17.

30. The North Carolina 2011 redistricting cycle was particularly litigious and resulted in several rounds of map drawing and redrawing. Leloudis Report at 63-64, 71-74. In 2010, the Republican Party took unified control of the North Carolina General Assembly for the first time since 1870, just as the United States Census Bureau released the results of the decennial census. Leloudis Report at 60. The North Carolina Republican Party was thus positioned to control the redistricting process that would determine state legislative and Congressional maps for the next ten years.

31. The North Carolina General Assembly enacted new House, Senate, and Congressional maps that were quickly challenged in federal court. In 2016, a federal three-judge court found that the House and Senate districts were unconstitutional racial gerrymanders in *Covington v. North Carolina*, 316 F.R.D. 117, 176–78 (M.D.N.C. 2016), and enjoined their use. The United States Court Supreme Court summarily affirmed this decision. 137 S. Ct. 2211 (2017).

32. The Federal Court for the Middle District of North Carolina also found Congressional Districts 1 and 12 were unconstitutional racial gerrymanders in *Harris v. McCrory*, 159 F. Supp. 3d 600, 604 (M.D.N.C. 2016), a decision that was affirmed by the United States Supreme Court in *Cooper v. Harris*, 137 S. Ct. 1455, 1481–82 (2017).

33. The North Carolina legislature subsequently redrew state legislative and congressional maps in 2017, which contained their own constitutional defects. In 2019, a three-judge panel of

the North Carolina Superior Court of Wake County struck down the 2017 state legislative maps as unconstitutional party gerrymanders. *Common Cause v. Lewis*, 2019 N.C. Super. LEXIS 56, at \*404–05 (N.C. Super. Ct. Sept. 3, 2019). Soon thereafter, the same three-judge panel found the 2017 congressional maps were an unconstitutional gerrymander and enjoined their use. *Harper v. Lewis*, 2019 N.C. Super. LEXIS 122, at \*24–25 (N.C. Super. Ct. Oct. 28, 2019).

34. In the new 2021 redistricting cycle, the North Carolina Legislature pursued many of the same or similar tactics as implemented in the prior redistricting cycle and has, yet again, drawn maps that discriminate against racial minorities and Democratic voters.

### **III. The 2021 Redistricting Process**

#### **A. The Legislative Defendants Fail To Plan Or Account For the Delay In Census Data.**

35. On February 12, 2021, the U.S. Census Bureau announced that its release of P.L. 94-171 redistricting data would be delayed by the COVID-19 pandemic, and would not be released until the fall of 2021, and specifically that it would deliver the Public Law 94.171 redistricting data to all states by September 30, 2021. Joint Stip. ¶ 18

36. On February 24, 2021, the North Carolina State Board of Elections Executive Director Karen Brinson Bell presented recommendations to the House Elections Law and Campaign Finance Reform Committee to move the 2022 primary to a May 3 primary, July 12 second primary, and November 8 general election. PX1402 (Feb 24, 2021 Presentation by N.C. State Bd. of Elections); Joint Stip. ¶ 19.

37. When Senator Hise received this recommendation, he had “no idea” how long the redistricting process would take. Hise. Dep. 155:3-18. Nonetheless, he and his co-chairs did not follow the Board’s recommendations to delay the primaries and provide more time for the redistricting cycle. *Id.* at 140:18-25. Senator Hise did, however, co-sponsor a senate bill that modified the deadline for municipalities similarly impacted by the census delay. *Id.* at 143:1-8.

38. On March 15, 2021, the United States Census Bureau announced that it would release a “legacy” format summary redistricting data file to all states by mid-to-late August 2021, in addition to the “tabulated” P.L. 94-171 block-level data released before September 30, 2021, “[i]n recognition of the difficulties this timeline creates for states with redistricting and election deadlines prior to Sept. 30.” PX132 (Mar. 15, 2021 Press Release from the U.S. Census Bureau); Joint Stip. ¶ 20.

39. On April 26, 2021, the United States Census Bureau released data indicating that North Carolina’s population increased from 9,535,483 residents in 2010 to 10,439,388 residents in 2020. PX142<sup>10</sup>; PX133<sup>11</sup>; PX143<sup>12</sup>; Joint Stip. ¶ 21. This 9.5 percent population increase resulted in North Carolina being given an additional Congressional seat following the 2020 Census, resulting in North Carolina’s congressional delegation growing from 13 to 14 members. PX142<sup>13</sup>; PX133<sup>14</sup>; PX143; Joint Stip. ¶ 21.

40. The Redistricting Chairs first convened the House and Senate Redistricting Committees in a joint session on Thursday, August 5, 2021. PX1403<sup>15</sup>; Joint Stip. ¶ 23. The Legislative Defendants were aware that the delay in the release of Census Data would shorten the amount of

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<sup>10</sup> U.S. Census Bureau, *North Carolina: 2010: Population and Housing Unit Census* (2021), <https://www.census.gov/prod/cen2010/cph-2-35.pdf>.

<sup>11</sup> U.S. Census Bureau, *North Carolina: 2010: Population and Housing Unit Census* (2021), <https://www.census.gov/prod/cen2010/cph-2-35.pdf>.

<sup>12</sup> See U.S. Census Bureau, *2020 Census Apportionment Results Delivered to the President* (Apr. 27, 2021); <https://www.census.gov/newsroom/press-releases/2021/2020-census-apportionment-results.html>; *North Carolina: 2020 Census*, U.S. CENSUS BUREAU (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/north-carolina-population-change-between-census-decade.html>.

<sup>13</sup> U.S. Census Bureau, *North Carolina: 2010: Population and Housing Unit Census* (2021), <https://www.census.gov/prod/cen2010/cph-2-35.pdf>.

<sup>14</sup> U.S. Census Bureau, *North Carolina: 2010: Population and Housing Unit Census* (2021), <https://www.census.gov/prod/cen2010/cph-2-35.pdf>.

<sup>15</sup> *Joint Meeting of the Senate Redistricting and Elections Committee and the House Redistricting Committee to Begin Discussion on the Redistricting Process*, Aug. 5, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-05-2021/6683.pdf>.

time available to pass new state Legislative and Congressional maps before relevant deadlines, including the one-year residency deadline that state Legislative candidates would have to meet and the candidate-filing deadline on December 6, 2021 for all 2020 general election candidates. Hise Dep. 139:23-140:5. Nonetheless, they chose not to convene the Senate and House Redistricting Committees earlier to plan for the process, Hise Dep. 143:8-22, and chose not to propose or set forth a schedule for the redistricting process that would have allowed the public or their Democratic colleagues to prepare for the steps that would be taken before final enactment of state Legislative and Congressional plans. Hise Dep. 153:7-13. The Chairs of the Redistricting Committees had the general authority to make such decisions and set forth a predictable schedule, but chose not to. Hise Dep. 143:12-19.

B. The Redistricting Chairs Propose and the Redistricting Committees Adopt Criteria That Prevent Members From Adhering to State Constitutional Requirements in Redistricting.

41. Following this August 5 meeting, staff member Erika Churchill distributed to Joint Committee members the legislative redistricting criteria ordered by the North Carolina Superior Court for Wake County in its September 3, 2019 Judgement in the matter *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56 (“the 2019 Criteria”). PX1404<sup>16</sup>; Joint Stip. ¶ 24.

42. Consistent with state Constitutional requirements, including the Supremacy Clauses in Article I, Sections 3 and 5, the 2019 Criteria set forth by the court in *Common Cause* specifically required that new maps comply with the VRA and other federal requirements concerning the racial composition of districts, and required the parties to submit briefing and expert analysis on whether VRA districts were required within 14 days of the order, including consideration of whether the

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<sup>16</sup> E-mail from Erika Churchill, Staff Attorney, Legislative Analysis Division, N.C. General Assembly, to Joint Committee Members (Aug. 5, 2021).



minimum Black Voting Age Population (“BVAP”) thresholds were met to implicate the VRA. *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, at \*417 (N.C. Super. Ct. Sept. 3, 2019).

43. Nevertheless, on Monday, August 9, 2021 the Chairs of the Redistricting Committees (the “Redistricting Chairs”) released the “2021 Joint Redistricting Committee Proposed Criteria,” which prohibited any use of racial data in redistricting by including the following criteria:

“Racial Data. Data 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.”

PX33<sup>17</sup>; Joint Stip. ¶ 25.

44. The criteria also stated that “[p]artisan consideration and election data results shall not be used in the drawing of districts for the 2021 Congressional, House and Senate Plans.” PX34.

45. On August 10, 2021 beginning at 8:30 am, the Redistricting Committees received in-person public comment on the proposed criteria. Joint Stip. ¶ 26. At that public comment period, Plaintiffs’ Counsel Allison Riggs urged legislators to reform the criteria to ensure that minority voters had the opportunity to elect candidates of their choice:

It is neither appropriate nor required to draw districts race-blind. As long as redistricting has occurred, it has been a tool used to harm voters of color. Beyond compliance with the Voting Rights Act, it is entirely appropriate to advance race-equity to consider race in the drawing of districts, to ensure that voters of color are not being packed or cracked. Additionally, in *Covington v. North Carolina*, this legislative body tried the same thing with respect to race-blind redistricting. A three-judge panel, including Republican and Democratic appointees, and a unanimous Supreme Court, rejected your race-blind remedial drawing of two Senate districts and two house districts. In fact there is apparently not a federal judge out there who agrees with this approach and we urge you to abandon that criteria.

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<sup>17</sup> 2021 Joint Redistricting Committee Proposed Criteria, North Carolina General Assembly Joint Redistricting Committee, Aug. 9, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-09-2021/2021%20Joint%20Redistricting%20Committee%20Plan%20Proposed%20Criteria.pdf>.

PX1487.<sup>18</sup>

46. On August 12, 2021, the U.S. Census Bureau released the 2020 Census Redistricting Data (Public Law 94-171) Summary File for all states, including North Carolina, in “legacy” format. PX134<sup>19</sup>; Joint Stip. ¶ 22. The vast majority of population growth occurred in urban and suburban areas. PX1450. Accordingly, if the North Carolina Legislature failed to draw new state legislative maps, North Carolina’s existing House and Senate districts would be substantially unequal in population size and deviation. PX1451.

47. On August 12, 2021, the Joint Redistricting Committee debated amendments to their proposed criteria. Joint Stip. ¶ 27. At this meeting, Senator Newton, Chair of the Senate Redistricting Committee, made the following statement:

The second question I want to address is the decision to exclude racial data from being used by this committee in the drawing of districts; of course we understand that North Carolina is obligated to comply with Section 2 of the Voting Rights Act when drawing districts in the 2021 Congressional, House, and Senate plans, but during the last decade the Supreme Court told us that there is not sufficient evidence of racially polarized voting in North Carolina to justify the consideration of race when drawing districts. If you have new evidence or new studies of racially polarized voting in North Carolina, we would be willing to examine that evidence, and nothing in this criteria prevents any member from bringing forward such evidence during this process.

PX77 at 3 (8/12/2021 Transcript).

48. In response, Senator Dan Blue stated that the North Carolina Supreme Court held in *Stephenson v. Bartlett* that legislators were first required to determine whether districts are required to comply with the VRA. PX77 at 4 (8/12/2021 Transcript). Senator Blue queried how this would be possible without the use of racial data, stating, “I think that *Stephenson* makes it relatively clear

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<sup>18</sup> NCGA Redistricting, *2021-08-10 Committee (Joint)*, YOUTUBE, <https://youtu.be/QFA6QNpqWVk?t=2084>, (Aug. 10, 2021).

<sup>19</sup> See U.S. Census Bureau, *U.S. Census Bureau Delivers Data for States to Begin Redistricting Efforts* (Aug. 12, 2021), <https://www.census.gov/newsroom/press-releases/2021/population-changes-nations-diversity.html>.

that before you consider clustering or groupings, you have to make that VRA determination.” PX77 at 4 (8/12/2021 Transcript).

49. Senator Newton replied, “The chairs have considered the various options and we will comply with the law and the methodology we used in 2019 passed muster and we’re going to continue with that methodology.” PX77 at 4 (8/12/2021 Transcript). He did not explain how the legislature would comply with the VRA without using racial data. *See generally* PX77 at 4 (8/12/2021 Transcript).

50. Senator Warren Daniel then proposed that the Joint Committees add a sentence under the criteria stating, “The Committee will draw districts that comply with the Voting Rights Act.” PX77 at 4 (8/12/2021 Transcript). Senator Daniel failed, however, to address the obvious problem the amendment posed – how this would or could be done achieved without any racial data or analysis of racially polarized voting patterns. PX77 at 4–5 (8/12/2021 Transcript). The amendment was nonetheless adopted into the final criteria. PX77 at 5 (8/12/2021 Transcript).

51. After Senator Daniel proposed his amendment, Senator Blue proposed an amendment titled “Voting Rights Act.” This amendment provided: “As condemned by the United States Supreme Court in *Cooper v. Harris* and *Covington v. State of North Carolina*, African-Americans shall not be packed into any grouping or district to give partisan advantage to any political party.” PX77 at 14 (8/12/2021 Transcript); PX73 (proposed amendment).

52. During debate on this amendment, Senator Blue offered the following comment on the amendment:

The amendment is sort of self-explanatory. I simply say that for the four decades since the 1980s redistricting, starting with *Gingles v. Edmisten*, and through *Shaw v. Reno*, and through the series of cases at the early part of this century, and the cases in the last redistricting cycle, North Carolina has basically been the state with the chin out before the Supreme Court to get our redistricting plans struck down. And we’ve spent tens of millions of dollars over that time period, from the 80s

forward, to have the Supreme Court basically say no to all of those efforts that we've done. So this is an effort to make sure that we make an effort to try and save the taxpayers what now is collectively more than 50 million dollars in efforts and futility, by setting forth that related to Senator Daniel's earlier amendment, that we know what the Voting Rights Act requires, we know what the Supreme Court has said, and this is the language that they have used with respect to, in both *Cooper v. Harris* and *Covington v. North Carolina*, what you've got to do to comply with the Voting Rights Act. I just offer the amendment so that it's constantly before us, so that we don't get tempted to sort of skirt to the edge again, and cost the taxpayers another 10 to 20 million dollars defending this thing back up through the Court of Appeals or the Supreme Court, or a three-judge panel and the Supreme Court. So I move for the adoption of the amendment.

PX77 at 14 (8/12/2021 Transcript).

53. During debate on the amendment, Senator Clark raised concerns about how North Carolina could comply with the VRA without considering racial data: "How do we intend to comply with the Voting Rights Act if we don't use the racial data that is required to comply with it?" PX77 at 14 (8/12/2021 Transcript).

54. In response, Defendant Daniel expressed the view that prior case law in North Carolina did not require the use of racial data:

Just as Senator Newton explained at the beginning of the meeting, in the event that evidence is presented to the committee that there's racially polarized voting in North Carolina then that might be something the committee would need to address. At this point, the courts in 2019 and even the Democrats' own expert have said that there is not racially polarized voting in North Carolina, and so that's sort of where we think we're at."

PX77 at 14–15 (8/12/2021 Transcript)

55. Senator Clark then reminded Senator Daniel of the *Stephenson* mandate:

Given that the Stephenson requirement is there, that we do VRA districts first, is it not incumbent upon the General Assembly itself to perform racially polarized studies in order to make that determination that, as we are here today, that there is no racial polarization in North Carolina with regard to voting?

PX77 at 15 (8/12/2021 Transcript)

56. Senator Daniel responded by saying, “We don’t feel that it necessary at this point at the outset of the map drawing.” PX77 at 15 (8/12/2021 Transcript)

57. Senator Clark then asked as a follow up, “Were we considering all of the VRA districts within the 2019 court case?”, which Senator Daniel declined to answer, saying “I don’t really have any further comment about this amendment.” PX77 at 15 (8/12/2021 Transcript).

58. The amendment offered by Senator Blue failed. PX77.

59. At the same meeting, Representative Hawkins offered an amendment to the proposed criteria entitled “Community Consideration.” Hawkins Aff. ¶ 6. This amendment would have provided clarity about what constitutes a community of interest and reasonable efforts to preserve such communities. Hawkins Aff. ¶ 7. That amendment also failed.

60. On Thursday, August 12, 2021, the Redistricting Committee adopted the final redistricting criteria. Joint Stip. ¶ 28. The final criteria prohibited the use of any racial data in the 2021 redistricting process. PX33 (2021 Redistricting Criteria).<sup>20</sup> The adopted criteria also included a provision that “[t]he Committees will draw districts that comply with the Voting Rights Act,” but again failed to specify how that would be possible without the use of racial data.

61. But while the criteria formally prohibited the use of racial data in the construction or consideration of districts, the unrebutted evidence those that in practice it would be and was impossible for the Redistricting Chairs to proceed of a “race-blind” redistricting process. This is because legislators (including the Redistricting Chairs themselves) have pre-existing knowledge of racial demographic and geographic information that they do not simply “unlearn” through the adoption of purportedly “race-blind” criteria.

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<sup>20</sup> *Adopted Redistricting Criteria*, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documentsites/committees/Senate2021-154/2021/08-12-2021/Criteria.adopted.8.12.pdf>.

62. The evidence in this matter strongly supports this principal as it applies specifically to the legislators drawing districts in 2021. For example, Senator Hise worked on every North Carolina statewide map since 2011 and in all of those instances, he reviewed analysis of racial data that Thomas Hofeller prepared. Hise Dep. 14:23-24, 133:16-134:13. Senator Hise admitted he is familiar with the racially polarized voting analysis by Dr. Thomas Brunell that the General Assembly commissioned for the 2011 redistricting cycle. His Dep. 135:2-18. He also testified that he is generally aware that there are higher proportions of minority populations in urban areas than in rural areas, with the exception of eastern North Carolina where there are significant Black residents. Hise Dep. 213:13-21. He also admitted that, once aware of this and similar information, he cannot “un-know it.” Dep. 212:15-17.

63. Like Senator Hise, Representative Hall participated in past redistricting cycles, including the 2017 redistricting cycle. Hall Dep. 23:17-20. In 2021, Representative Hall drew almost all of the state House plans that were enacted in 2021 and sponsored the bill that enacted the plan. Hall Dep. 33:17-21. Representative Hall acknowledges that once a map drawer learns about racial data from previous redistricting cycles, the legislator may bring that knowledge to the current redistricting cycle. Hall Dep. 65:6-13.

64. Overall, the Committee Chairs have been involved in redistricting in North Carolina for several decades and are intimately familiar with the demographic data across the state. Hawkins Aff. ¶ 13; *see also* Leloudis Rough Depo Tr. at 17:3-16; Leloudis Report at 78-79.

65. Legislators go into map-drawing with knowledge of the basic demographics, including race, of voters in the state and in the districts they represent. Taylor Rough Dep. Tr. [X]. Legislators must know the general demographic makeup of their districts in order to get elected and understand the role that demographics play in the election process. Taylor Dep.

66. Accordingly, the court finds that, notwithstanding criteria that prohibited the formal use of racial data in drawing district lines, the North Carolina Legislature did in fact use knowledge of racial data (regardless of whether or not they had this data with them when drawing district lines on public computers) to the extent they relied on their knowledge accumulated over previous redistricting cycles and throughout their experience as legislators.

67. This same finding applies to the use of partisan considerations and election data in redistricting. The final adopted criteria provided that “Election Data. Partisan considerations and election results data shall not be used in the drawing of districts in the 2021 Congressional, House, and Senate plans.” PX34. However, in light of the Redistricting Chairs’ extensive prior participation in redistricting, and the knowledge they inherently know as legislators about the political geography of North Carolina, it would be impossible for them to not use their pre-existing knowledge of election results or the partisan lean of geographic areas across the state. Rep. Hall Tr. 65:6-13; Sen. Hise Tr. 130:10-133:10, 212:15-17.

C. The Redistricting Chairs Mandate The Use of County Clusters That Further Prevent Members from Adhering to State Constitutional Requirements in Redistricting.

68. On Tuesday, October 5, 2021, the House Committee on Redistricting and the Senate Committee on Redistricting and Elections convened separately. In both meetings, the Redistricting Chairs announced that they would limit consideration of the Senate and House maps to those drawn using the county clusters described in the academic paper *N.C. General Assembly County Clusterings from the 2020 Census* (“the “Duke Academic Paper”), published on the Duke University website “Quantifying Gerrymandering.” PX80 at 7–8 (10/5/2021 House Redistricting Transcript); PX80 at 1–21 (10/5/2021 Senate Redistricting Transcript); PX70 (Quantifying Gerrymandering);

69. The Duke Academic Paper states that “[t]he one part of *Stephenson v. Bartlett* which this analysis does not reflect is compliance with the Voting Rights Act,” PX70 (Quantifying Gerrymandering), a fact that was known to the Redistricting Chairs and announced publicly in both the House and Senate Redistricting Committee Meetings. PX80 at 18:6-9 (10/5/2021 Senate Redistricting Transcript); PX79 at 9:14-16 (10/5/2021 House Redistricting Transcript).

70. In the Senate Redistricting Committee meeting, Senator Blue repeatedly asked how leadership had ensured compliance with the VRA, as required under the North Carolina Constitution, in the mandated clusters without any demographic analysis. PX80 at 6 (10/5/2021 Senate Redistricting Transcript). Senator Marcus stated the committee needed to conduct an RPV study to ensure legal compliance. PX80 at 7 (10/5/2021 Senate Redistricting Transcript). Chair Hise confirmed the Chairs’ views that no demographic data was legally required, and that there was no directive to staff to order any RPV analysis or provide racial data to members drawing maps. PX80 at 8 (10/5/2021 Senate Redistricting Transcript).

71. In the House Redistricting Meeting, Representative Harrison similarly questioned how the committee would comply with the VRA, as the Duke Academic Paper stated its analysis did not reflect compliance with the VRA as required by *Stephenson*. PX79 at 36 (10/5/2021 House Redistricting Transcript). Representative Reives inquired about the obligations under the VRA and how to comply with them. PX79 at 75 (10/5/2021 House Redistricting Transcript). Chair Hall stated the committees made a decision not to use racial data, contrary to redistricting criteria used in the previous two sessions, which Chair Hall alleged to be “the best way” to ensure compliance with the VRA as well as other state and federal law. PX79 at 35 (10/5/2021 House Redistricting Transcript).



72. Evidence was adduced in this litigation that, at the time, Defendants Hise and Hall were both aware of a public blog post endorsing the Duke Academic Clusters as advantageous to Republicans. Hise Dep. 167:22-168:3; 272:1-8. Hall Dep. 233:18-24; PX1531. This blog post was on the website “Differentiators,” which a website run by former Chief of Staff for Senator Berger, Jim Blaine. Hise Dep. 167:22-168:3.

D. The Redistricting Chairs Prevent the Committees from Undertaking any Racially Polarized Voting Analysis Or From Considering Such Evidence Despite Representations to the Contrary.

73. The Redistricting Chairs also used the purportedly “race-blind” criteria passed in August to prevent any other member from having staff gather data relevant to assess whether VRA concerns would require different clustering. For example, in the October 5 Senate Redistricting Committee meeting in which the clusters were announced, Senator Blue asked if legislative staff could provide data relevant to particular clusters in North Carolina to analyze whether there might be VRA concerns; Defendant Hise rejected this request, stating “we can provide the information that’s consistent with the guidance of this committee at this point, not including racial data as were coming in.” PX80 at 24:16-24 (10/5/2021 Senate Redistricting Transcript); Hise Dep. 185:14-22.

74. Furthermore, the Redistricting Chairs repeatedly stated they would be willing to examine evidence of racially polarized voting that was presented to the committees during the redistricting process, including evidence presented from either other legislators or from the public, and then failed to just that. Defendants Expert Dr. Lewis stated that it was entirely possible to do the RPV analysis before the maps were passed. However, he was only asked to do the RPV study after he was retained on November 12, 2021.<sup>21</sup>

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<sup>21</sup> As this deposition occurred in the afternoon of December 31, 2021, specific deposition cites are unavailable.

75. Specifically, on October 5, 2021, Defendant Hise said “this committee is still open to consider any information that exists on racially polarized voting.” Ex 80 at 32:24-33:2 (10/5/2021 Senate Redistricting Transcript). He also said in that meeting that “if information does come forward regarding racially polarized voting, we will consider it.” PX80 at 26:12-15 (10/5/2021 Senate Redistricting Transcript).

76. Similarly, Senator Newton stated on August 12, 2021 that, “If you have new evidence or new studies of racially polarized voting in North Carolina, we would be willing to examine that evidence, and nothing in this criteria prevents any member from bringing forward such evidence during this process.” PX77 at 11:11-16 (8/12/2021 Joint Committee Transcript). And in that same meeting, Representative Hall said:

We’re agreeing – or at least we’re proposing in this criteria not to use racial data at all in the drawing of these maps, but as Senator Daniel has said, members of the committee and members of the public are welcome to gather whatever evidence and put forth evidence that might fall under Section 2 of the Voting Rights Act, that that may require some use of racial data. And, of course, that will be up to this body, to this committee, and ultimately two bodies of the two chambers as to whether to consider that and how to do that. But at this point, none of that evidence has been put forth.

PX77 at 86:10-23 (8/12/2021 Joint Committee Transcript).

77. Following these statements, the Legislative Defendants and other committee members were presented with evidence on several occasions of potential VRA issues that would require further analysis.

78. On October 8, 2021, three days after the proposed County Cluster Maps were publicly released, Legislative Defendants received a letter from Allison Riggs, current counsel for Plaintiff Common Cause, informing them that the race-blind redistricting criteria adopted and the mandated county clusters violated well-established redistricting law. PX1412 (October 8 Letter). The

October 8 Letter also informed Legislative Defendants of specific areas in North Carolina Senate and House cluster maps that required examination for VRA compliance, including:

- (a) the Greene/Wayne/Wilson cluster “Q1” mandated by all 16 of the Senate Duke Cluster options;
- (b) the Sampson/Wayne cluster “LL2” mandated in some of the House Duke Cluster options; and
- (c) the Camden/Gates/Hertford/Pasquotank cluster “NN1” mandated in some of the House Duke Cluster options.

79. Representative Hall chose not to read this letter, and Sen. Hise took no action after receiving this letter. Hise Dep. 200:23-201:1, Hall Dep. 249:11-16. There is no evidence that any remedial action or RPV study was undertaken in response to this letter.

80. After draft Senate map, “SST-4”, was made publicly available on the ncleg.gov website, Legislative Defendants received a second letter from Allison J. Riggs, current counsel for Plaintiff Common Cause on October 25, 2021, in which she expressed concern that the cluster “Z1” chosen for this map from Duke Senate Clusters map “Duke\_Senate 02” would obstruct the ability of Black voters to continue electing their candidate of choice. PX1413 (October 25 Letter).

81. Senator Hise did not take any action to conduct a racially polarized voting study. Hise Dep. 206:17-20, nor did he ask the committee to vote on whether the committee should undertake a racially polarized voting analysis, Hise Dep. 211:2-6. There is no evidence that any remedial action or RPV study was undertaken in response to this letter.

82. On October 26, 2021, Plaintiff Common Cause sent a letter to Legislative Defendants, providing RPV analysis for Senate Districts 1 and 9 in map SST-4 that showed legally significant racially polarized voting in these proposed districts. PX1414 (October 26 Email).

83. Senator Hall admitted that he never specified what type of evidence, if not this, would induce him to examine whether the VRA required minority opportunity districts. Hise Dep. 209:17-212. There is no evidence that Defendant Hall, or any other Redistricting Chair, announced publicly what type of evidence, if not that already provided, would have prompted the Redistricting Committees to conduct analysis relevant to ascertain what the VRA might require.

84. Overall, the redistricting chairs unilaterally decided not to undertake or commission any racially polarized voting study for the 2021 redistricting cycle. Hise Dep. 135:19-25. The evidence described above supports that the redistricting criteria proposed by the Redistricting Chairs and passed, and the county clusters unilaterally required to be used by the Redistricting Chairs, were all intentionally put in place to prevent any such RPV or other racial analysis to be considered by the Committees during the process. This is further supported by contradictions from Defendant Hise as to what is required once new census data is released. Senator Hise acknowledged that the General Assembly is required to “start from scratch” in drawing new maps once Census Data is released. Hise Dep. 15-21. He also was aware of the RPV study Commissioned by Dr. Brunell in 2011, and that this study used 2010 census data and elections data that was more than 10-years old. Hise Dep. 174:11; 178:2-9. And yet he could not explain why more recent racial and election data would not similarly require the General Assembly to “start from scratch” in ascertaining what the VRA required. And no Redistricting Chair, either testifying in this matter or in public statements in Committee meetings, provided any evidence they had conducted an analysis using updated data that would show VRA districts were not required this cycle.

E. The 2021 Redistricting Process Had Serious Lapses in Transparency.

85. As previously explained, the North Carolina Legislature’s treatment of racial data and racial minority populations raises red flags. So, too, does the opacity of the redistricting process

as a whole. The Legislative Defendants engaged in a rushed map-drawing process that was entirely obscured from public view.

86. On August 18, 2021, legislative leaders announced that there would be ten public hearings on the proposed district maps. Phillips Aff. ¶ 17. By way of comparison, the Redistricting Committee had held over 60 hearings during the 2011 cycle. After public pushback, the legislature announced on September 1, 2021 that they would hold 13 public hearings beginning on September 8, 2021. *Id.* That gave the public less than one week's notice to prepare for the first hearing. *Id.* The legislative leaders provided no information regarding whether any draft maps would be available for the public to view in advance of the meetings or how public comment would ultimately be utilized in the drawing of maps. *Id.*

87. When the public hearings took place, they failed to provide meaningful opportunity for public comment. The first hearing on September 8, 2021 was scheduled to take place in Caldwell County. *Id.* at ¶ 18. However, the schedule announced by the Redistricting Committees provided the wrong location for the hearing, thereby preventing the public from fully engaging in this first hearing. *Id.* The North Carolina General Assembly's website stated that the hearing would be located in the Caldwell Community College and Technical Institute. *Id.* In fact, the hearing actually took place at the J.E. Boyhill Civic Center Auditorium, two miles away. *Id.* Members of the public who arrived at Caldwell Community College were met with inadequate instructions about where the hearing would take place. *Id.* Representative Becky Carney, who planned on presiding at the hearing, was also misled about the location and arrived at Caldwell Community College, unsure where to go. *Id.* As a result of this confusion, many members of the public who planned to speak at the hearing likely missed their opportunity to do so.

88. The legislative leaders likewise provided misleading information about the September 14, 2021 hearing in Forsyth County. *Id.* at ¶ 19. The hearing schedule on the North Carolina General Assembly website stated that the hearing would be held at the Strickland Auditorium. *Id.* The hearing actually took place at the Dewitt Rhoades Conference Center. *Id.*

89. The House and Senate hearing calendars also conflicted with each other, causing additional confusion. *Id.* at ¶ 20. The House and Senate calendars provided different times for the same Robeson County hearing scheduled for September 29, 2021. *Id.*

90. At none of these hearings were there any draft maps for the public to review or speak to. *Id.* at ¶ 22. The public therefore had no chance to provide input as to how the proposed maps would affect their communities. *Id.* In fact, many of the comments made at these pre-maps hearings were taken out of context by the Chairs and used to support maps in a way not intended by the individuals making comment. *See, e.g.,* Harrison Aff. ¶¶ 22-24. This distortion of public comment was possible because there were no draft maps available for the public to examine or refer to in their public comments. Moreover, the legislative leaders never provided transparency about how public comments would be used once map drawing began.

91. The legislature scheduled no public hearings at all in Raleigh, Greensboro, or Asheville, three of the largest municipalities in the state that also have high concentrations of African American voters. *Id.*; Hawkins Aff. ¶ 7.

92. Furthermore, at a time when the COVID-19 Delta variant was at its peak, lawmakers made no arrangements to livestream a single public hearing. *Id.* There were also no arrangements to provide Spanish and sign language interpretation on site to ensure all members of the public could meaningfully participate.

93. On Tuesday, October 5, 2021, the Senate Committee on Redistricting and the House Committee on Redistricting and Elections both convened separately. Daye Aff. ¶ 6.

94. At these meetings, the House and Senate Chairs of the Redistricting Committees announced in their respective committee meetings that they would make computer stations available to legislators to draw maps, beginning the morning of October 6, 2021. *Id.* The Chairs stated that there would be four stations available to the House in Room 643 of the Legislative Office Building, and there would be four stations available to the Senate in Room 544 of the Legislative Office Building. *Id.* The stations would be open during business hours, and both the rooms and the screens of the station computers would be live streamed while the stations were open. *Id.*

95. The legislature never issued any public announcement regarding how long the map drawing process would extend. *Id.* at ¶ 8. This gave the public no indication of how long the live streams would continue. *Id.* Moreover, map drawing days were continuously added to the legislative calendar with inadequate public notice up until November 4, 2021, the day State Senate, State House, and Congressional maps were enacted.

96. The Chairs did not provide lawmakers any set deadline by which they had to draw and propose maps. Phillips Aff. ¶ 23. Nor did they answer questions from legislators who asked about the timeline. Marcus Aff. ¶ 7. The Senate and House Redistricting Chairs did not provide legislators basic information about the process, including meeting agendas, and public hearing details. *Id.* at ¶ 5. When members asked for information of this sort, the chairs did not provide it. *Id.* This prevented legislators from meaningfully exercising their duties as members of the Redistricting Committees. *Id.*

97. Senator Marcus, a member of the Senate Redistricting Committee, observed that all major decisions in the process, including proposed criteria for map-drawing, what data would be made available for legislators to draw maps, designation of county cluster groups, when debate and votes would be held, and the timeline for the process writ large, appeared to have all been made by legislative leaders behind closed doors. *Id.* at ¶ 4. This made it extremely difficult for legislators to participate in the redistricting process. *Id.* Representative Hawkins also found that Democratic lawmakers were given little to no notice about agendas for redistricting committee meetings. Hawkins Aff. ¶ 9. They were also not informed about ways in which the public could participate in the redistricting process. *Id.*

98. From October 6, 2021 until the conclusion of the redistricting process, the legislature aired at least ten different live streams at a time. Daye Aff. ¶ 8. The legislature did not inform the public when any legislature would be physically present in any particular room drawing a map. *Id.* In order for the public to monitor the process, an individual had to sit at their computer, monitoring ten different live streams to observe any map-drawing activity, including times where multiple stations were being used at the same time. *Id.*

99. Plaintiff Common Cause North Carolina assigned staff members to watch every single video feed as long as the map drawing process went on, but could not fully monitor the process or fulsomely educate the public on the map-drawing process. *Id.*

100. At every terminal, there were long periods during which there was no map-drawing activity, but the public had no notice of when the map drawing would resume. *Id.* at ¶ 10. As a result, individuals had to constantly monitor all ten video feeds, even when those feeds showed nothing but empty rooms. *Id.*



101. The legislature also erected barriers to the public attending the map-drawing sessions in person. Phillips Aff. ¶ 25. Members of the public were made to sit in the back of the room, unable to hear or see who was drawing the maps or what information the map drawers were using. *Id.* The public was provided with no information about who was working any of the work stations. *Id.*

102. The live-streamed videos were also opaque and difficult to parse. The visuals in the live-streamed videos do not allow the viewer to see who was engaged in map drawing and whether the maps they were working on would be proposed or adopted. Daye Aff. ¶ 12. The camera was physically placed far from where the legislators were working, obscuring their activities. *Id.* The videos provided no information about the individuals who were drawing the maps. *Id.*

103. The live-streamed videos also had very poor audio quality, making it difficult for the public to understand what individuals in the rooms were saying. *Id.* at ¶ 20. YouTube offers streamers the ability to allow viewers to access an automatically-generated transcript of a video, but this feature was not available for the map-drawing videos. *Id.*

104. The legislators often brought unidentified individuals into the map-drawing rooms, without publicly disclosing their identities. *Id.* at ¶ 12. In the video of an October 7, 2021 Senate map-drawing session, Senator Newton can be seen sitting with an individual who assisted him in drawing the Senate maps that would ultimately be enacted. *Id.* at ¶ 13. This individual can frequently be seen accompanying legislators to draw maps in the House and Senate room and consulting with them. *Id.* at ¶ 15. There was no way for the public to identify this individual using information available on the North Carolina Legislature's website. *Id.* Legislators' public profiles sometimes allowed the public to identify them, depending on the quality of the video, but there was no way for the public to identify individuals who are not members of the legislative body. *Id.*

at ¶ 12. As a result, the public had no clear understanding of who was drawing and assisting with the drawing of the legislative maps. *Id.*

105. Representative Hall subsequently admitted that he received the assistance of a lobbyist by the name of Dylan Reel in drawing House maps. Hall Dep. 215:16-19, 223:18-20. Mr. Reel often met with staff from Senator Moore's office and often provided Representative Hall that he used in drawing maps. Hall Dep. 123:2-10, 227:6-13. These maps were not drawn on public terminals, and Representative Hall has no idea where they came from or whose computer was used to draw them. Hall Dep. 123:11-13, 148:18-19. Representative Hall never asked Mr. Reel what information he consulted in drawing the concept maps. Hall Dep. 127:19-22. The public had no knowledge of any of this. Hall Dep. 156:4-9.

106. The inability of the public to know the identity of individuals who were drawing maps could have been easily rectified if mapmakers had been required to publicly sign up, or if the cameras were mounted on the computer monitors. *Id.* at ¶ 15. Plaintiff Common Cause and other advocacy groups in fact requested such transparency measures early on in the process, but no such steps were taken or implemented. *Id.*

107. On August 18, 2021, Representative Pricey Harrison submitted a proposal requiring that the Redistricting Committees disclose all consultants and counsel to members of the legislature who are paid by state funds and would be participating in the redistricting process. PX52, PX78 at 2. Senator Hise did not allow a vote on this proposal. PX78 at 4.

108. At the same time, the Redistricting Chairs did not pursue measures that would prevent anyone from bringing draft maps or other information with them into the public drawing rooms, which could have allowed members to use racial data despite the stated criteria. PX146. 158:21-159:11; PX79 at 54:10-55:11, 66:3-23.

109. In total, the North Carolina Legislature posted 213 “map-drawing” videos on the nclg.gov website, many of which are eight hours long or longer. *Id.* at ¶ 11, Exhibit A. This is an overwhelming amount of footage for the public to observe and yet the only way for the public to try to understand what occurred during the map-drawing process. *Id.*

110. Legislators and other individuals were frequently seen on the videos bringing papers and communications devices, such as computers and cell phones, into the map-drawing rooms. *Id.* at ¶¶ 16, 17, 54, Marcus Aff. ¶ 13. Representative Hall and Mr. Reel both brought their phones into the public map-drawing room and looked at them while drawing the maps. Hall Dep. 236:22-237:13. The public had no way to know what the papers were, what the map-drawers were looking at on their computers, or who the map drawers might be communicating with while they drew the maps. Daye Aff. ¶ 16. The use of such materials provided legislators the opportunity to use racial and partisan data, despite the stated redistricting criteria that precluded them from doing so. Marcus Aff. ¶ 13.

111. On October 7, 2021, Senate Newton could be observed referencing papers that he had brought with him while drawing the enacted Senate map. Daye Aff. ¶ 17. In the same video, Senate Hise can be observed working at one of the map-drawing stations with an unidentified individual. *Id.* ¶ 18. This individual looked at his phone and assisted Senator Hise. The individual appears to be the same individual who assisted Senate Newton on October 7. *Id.* at ¶¶ 13, 14, 18.

112. Although the videos only showed activity in the designated rooms, legislators frequently requested print-outs of draft maps and took those print-outs out of the map-drawing rooms. *Id.* at ¶ 21. This allowed legislators to conduct analysis of the maps out of public view. *Id.*

113. On October 8, 2021, an aide asked legislative staff member Erika Churchill for a printout of the Senate map that the Senate Co-Chairs had been working on, map SBR-3. *Id.* at ¶

22. The aide specifically asked for “county-level printouts so we can see the precinct numbers in a few counties” and the ability to see “precinct lines and names potentially?” for several areas. *Id.* This level of detail would allow map-drawers to redraw the maps outside the room and conduct analysis on these maps using data that was not available on the House and Senate station computers. *Id.*

114. When Senator Newton returned to the map-drawing room on October 11 to continue working on the map he had been drawing, he and his aide brought a large volume of papers into the room, which they then referred to while map-drawing. *Id.* at ¶ 23.

115. On at least one occasion, legislators drew maps during times that were not properly noticed beforehand. *Id.* at ¶ 9. On the morning of October 28, the North Carolina General Assembly Calendar did not list any scheduled Senate Redistricting Committee meeting. *Id.* Later that evening, a video labeled 2021-10-28 Map Drawing Session 04(544) was available on YouTube. *Id.* This video had been streamed earlier in the day from the Senate Committee map-drawing room at Station 4. *Id.* Unlike other videos which typically extended from 9:00 am to 5:00 pm, this video begins with a timestamp at 16:11 (1:34 pm) and lasts less than an hour and a half. *Id.*

116. At timestamp 16:56 in this video, Senate Hise directed the staff member assisting him to “switch[] the pods” for Senate Districts 1 and 3 in the map; that referred to switching the county groupings for the northeast corner of the state labeled Z1 and Y1 in Duke\_Senate 03 to the grouping illustrated in Duke\_Senate 04. *Id.* At timestamp 19:25, Senator Hise told the staff member, “We’ve not decide which will be filed, but we want to be prepared to file either one.” *Id.*

117. Sometime later, the NCGA Calendar showed a Senate redistricting map drawing had been scheduled for 1:30 pm on October 27. *Id.* This meeting had not been posted on the daily NCGA Calendar in the morning of October 28. *Id.*

118. There was no public disclosure of the maps drafts, and the public was not informed of who was working on any particular map at a particular station or time. *Id.* at ¶ 27. In addition, the map drafts were given a new name every time a new staff member replaced a prior one or a new session started. *Id.* These names were not always assigned in systematic fashion; in order to track a specific draft map through its different iterations during the map-drawing process, an individual had to watch every video in which the map was renamed. *Id.*

119. On October 7, 2021, Senator Newton and an unidentified aide can be observed drawing districts within the Mecklenburg/Iredell Senate cluster. *Id.* at ¶ 30. The video shows Senator Newton and the aide first drawing a district in the northern part of the cluster, including all of Iredell County with areas in northern Mecklenburg County. *Id.* at ¶ 31. This district captured only a small Democratic-leaning area of Mecklenburg County, but one that double-bunked Senator Marcus with a Republican incumbent in a heavily-Republican district. *Id.* at ¶ 32; Marcus Aff. ¶ 22. Instead of proceeding south through the cluster, Senator Newton and the aide then moved to the southern border of Mecklenburg County, where they grouped the most heavily white and Republican areas of southern Mecklenburg County with each other, while avoiding heavily Black and Democratic areas. Daye Aff. ¶¶ 33-34. Senator Newton and the aide then moved back to northern Mecklenburg County to group all of the remaining white, Republican-leaning areas in north Mecklenburg County together. *Id.* at ¶ 35. Senator Newton and the aide then drew the remaining three districts in the core of Mecklenburg County, packing together the heavily Democratic and minority areas. *Id.* at ¶ 36. Tylor Daye was able to determine the partisan and racial makeup of the districts Senator Newton drew by imposing on the districts an overlap of partisan and racial data from Dave's Redistricting App. *Id.* ¶ 32, 34.

120. On October 7, 2021, Senator Hise and an unidentified aide can also be seen drawing six districts within the Wake/Granville cluster. *Id.* at ¶ 42. Senator Hise and his aide created a district that encompassed the whole of Granville County, which is rural, largely white and Republican-leaning, and add in the more Republican and white areas of northern Wake County. *Id.* at ¶¶ 43-44.

121. Instead of moving south through the cluster, Senator Hise and the aide then skipped to the southern border of Wake County to create another Republican-leaning, heavily white district from the southernmost parts of Wake County. *Id.* at ¶ 45. Senator Hise and the aide then created four districts by packing together heavily Democratic and minority areas of Wake County. *Id.* at ¶ Tylor Daye was able to determine the partisan and racial makeup of the districts Senator Hise drew by imposing on the districts an overlap of partisan and racial data from Dave’s Redistricting App. *Id.* ¶ 46.

122. On October 14, 2021, Representative Hall and an unidentified man, who was later identified by Representative Hall as Dylan Reel, can be observed using the phones at a map-drawing station. *Id.* at ¶ 53. Representative Hall can be heard asked for a print-out of the Buncombe County cluster and the previous cluster they were working on. *Id.* at ¶ 56. On October 18, 2021, Representative Hall and another unidentified man, who is believed to be Dylan Reel, then reviewed and discarded the draft drawn on October 14, 2021, and created new districts from the cluster. *Id.* at ¶ 59. These previous districts consisted of two districts with a +39 and +24.1 Democratic lean and one with a +3.2 Republican lean. *Id.* at ¶ 62. The newly-created districts consisted of two districts with a +43.6 and +20.8 Democratic lean and one with a +7.5 Republican lean. *Id.* The new cluster therefore, had a significantly greater partisan skew. Tylor Daye was able to determine

the partisan makeup of the districts Representative Hall drew by imposing on the districts an overlap of partisan data from Dave’s Redistricting App. *Id.* ¶ 62.

123. Throughout the map-drawing process, the legislature provided inadequate opportunity for the public to comment upon the draft maps. On Wednesday, October 20, 2021, the General Assembly announced that they would hold two hearings for public comments, one on Monday, October 24, 2021 for the Congressional maps and one on Tuesday, October 26, 2021 for the House and Senate maps. Phillips Aff. ¶ 25. The hearing notices did not specify which maps would be discussed. *Id.* This announcement gave individuals very little time to review and prepare for the public hearings. In fact, individuals had less than three business days to prepare for the hearing on October 25. The legislature only made 30 public speaking slots available across the two hearings – this in a state of more than 10 million people. *Id.* at ¶ 26. There was no further opportunity for individuals to sign up for speaking slots during the hearings. *Id.* Those hearings took place in the middle of the day, during the workweek, at a time inconvenient for working individuals. Hawkins Aff. ¶ 8.

124. Representative Hawkins heard members of the public express concern that the limited hearings were not accessible. *Id.* At one public hearing, an individual asked, “Who can come to a hearing at 3:00 pm in Raleigh?” *Id.* Republican legislators disregarded any additional opportunities for meaningful public input into the redistricting process. *Id.*

125. On October 28, 2021, the House Redistricting Committee filed a redistricting bill, House Bill 976 (“HB 976”) as a placeholder that contained no district lines. Phillips Aff. ¶ 30. HB 976 passed its first reading. Joint Stip. ¶ 35.

126. The House map eventually considered by the Committee in its November 1, 2021 meeting was not posted on the General Assembly’s website under “member-submitted maps”

ahead of the meeting, as was expected. *Id.* A committee substitute (“HBK-14”) received a favorable review and, after one amendment, passed its second and third readings on the House and its first reading in the Senate on November 2, 2021. *Id.* It received a favorable report from the Senate Redistricting Committee on November 3, 2021 without alteration and passed its second and third readings on November 4, 2021. *Id.*

127. HB976 was ratified into law on November 4, 2021 as S.L. 2021-175. *Id.* ¶ 36.

128. A proposed version of the state Senate map (“SST-13”) was filed on Friday, October 29, 2021 as Senate Bill 739 (“SB739”) and received its first reading in the Senate that day. It was then referred to the Senate Redistricting Committee on November 1 where the Redistricting Committee adopted a substitute along party lines (“SBK-7”). On November 2, Senator Marcus offered an amendment entitled “SBVAmend-2” to the Senate Redistricting Committee. Senator Clark also offered an amendment entitled “SCGAmend-3” to the Senate Redistricting Committee. Both amendments were adopted and included in the final version of SB739. True and accurate copies of these amendments are attached hereto as Exhibits 1 and 2. SB739 then passed its second and third readings in the Senate by November 3 along party lines, and passed all three readings and the House Redistricting Committee without any alteration on November 3 – 4, 2021. *Id.* ¶ 37.

129. SB739 was ratified into law on November 4, 2021 as S.L. 2021-173. *Id.* ¶ 38. A proposed Congressional map (“CST-13”) was filed on October 29, 2021 as Senate Bill 740 (“SB740”) and passed its first reading and received a favorable report from the Senate Redistricting Committee on November 1, 2021. It proceeded unaltered through its second and third readings in the Senate and its first reading in the House on November 2, received a favorable report from the House Redistricting Committee on November 3, and proceeded unaltered through its second and



third readings in the House on November 4, 2021. *Id.* ¶ 36.SB740 was ratified into law on November 4, 2021 as S.L. 2021-174. *Id.* ¶ 40.

130. During the public hearings in the lead up to map drawing, the legislature heard more than three dozen comments requesting that legislators keep the Triad, or at least Guilford County, in one Congressional District. *Daye Aff.* ¶ 65. In the enacted map this redistricting cycle, Guilford County is split into three Congressional districts. *Id.* at ¶ 66.

131. The State House, State Senate and Congressional Maps all passed along party lines. *Joint Stip* ¶ 41.

132. The State House map, HB976, passed the House on a strict party line vote, with 67 Republican Representatives in favor and 49 Democratic Representatives opposed. HB976 also passed the Senate on a strict party line vote, with 25 Republican Senators in favor and 21 Democratic Senators opposed. *Joint Stip* ¶ 42.

133. The State Senate map, SB739, passed the Senate on a strict party line vote, with 26 Republican Senators in favor and 19 Democratic Senators opposed. SB739 also passed the House on a strict party line vote, with 65 Republican Representatives in favor and 49 Democratic Representatives opposed. *Joint Stip* ¶ 43.

134. The Congressional map, SB740, passed the Senate on a strict party line vote, with 27 Republican Senators in favor and 22 Democratic Senators opposed. SB740 also passed the House on a strict party line vote, with 65 Republican Representatives in favor and 49 Democratic Representatives opposed. *Joint Stip* ¶ 44.

135. Senator Natasha Marcus, a member of the Senate Redistricting Committee who attended every committee meeting and three public hearings, found that the process by which the

House, Senate, and Congressional maps were enacted was “neither transparent nor fair.” *Marcus Aff.* ¶ 4.

136. These results betray an extreme lack of responsiveness to public concern. The Legislature’s process, while much-touted by the Chairs as a beacon of transparency, appeared to offer only a surface-level transparency, while shrouding the true decision-making and deliberative process from public view.

137. Prior to Representative Hall’s deposition, *Harper* Plaintiffs served limited discovery requests on Legislative Defendants seeking documents and information concerning the 2021 map-drawing process. After Legislative Defendants refused to formally respond to the requests, claiming that all responsive information and materials were already in the public record online, *Harper* Plaintiffs moved to compel, which this Court granted, finding that the information and documents sought “goes to the heart of the dispute in this redistricting matter,” Order on Mot. to Compel at 4, and ordered compliance by 9 a.m. December 28, 2021.

138. After the deposition, in which Rep. Hall admitted to using concept maps that were not in the public record, Legislative Defendants identified for the first time a number of individuals who participated in drawing maps whose participation was not publicly known, contradicting their previous assertion to Plaintiffs and to this Court that all the information sought by Plaintiffs was “publicly available.” Legislative Defendants also acknowledged that Representative Hall relied on concept maps. Also, in contradictory statements, Legislative Defendants asserted that they cannot speak for third parties, like Mr. Reel, but then stated that Mr. Reel did not use any racial or political data in preparing these concept maps. Legislative Defendants informed Plaintiffs that they did not have copies of the concept maps.

139. In response, *Harper* Plaintiffs filed another motion to compel, which this Court granted, requiring that Legislative Defendants, in part, identify the lost or destroyed material with specificity and certify to that loss or destruction. The next morning, Legislative Defendants served insufficient supplemental responses and objections, stating only that Representative Hall called Mr. Reel, which stated that the concept maps “*were not saved, are currently lost and no longer exist.*” Legislative Defendants provided no further information about the missing files—not even basic facts about the devices on which these files were created or stored, or the nature of the files themselves—nothing. Nor did Legislative Defendants provide answers to important questions about the circumstances of the files’ creation, retention, and destruction.

140. The gaslighting of both the public and other redistricting committee members about the full transparency of the redistricting process is evident from Representative Hall’s testimony in his December 27, 2021 deposition. In his testimony, he revealed not only that between his map-drawing sessions at the public terminal, he repeatedly met with his then-General Counsel, Dylan Reel, and other partisan staffers for “strategy sessions” about the map-drawing in a private room adjacent to the public ma-drawing room, but that he reviewed “concept maps” of several county groupings for the House map. PDX 145 at 118:4-7.

141. Representative Hall testified that, unlike maps drawn on the public terminals, these “concept maps” are *not publically available*. *Id.* at 150:9-20. Therefore, when the Redistricting Chairs continually flaunted that this was the most transparent redistricting process in the history of North Carolina, they were well-aware of the concept maps and strategy sessions behind closed doors and out of full public view. Thus, the Redistricting Chairs continued to follow the path of previous redistricting cycles that denied the public the opportunity to meaningfully participate in

the redistricting process and maps that were found to be illegal partisan and racial gerrymanders by North Carolina courts.

**IV. The Legislative Defendants Act to Quickly Enact the Republican-Drawn Maps That Will Harm Voters of Color if Enforced.**

142. On October 29, 2021, Plaintiffs Common Cause, North Carolina State Conference of the NAACP, Marilyn Harris, Gary Grant, Joyah Bulluck, and Thomasina Williams filed an action for a preliminary injunction, asking the court to enjoin the North Carolina Legislature from using its unconstitutional, supposedly race-blind approach to redistricting. *See N.C. NAACP v. Berger*, Case No. 21 CVS 014776 (N.C. Super. Ct. 2021). At the time of filing, the Redistricting Chairs had not set any deadline for the final enactment of any map. However, just four business days later, on November 4, 2021, the North Carolina Legislature enacted new House, Senate, and congressional maps for the 2021 redistricting cycle.

143. In its rush to finalize maps, the Legislative Defendants rejected or tabled multiple amendments offered by other Senators and Representatives intended to require assessment of and, as appropriate, to ameliorate the harm that would result to voters of color from the Legislative Defendants' redistricting process.

144. The Legislative Defendants also continued to defend the adopted criteria with inaccurate recitations of applicable law and mischaracterizations of fact. For example, in the meeting of the Senate Committee on Redistricting and Elections on November 2, Defendant Newton stated that "some have asked whether the *Stephenson* cases require that race be used in redistricting," and then sought to justify the Legislative Defendants' choice to prohibit use of racial data by asserting that (1) subsequent case law held that use of racial data or analysis was not legally required, (2) *Stephenson* did not apply because Section 5 of the VRA is not currently enforceable, and (3) it was the duty of other members to propose plans with majority-minority districts (despite

unequivocal direction from the Redistricting Chairs that *no plan would be considered if racial data had be used*).

145. Despite legislators' stated commitment eschewing racial data, individuals familiar with the demographics of given areas can clearly see districts drawn with attention paid to race. Leloudis Rough Tr. at 17:9-20. Pitt County, for example, is split into House Districts 8 and 9, with the area North of Tar River and parts of West Greenville in District. Hawkins Aff. ¶ 14. According to Representative Hawkins, people who know Pitt County therefore can easily recognize that the districts are split along racial lines. *Id.*

146. The resulting House, Senate, and congressional maps diminish the BVAP in key districts where previously there was a sufficiently numerous BVAP population to as to allow Black voters to elect their candidates of choice. As a result, the maps enacted by the North Carolina Legislature unnecessarily dismantle performing districts in which Black voters had the opportunity to elect candidates who could effectively represent their interests.

F. The 2021 House Map Will Diminish Black Voters' Ability to Elect Their Candidates of Choice.

147. The 2021 maps will cause a reduction in the number of State House Representatives who are the candidates of choice of Black voters. Under the 2019 maps, House District 5 contains a 44.32% BVAP, which allows Black voters in the district to elect their candidates of choice. Ketchie Aff. PX5. Representative Howard J. Hunter III currently represents House District 5. *Id.* Representative Hunter is Native American and is the candidate of choice of Black voters in House District 5. *Id.* Under the 2021 maps, Representative Hunter will be located in House District 5, and the BVAP percentage will decrease to 38.59%. Ketchie Aff. Ex. 6. This BVAP percentage makes it less likely that Black voters will be able to continue to elect Representative Hunter. House District 5 was previously determined to be a racial gerrymander in *Covington v. North Carolina*,

316 F.R.D. 117, 143 (2017). North Carolina Legislatures therefore were well aware of the demographic composition of this area of North Carolina.

148. House District 21 as currently constituted under the 2019 maps contains a BVAP of 39.00%. Ketchie Aff. Ex. 5. Representative Raymond E. Smith currently represents House District 21. *Id.* Representative Smith is Black and is the candidate of choice of Black voters in his district. *Id.* Under the enacted 2021 maps, Representative Smith was redrawn into District 10 and double bunked against Representative John R. Bell IV. Ketchie Aff. Ex. 6. The redrawn Senate District 10 contains a BVAP of 34.27%, which makes it less likely that Black voters will be able to elect their candidates of choice. *Id.* House District 21 was previously determined to be a racial gerrymander in *Covington v. North Carolina*, 316 F.R.D. 117, 147 (2017). North Carolina Legislatures therefore were well aware of the demographic composition of this area of North Carolina. In this district, a district that elected a Black representative, will now be unlikely to elect Black voters' preferred candidate of choice.<sup>22</sup>

149. The House maps also unnecessarily double-bunk Black elected officials. Representatives Abe Jones and James Roberson represent House Districts 38 and 39, respectively and are the candidates of choice for Black voters in their districts. Ketchie Aff. Ex. 5. Representatives Jones and Roberson are both Black. *Id.* Under the 2021 maps, Representatives Jones and Roberson will be double-bunked against each other, and Black voters will be forced to choose between two representatives who were both previously their candidates of choice. Ketchie Aff. Ex. 6. House District 38 was previously determined to be a racial gerrymander in *Covington v. North Carolina*, 316 F.R.D. 117, 151 (2017).

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<sup>22</sup> As this deposition occurred in the afternoon of December 31, 2021, specific deposition cites are unavailable.

G. The 2021 Senate Map Will Diminish Black Voters' Ability to Elect Their Candidates of Choice.

150. The 2021 Senate maps will also likely result in a reduction of the number of Senators who are the candidates of choice of Black voters in North Carolina. Senate District 21 as currently drawn under the 2019 maps has a 42.15% BVAP, which allows Black voters to elect their candidates of choice. Ketchie Aff. Ex. 3. Ben Clark currently represents North Carolina Senate District 21. *Id.* Senator Clark is Black and is the preferred candidate of Black voters in his district. *Id.* Under the 2021 maps, Senator Clark is drawn into Senate District 24, which as newly drawn contains a 29.63% BVAP population. Ketchie Aff. Ex. 4. Senator Clark is also double bunched with Senator Danny Earl Britt Jr., who is white. *Id.* This diminution in BVAP percentage will prevent Black voters in the district from continuing to elect their candidates of choice. Senator Clark will therefore likely lose his Senate seat to a candidate who is not supported by Black voters in his district. Senate District 21 was previously determined to be a racial gerrymander in *Covington v. North Carolina*, 316 F.R.D. 117, 147 (2017). North Carolina Legislatures therefore were well aware of the demographic composition of this area of North Carolina.

151. Senate District 4 as currently drawn under the 2019 maps contains a 47.46% BVAP, which allows Black voters to elect their candidates of choice. Ketchie Aff. Ex. 3. Senator Milton F. "Toby" Fitch currently represents Senate District 4. *Id.* Senator Fitch is Black and is the preferred candidate of Black voters in the district. *Id.* Under the 2021 maps, Senator Fitch will be located in the redrawn Senate District 4, which will contain a 35.02% BVAP. Ketchie Aff. Ex. 4. This diminution in BVAP percentage will prevent Black voters in the district from electing their candidate of choice. As a result, Senator Fitch will likely lose his seat to a candidate who is not the candidate of choice of Black voters in the district. Senate District 4 was previously determined to be a racial gerrymander in *Covington v. North Carolina*, 316 F.R.D. 117, 142 (2017). North

Carolina Legislatures therefore were well aware of the demographic composition of this area of North Carolina. In this district, the chance of the Black preferred candidate winning went from 100% to 0%. Thus, the legislature's senate map destroyed two functioning, effective, crossover districts.<sup>23</sup>

152. The same thing applies to Senate District 1 where the chance of the Black preferred candidate winning went from 100% to 0%. Thus, the legislature's senate map destroyed two functioning, effective, crossover districts.<sup>24</sup>

153. In the final enacted maps, the only Senator who is double-bunked is Senator Marcus. Marcus Aff. ¶ 23. Senator Marcus represents Senate District 41. *Id.* at ¶ 1. She is the candidate of choice of Black voters in her district. Ketchie Aff. 3. Representative Marcus is currently double-bunked with a Republican, and the new composition of the district will make her election very unlikely. Marcus Aff. ¶ 22.

H. The 2021 Congressional Map Will Diminish Black Voters' Ability to Elect Their Candidates of Choice.

154. The North Carolina Congressional maps enacted in 2021 will likely result in one of the two Black Congressmen from the State of North Carolina losing his seat due to Black voters' inability to elect their candidates of choice in the newly drawn Congressional district. Under the 2019 maps, North Carolina's First Congressional District contained a 42.38% Black voting age population (BVAP). Ketchie Aff. Ex. 1. This BVAP percentage allows Black voters to elect their candidates of choice. *Id.* Representative G.K. Butterfield currently serves as the representative to the United States House of Representatives from the First Congressional District. *Id.*

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<sup>23</sup> As this deposition occurred in the afternoon of December 31, 2021, specific deposition cites are unavailable.

<sup>24</sup> As this deposition occurred in the afternoon of December 31, 2021, specific deposition cites are unavailable.



Representative Butterfield is Black and is the candidate of choice of Black voters in his district. *Id.* Under the 2021 maps, Representative Butterfield was drawn into the Second Congressional District, which was drawn with a BVAP of 39.99%. Ketchie Aff. Ex. 2. The First Congressional District exhibits a high level of racially polarized voting, such that differences in BVAP have a consequential effect on the ability of Black voters to elect their candidates of choice. Under the 2021 maps, Representative Butterfield will likely lose his seat to a candidate who is not supported by the Black voters in the district. *Id.* Congressional District 1 was previously determined to be a racial gerrymander in *Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016). North Carolina Legislatures therefore were well aware of the demographic composition of this area of North Carolina.

**V. The Legislature’s Failure to Properly Consider Race is Consistent with a Long History of Racial Discrimination in North Carolina Harming Voters of Color.**

155. The North Carolina Legislature’s failure to consider whether VRA districts where necessary, and destruction of performing Black districts is part of a 150+ year pattern of discrimination that diminishes the ability of Black North Carolinians to fully participate in the political process. Leloudis Rough Dep. Tr. at 82:19-83:16; Leloudis Report at 3-4.

156. Analysis from Plaintiffs’ expert, Professor James Leloudis II starkly reveals how the new legislative maps enacted by the North Carolina Legislature is the latest in a long sequence of governmental actions that have barred Black voters from exercising their fundamental right to vote and have their vote counted effectively.

157. Dr. Leloudis is a Professor of History at the University of North Carolina Chapel Hill, where he has taught for more than 31 years. Leloudis Report at 3. Dr. Leloudis focuses on the history of North Carolina and the American South and has published extensively on the history

of the state and region. *Id.* Dr. Leloudis’s report provides context to the current redistricting cycle in light of North Carolina’s long history of racial discrimination.

158. Since the time of Reconstruction, North Carolina lawmakers have employed a variety of strategies to limit the rights of racial and ethnic minorities to fully participate in the political process, including vigilante violence, literacy tests, poll taxes, and other regulations that prevented Black North Carolinians from registering to vote and accessing the ballot box. Leloudis Rough Dep. Tr. at 83:3-13; Leloudis Report at 3.

159. During Reconstruction, Black North Carolinians won rapid gains in their ability to win representation, only to see those victories fall away in the face of laws that diminished their ability to register to vote and cast their ballots. Leloudis Report at 7-12, 19-21.

160. Immediately after the Civil War, there was a flush of reform that expanded the franchise to newly freed Black North Carolinians. Leloudis Report at 8-10. In 1868, a constitutional convention enacted a constitution for the state of North Carolina that guaranteed every adult male citizen the right to cast their ballot in a free and fair election. *Id.* In response to the ensuing rapid development of Black political leadership, conservative politicians used violence and racial appeals to gain a majority in the legislature and then pass a constitutional amendment requiring the passage of a literacy test and the payment of a poll tax as preconditions to register to vote. *Id.* at 19-21. The literacy test and poll tax resulted in the wholesale disenfranchisement of Black North Carolinians and their removal from the political life of the state. *Id.* at 21-22.

161. In the mid-1950s, Black North Carolinians made another push toward equality and won temporary political victories and increased representation. *Id.* at 31. In the post-War years, “[l]eaders and ordinary folk in Black communities across North Carolina took up [the] challenge

. . . [and] a ‘rush’ of . . . Black candidates stood for election . . .” *Id.* at 32. These Black candidates achieved success by mobilizing Black people to register and vote, despite the overwhelming odds. *Id.* at 33. Black political leadership “recruited brave volunteers and ‘sat up the night with them’ to memorize and ‘rehearse the Constitution.’” *Id.* While many eligible Black voters were turned away from registration due to the discriminatory whims of registrars, enough were able to vote to elect a new round of Black leaders to local office. *Id.* In response, and in a move deeply resonant of the battles being fought today, the white political establishment altered methods of election to keep Black candidates from winning. *Id.* at 34. Between 1955 and 1961, the state legislature “approved a flurry of new laws that mandated at-large voting in a shifting mix of elections for county boards of commissioners and town councils in twenty-three eastern counties.” *Id.* As with redistricting today, the laws were neutral on their face and altered the seemingly-wonky field of electoral mechanics. Yet, they successfully prevented Black voters from marshalling their resources to elect their candidates of choice.

162. The story of G.K Butterfield Sr. “epitomized the contest between white men in power and their Black challengers in [eastern North Carolina]. *Id.* at 32. In response to Butterfield’s election to the Wilson Town Commission, the county and North Carolina legislature changed Wilson’s method of election for the Commission from districts to at-large, and outlawed anti-single shot voting. *Id.* at 33. Whenever there has been a period of Black advancement there has been a movement to find other ways to disenfranchise Black voters or to dilute their vote in such a way that they are prevented from electing their candidates of choice. *Id.* at 3, 32.

163. This episode is symptomatic of a long running theme in North Carolina history – frequently, laws limiting Black North Carolinians’ political participation have been facially race neutral, but have nevertheless had profoundly discriminatory effects. *Leloudis Depo Tr. 90:9-19.*

164. The same series of actions – seemingly race-neutral changes to election methodology – occurred in the 1960s and 1970s upon the passage of the Voting Rights Act and the federal judiciary’s move toward enforcing individual rights. *Id.* at 51. In 1967, lawmakers added a numbered-seat plan in 20 out of 41 multimember House districts and 3 out of 15 in the Senate. *Id.* This paired minority candidates in “direct, one-to-one competitions” against white candidates – competitions that they often lost. *Id.* In these years, in which liberal Democrats began to champion civil rights, Republicans moved into the space formerly occupied by Southern Democrats. *Id.* at 53. As a result, “[b]y the early 2000s, North Carolina voters had become as racially polarized as they were at the end of the nineteenth century,” but with Black voters voting for Democrats and white voters voting for Republicans. *Id.* at 59.

165. This level of polarization, means that “in North Carolina politics, partisan gerrymandering is a highly effective means of discriminating against racial minorities.” *Id.* at 74. Therefore, partisan gerrymandering became an effective tool to limit Black political participation. *Id.* Simultaneously, conservatives could “rel[y] on racial discrimination to secure partisan advantage.” *Id.* at 78; *see also* Leloudis Rough Dep. Tr. at 35:6-10.

166. Additionally, because this is the first redistricting cycle since the *Shelby County v. Holder* decision in 2013, the Legislature acted without fear of repercussion, and executed a redistricting process and subsequent maps that ignored race, thus continuing the pattern of “race-neutral” laws having a discriminatory effect on Black voters. Leloudis Report at 4.

167. In total, the North Carolina Legislature’s actions in the current redistricting cycle, “fit the pattern of conservative backlash to minority gains.” *Id.* at 3. As in past years, seemingly race-neutral policies are actually an effective tool to limit Black political participation and ensure partisan control over state government.

168. It is well understood that Black voters vote for Democratic candidates at a much higher rate than white voters. Taylor Dep. It is also well understood that partisan considerations are a primary motivation for actions taken by the Legislature.

**VI. The House, Senate, and Congressional Maps Also Exhibit Patterns of Extreme Partisan Gerrymandering.**

169. In addition to our findings regarding the treatment of racial data and the lack of transparency in the process, we also find that the enacted House, Senate, and congressional maps exhibit extreme partisan gerrymandering. A variety of quantitative methods from Plaintiffs' experts demonstrate that the North Carolina Legislature deliberately crafted the maps to insulate Republican candidates from shifting political climates and retain a Republican majority in the state legislature, regardless of the will of the voters.

A. House Maps

170. Analysis by Dr. Jonathan Mattingly unequivocally demonstrates extreme partisan gerrymandering in the 2021 House maps enacted by the North Carolina General Assembly.

171. Dr. Jonathan Mattingly is a Professor of Mathematics and Statistical Science at Duke University. Mattingly Report at 2. He received his Bachelor's degree at Yale University and his Ph.D. from Princeton University. *Id.* Dr Mattingly submitted a report for the Plaintiffs that demonstrates the extent of partisan gerrymandering in each of the enacted maps through longstanding statistical methods. A good deal of the information in this report derives from independent research Dr. Mattingly conducted with a group at Duke University that seeks to understand and quantify gerrymandering. *Id.* Much of the core analysis in his report was previously publicly released as part of a nonpartisan effort to inform the public and contribute to the public discussion about redistricting. *Id.* The North Carolina Legislature, in fact, used Dr. Mattingly's

publicly-released findings from his nonpartisan research to determine possible county clusters. *Id.* at 6.

172. Dr. Mattingly used the Metropolis-Hasting Markov Chain Monte Carlo Algorithm to create a representative set of 100,000 maps as benchmarks against which he could compare the enacted maps. *Id.* at 10. The algorithm produced maps that accorded with traditional districting criteria: approximately equal population per district; contiguity; compactness; reducing transversals; and keeping counties, precincts, and municipalities whole. *Id.* at 9. Dr. Mattingly also designed the algorithm to develop maps that respected the county clustering requirement for state legislative maps under *Stephenson I.* *Id.* at 5–6. The algorithm did not incorporate as output requirements any ideas of proportional representation or notions of fairness. *Id.* at 2. Rather, the maps illustrate what the result would have typically been due to the political geography of North Carolina had only the stated redistricting criteria been used. *Id.*

173. In Dr. Mattingly’s initial set of maps, the algorithm created districts in which the number of split counties, municipalities, and precincts were similar to those in the enacted maps. *Id.* at 5.

174. Dr. Mattingly then generated a second set of maps that minimized municipality splits and a third set of maps that took incumbent pairings into account. *Id.* at 5.

175. Dr. Mattingly also independently created maps from possible clusters that include Wake County and Mecklenburg County, since those counties have a large amount of precincts and possible districts, due to their size. *Id.* at 9.

176. After generating the maps, Dr. Mattingly used historical elections data to simulate how his nonpartisan maps would perform under a variety of political climates. *Id.* at 10. He considered the following statewide election contest in the years 2016 and 2020: races for Governor,

Lieutenant Governor, Attorney General, United States Senate, Commissioner of Insurance, State Treasurer, Secretary of State, and State Auditor. *Id.*

177. He concluded that the North Carolina House maps are an extreme gerrymander over a wide range of potential election scenarios. *Id.* Elections that under typical maps would produce a Democratic majority in the North Carolina House give Republicans a majority under the enacted maps. *Id.* Likewise, maps that would normally produce a Republican majority under nonpartisan maps produce a Republican supermajority under the enacted maps. *Id.* Among every possible election that Dr. Mattingly analyzed, the partisan results were more extreme than what would see from nonpartisan maps. *Id.* at 11.

178. In every election scenario, Republicans won more individual seats that they statistically should under nonpartisan maps. *Id.* at 11. For example, when Dr. Mattingly evaluated how the results of the sample maps would compare to the enacted maps using election returns from the 2020 governor's race, he found that out of 100,000 maps, the enacted maps exhibited more partisan skew than all but 118. *Id.* at 12.

179. The results are even more extreme for the election returns from the state auditor's race and the attorney general's race. *Id.* Using data from the 2020 state auditors race, the enacted maps are more partisan than all but 7 of the algorithmically-generated nonpartisan maps. *Id.* And when Dr. Mattingly analyzed data from the 2020 Attorney General's race, he found that the enacted maps are more partisan than all but 5 nonpartisan maps. *Id.*

180. When Dr. Mattingly evaluated how the enacted maps would perform under the political conditions of the 2020 Secretary of State race, he found that out of 100,000 sample maps, not a single one produced results as partisan as the enacted maps. *Id.*

181. The results of these election simulations demonstrate that the enacted maps are impervious to the shifting will of the electorate and always skew drastically in favor of Republicans.

182. In addition, the results of the enacted maps in simulated election returns become more extreme as the Democratic vote share increases. *Id.* at 11–12.

183. Mattingly deepened his analysis by using the uniform swing hypothesis to simulate other elections results. *Id.* at 12. The uniform swing hypothesis takes a single election result and uniformly increases or decreases the percentage of votes given to a particular party across all precincts. *Id.* at 4 n.1. This creates a new set of potential election returns, with the same spatial voting patterns. *Id.*

184. Dr. Mattingly used the uniform swing hypothesis on the 2020 and 2016 statewide elections to simulate statewide elections in which Democrats won anywhere from 46 to 55 percent of the statewide vote share. *Id.* at 14.

185. When Dr. Mattingly used the uniform swing hypothesis to create 10 different potential Democratic vote shares out of sixteen different election scenarios (eight offices across two years), he could not find a *single instance* in which the enacted maps favored Democrats. *Id.* at 12.

186. The same pattern of extreme gerrymandering holds in Dr. Mattingly’s sample maps in which he programmed the algorithm to minimized incumbent pairings. *Id.* at 19. The level of Republican partisan advantage, therefore, cannot be explained by a desire on the part of legislators to minimize incumbent pairings.

187. The pattern is even more extreme in the maps Dr. Mattingly created in which he intentionally minimize municipality splits. *Id.* at 20. Dr. Mattingly found that the enacted maps do



a poor job of preserving municipalities as compared to the thousands of sample maps he drew. *Id.* at 10. Therefore, if legislators had intentionally created maps in which they avoided splitting municipalities, as they claimed they did, the resulting maps would have resulted in *fewer* municipal splits and been *less* partisan. *Id.* at 10.

188. Dr. Mattingly also performed an analysis to determine the extent of “cracking” and “packing” in the enacted maps. *Id.* at 12.

189. “Cracking” occurs when communities of interest, including heavily Democratic areas, are split amongst two or more districts to diminish their electoral power.

190. “Packing” occurs when voters who vote as a group, including Democratic voters, are concentrated in a single district to diminish their electoral influence elsewhere.

191. In maps that are cracked and packed, we would expect to see that the concentrations of Democratic voters are outliers as compared to nonpartisan maps. *Id.* at 12.

192. Dr. Mattingly arranged the districts in the enacted maps and the districts in the sample maps in order of least to most Democratic voters and found that, in the enacted maps as compared to the sample maps, there is an overconcentration of Democratic voters in the least Democratic districts and in the most Democratic districts. *Id.* at 16. In other words, the districts with the highest concentration of Democrats have far more Democratic voters than we would expect in nonpartisan maps, and threshold districts have far fewer Democratic voters than we would expect in nonpartisan maps. *Id.* This is a very strong indication that the legislature packed and cracked Democratic voters.

193. Dr. Dan Magleby found a similar pattern in the House-enacted maps. Dr. Magleby is a professor at Binghamton University, where he holds a courtesy appointment in the Department of Economics and is the director of the Center for the Analysis of Voting and Elections. Magleby

at 3. Dr. Magleby used a peer-reviewed algorithm that he developed to generate a set of unbiased maps against which he compared the enacted House, Senate, and congressional maps. *Id.* at 6. He designed this algorithm to prioritize maintaining voting districts and to draw maps that were contiguous and roughly equal in population. *Id.* Dr. Magleby's maps were purely what we would expect to see if the maps had not been motivated by partisan bias. *Id.* at 5.

194. Dr. Magleby then used this algorithm to develop a set of between 20,000 and 100,000 maps, from which he took a random sample of 1,000 maps that roughly met the North Carolina Legislature's 2021 criteria for drawing districts. *Id.* at 6.

195. Dr. Magleby then aggregated statewide votes from statewide races between 2016 and 2020 to the voting district level in order to determine typical partisan performance in North Carolina state elections (a "seats carried" analysis). *Id.* at 4, 7. In order to match up the vote share to the newly enacted districts, Dr. Magleby determined which simulated district a precinct would fall in and assigned that precinct's vote count to the hypothetical district. *Id.* at 7. If the precinct fell in more than one simulated district, Dr. Magleby assigned to the sample district the proportion of the votes as determined by the precinct's population that fell in the simulated district. *Id.* at 8.

196. Dr. Magleby found the level of partisan bias in seats the House maps went far beyond anything we would expect based on the neutral political geography of North Carolina. *Id.* at 10.

197. In the neutral maps drawn using the North Carolina Legislature's stated criteria for drawing maps, Dr. Magleby's analysis found that Democrats most commonly won 52 seats in the North Carolina House of Representatives. *Id.* at 12. In the map enacted by the legislature, on the other hand, Democrats won only 48 seats. *Id.* at 12. Out of 1,000 possible maps that the algorithm

drew, only one map resulted in Democrats winning as few as 48 seats. *Id.* at 13. That amounts to a 0.1% chance that Democrats would win as few as 48 seats absent partisan bias.

198. Because an analysis of “seats carried” is not sufficient to identify all gerrymanders, Dr. Magleby also used median-mean calculations to measure the extent of partisan advantage—specifically, to understand how dramatically Democratic voters were treated from Republican voters and how durable that gerrymander is. *Id.* at 9. To calculate the median-mean difference, Dr. Magleby first calculated the average Democratic vote share in the House districts. *Id.* at 9–10. He then found the median Democratic vote share by lining up the enacted House districts from least Democratic to most Democratic and identifying the districts that fell in the middle. *Id.* at 10. In a nonpartisan map, we would expect a low median-mean difference. *Id.*

199. Dr. Magleby found that the median-mean bias in the enacted maps was far more extreme than we would expect in nonpartisan maps. The nonpartisan House maps that Dr. Magleby drew most commonly had a median-mean difference in the Democratic vote share of between 0.0225 and -0.025. *Id.* at 15. The lowest median-mean difference in the generated maps was -0.034, and the highest was -0.005. *Id.* The Legislature-drawn maps have a median-mean difference in Democratic vote share of -0.04. *Id.* No randomly generated map had such an extreme median-mean share—meaning that in his analysis, he saw no simulated map that was as extreme and durable a gerrymander. *Id.*

200. The individual House clusters also exhibit an extreme degree of packing and cracking.

201. In addition to drawing statewide maps, Dr. Mattingly generated a set of nonpartisan maps in the Mecklenburg House cluster. Mattingly at 29. Based on Dr. Mattingly’s data, the enacted Mecklenburg cluster depletes Democratic voters from the two most Republican districts

as compared to what we would expect to see in a nonpartisan map. *Id.* 29. This strongly suggests that the legislature intentionally packed Democrats so as to increase the number of districts that can likely elect Republicans in Mecklenburg County.

202. Likewise, the Wake County cluster has far fewer Democratic voters in the two most Republican districts than we would expect to see absent packing. *Id.* at 32. This suggests that the Legislature removed Democratic voters from these districts to create two guaranteed Republican seats.

203. A similar pattern of packing and cracking can be observed in Forsyth County. Dr. Mattingly evaluated what the partisan vote share in Forsyth County would look like in a variety of election returns under the enacted maps and under algorithmically-drawn maps. *Id.* at 34. Dr. Mattingly found that the partisan patterns in the Forsyth County districts that the legislature drew are far more extreme than we would see in nonpartisan maps. *Id.* Across a variety of political environments, as measured by 2016 and 2020 statewide contests, Democrats receive more votes in largely Democratic districts than would be expected and fewer votes in districts that would otherwise be tossup districts. *Id.* This strongly suggests intentional packing and cracking of Democratic voters to create two safely Republican districts in what would otherwise be swing districts. *Id.*

204. A similar pattern can be observed in Guilford County. The two most Republican districts have exceptionally few Democrats as compared to the nonpartisan sample maps, and the most Democratic districts have far more Democrats than would be expected. *Id.* at 36. Out of 800,000 algorithmically-generated plans, not a single one had as high a share of Democratic votes in the four most Democratic districts or as low a share of Democratic votes in the two most

Republican districts. *Id.* This allows Republicans to safely elect two Republicans under election climates in which they would rarely if ever do so. *Id.*

205. In Buncombe County, the algorithmically-generated maps typically created two safely Democratic districts and one district that leans Democratic. *Id.* at 38. However, the legislatively-enacted maps overpopulate the most Democratic district with Democratic voters, creating one safely Republican district. *Id.* Only 1.2% of the plans in the nonpartisan sample maps had a lower Democratic fraction. *Id.* at 38.

206. Pitt County contains two House districts. *Id.* at 40. Dr. Mattingly's sample maps show that the more Democratic district is far more overpopulated with Democrats that we would expect absent partisan gerrymandering, and the more Republican districts has far fewer Democrats than we would expect. *Id.*

207. The Durham-Person cluster also exhibits obvious signs of packing and cracking. In typical nonpartisan maps, the Durham-Person cluster contains three highly Democratic districts and one moderately Democratic district. *Id.* at 44. The enacted House map under concentrates Democrats in what would otherwise be a moderate Democratic district, allowing Republicans to win the district in several elections scenarios in which the seat would typically go a Democrat. *Id.*

208. The Cumberland County districts are also extreme outliers. Typical nonpartisan maps produce three safely Democratic districts and one district that leans Republican. *Id.* at 48. The enacted maps over concentrate Democratic voters in the most Democratic districts and remove Republican voters from the most Democratic districts to create two seats in which Republicans can expect to win. *Id.* at 47.

209. The Cabarrus-Davie-Rowan-Yadkin cluster turns what would otherwise be a swing Democratic district into a reliably Republican district by placing abnormally few Democrats in the

most Democratic district and abnormally many Democrats in the next three most Democratic districts. *Id.* at 50.

210. Overall, patterns at both the state level and at the individual cluster level exhibit extreme partisan gerrymandering in the North Carolina House of Representatives.

211. On the other hand, Defendants' experts produced error-laden and self-contradictory reports that serve only to bolster the conclusions of Plaintiffs' experts that the enacted House maps are partisan gerrymanders.

212. Defendants offer a report by Dr. Michael Barber, an associate professor of political sciences at Brigham Young University. Barber at 8. In contrast to Plaintiffs' experts, Dr. Barber has no expertise in redistricting outside of litigation. Redistricting is not the focus of his academic work, Barber Dep. at 1:13, he has not studied redistricting as part of his academic work, *id.*, and has no published work in which he discusses redistricting, *id.* Neither has Dr. Barber conducted any research on North Carolina politics or North Carolina political geography. *Id.* at 1:14. Nevertheless, Dr. Barber used an algorithm to generate a set of maps against which compared the enacted 2021 North Carolina House maps. Barber at 21.

213. Dr. Barber aggregated the results of statewide elections between 2014 and 2020 to determine how the newly enacted maps would behave. He summed the number of Democratic votes for the 2014 U.S. Senate race, the 2016 Attorney General race, the 2016 Lieutenant Governor race, the 2016 Senate Race, the 2016 presidential race, the 2020 Attorney General race, the 2020 Lieutenant Governor race, the 2020 Governor race, the 2020 U.S. Senate race, and the 2020 Presidential race and divided that by the number of votes for both Democrats and Republicans to find the average Democratic vote share. Barber at 24. Dr. Barber then used that data to analyze how the enacted maps would perform at the cluster level.

214. House Maps. In reviewing Dr. Barber's analysis, we immediately run into problems. The first issue is Dr. Barber's failure to conduct a statewide analysis. As should be obvious, the North Carolina House of Representatives is a statewide deliberative body. Representatives are chosen from individual districts not to be rulers of their own fiefdoms but to represent their district's interests in the House chamber. As such, the composition of the House as a whole is of preeminent importance. Yet, Dr. Barber failed to conduct any analysis of the statewide maps as a whole. Instead, he focused his analysis on the cluster level. *Id.* at 29. He created a sample set of maps cluster by cluster to compare the enacted House maps at the cluster level to potential other maps the legislature could have created for that cluster. *Id.* Such analysis misses the forest for the trees. It is certainly instructive that the legislature could have created alternative maps at the cluster level, but only looking at the cluster level neglects to tell the larger picture. Dr. Barber therefore only performed half the analysis.

215. Setting aside Dr. Barber's failure to conduct statewide analysis, his simulations of maps at the cluster level bolsters Plaintiffs' contention that the North Carolina House maps are partisan gerrymanders. As previously stated, Dr. Barber used the statewide average, as measured over the course of eleven races to compare the enacted maps to his sample maps. *Id.* at 24. Dr. Barber used that data to determine how many seats Democrats could expect to win at the cluster level. Barber Dep. at 1:28. He then determined how often Democrats could expect to win a given number of seats in the sample maps, as compared to how many seats Democrats could expect to win in the enacted maps. *Id.* If the results of the enacted maps fell outside the middle 50% range

of results that the sample maps produced, Dr. Barber considered that a partisan gerrymander. *Id.* at 1:29.

216. Based on Dr. Barber's own data and his own analysis, the North Carolina House maps constitute a partisan gerrymander. As previously stated, Dr. Barber did not do extensive analysis as to how the House map performs at the state level. Barber at 29. He did, however, estimate the number of Democratic seats we would expect to see at the state level based on nonpartisan maps by adding up the number of Democrats we would expect to see at the *cluster level* under nonpartisan maps. *Id.* at 31. Dr. Barber determined that if 75% of sample maps produce fewer Democratic representatives in a given cluster, the map at the 75th percentile is the cutoff between gerrymandering and not gerrymandering. Barber Depo at 1:29. So he found the number of Democrats produced by sample maps in the 75th percentile at each cluster level and added up the number of representatives to get to a statewide outcome. Barber at 31.

217. As an initial matter, Dr. Barber's math is plainly wrong. Pegden Rebuttal at 3. A statistical analysis of Buncombe and Cumberland Counties shows how Dr. Barber botched the statistical analysis. *Id.* In Buncombe, using Dr. Barber's nonpartisan sample maps, there is a 28% chance of electing two Democratic representatives and a 72% chance of electing three Democratic representatives. *Id.* at 2. In Cumberland, using Dr. Barber's nonpartisan sample maps, there is an 85% chance of electing three Democratic representatives and an 18% chance of electing four Democratic representatives. *Id.* Dr. Barber did his statewide calculations by numerically adding up the number of legislators that are possible from individual clusters. Barber at 31. But looking at the chances of Buncombe and Cumberland jointly sending a given number



of Democratic legislators to Raleigh requires an entirely difference calculation – it requires *multiplication*, not addition. Pegden Rebuttal at 2. Therefore, rather than adding up the potential *number* of Democratic legislators that each individual cluster could send to Raleigh, Dr. Barber should have looked at the *percent chance* that the clusters would send the lower number of Democratic legislators to Raleigh and multiply the percentages together. *Id.* Dr. Barber does not dispute the accuracy of this type of mathematical analysis. Barber Dep. at 2:02.

218. Evaluated this way and based on Dr. Barber’s own data, the enacted House map results in more Republicans than all but 0.177% of Dr. Barber’s sample maps. Mattingly Rebuttal at 4. Under Dr. Barber’s own standards, by which he considers a map a partisan gerrymander if it falls outside the middle 50% range of sample maps, this is an extreme partisan gerrymander. Barber Dep. at 1:29.

219. And yet, even if we accept Dr. Barber’s incorrect mathematics at face value, the results *still* result in a partisan gerrymander favoring Republicans. If you (incorrectly) add up the minimum number of Democrats that the clusters can reasonably expect to elect based on nonpartisan maps, you would arrive at a total of 56. Barber Dep. at 1:40. Under Dr. Barber’s own analysis, the enacted maps will likely result in 49 Democrats. *Id.*, Barber at 31. This, by Dr. Barber’s own standards, is a partisan gerrymander.

220. Dr. Barber’s cluster level-analysis also demonstrates the partisan nature of the House map. In addition to finding a statewide Democratic vote average, Dr. Barber evaluated how the enacted and simulated maps would perform in all of the statewide races that he chose to average. *Id.* at 116.

221. In 100% of Dr. Barber's simulated Cumberland cluster maps, Democrats could expect to win more than two districts. Barber Dep. at 2:24. Under the enacted map, in six out of eleven election contests, Democrats could expect to win only two seats. *Id.*
222. In every election save the 2016 presidential election in Dr. Barber's simulated Buncombe cluster maps, Democrats could expect to win more than two districts. *Id.* at 2:37. Under the enacted maps, in eleven out of eleven elections contests, Democrats could expect to win two seats. *Id.* at 2:24.
223. In 100% of Dr. Barber's Durham-Person cluster simulated maps, Democrats could expect to win more than four districts. *Id.* Under the enacted maps, there are two elections where Democrats win only two seats. *Id.* Furthermore, Dr. Barber failed to use any other measurement of partisan gerrymandering besides partisan outcomes. He did not, for example, use the median-mean difference, as Dr. Magleby did, and which is less prone to error. *Id.* at 4:53.
224. Overall, Dr. Barber's analysis further supports that of Plaintiffs' experts and demonstrates the enacted House maps are partisan gerrymanders.
225. Senate maps. Statistical evidence demonstrates that the new North Carolina Senate map is also an extreme partisan gerrymander. *Id.* at 10. The North Carolina legislature packed and cracked Democratic voters so as to elect far more Republican Senators than would be expected in nonpartisan maps. *Id.* at 10.
226. As with the House maps, Dr. Mattingly created a set a nonpartisan maps that prioritized traditional redistricting criteria. *Id.* at 21. These maps showed atypical behavior that all favored Republican candidates. *Id.*

227. Unlike the House maps, however, the Senate maps exhibit a high degree of municipal preservation. *Id.* at 28. To evaluate the full range of potential partisan gerrymandering, Dr. Mattingly programmed the algorithm to create nonpartisan maps that did not prioritize municipal preservation, and found that when municipal preservation was not given as much prominence, the enacted plan appears as even more extreme partisan outliers. *Id.* at 28.

228. Dr. Magleby also showed that with nonpartisan Senate maps, Democrats should expect to win substantially more seats than they do under the legislatively-enacted maps. Dr. Magleby's analysis demonstrates that in typical, nonpartisan maps, Democrats usually carry 22 Senate seats. Magleby at 17. In the maps drawn by the North Carolina Legislature, Democrats typically carry just 19 seats. *Id.* at 17. Only 15 out of 1,000 neutral algorithmically-created maps result in such a low Democratic presence in the Senate. *Id.* at 17. That amounts to a 1.5% chance that Democrats would win so few seats absent partisan gerrymandering.

229. Again, because a "seats carried" analysis is not sufficient to identify all gerrymanders, especially packing gerrymanders, Dr. Magleby also performed a median-mean difference analysis. The Senate maps also exhibit an extreme median-mean difference. In the algorithmically-generated maps, the most common median-mean difference fell between -0.0075 and -0.01. *Id.* at 20. The lowest observed median-mean difference in the nonpartisan maps was -0.0201, and the highest was -0.005. *Id.* at 20. The enacted Senate maps, by contrast, had a median-mean difference in Democratic vote share of -0.024. *Id.* at 19. Not a single one of Dr. Magleby's

- algorithmically-drawn maps had a median-mean difference that extreme, meaning that none were as disadvantageous to Democrats or as durable a gerrymander. *Id.* at 19.
230. As with the house maps, Dr. Mattingly drew a set of nonpartisan maps in the Senate county clusters by way of comparison. His findings demonstrate an extreme pattern of cracking and packing Democratic voters so as to achieve extreme Republican advantage.
231. In the Iredell-Mecklenburg cluster, Democratic voters were packed into the most Democratic districts and underpopulated in the least. Mattingly at 55. As a result, a district that would ordinarily lean Democratic would perform Republican in a number of election scenarios. *Id.* This makes the district far less responsive to the will of the electorate than would otherwise be expected. *Id.*
232. In the two districts in the Forsyth-Stokes cluster, the most Democratic district is overpopulated with Democrats and the least Democratic district is underpopulated with Democrats. *Id.* at 59. No algorithmically-generated districted exhibited a pattern this extreme. *Id.* The chance of this configuration appearing absent intentional partisan gerrymandering is less than 1%. *Id.*
233. The same pattern holds true in the Cumberland-Moore cluster – Democrats are overpopulated in the most Democratic cluster and underpopulated in the least Democratic cluster. *Id.* at 61. The chances of this occurring absent intentional partisan gerrymandering are less than 0.06%. *Id.*
234. In the Guilford-Rockingham cluster, Democrats are overpopulated in the most Democratic districts and underpopulated in the least Democratic district, so that what otherwise be a toss-up district becomes safely Republican. *Id.* at 63.

235. Dr. Mattingly also found abnormalities in the Northeast county cluster. The counties in the Northeast of North Carolina could have been divided into one of two clusters. *Id.* at 65. The cluster that the North Carolina Legislature selected will likely result in two Republican Senators in a variety of political environments. *Id.* The alternative cluster would have resulted in one party winning each district. *Id.*
236. Altogether, Dr. Mattingly's and Dr. Magleby's analysis convincingly shows that the North Carolina Legislature engaged in intentional partisan gerrymandering so as to create Senate maps that would have been near-impossible to generate absent attempts to entrench the Republican Party in power.
237. The draft map also received an F rating on partisan fairness from the nonpartisan Princeton Gerrymandering Project. Marcus Aff. ¶ 19.
238. Defendants' expert Dr. Barber also, perhaps unintentionally, shows that the enacted Senate maps are a partisan gerrymander.
239. As previously stated, Dr. Barber's calculations were error-prone and unreliable. And yet, even looking at the numbers as he presented them, the Senate maps are clear partisan gerrymanders.
240. Based on Dr. Barber's arithmetic, anything less than 23 Democratic Senators constitutes a partisan gerrymander. Barber at 183; Barber Dep. at 1:44. The enacted map, under Dr. Barber's own calculations will result in 20 Democratic Senators, giving the Republicans a veto-proof supermajority through partisan gerrymandering. Barber Dep. at 1:44.
241. Congressional Maps. The legislatively-enacted Congressional maps also exhibit characteristics consistent with partisan gerrymandering. To evaluate partisan bias, Dr.

Mattingly generated a set of nonpartisan Congressional maps, based on traditional redistricting criteria. Mattingly at 72. He programmed the algorithm so that the resulting districts split no county into more than two districts, traversed counties as few times as possible, were contiguous, and fell within the constitutionally-mandated 1% population deviation. *Id.* These districts were designed so as to have a similar level of compactness as those created by the state legislature. *Id.*

242. According to Dr. Mattingly's simulations, under the enacted district map, Democrats consistently win four Congressional seats, regardless of the statewide Democratic vote share. *Id.* at 74. This makes the congressional maps essentially impervious to changing voter preferences. In contrast, the nonpartisan, algorithmically-generated maps exhibited substantial responsiveness to voter preferences. *Id.* Depending on the statewide Democratic vote share, in nonpartisan maps, Democrats can expect to win anywhere from four to eight seats. *Id.* In drawing the congressional maps, the North Carolina Legislature found a way to defeat North Carolina's political geography and win elections, no matter what voters want.

243. Dr. Magleby's simulations likewise found patterns of Republican partisan gerrymandering. Dr. Magleby ran simulations to generate 100,000 maps, from which he took a random sample of 1,0000. Magleby at 21. Under the simulated maps, there was an 89.2% chance of Democrats carrying 5 or more Congressional seats. *Id.* at 22. In fact, he found it was more likely that a non-biased map would produce 7 Democratic seats than it would 4 Democratic seats. However, Dr. Magleby, like Dr. Mattingly, found that Democrats can expect to win only four seats under the enacted maps. Moreover, because Dr. Magleby held constant the split counties that the legislature

chose, i.e., splitting Guilford and Mecklenburg Counties and allowed the algorithm to split those counties, at times, the same number of times that the legislature did, Dr. Magleby's seats carried analysis is even more concerning. That is, even baking in the discriminatory decision to pack and crack two heavily Democratic counties, it was still exceedingly rare that a randomly drawn plan would only elect 4 Democrats. *Id.*

244. Because of the decision to hold constant the choice of county splits in the Congressional simulations, Dr. Magleby's median-mean analysis of the Congressional plan is even more important. The Congressional map enacted by the North Carolina Legislature also had a more extreme median-mean difference than any nonpartisan, algorithmically-derived map. *Id.* at 24. In the simulated maps, the median-mean difference in Democratic vote share ranged from -0.042 to 0.025. *Id.* The legislatively-drawn maps, however, have a median-mean difference of -0.055. *Id.* Not a single computer-generated map exhibited a difference so extreme. That is to say, even a randomly produced 10-4 map would not be so durable or so non-responsive to Democratic voters or shifts in the Democratic statewide vote shares. The map produced by the legislature is an extreme statistical outlier.

245. Overall, Dr. Mattingly and Dr. Magleby both found evidence of intentional partisan gerrymandering in the Congressional maps.

246. The draft Congressional map received an F grade on partisan fairness from the Princeton Gerrymandering Project. Marcus Aff. ¶ 17. Democratic Senators Clark and Chaudhuri offered two alternative Congressional maps, both of which received an A grade on partisan fairness from the Princeton Gerrymandering Project. ¶ 16. These maps were rejected by Senate Republicans. *Id.*

247. As a result, all three maps enacted by the North Carolina Legislature – the House, Senate, and Congressional maps – are all intentional partisan gerrymanders. The patterns found in these maps would be near-impossible to produce without intentional efforts to ensure that Republicans will be elected, regardless of voter preference.

**VII. Partisan gerrymandering has a disproportionate effect on Black voters.**

248. The North Carolina Legislature has a long history of implementing measures to diminish the competitiveness of elections in order to prevent Black North Carolinians from voting. Leloudis Report at 6. Throughout North Carolina’s history, legislators have attempted to impose one-party rule to prevent the formation of an interracial coalition that would challenge the dominant power structure. *Id.*

249. In the pre-Civil War years, the North Carolina State Constitution gave political advantage to a slave-holding elite, which allowed them to dominate antebellum politics. *Id.* As a result, by 1860, more than 85% of lawmakers in the North Carolina General Assembly were slaveholders, a higher percentage than in any other Southern state. *Id.* North Carolina policy, therefore, reflected the interests of this slaveholding elite.

250. In the post-Reconstruction years, white reactionaries attempted to overturn the gains that Black North Carolinians had made in the 1860s and 1870s and dissolve a nascent forward-looking interracial coalition. *Id.* at 11. But they were initially stymied by the fact that “Black political participation at the state level sustained a competitive two-party system.” *Id.* at 11. The solution was disenfranchisement and noncompetitive elections going forward.

251. White Democrats in 1899 used the narrow legislative advantage they gained through racial appeals to pass the 1899 Act to Regulate Elections. *Id.* at 19. This act was intended to limit Black voting power in order to entrench the Democratic Party in



power in North Carolina. *Id.* at 19. The law contained such electoral changes designed to prevent Black North Carolinians from registering and voting, including provisions implementing an entirely new voter registration system, allowing any voter to challenge the registration of any other voter, and requiring ballots contain to symbols or colors that could accommodate illiterate voters. *Id.* 19–20. This law served its purpose – it limited Black voter participation enough to put Democrats in power in the 1900. *Id.* at 20. This turnaround “cleared the way for a new order characterized by one-party government, segregation, and cheap labor.” *Id.* at 21. By the early 1900s, “no Republican had a realistic chance of winning election to a statewide office . . . .” *Id.* at 22.

252. The conservative Democratic party then quickly used its legislative advantage to implement a brutal regime of Jim Crow. *Id.* White supremacists “enacted a system of power and plunder that concentrated wealth and opportunity in the hands of the few and mobilized racial animosity in defense of that accumulation.” *Id.*

253. When the Democratic Party began to embrace the civil rights platform in the 1960s and 1970s, the Republican Party stepped into the void and adopted the positions favored by conservative whites. *Id.* at 49. As a result, Black and white voters’ affiliations with the political party reversed – in North Carolina, whites began to vote en masse for Republicans, and Black voters became loyal to the Democratic party. *Id.* at 53. The fundamental divides between the parties remained as salient as ever, but Democrats and Republicans have flipped positions. *Id.* As a result, by the early 2000s, North Carolina politics was as racially polarized as it was in the late 1800s. *Id.* at 59.

254. The high level of racial polarization inevitably means that in North Carolina, race and partisanship are inextricably linked. Leloudis Rough Depo Tr. at 35:6-10. Conservative politicians throughout North Carolina's history have recognized this relationship and have viewed discrimination against Black voters as an effective means of preventing "an interracial coalition" that would overthrow the hegemony of a narrow white elite. Leloudis Report at 21.
255. In the last decades, gerrymandering has become "the tactic of choice" to limit Black voters' political influence. The overlap between party and race allows "gerrymandering many times [to] act[] as a cover for racial discrimination in redistricting." *Id.* at 4. Therefore, efforts to gain partisan advantage in North Carolina politics cannot be extricated from efforts to reduce minority voters' political participation. *Id.* at 6. Simultaneously, those in power continue to use the diminution of Black political power to preserve the dominant power structure and eradicate election methods that could plausibly result in electoral change.
256. The relationship between partisanship and racial discrimination is particularly evident in the Senate districts drawn in the Northeast corner of North Carolina. Statistical analysis demonstrates that the clusters that the North Carolina Legislature chose to use in the Northeast affect both the percentage of Black voters in the districts and, due to the overlap of race and party, the partisan outcome of those districts.
257. Dr. Mattingly evaluated the possible choices North Carolina Legislatures had in drawing Senate districts in the Northeast. Mattingly Addendum at 1-2. His analysis shows that the North Carolina Legislature could have chosen one of two options in

Northeast North Carolina to draw Senate maps. The enacted map divides the Northeast into two county clusters – one made up of Martin, Warren, Halifax, Hyde, Pamlico, Chowan, Washington, and Carteret Counties (cluster 1) and one made up of Gate, Currituck, Pasquotank, Dare, Bertie, Camden, Perquimans, Hertford, Tyrrell, and Northampton Counties (cluster 2). *Id.* at 1. The legislature could instead have enacted one cluster made up of Pasquotank, Dare, Perquimans, Hyde, Pamlico, Chowan, Washington, and Carteret Counties (alternative 1) and one made up of Gate, Currituck, Camden, Bertie, Warren, Halifax, Hertford, Tyrrell, Northampton, and Martin Counties (alternative 2). *Id.*

258. There are significant differences in racial composition and partisanship between the two cluster options. Clusters 1 and 2 have BVAPs of 30.0% and 29.49%, respectively. *Id.* Based on statewide election results in 2016 and 2020, these BVAP numbers will result in a Democratic vote share in these two clusters of no more than 47.56% and 47.85%, respectively. *Id.* The chosen clusters therefore split the Black vote and result in two stable Republican seats. *Id.* at 1–2.

259. Alternative Senate clusters 1 and 2, on the other hand, would have had BVAPs of 17.47% and 42.33%, respectively. *Id.* at 1. In a district with a 42.33% BVAP, a Democratic candidate can expect to win at least 50% of the vote. If the legislature had not split Black voters, one of the districts in the Northeast would have reliably elected a Democratic candidate. *Id.* at 2. The chosen clusters therefore simultaneously result in partisan gerrymandering and diminished opportunity for Black voters to elect their candidates of choice.

260. Dr. Mattingly also examined the correlation between the BVAP fraction and the Democratic vote fraction in the Duplin-Wayne House Cluster. *Id.* at 2. His analysis demonstrates that it is possible to draw districts with significantly higher BVAPs, and a higher BVAP would raise the Democratic vote fraction. *Id.*

261. Statistical analysis, then, coincides with historical evidence. North Carolina politicians, in the past and present, limited Black voters' political influence and diminished the competitiveness of elections. Due to the overlap of partisanship and race, the effects are one and the same: The maps enacted by the North Carolina Legislature in 2021 simultaneously disadvantage Black voters and advantage Republicans.

## CONCLUSIONS OF LAW

### I. **Plaintiffs have standing.**

1. The North Carolina 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. Unlike the federal constitution, the North Carolina Constitution does not have a “case or controversy” clause, meaning the North Carolina courts are not constrained by federal standing principles. *Davis v. New Zion Baptist Church*, 811 S.E.2d 725, 727 (N.C. Ct. App. 2018). As a result, the North Carolina Constitution liberally confers standing on those who suffer harm. *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 642, 669 (2008); *Comm. to Elect Forest v. Emps. Pol. Action Comm.*, 260 N.C. App. 1, 6 (2018). The relevant question is whether the party seeking relief has “alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely

depends for illumination of difficult Constitutional questions.” *Stanley v. Dep’t of Conservation & Dev.*, 284 N.C. 15, 28, (1973)).

2. Plaintiff Common Cause easily shows that it has standing to sue, both on its behalf and on behalf of its members. Common Cause as an organization has suffered harm due to the North Carolina Legislature’s actions. For decades, Common Cause has been dedicated to advocating and lobbying for fair maps and to fostering political participation among North Carolinians. During the legislative redistricting process, Common Cause was obligated to reallocate staff time and resources to contend with the chaotic process. Now that gerrymandered maps have been enacted, Common Cause faces difficulty advocating for the fair elections, engaging voters, and ensuring that the North Carolina Legislature is responsive to the needs of its citizens. *See generally* PX1480 (Phillips Affidavit); PX1561 ¶ 17 (Common Cause Complaint). Therefore, we find Common Cause is impeded in its organizational mission.

3. As for Common Cause’s standing to bring suit on behalf of its members, organizational plaintiffs have standing to challenge an official action when at least one of their organization members has standing to sue in his or her own right. *River Birch Associations v. City of Raleigh*, 326 N.C. 100, 129 (1990). Common Cause has members across the state who identify as Black and are harmed by intentional racial discrimination directed at Black North Carolinians. These members reside in areas that include Bertie County, Gates County, Hertford County, Hoke County, Nash County, Northampton County, Pasquotank County, Scotland County, Wake County, Wayne County, and Wilson County. *See generally* PX1480 (Phillips Affidavit); PX1561 ¶ 17 (Common Cause Complaint). Common Cause’s members who identify as Black are directly harmed by the legislature’s failure to consider racially data and to preserve existing minority-performing districts.

The resulting maps eradicated the possibility of any VRA protections that may have been necessary and will likely result in the dilution of their votes.

4. We therefore find that Common Cause has standing for all claims.

II. **Plaintiffs are entitled to a declaratory judgment that the enacted maps violate *Stephenson I* and Plaintiffs’ rights under the North Carolina Constitution.**

5. The North Carolina Declaratory Judgment Act, N.C.G.S. Chapter 1, Article 26, expressly allows for the determination of legal rights to afford “relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” N.C.G.S. §§ 1-254, 1-264.

6. Under N.C.G.S. §§ 1-253 and 1-254, “a declaratory judgment should issue (1) when it will serve a useful purpose in clarifying and settling the legal relations at issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity and controversy giving rise to the proceeding.” *Conner v. N.C. Council of State*, 365 N.C. 242, 258 (2011) (internal citation omitted). “Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper.” N.C.G.S. § 1-259. The Declaratory Judgment Act is “to be liberally construed and administered,” N.C.G.S. § 1-264, and courts have “no discretion to decline” a request for declaratory relief where “fundamental human rights are denied in violation of constitutional guarantees” and legislative action is specifically challenged by persons directly affected by it. *Augur v. Augur*, 356 N.C. 582, 589 (2002) (internal citation omitted).

7. Where a declaratory judgment claim is premised on “issues of great public interest,” the court should “adopt and apply the broadened parameters of a declaratory judgment action.” *Hoke Cty Bd. of Educ. v. State*, 358 N.C. 605, 615-16 (2004).

8. The case at hand clearly presents an issue of great public importance about which the parties disagree. Plaintiffs contend that the North Carolina Legislature must analyze the necessity

of creating VRA districts in order to follow the mandates of *Stephenson I* and *II*, while the North Carolina Legislature insists it does not have to look at racial data.

9. Clearly, the necessity of complying with federal and state statutory and constitutional law is an issue of pressing concern. And it is likely that in the absence of a declaration, the next redistricting cycle will be plagued by the same uncertainty, insecurity, and controversies that have arisen this time around.

10. The North Carolina Constitution provides that “the General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts” and “shall revise the representative districts and the apportionment of Representatives among those districts.” N.C. Const. art. II, §§ 3, 5.”

11. The State Constitution specifically enumerates four limitations upon the redistricting and reapportionment authority of the General Assembly, including that:

- (a) each Senator and Representative shall represent, as nearly as possible, an equal number of inhabitants;
- (b) each senate and representative district shall at all times consist of contiguous territory;
- (c) no county shall be divided in the formation of senate or representative districts (the “Whole County Provision”); and
- (d) once established, the senate and representative districts and the apportionment of Senators and Representatives shall remain unaltered until the next decennial census of population taken by order of Congress.

*See* N.C. Const. art. II, §§ 3, 5; Joint Stip. ¶ 14.

12. In addition to these requirements, Article I, Section 3 of the North Carolina Constitution provides that the rights of the people of North Carolina “shall be exercised in pursuance of law and consistently with the Constitution of the United States,” and Article I, Section 5 of the North Carolina Constitution prohibits a law or ordinance in North Carolina from contravening the federal Constitution. Collectively, these provisions “delineate[] the interplay between federal and state law[.]” *Stephenson v. Bartlett*, 355 N.C. 354, 370 (2002) (“*Stephenson I*”). Finally, Article I, Section 19 guarantees North Carolinians equal protection of the laws and freedom from discrimination by the State on the basis of race, color, religion, or national origin, and Article I, Section 10 provides that “[a]ll elections shall be free.”

13. The United States Constitution requires that state legislative and Congressional districts comply with the one-person, one-vote requirement under the Equal Protection Clause of the Fourteenth Amendment. State legislators are also required to draw state legislative and congressional districts that comply with the federal Voting Rights Act (“VRA”), as amended and as proscribed under the Fifteenth Amendment. *Stephenson I*, 355 N.C. at 363–64. Therefore, North Carolina law prohibits any voting qualification or prerequisite that impairs or dilutes, on account of race or color, a citizens’ opportunity to participate in the political process and to elect representatives of their choice. *Id.* This requirement does not compel a state to adopt any particular legislative reapportionment plan, but rather prevents the enforcement of redistricting plans that have the purpose or effect of diluting the voting strength of legally protected minority groups. *Id.* at 364.

14. In *Stephenson v. Bartlett*, the North Carolina Supreme Court sought to harmonize the North Carolina constitutional redistricting requirements with federal law. 355 N.C. 354; *see also Stephenson v. Bartlett*, 357 N.C. 301 (2003) (“*Stephenson II*”). The court developed a



methodology for grouping counties together into “clusters” that it held would minimize the splitting of counties, in recognition of the Whole County Provision, while satisfying one person, one vote requirements.

15. *Stephenson* expressly mandated that “to ensure full compliance with federal law, legislative districts required by the VRA shall be formed prior to the creation of non-VRA districts.” *Stephenson I*, 355 N.C. at 383. In other words, first, any and all districts that are required under the VRA (which requires that districts be drawn without the intent or effect of depriving protected voters of an equal opportunity to elect their candidates of choice) must be drawn.

16. The trial court in *Stephenson* also instructed that VRA districts should be formed where, “due to demographic changes in population there exists the required [*Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986)] preconditions,” a finding that was affirmed by the North Carolina Supreme Court. *Stephenson II*, 357 N.C. at 307. Accordingly, to comply with *Stephenson*, the Legislature must evaluate demographic changes to determine whether there exist the required *Gingles* preconditions. This includes, at the least, considering racial data and, where legislators and members of the public have indicated that there may be VRA concerns, conducting a regionally-focused Racially Polarized Voting (“RPV”) study to determine if there is legally significant racially polarized voting. *See, e.g.*, *Gingles*, 478 U.S. at 55–58.

17. The North Carolina Constitution, therefore, requires the North Carolina Legislature to follow a sequential redistricting process to ensure compliance with both state and federal law. The North Carolina Legislature must observe this process regardless of whether or not VRA districts are ultimately necessary; the process *itself* ensures compliance with applicable state and federal law and preserves the rights of minority communities in North Carolina.

18. The Court therefore finds that Plaintiffs are entitled to a declaratory judgment establishing that Legislative Defendants must abide by *Stephenson I* and *II*. Indeed, the result could not be more clear. The North Carolina Supreme Court, the highest court in the state, has already established a mandatory process for the Legislature to follow in order to harmonize federal law and state law. This court is bound by the decisions of the highest court, and finds that the North Carolina Legislature must engage in a redistricting process that accords with the North Carolina Constitution

19. The Court understands that the Superior Court for Wake County previously found Defendants’ failure to follow the constitutionally-determined process moot. Order, *NAACP v. Berger*, No. 21-CVS-014476 (N.C. Super. Ct. Dec. 3, 2021). This Court disagrees for two reasons. First, when these maps are enjoined, *see* below, the Legislature will be obligated to redraw the House, Senate, and Congressional maps. The map-drawing process will then be a live issue – Legislative Defendants will have the opportunity, and indeed the necessity, of properly considering racial data in order to ensure compliance with state and federal law. With this looming on the horizon, the issue is in no way moot.

20. Second, Legislative Defendants cannot evade the requirements of the North Carolina Constitution simply by ignoring them. The North Carolina Constitution is the supreme law of the land, and Legislative Defendants cannot “wait out” a constitutional requirement by disregarding a time-bound law and then claiming the time has passed. During the process, Legislative Defendants were required to abide by the *Stephenson* process, and they continue to hold that obligation. The obligation itself did not disappear when they passed the legislative maps. Therefore, we find this issue live, important, and in Plaintiffs’ favor.

III. **The North Carolina Legislature intentionally discriminated on the basis of race while redistricting.**

21. The Court also finds that Defendants' failure to properly consider racial data, which is the constitutionally-mandated process as outlined in *Stephenson*, coupled with the dismantling of districts in which Black voters can elect candidates of their choice, constitutes racial discrimination in violation of the Equal Protection Clause of Article I, Section 19 of the North Carolina Constitution.

22. The North Carolina Constitution guarantees all persons equal protection of the law and provides that no person shall be "subjected to discrimination by the State because of race, color, religion, or national origin." N.C. Const. art. I, § 19.

23. The standard for determining racial discrimination in violation of the North Carolina Constitution derives from *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 265 (1977); *State v. Jackson*, 322 N.C. 251, 261 (1988). In this case, the United States Supreme Court laid out a non-exhaustive list of factors that a court can consider in order to determine whether an official action was enacted with a racially discriminatory purpose. *Id.* Those factors include 1) the impact of the official action and whether it bears more heavily on one race than another; 2) the historical background of the decision; 3) the sequence of events leading up to the decision, including departures from normal procedures; and 4) the legislative or administrative history of the official action. *Arlington Heights*, 429 U.S. at 266–68.

24. Discrimination does not need to derive from any racial animus on the part of the legislators. *North Carolina State Conference of the NAACP v. McCrory*, 831 F.3d 204, 222 (2016). Legislators may, instead, be liable for intentional discrimination against Black voters if they discriminated against Black voters by using partisanship as a proxy for race and depriving Black voters of their right to fully participate in the political process. *Id.*

25. Plaintiffs need not show that discriminatory purpose was the “dominant” or “primary” reason that legislature passed the law. *Arlington Heights*, 429 U.S. at 265. Rather, plaintiffs need only show that racial discrimination was “a” motivating factor. *Id.* at 265–66. The burden then shifts to the defendants to prove that the official action would have taken place without the discriminatory motivation.

26. Based on the *Arlington Heights* factors, we find that the North Carolina Legislature engaged in intentional discrimination by failing to use racial data in its redistricting analysis, by dismantling performing Black districts, and by using partisan gerrymandering as a proxy for racial discrimination.

A. Impact of the decision.

27. One relevant factor that courts use to determine whether an official action was intentionally racially discriminatory is the impact of the official action and whether it “bears more heavily on one race than another.” *Id.* at 266. In order to show the impact bears more heavily on a particular racial group, plaintiffs need only show “disproportionate impact . . . not overwhelming impact . . .” *McCrary*, 831 F.3d at 231.

28. The process that the North Carolina Legislature used to draw the new maps and the results of the maps themselves both bear more heavily on Black voters than on white voters.

29. First, the legislature’s failure to abide by the *Stephenson* criteria by definition had a disproportionate impact on Black voters. *Stephenson* instructs legislators to first draw VRA districts in order to ensure that Black voters have an equal opportunity to participate in the political process. The actual mechanics of *Stephenson* are clear. *Stephenson I* requires that legislators draw VRA districts “prior to” drawing all other districts. *Stephenson I*, 355 N.C. at 383. In order to draw VRA districts, legislators must, by definition, examine racial data, including the extent of racially polarized voting in North Carolina to determine whether or not VRA districts are required in the

first place. Therefore, by definition, failure to conduct any analysis into the necessity of drawing VRA districts disproportionately falls on minority voters.

30. We also find that the overtly partisan character of the enacted maps has a disproportionate impact on Black voters. As we establish below, the House, Senate, and Congressional maps are all extreme partisan gerrymanders that will elect a disproportionate number of Republican representatives, regardless of the political climate. Analysis by Drs. Mattingly and Leloudis convincingly shows that partisan redistricting that favors Republicans at the expense of Democrats has a disproportionate impact on Black voters.

31. Dr. Mattingly demonstrated the association between Black voters and the Democratic party by examining the Northeast corner of North Carolina, an area with a high proportion of Black voters. Dr. Mattingly found that the North Carolina Legislature had a choice between two different Senate clusters, and chose the option that combines Martin, Warren, Halifax, Hyde, Pamlico, Chowan, Washington, and Carteret Counties on the one hand and Gate, Currituck, Pasquotank, Dare, Bertie, Camden, Perquimans, Hertford, Tyrrell, and Northampton Counties on the other. *Id.* at 1. The alternate option was one cluster that combined Pasquotank, Dare, Perquimans, Hyde, Pamlico, Chowan, Washington, and Carteret Counties and one that combined Gate, Currituck, Camden, Bertie, Warren, Halifax, Hertford, Tyrrell, Northampton, and Martin Counties. *Id.* The chosen districts have BVAPs of 30.0% and 29.49%, and will likely result in two reliable Republican districts. *Id.*

32. If the Senate had chosen the other cluster options, the districts would have had BVAPs of 17.47% and 42.33%. *Id.* at 1. A district with a 42.33% BVAP, would have resulted in a consistent Democratic victor in that district. Therefore, if the legislature had not split Black voters, one of the districts in the Northeast would have reliably elected a Democratic candidate. *Id.* at 2.

33. Dr. Mattingly also examined the correlation between the BVAP fraction and the Democratic vote fraction in the Duplin-Wayne House Cluster. *Id.* at 2. His analysis demonstrates that it is possible to draw districts with significantly higher BVAPs, and a higher BVAP would raise the Democratic vote fraction. *Id.*

34. Overall, his analysis shows that the percentage of Black voters in a district has a determinative effect on partisan results of the election. In these maps, the addition of a greater percentage of Black voters was enough to tip the scale from a Republican victory to a Democratic victory. Likewise, the diminution of the percentage of Black voters tips the scales to a Republican victory. Based on these figures, we can conclude that partisan gerrymandering, in which maps are designed to disadvantage Democrats, has a disproportionate impact on the ability of Black voters to elect their candidates of choice.

B. Historical background of the decision.

35. *Arlington Heights* also instructs courts to evaluate the historical background of the challenged decision, particularly if it reveals a series of official actions taken for invidious purposes. *Arlington Heights*, 429 U.S. at 267. “A historical pattern of producing discriminatory results provides important context for determining whether the same decision-making body has also enacted a law with discriminatory purpose.” *McCrary*, 831 F.3d at 223–24; see also *Holmes v. Moore*, 270 N.C. App. 7, 20 (2020).

36. Plaintiffs have presented unrebutted extensive evidence that the history of voting rights and election laws in North Carolina shows a recurring pattern in which Black voters are targeted for disenfranchisement, and their ability to fully participate in the political process is diluted. Dr. Leloudis’s report shows that this history goes back not just decades, but well over a century and a half. In the redistricting context in particular, Black voters have frequently been the target of

nefarious activity, including racial gerrymandering in the last redistricting cycle. *See Covington v. North Carolina*, 316 F.R.D. 117, 176–78 (M.D.N.C. 2016); *Harris v. McCrory*, 159 F. Supp. 3d 600, 604 (M.D.N.C. 2016).

37. Furthermore, there is un rebutted evidence that Republican leadership has consistently and repeatedly chosen to consider race in redistricting only if and when it would prove advantageous of them to do so in order to further political entrenchment. Defendant Hise testified that the General Assembly commissioned an RPV study in the 2011 cycle “frankly because it was advantageous for us to create” concentrated minority districts. Hise Dep. 272:5-7. In the 2019 decision in *Common Cause*, the Court found “un rebutted evidence presented at trial established that Legislative Defendants themselves created districts with artificially low BVAPs when it was politically advantageous.” 2016 LEXIS 56, at \*316. And both Defendants Hise and Hall testified that, in 2021, they were aware that the clusters set forth in the Duke Academic Paper had been endorsed on the website the “Differentiators,” run by the former Chief of Staff for Speaker Berger, before requiring legislators to use these cluster options that, by their own definition, did not take into account analysis of what the VRA requires. Hall Dep. Dep. 233:9-24; Hise Dep. Dep. 167:22-168:3.

38. Seen in this light, Legislative Defendants’ willful blindness to race despite this very recent history demonstrating the intersection of race and politics, particularly in redistricting, supports an inference that Legislative Defendants intentionally harmed Black voters under the façade of a race-neutral criterion.

C. Sequence of events leading up the decision.

39. The sequence of events leading up to the passage of the House, Senate, and Congressional maps provides further evidence of racial discrimination. *Arlington Heights*, 429. U.S. at 267.

40. Of particular note is the fact that legislators were repeatedly put on notice that they would violate the North Carolina Constitution if they did not use racial data to determine the necessity of creating VRA districts. At least as early as August 10, 2021, counsel for Plaintiff Common Cause informed committee chairs that they were required to evaluate whether or not VRA districts were required and that it would be impossible to do so without the use of racial data. Consistent with Legislature's statements that they would consider racial data if given reason to, Plaintiff Common Cause informed the Legislature about racially polarized voting patterns, and the Southern Coalition for Social Justice sent Legislative Defendants a letter explaining the proper way to use racial data. Legislative Defendants were repeatedly given the same warning by various members of the House and Senate Redistricting Committees. In the face of all this public and legislative pressure, Defendants persisted in their course.

D. Legislative history.

41. The legislative history also provides compelling evidence that the Legislature engaged in racially discriminatory behavior.

42. As is very well established, Legislative Defendants failed to conduct any meaningful analysis to determine whether VRA districts were compelled. The redistricting criteria adopted by the Joint Committees on Redistricting explicitly states that the legislators were barred from using racial data in the determination of district lines. Senator Daniel's amendment stating that the district lines would comply with the Voting Rights Act is no safe harbor. On the contrary, neither Senator Daniel nor any other legislator gave any indication how the legislature would draw VRA districts absent data that informs the legislature about the racial demographics in North Carolina. As a result, Senator Daniel's amendment amounts to nothing more than empty words.



43. Moreover, Common Cause staff observed firsthand legislative defendants creating maps that divided communities on the basis of race, including in Wake and Mecklenburg Counties. As a result, the legislative history strongly points to an inference of intentional discrimination.

44. Based on the four factors, this court finds that Plaintiffs have made a prima facie showing that the North Carolina Legislature intentionally racially discriminated against Black voters in drawing legislative districts for the 2021 cycle.

E. Legislative Defendants cannot show that the maps would have been enacted without racially discriminatory intent.

45. Once plaintiffs make a prima facie showing of racial discrimination, the burden shifts to the defendants to show that the challenged action would have taken place without the discriminatory intent. The Legislative Defendants here can make no such showing.

46. Legislative Defendants blatantly ignored the mandates of *Stephenson* and provide essentially no reason to justify this decision. Moreover, as will be further discussed below, the resulting maps cannot be explained by neutral redistricting criteria. As a result, this court finds that the Legislative Defendants are liable for intentional discrimination against Black voters.

IV. Legislative Defendants engaged in partisan gerrymandering.

47. In addition to our findings regarding racial discrimination, we find the Legislative Defendants engaged in unconstitutional partisan gerrymandering in violation of Article I, Sections 10, 12, 14, and 19 of the North Carolina State Constitution. Partisan gerrymandering strikes at the heart of our system of representation – it circumvents the will of the people and substitutes in its place the will of political candidates. *See People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875). Moreover, it penalized voters for exercising their rights to vote and for voicing policy preferences. The North Carolina Constitution’s protections for individual rights extend beyond those of the federal constitution; our constitution contains explicit protection for elections,

something that is found nowhere in the federal constitution. *see* N.C. Const. art. I, § 10. And state courts have interpreted our comparable constitutional provisions as more protective than those of the federal constitution. *See, e.g., Bulova Watch Co. v. Brand Distributors of N. Wilkesboro, Inc.*, 285 N.C. 467, 474 (1974); *State v. Barnes*, 264 N.C. 517, 520 (1965). Therefore, we are not limited by the federal constitution in our treatment of partisan gerrymandering. *Cf. Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

48. The Equal Protection Clause of the North Carolina Constitution guarantees to all North Carolinians that “[n]o person shall be denied the equal protection of the laws.” N.C. Const., art. I, § 19. The Equal Protection Clause protects the right to “substantially equal voting power.” *Stephenson I*, 355 N.C. at 379. The right to vote on equal terms is a “fundamental right.” *Id.* at 379.

49. Partisan gerrymandering violates the State’s obligation to provide all persons with equal protection of law because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party. *Common Cause v. Lewis*, 2019 N.C. Super. LEXIS 56, at \*346; *cf. Lehr v. Robertson*, 463 U.S. 248, 265 (1983) (“The concept of equal justice under law requires the State to govern impartially.”).

50. In drawing and enacting SB740, SB739, and HB976, Defendants intended to deprive citizens of the right to vote on equal terms based on partisan classification in an invidious manner and/or in a way unrelated to any legitimate legislative objective.

51. Defendants’ actions have the effect of silencing the political voice of voters who support Democratic candidates by virtue of district lines that crack or pack those voters, thereby depriving them of substantially equal voting power in an effort to entrench the Republican party in power,

52. Legislative Defendants' actions are not justified by any legitimate state interest or other neutral factor, nor are they narrowly tailored to advance a compelling government interest. Rather, Legislative Defendants acted with intent, unrelated to any legitimate legislative objective, to classify voters and deprive citizens of the right to vote on equal terms by subordinating Democratic voters to Legislative Defendants' partisan goals, and this intent was the predominant purpose of drawing the district lines in individual districts and statewide.

53. Because these extreme partisan gerrymanders result in one party winning far more elections and seats than they would be expected to in a nonpartisan map, they are non-responsive to the will of the electorate, and such non-responsiveness is durable, because the results of the gerrymander remains no matter how the voters' preferences change over the next ten years.

54. This durable non-responsiveness, coupled with how rare it is to arrive at such extreme seat splits absent intentional partisanship, establish extreme partisan gerrymandering in violation of the Equal Protection Clause.

55. Indeed, extreme partisan gerrymanders, which yield such non-responsive maps that diminish the impact of an individual voter's vote based on which party they vote for, are just as unconstitutional as grossly malapportioned maps that weigh voters' votes differently based on where they live. *See Reynolds v. Sims*, 377 U.S. 533, 568 (1964).

56. North Carolina's current political geography, when it properly accounts for the will of the electorate, does not produce maps with a significant Republican bias, as do the extreme gerrymanders.

57. Alternatively, this Court may use a different judicially-manageable standard for evaluating whether a partisan gerrymander violates the Equal Protection Clause that does not turn on Legislative Defendants' intent. First, the Court must examine whether there is a likelihood that

Legislative Defendants could have achieved a similar seat distribution without engaging in extreme partisan gerrymander, and whether the maps are responsive to the will of North Carolina voters. Second, should the distribution and responsiveness fall outside certain acceptable boundaries, this Court can shift the burden to Legislative Defendants to demonstrate whether there are partisan-neutral reasons that explain why such distribution and non-responsiveness occurred.

58. In this case, without determining what level of distribution and responsiveness would be considered acceptable, it is clear as a matter of law that there is very little likelihood that Legislative Defendants could have achieved a similar seat distribution without engaging in extreme partisan gerrymander. Moreover, the maps are not at all responsive to the will of North Carolina voters. Legislative Defendants have not offered any plausible neutral reason that explains the distribution and non-responsiveness. The Court therefore concludes that the maps at issue in this case constitute extreme partisan gerrymanders.

59. Accordingly, we find that the House, Senate, and congressional district maps all constitute extreme partisan gerrymandering. All three maps result in partisan configurations far beyond anything that would be expected in nonpartisan maps, with extreme consequences for representation in the State of North Carolina, and indeed for the integrity of our electoral process.

V. **Defendants violated the Free Elections Clause of the North Carolina Constitution.**

60. Article I, Section 10 of the North Carolina Constitution provides that “[a]ll elections shall be free.” This constitutional clause “makes the North Carolina Constitution more detailed and specific than the federal Constitutions in the protections of the rights of its citizens.” *Common Cause*, 2019 N.C. Super. LEXIS at \*334. As a result, the Free Elections Clause exceeds the federal constitution in preserving the “compelling interest of the State in having fair, honest elections.” *Id.* (quoting *State v. Petersilie*, 334 N.C. 169, 184 (193)). Under the Free Elections Clause, all

elections “must be conducted freely and honestly to ascertain, truthfully and fairly, the will of the people.” *Common Cause*, 2019 N.C. Super. LEXIS at \*337.

61. At its most basic level, partisan gerrymandering operates to subvert the will of the people. Gerrymandering involves packing disfavored communities into a small number of districts in which they constitute a supermajority and cracking disfavored communities across a larger number of districts to minimize their influence elsewhere. *Gill v. Whitord*, 138 S. Ct. 1916, 1920. This subverts the will of the people both on an individual level and on an aggregate level. On the individual level, when an individual resides in a packed or cracked district, that individual’s vote carries less weight than it would under a nonpartisan map. *Id.* at 1935–36 (Kagan, J., concurring). In a nonpartisan district, an individual voter’s choice, based on that voter’s political conscience, carries a larger probability of swaying the outcome of an election than in a gerrymandered district, where there is essentially no chance of doing so. On the aggregate level, a gerrymandered map preserves the power of the party in charge, regardless of the shifting will of the voters. The consequence is a system in which elected officials choose their voters rather than the other way around. *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 824 (2015).

62. We also find persuasive the reasoning of the Pennsylvania Supreme Court regarding an analogous provision in the Pennsylvania Constitution. In *League of Women Voters v. Commonwealth*, 645 Pa. 1, 117 (2018), the Pennsylvania Supreme Court determined that under the Free Elections Clause of the Pennsylvania State Constitution, partisan gerrymandering is an unconstitutional dilution of the people’s votes. The Pennsylvania Supreme Court noted, as do we, that this clause “has no federal counterpart” and thus provides greater protections than the federal constitution in preserving the integrity of individual votes. *Id.* at 98. Specifically, the court found that “partisan gerrymandering dilutes the votes of those who in prior elections voted for the party

not in . . . . By placing voters preferring one party's candidates in districts where their votes are wasted on candidates likely to lose (cracking), or by placing such voters in districts where their votes are cast for candidates destined to win (packing), the non-favored party's votes are diluted. It is axiomatic that a diluted vote is not an equal vote . . . .” *Id.* at 116–17. The Pennsylvania Free Elections Clause has strikingly similar wording to that of the North Carolina Elections Clause: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” *Id.* at 100. The North Carolina Constitution provides no less protections to its people than the Pennsylvania Constitution does to its people. We therefore embrace the analysis of the Pennsylvania Supreme Court and likewise find that the North Carolina Free Elections clause bars partisan gerrymandering.

A. House Maps.

63. Plaintiffs’ experts demonstrate that the maps were specifically and systematically designed to entrench the Republican party in power, regardless of shifting political circumstances. Drs. Magleby and Mattingly each independently show that Republicans win more seats in the House than they would be expected to under nonpartisan maps. Dr. Mattingly’s report convincingly shows that the North Carolina Legislature created a map in which it would be nearimpossible for Democrats to attain a majority in the legislature. Mattingly at 11. In Dr. Mattingly’s simulations, even with 52% of the vote, a situation in which any nonpartisan map would result in a Democratic majority, Republicans can expect to retain their legislative House majority. *Id.* at 11. Equally as concerning, in situations where nonpartisan maps would result in Republicans winning a simple majority, the enacted maps will result in Republicans winning a supermajority. Not only did the North Carolina Legislature deny to North Carolina voters the opportunity to elect a Democratic majority, they denied to North Carolina voters the opportunity for any effective check on

legislative power. N.C. Const. art. II, § 22. This denies North Carolina voters the right to choose their representatives and see their preferred priorities enacted in their legislative body.

B. Senate Maps.

64. We likewise conclude that the Senate maps enacted by the North Carolina Legislature constitute partisan gerrymandering. As with the House maps, the Senate maps were meticulously drawn to ensure continued Republican power in the North Carolina Senate. Mattingly at 27. The Senate maps are most egregious in their conversion of a Republican simple majority into a Republican supermajority. The North Carolina Constitution establishes a careful system of checks and balances in its elected government. N.C. Const. art. II, § 22. The North Carolina Constitution specifically provides that the governor, elected by the people as a whole, N.C. Const. art. III, § 2, may veto the acts of the North Carolina Legislature. N.C. Const. art. II, § 22. By establishing a veto-proof majority, the North Carolina Legislature skirts this constitutional provision, ensuring unchecked power, irrespective of their support among the North Carolina people.

65. The results are even more extreme in Dr. Mattingly's second sample maps, in which, unlike the Legislature, he did not prioritize municipal preservation. In this situation, even when Democrats win 52.32% of the statewide vote, it is statistically impossible for them to constitute a majority in the Senate. Mattingly at 28. In Dr. Mattingly's sample maps, *not a single* nonpartisan, algorithmically-generated map had resulted in this outcome. *Id.* at 28.

66. We recognize that municipal preservation is often touted as a "traditional" redistricting criterion that legislators point to in order to justify the maps against constitutional challenge. That justification has no weight here. While legislators are entitled to deference in making discretionary choices regarding policy, *State v. Peek*, 313 N.C. 266, 275, such deference yields in the face of actions that violate the Constitution. *McIntyre v. Clarkson*, 254 N.C. 510, 515, (1961). In other

words, legislators cannot use preserving municipalities as an excuse to violate the Free Election Clause.

67. This issue was directly addressed in *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 273 (2015). Here, the Supreme Court ruled that constitutional requirements take preeminence above and beyond neutral redistricting criteria. *Id.* According to the Court, the “requirement that districts have approximately equal populations is a background rule against which redistricting takes place,” not a factor to be considered like any other. *Id.* Similarly, under the North Carolina Constitution, ascertaining the will of the people is of preeminent importance and easily overrides a discretionary decision to use a particular redistricting criterion. And in the seminal case *Reynolds v. Sims*, 377 U.S. 533, 561 (1964), which established the one-person, one-vote constitutional standard, the United States Supreme Court overturned an Alabama apportionment scheme which allocated one House representative to each county. *Id.* at 569. As previously intimated, the preeminence of county lines is frequently touted when legislators draw new lines. *Cooper v. Harris*, 137 S. Ct. 1455 (2017). Yet constitutional principles take preeminence, and so must the Free Elections Clause here.

### C. Congressional Maps.

68. We also find that the Congressional maps enacted by the North Carolina Legislature constitute partisan gerrymandering in violation of the Free Elections Clause. Dr. Magleby convincingly shows that the maps were specifically engineered to maximize the number of Republican representatives and minimize the number of Democratic representatives. Magleby at 22. Moreover, Dr. Mattingly’s analysis shows that this was accomplished through the packing and cracking of Democrats in Congressional districts. Mattingly at 75–76. In Dr. Mattingly’s nonpartisan maps, *not a single map* produced such a stark pattern of partisan advantage.



Republican have, therefore created maps that are as impervious as is absolutely possible to the will of the people.

69. As a result, we find that the House, Senate, and Congressional maps as enacted by the North Carolina Legislature violate the Free Elections Clause of the North Carolina Constitution.

VI. **Equal Protection Clause of the North Carolina Constitution.**

70. The Equal Protection Clause of the North Carolina Constitution provides that “[n]o person shall be denied the equal protection of the laws.” N.C. Const. art. I, § 19. The North Carolina Constitution extends greater protections to individuals than does the federal constitution. *Stephenson*, 355 N.C. at 381 n.6.; *Northampton County Drainage District No. One v. Bailey*, 326 N.C. 742, 749 (1990).

71. Gerrymandering violates the Equal Protection Clause of the state constitution by “treat[ing] individuals who support candidates of one political party less favorably than individual support candidates of another party.” *Common Cause*, 2019 N.C. Super. LEXIS at \*344. An equal protection gerrymandering claim has three elements: 1) intent, 2) effect, and 3) causation.

72. The North Carolina maps clearly intended to entrench Republicans in power through partisan gerrymandering. Plaintiff’s experts have provided substantial evidence showing that the level of partisan advantage in the enacted House, Senate, and Congressional maps is extremely unlikely to occur on accident. Drs. Mattingly and Magleby show that the effects cannot be explained by any nonpartisan redistricting criteria. In addition, Dr. Mattingly’s analysis shows that in the individual district level, the partisan composition of voters in the district is far more extreme than we would expect to see if partisanship was not considered.

73. In addition, Plaintiffs have provided substantial evidence that casts doubt on the fundamental fairness of the map-drawing process. Plaintiffs showed that Legislative had ample

opportunity to construct hyper-partisan maps away from public view. Legislators took materials in and out of the map-drawing rooms, failed to identify individuals who assisted with the map-drawing process, and generally made the process opaque to the public. The impenetrability of this process, combined with the partisan nature of the enacted maps leads the court to conclude that the legislature intentionally used a nontransparent process to draw partisan maps away from public view. As such, the court finds that the North Carolina Legislature intended to produce maps with extreme partisan gerrymandering.

74. Next, Plaintiffs must prove that the enacted districts had the effect of discriminating against voters who support Democratic candidates. The composition of the district maps prevents a majority of Democratic voters from electing a majority of Democrats to the state legislature. The plans, in fact, deprive Democrats of numerous seats in the House, Senate, and United States House of Representatives in a variety of electoral environments. Dr. Magleby also shows that the maps have the effect of electing fewer Democrats to the House of Representatives than would be expected in nonpartisan maps. There is no question about the nexus between the enacted maps and the harms suffered by plaintiffs. Therefore, the court finds that the enacted maps violate the Equal Protection Clause of the North Carolina Constitution.

A. Freedom of Assembly and Freedom of Speech.

75. Article I, Section 14 of the North Carolina Constitution provides that “[f]reedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never restrained.” Article I, Section 12 of the North Carolina Constitution provides that “[t]he people have a right to assembly together to consult for their common good, to instruct their representative, and to apply to the General Assembly for redress of grievances.” The North Carolina Supreme Court has held that North Carolina’s Free Speech Clause provides broader rights than does federal law. *Evans v.*

*Cowan*, 122 N.C. App. 181, 183–84 (N.C. Ct. App. 1996). In North Carolina, the right of assembly encompasses the right of association. *Feltman v. City of Wilson*, 238 N.C. App. 246, 253 (N.C. Ct. App. 2014). Together, North Carolina’s Freedom of Speech and Freedom of Assembly Clauses protect the right individuals to cast a ballot for the candidate of their choice and associate with their chosen political party. *Common Cause*, 2019 N.C. Super. LEXIS at \*365.

76. The 2021 enacted plans impermissibly burden individuals’ political expression and association. By drawing maps for partisan advantage, Legislative Defendants identified Republican voters as preferred speakers and targeted Democratic voters as disfavored speakers for disfavored treatment because of disagreement with the views they express when they vote. In doing so, they have rendered disfavored speech less effective and intentionally engaged in viewpoint discrimination against Democratic voters.

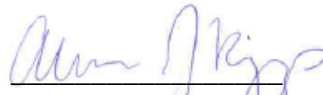
77. The maps also burden the ability of Plaintiffs to associate effectively, as guaranteed under Article I, § 12, by precluding them from instructing their representatives, and applying to the General Assembly for redress of grievances. The maps also impermissibly retaliate against Plaintiffs by taking adverse against them due to their voting history. Furthermore, Defendants would not have cracked and packed Democratic voters to dilute their votes but for that retaliatory intent.

## **CONCLUSION**

Based on the evidence presented, we conclude that Defendants intentionally discriminated against Black voters by failing to follow the constitutionally-required *Stephenson* process and by dismantling performing Black districts. Furthermore, we find that Defendants engaged in impermissible partisan gerrymandering in violation of Article I, Sections 10, 12, 14, and 19 of the

North Carolina Constitution. H.B. 976, S.B. 739, and S.B. 740 are hereby ENJOINED and Defendants are ordered to create new maps that comply with the North Carolina Constitution.

Respectfully submitted, this the 31<sup>st</sup> day of December, 2021.



Allison J. Riggs (State Bar No. 40028)

[allison@southerncoalition.org](mailto:allison@southerncoalition.org)

Hilary H. Klein (State Bar No. 53711)

[hilaryhklein@scsj.org](mailto:hilaryhklein@scsj.org)

Mitchell Brown (State Bar No. 56122)

[Mitchellbrown@scsj.org](mailto:Mitchellbrown@scsj.org)

Katelin Kaiser (State Bar No. 56799)

[Katelin@scsj.org](mailto:Katelin@scsj.org)

Jeffrey Loperfido (State Bar No. 52939)

[jeffloperfido@scsj.org](mailto:jeffloperfido@scsj.org)

SOUTHERN COALITION FOR SOCIAL JUSTICE

1415 W. Highway 54, Suite 101

Durham, NC 27707

Telephone: 919-323-3909

Facsimile: 919-323-3942

J. Tom Boer\* (D.C. Bar No. 469585;

CA Bar. No. 199563)

[tom.boer@hoganlovells.com](mailto:tom.boer@hoganlovells.com)

Olivia T. Molodanof\* (CA Bar No.  
328554)

[olivia.molodanof@hoganlovells.com](mailto:olivia.molodanof@hoganlovells.com)

\* Admitted *Pro Hac Vice*

HOGAN LOVELLS US LLP

3 Embarcadero Center, Suite 1500

San Francisco, California 94111

Telephone: 415-374-2300

Facsimile: 415-374-2499

*Counsel for Plaintiff Common Cause*

## CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day submitted a copy of the foregoing document in the above titled action by mail and/or electronic mail, in the manner requested, to the following parties:

Sam Hirsch  
Jessica Ring Amunson  
Kali Bracey  
Zachary C. Schuaf  
Karthik P. Reddy  
Urja Mittal  
JENNER & BLOCK LLP  
1099 New York Avenue, NW, Suite 900  
Washington, D.C. 20001  
[shirsch@jenner.com](mailto:shirsch@jenner.com)  
[zschauf@jenner.com](mailto:zschauf@jenner.com)

Stephen D. Feldman  
ROBINSON, BRADSHAW & HINSON, P.A.  
434 Fayetteville Street, Suite 1600  
Raleigh, NC 27501  
[sfeldman@robinsonbradshaw.com](mailto:sfeldman@robinsonbradshaw.com)

Adam K. Doerr  
ROBINSON, BRADSHAW & HINSON, P.A.  
101 North Tryon Street, Suite 1900  
Charlotte, NC 28246  
[adoerr@robinsonbradshaw.com](mailto:adoerr@robinsonbradshaw.com)

Erik R. Zimmerman  
ROBINSON, BRADSHAW & HINSON, P.A.  
1450 Raleigh Road, Suite 100  
Chapel Hill, NC 27517  
[ezimmerman@robinsonbradshaw.com](mailto:ezimmerman@robinsonbradshaw.com)

*Counsel for North Carolina League of  
Conservation Voters, INC., et al. Plaintiffs*

Burton Craige  
Narendra K. Ghosh  
Paul E. Smith  
PATTERSON HARKAVY LLP  
100 Europa Dr., Suite 420  
Chapel Hill, NC 27517  
[bcraige@pathlaw.com](mailto:bcraige@pathlaw.com)  
[nghosh@pathlaw.com](mailto:nghosh@pathlaw.com)  
[psmith@pathlaw.com](mailto:psmith@pathlaw.com)

Lalitha D. Madduri  
Jacob D. Shelly  
Graham W. White  
ELIAS LAW GROUP LLP  
10 G. Street NE, Suite 600  
Washington, D.C. 20002  
[MElias@elias.law](mailto:MElias@elias.law)  
[ABranch@elias.law](mailto:ABranch@elias.law)  
[LMadduri@elias.law](mailto:LMadduri@elias.law)  
[JShelly@elias.law](mailto:JShelly@elias.law)  
[GWhite@elias.law](mailto:GWhite@elias.law)

Abha Khanna  
ELIAS LAW GROUP LLP  
1700 Seventh Avenue, Suite 2100  
Seattle, Washington 98101  
[AKhanna@elias.law](mailto:AKhanna@elias.law)

Elisabeth S. Theodore  
R. Stanton Jones  
Samuel F. Callahan  
ARNOLD AND PORTER KAYE SCHOLER LLP  
601 Massachusetts Avenue NW  
Washington, DC 20001  
[elisabeth.theodore@arnoldporter.com](mailto:elisabeth.theodore@arnoldporter.com)

*Counsel for Rebecca Harper, et al. Plaintiffs*

Phillip J. Strach  
Thomas A. Farr  
Alyssa M. Riggins  
NELSON MULLINS RILEY & SCARBOROUGH  
LLP  
4140 Parklake Avenue, Suite 200  
Raleigh, North Carolina 27612  
[phillip.strach@nelsonmullins.com](mailto:phillip.strach@nelsonmullins.com)  
[tom.farr@nelsonmullins.com](mailto:tom.farr@nelsonmullins.com)  
[alyssa.riggins@nelsonmullins.com](mailto:alyssa.riggins@nelsonmullins.com)

Mark E. Braden  
Katherine McKnight  
Richard Raile  
BAKER HOSTETLER LLP  
1050 Connecticut Ave NW  
Suite 1100  
Washington, DC 20036  
[mBraden@bakerlaw.com](mailto:mBraden@bakerlaw.com)  
[kmcknight@bakerlaw.com](mailto:kmcknight@bakerlaw.com)  
[rraile@bakerlaw.com](mailto:rraile@bakerlaw.com)

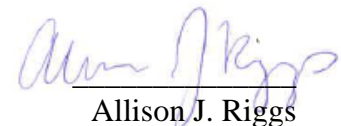
*Counsel for Legislative Defendants*

This the 31<sup>st</sup> day of December, 2021.

Terence Steed  
Special Deputy Attorney General  
Stephanie A. Brennan  
Special Deputy Attorney General  
Amar Majmundar  
Senior Deputy Attorney General

NC DEPARTMENT OF JUSTICE  
P.O. Box 629  
Raleigh, NC 27602  
[tsteed@ncdoj.gov](mailto:tsteed@ncdoj.gov)  
[sbrennan@ncdoj.gov](mailto:sbrennan@ncdoj.gov)  
[amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov)

*Counsel for the State Defendants*



Allison J. Riggs  
Southern Coalition for Social Justice