

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

Docket No. \_\_\_\_\_

REBECCA HARPER; AMY CLARE  
OSEROFF; DONALD RUMPH; JOHN  
BALLA; RICHARD R. CREWS; LILY  
NICOLE QUICK; GETTYS COHEN JR.;  
SHAWN RUSH; JACKSON THOMAS  
DUNN, JR.; MARK S. PETERS; JOSEPH  
THOMAS GATES; KATHLEEN BARNES;  
VIRGINIA WALTERS BRIEN; DAVID  
DWIGHT BROWN,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, IN  
HIS OFFICIAL CAPACITY AS SENIOR  
CHAIR OF THE HOUSE STANDING  
COMMITTEE ON REDISTRICTING;  
RALPH HISE, IN HIS OFFICIAL  
CAPACITY AS CO-CHAIR OF THE  
SENATE STANDING COMMITTEE ON  
REDISTRICTING; WARREN DANIEL, IN  
HIS OFFICIAL CAPACITY AS CO-CHAIR  
OF THE SENATE STANDING  
COMMITTEE ON REDISTRICTING; PAUL  
NEWTON, IN HIS OFFICIAL CAPACITY  
AS CO-CHAIR OF THE SENATE  
STANDING COMMITTEE ON  
REDISTRICTING; SPEAKER OF THE  
NORTH CAROLINA HOUSE OF  
REPRESENTATIVES TIMOTHY K.  
MOORE; PRESIDENT PRO TEMPORE OF  
THE NORTH CAROLINA SENATE PHILIP  
E. BERGER; THE NORTH CAROLINA  
STATE BOARD OF ELECTIONS; DAMON  
CIRCOSTA, IN HIS OFFICIAL CAPACITY  
AS CHAIRMAN OF THE NORTH  
CAROLINA STATE BOARD OF

**VERIFIED COMPLAINT**

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

FILED

2019 SEP 27 A 9:53

WAKE CO. S.C.  
BY \_\_\_\_\_

ELECTIONS; STELLA ANDERSON, IN  
HER OFFICIAL CAPACITY AS  
SECRETARY OF THE NORTH CAROLINA  
STATE BOARD OF ELECTIONS;  
KENNETH RAYMOND, IN HIS OFFICIAL  
CAPACITY AS MEMBER OF THE NORTH  
CAROLINA STATE BOARD OF  
ELECTIONS; JEFF CARMON, IN HIS  
OFFICIAL CAPACITY AS MEMBER OF  
THE NORTH CAROLINA STATE BOARD  
OF ELECTIONS; DAVID C. BLACK, IN HIS  
OFFICIAL CAPACITY AS MEMBER OF  
THE NORTH CAROLINA STATE BOARD  
OF ELECTIONS,

Defendants.

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Plaintiffs, complaining of Defendants, say and allege:

## INTRODUCTION

1. “[T]he constitutional rights of North Carolina citizens are infringed when the General Assembly . . . draws district maps with a predominant intent to favor voters aligned with one political party at the expense of other voters.” *Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 6 (N.C. Sup. Ct. Sept. 3, 2019). Partisan gerrymandering “strikes at the heart of the Free Elections Clause” of North Carolina’s Constitution, a provision with no federal analogue that “guarantees that all elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the People.” *Id.* at 9, 305. Partisan gerrymandering also violates the North Carolina Constitution’s guarantees of equal protection and free expression, both of which provide broader protections for voting rights than their federal counterparts. *Id.* at 307-31.

2. This case concerns North Carolina’s 2016 congressional map, which may be the most extreme and brazen partisan gerrymander in American history. There is no dispute that the 2016 congressional map reflects an extreme and intentional effort to maximize Republican advantage. Legislative Defendants proudly admitted it at the time. They adopted “Partisan Advantage” as an official criterion, directing that the districts be constructed to “maintain the current partisan makeup of North Carolina’s congressional delegation,” namely “10 Republicans and 3 Democrats.” Legislative Defendants admitted that they instructed their mapmaker, Dr. Thomas Hofeller, to use partisan voting histories to rig the district lines to entrench a 10-3 Republican advantage. Defendant Representative David Lewis asserted that the map was drawn in this manner because he believes “electing Republicans is better than electing Democrats,” and the only reason Legislative Defendants sought a 10-3 Republican advantage was because they “did not believe it would be possible to draw a map with 11 Republicans and 2 Democrats.”

3. With Dr. Hofeller's help, Legislative Defendants succeeded in rigging North Carolina's congressional elections. Republicans have won 10 of 13 seats in both elections under the 2016 Plan, including in the blue wave of 2018 when Democratic congressional candidates received a majority of the statewide vote after adjusting for an uncontested race. The 2016 map is impervious to "the will of the People." *Common Cause*, 18-CVS-014001, slip. op. at 9, 306.

4. In 2019, in a case involving the same congressional map at issue here, the U.S. Supreme Court held that partisan gerrymandering claims are not justiciable under the *federal* constitution. *See Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). But in so holding, the Court made clear that the solution to partisan gerrymandering lies with the states, because "[p]rovisions in state statutes and state constitutions can provide standards and guidance for state courts to apply." *Id.* at 2507. The courts of this State have now held that the North Carolina Constitution provides precisely such standards and guidance. Just weeks ago, a three-judge panel of this Court invalidated North Carolina's state legislative maps as unlawful partisan gerrymanders in violation of North Carolina's Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Assembly Clauses. *See Common Cause*, 18-CVS-014001, slip. op. at 298-331.

5. As this Court explained in *Common Cause v. Lewis*, North Carolina's 2016 congressional map "arose in remarkably similar circumstances" as the state legislative maps that the Court struck down and ordered redrawn. *Id.* at 298. The 2016 congressional map should now meet the same fate as the unconstitutional and invalidated state legislative maps. The facts of this case are undisputed, and the law of North Carolina is now settled. This Court should invalidate the gerrymandered 2016 congressional map immediately and order a new, fair map for use in the 2020 elections.

## **PARTIES**

### **A. Plaintiffs**

6. Plaintiff Amy Clare Oseroff is a teacher residing in Greenville, North Carolina, within Congressional District 1. Ms. Oseroff is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly packed the most heavily Democratic areas in Pitt County and Wilson County into District 1 to create an overwhelmingly Democratic district, ensuring that nearby Districts 2 and 3 would favor Republicans. In 2018, the Democratic candidate won District 1 with almost 70% of the vote.

7. Plaintiff Rebecca Harper is a real estate agent residing in Cary, North Carolina, within Congressional District 2. Ms. Harper is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly carefully avoided the most Democratic areas of Wake County and Wilson County and cracked the Democratic voters of Johnston County to create a district that favors Republicans. In 2018, the Republican candidate won District 2 with nearly 53% of the vote.

8. Plaintiff Donald Rumph is an Army and Air Force combat veteran and retired registered nurse residing in Greenville, North Carolina, within Congressional District 3. Mr. Rumph is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. District 3 is a Republican district because the General Assembly packed the most Democratic voters from Pitt County into the adjoining District 1. In 2018, the Republican candidate ran unopposed.

9. Plaintiff John Balla is a digital marketing strategist residing in Raleigh, North Carolina, within District 4. Mr. Balla is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. District 4 is a packed Democratic

district that uses a strip of southern Durham County to connect Wake County's most Democratic areas with the heavily Democratic areas in Orange County. In 2018, the Democratic candidate won District 4 with over 75% of the vote.

10. Plaintiff Richard R. Crews is a retired stock broker residing in Newland, North Carolina, within Congressional District 5. Mr. Crews is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. District 5 cracks Democratic voters in Forsyth County, connecting them with more Republican communities in Winston-Salem rather than grouping them with neighboring Guilford County. In 2018, the Republican candidate won District 5 with over 57% of the vote.

11. Plaintiff Lily Nicole Quick is a homemaker residing in Greensboro, North Carolina, within Congressional District 6. Ms. Quick is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly cracked District 6 by splitting Greensboro and Guilford County to ensure that District 6 would favor Republicans. In 2018, the Republican candidate won District 6 with just over 56% of the vote.

12. Plaintiff Gettys Cohen Jr. is a dentist residing in Smithfield, North Carolina, within Congressional District 7. Dr. Cohen is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly cracked Democratic voters in District 7, in part by splitting Johnston County's Democratic voters and Bladen County's most Democratic voters. In 2018, the Republican candidate won District 7 with over 56% of the vote.

13. Plaintiff Shawn Rush is part owner of a marketing firm and a Meals on Wheels organizer residing in East Spencer, North Carolina, within Congressional District 8. Mr. Rush is

a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly manipulated District 8 by cracking Fayetteville's Democratic voters between Districts 8 and 9. In 2018, the Republican candidate won with roughly 55% of the vote.

14. Plaintiff Jackson Thomas Dunn, Jr. is a retired attorney and law professor residing in Charlotte, North Carolina, within Congressional District 9. Mr. Dunn is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. As with District 8, the General Assembly manipulated District 9 to be as favorable as possible for Republicans, with the Republican candidate winning by two percentage points in the 2019 special election in this district.

15. Plaintiff Mark S. Peters is a retired physician assistant residing in Fletcher, North Carolina, within Congressional District 10. Mr. Peters is registered as an unaffiliated voter and has consistently voted for Democratic candidates for the U.S. House of Representatives. In drawing the 2016 maps, the General Assembly cracked Asheville's Democratic voters between Districts 10 and 11 to make each district more favorable to Republican candidates. In the 2018 elections, the Republican candidate won District 10 with over 59% of the vote.

16. Plaintiff Joseph Thomas Gates is a former Colonel in the Air Force and a retired information technology project manager residing in Weaverville, North Carolina, within Congressional District 11. Mr. Gates is a registered unaffiliated voter who has consistently voted for Democratic candidates for the U.S. House of Representatives. As explained above, the General Assembly made District 11 as favorable as possible for Republicans by cracking Democratic voters between Districts 10 and 11. In 2018, the Republican candidate won District 11 with over 60% of the vote.

17. Plaintiff Kathleen Barnes is the owner of a small publishing company residing in Brevard, North Carolina, within Congressional District 11. Ms. Barnes is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. As explained above, the General Assembly made District 11 as favorable as possible for Republicans by cracking Democratic voters between Districts 10 and 11. In 2018, the Republican candidate won District 11 with over 60% of the vote.

18. Plaintiff Virginia Walters Brien is a sales manager residing in Charlotte, North Carolina, within Congressional District 12. Ms. Brien is a registered unaffiliated voter who has consistently voted for Democratic candidates for the U.S. House of Representatives. District 12 is a packed Democratic district. In 2018, the Democratic candidate won District 12 with over 73% of the vote.

19. Plaintiff David Dwight Brown is a retired computer systems analyst residing in Greensboro, North Carolina, within Congressional District 13. Mr. Brown is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly ensured that Republicans were favored in District 13 by cracking the Guilford County Democratic voters and grouping them with overwhelmingly Republican voters in nearby counties. In 2018, the Republican candidate won District 13 with over 53% of the vote.

**B. Defendants**

20. Defendant David R. Lewis is a member of the North Carolina House of Representatives and currently serves as the Senior Chair of the House Standing Committee on Redistricting. In 2016, Representative Lewis served as Chairman of the North Carolina House



Redistricting Committee for the 2016 Extra Session and Co-Chairman of the Joint Select Committee on Congressional Redistricting. Defendant Lewis is sued in his official capacity only.

21. Defendant Ralph E. Hise, Jr. is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting. Defendant Hise is sued in his official capacity only.

22. Defendant Warren Daniel is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting. Defendant Daniel is sued in his official capacity only.

23. Defendant Paul Newton is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting. Defendant Newton is sued in his official capacity only.

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

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

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

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

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

29. Defendant Ken Raymond is a member of the North Carolina State Board of Elections. Mr. Raymond is sued in his official capacity only.

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

31. Defendant David C. Black is a member of the North Carolina State Board of Elections. Mr. Black is sued in his official capacity only.

### **JURISDICTION AND VENUE**

32. This Court has jurisdiction of this action pursuant to Articles 26 and 26A of Chapter 1 of the General Statutes.

33. Under N.C. Gen. Stat. § 1-81.1, the exclusive venue for this action is the Wake County Superior Court.

34. Under N.C. Gen. Stat. § 1-267.1, a three-judge court must be convened because this action challenges the validity of redistricting plans enacted by the General Assembly.

### **FACTUAL ALLEGATIONS**

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

35. In the years leading up to the 2010 decennial census, national Republican leaders undertook a sophisticated and concerted effort to gain control of state governments in 13 critical swing states such as North Carolina. The Republican State Leadership Committee (RSLC) code-named the plan “the REDistricting Majority Project” or “REDMAP.” REDMAP’s goal was to “control[] the redistricting process in . . . states [that] would have the greatest impact on determining how both state legislative and congressional district boundaries would be drawn” after the 2010 census. The RSLC’s REDMAP website explained that fixing these district lines in favor of Republicans would “solidify conservative policymaking at the state level and maintain a Republican stronghold in the U.S. House of Representatives for the next decade.”

36. North Carolina was a key REDMAP “target state.” REDMAP aimed to flip both chambers of the North Carolina General Assembly from Democratic to Republican control.

37. To spearhead its efforts in North Carolina, the RSLC enlisted the most influential conservative donor in North Carolina, Art Pope. Together, the RSLC and Pope targeted 22 races in the North Carolina House and Senate. Pope helped create a new non-profit organization called “Real Jobs NC” to finance spending on the races, and the RSLC donated \$1.25 million to this new group. Pope himself made significant contributions; in total, Pope, his family, and groups backed by him spent \$2.2 million on the 22 targeted races. This represented three-quarters of the total spending by all independent groups in North Carolina on the 2010 state legislative races.

38. The money was well spent. Republicans won 18 of the 22 races the RSLC targeted, giving Republicans control of both the House and Senate for the first time since 1870.

**B. Republican Mapmakers Create the 2011 Plan from Party Headquarters With the Intent to Advantage Republicans and Disadvantage Democrats**

39. Following the 2010 election, the House and Senate each established redistricting committees that were jointly responsible for preparing a congressional redistricting plan. Representative David Lewis, in his capacity as the Senior Chair of the House Redistricting Committee, and Senator Robert Rucho, in his capacity as Senior Chair of the Senate Redistricting Committee, were responsible for developing the proposed congressional districting plan (the “2011 Plan”).

40. The House and Senate Redistricting Committees engaged Dr. Thomas Hofeller, who also served on a REDMAP redistricting team, to draw the 2011 Plan. Dr. Hofeller and his team drew the 2011 Plan at the North Carolina Republican Party headquarters in Raleigh using mapmaking software licensed by the North Carolina Republican Party.

41. Legislative Defendants did not make Dr. Hofeller available to Democratic members of the General Assembly during the 2011 redistricting process, nor did Dr. Hofeller communicate with any Democratic members in developing the 2011 Plan.

42. Representative Lewis and Senator Rucho, both Republicans, orally instructed Dr. Hofeller regarding the criteria he should follow in drawing the new plan. Dr. Hofeller later testified that the Committee Chairs instructed him to “create as many districts as possible in which GOP candidates would be able to successfully compete for office.” Deposition of Thomas Hofeller (“Hofeller Dep.”) at 123:8-23 (Jan. 24, 2017). Following these instructions, Dr. Hofeller sought to “minimize the number of districts in which Democrats would have an opportunity to elect a Democratic candidate.” Hofeller Dep. at 123:1-7. Dr. Hofeller consulted “political voting history” as reflected in “past election results,” which he testified is “the most important information in trying to give one party or the other a partisan advantage in the redistricting process,” because it is “the best predictor of how a particular geographic area is likely to vote” in future elections. Hofeller Dep. at 14:7-15:14, 16:8-12, 132:14-134:13.

43. Dr. Hofeller sought to minimize the opportunities for Democratic voters to elect Democratic representatives by using past election data to concentrate as many Democratic voters as possible into Congressional Districts 1, 4, and 12. *See* Hofeller Dep. at 127:19-128:6. In his testimony, Dr. Hofeller admitted that the resulting 2011 Plan “diminished the opportunity to elect a Democratic candidate in the districts in which [he] increased Republican voting strength.” *See* Hofeller Dep. at 128:17-21.

44. The scheme worked. North Carolina conducted two congressional elections using the 2011 Plan, both of which handed outsized power to Republican congressional candidates. In 2012, Republicans won a *minority* of the statewide congressional vote but won 9 of the 13 seats.

	<b>North Carolina State-Wide Votes in U.S. House Elections</b>		<b>Representatives Elected to U.S. House for North Carolina</b>	
<b>Year</b>	Percentage of <i>Votes</i> Received by Democratic Congressional Candidates	Percentage of <i>Votes</i> Received by Republican Congressional Candidates	Percentage of <i>Seats</i> Won by Democratic Congressional Candidates	Percentage of <i>Seats</i> Won by Republican Congressional Candidates
2012	51%	49%	31% (4 of 13)	69% (9 of 13)
2014	46%	54%	23% (3 of 13)	77% (10 of 13)

**C. Legislative Defendants Create the 2016 Plan with the Explicit Partisan Goal of Guaranteeing a 10-3 Republican Advantage in Congressional Seats**

45. On February 5, 2016, a three-judge federal district court struck down the 2011 Plan as racially gerrymandered in violation of the Fourteenth Amendment's Equal Protection Clause. *See Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016). The Court ordered the General Assembly to draw a new congressional map.

46. At that time, Republicans held supermajority control of both chambers of the North Carolina General Assembly, and thus had the power to draw the new congressional district lines unilaterally. Representative Lewis and Senator Rucho again took charge of the mapmaking process, and again engaged Dr. Hofeller to draw the remedial congressional plan.

47. On February 9, 2016, in a meeting at Dr. Hofeller's home, Representative Lewis and Senator Rucho gave Dr. Hofeller oral instructions regarding the criteria he should use in drawing the remedial plan, directing him to use political data to create the new districts. This political data included precinct-level election results from all statewide elections, excluding presidential elections, dating back to January 1, 2008. Representative Lewis and Senator Rucho specifically instructed Dr. Hofeller to use this partisanship data to draw a map that would ensure 10 Republican seats and 3 Democratic seats. *See* Deposition of Representative David Lewis

(“Lewis Dep.”) at 162:24-163:7, 166:13-169:1 (Jan. 26, 2017); Hofeller Dep. at 175:19-23, 178:14-20, 188:19-190:2.

48. Working on his personal computer, Dr. Hofeller sought to achieve Representative Lewis and Senator Rucho’s partisan objectives through the use of a partisanship formula he created to score every voting tabulation district (VTD) in North Carolina. Dr. Hofeller’s partisanship formula measured the average Democratic and Republican vote share in each VTD across the following seven statewide elections: the 2008 Gubernatorial, U.S. Senate, and Commissioner of Insurance elections; the 2010 U.S. Senate election; the 2012 Gubernatorial and Commissioner of Labor elections; and the 2014 U.S. Senate election.

49. Dr. Hofeller testified that he used the averaged results from these seven elections “to get a pretty good cross section of what the past vote had been,” Hofeller Dep. at 212:16-213:9, and “[t]o give [him] an indication of the two-party partisan characteristics of VTDs,” Deposition of Thomas Hofeller (“Hofeller Dep. II”) at 267:5-6 (Feb. 10, 2017). Dr. Hofeller said that “he had drawn numerous plans in the state of North Carolina over decades,” and that in his experience, “the underlying political nature of the precincts in the state does not change no matter what race you use to analyze it.” Trial Testimony of Thomas Hofeller (“Hofeller Testimony”) at 525:6-10, *Common Cause v. Rucho*, No. 1:13-cv-949, 2018 WL 421334 (M.D.N.C. Sept. 4, 2018), *vacated by Rucho v. Common Cause*, 139 S. Ct. 2484 (2019); *see* Hofeller Dep. at 149:5-18. “So once a precinct is found to be a strong Democratic precinct,” Dr. Hofeller explained, “it’s probably going to act as a strong Democratic precinct in every subsequent election. The same would be true for Republican precincts.” Hofeller Testimony at 525:14-17.

50. As he drew the district lines in the Maptitude software program, Dr. Hofeller color-coded VTDs on his screen based on his partisanship formula. Dr. Hofeller admitted that he used this partisan color-coding to guide him in assigning VTDs “to one congressional district or another,” using red to show VTDs where voter history data was “the most Democratic” and dark blue for areas that were “the most Republican.” Hofeller Dep. at 102:14-104:22, 106:23-107:1. He further admitted that he similarly used his partisanship formula to assess the partisan performance of draft plans as a whole. Hofeller Dep. II at 282:1-7.

51. Dr. Hofeller testified that he conveyed to Representative Lewis his assessment of the partisan performance of districts for which the partisan result wasn’t “really obvious.” Hofeller Dep. II at 290:17-25. Representative Lewis admitted in sworn testimony that “[n]early every time” he reviewed Dr. Hofeller’s draft plans, Representative Lewis assessed the plans’ partisan performance using the results from North Carolina’s 2014 Senate race between Senator Thom Tillis and former Senator Kay Hagan, because it was “in [his] mind the closest political race with equally matched candidates who spent about the same amount of money.” Lewis Dep. at 63:9-64:17.

52. Both Representative Lewis and Dr. Hofeller admitted that Dr. Hofeller had nearly finished drawing the final 2016 Plan before the House and Senate Redistricting Committees ever met, and that Dr. Hofeller pre-drew the plan with express partisan intent. Dr. Hofeller recalled that “the plan was actually brought into a form to be presented to the legislature long before [February] 16th.” Hofeller Dep. at 175:10-18. Indeed, on February 10, 2016, Dr. Hofeller met with Representative Lewis and Senator Rucho and showed them several draft plans. Lewis Dep. at 58:13-61:17. Representative Lewis visited Dr. Hofeller’s house several more times over the next few days to review additional draft plans. *Id.* at 73:7-74:7, 77:7-20.

53. The maps Representative Lewis reviewed with Dr. Hofeller over the three days following the February 10 meeting were “near-final versions of the 2016 map” that Representative Lewis intended to submit to the legislature for approval. Lewis Dep. at 77:7-20. Dr. Hofeller and Representative Lewis agreed on a draft plan on either February 12 or 13, 2016. *Id.* That plan was “ultimately adopted with a minor distinction for an incumbency issue.” *Id.* at 77:21-24.

54. On February 12, 2016, after the 2016 Plan was already nearly finished, the Republican leadership of the General Assembly appointed Representative Lewis and Senator Rucho as co-chairs of the newly formed Joint Select Committee on Redistricting (the “Joint Committee”). The Joint Committee consisted of 25 Republicans and 12 Democrats.

55. The Joint Committee held a public hearing on February 15, 2016. But because Dr. Hofeller finished drawing the 2016 Plan before the hearing took place, the final plan did not reflect any public input.

56. At a meeting on February 16, 2016, the Joint Committee adopted a set of criteria (the “2016 Adopted Criteria”) to govern the creation of the 2016 Plan.

57. The Joint Committee adopted “Partisan Advantage” as one official criterion. This criterion required the new plan to preserve Republicans’ existing 10-3 advantage in North Carolina’s congressional delegation. The criterion read as follows:

**Partisan Advantage:** The partisan makeup of the congressional delegation under the enacted plan is 10 Republicans and 3 Democrats. The Committee shall make reasonable efforts to construct districts in the 2016 Contingent Congressional Plan to maintain the current partisan makeup of North Carolina’s congressional delegation.

58. In explaining this Partisan Advantage criterion, Representative Lewis proposed that the Committee “draw the maps to give a partisan advantage to 10 Republicans and 3



Democrats because I do not believe it's possible to draw a map with 11 Republicans and 2 Democrats.” Joint Comm. Session, Feb. 16, 2016, at 50:6-10.

59. Representative Lewis “acknowledge[d] freely that this would be a political gerrymander.” *Id.* at 48:4-5.

60. The Joint Committee adopted “Political Data” as another criterion, which stated:

**Political Data:** The only data other than population data to be used to construct congressional districts shall be election results in statewide contests since January 1, 2008, not including the last two presidential contests. Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts in the 2016 Contingent Congressional Plan. Voting districts (“VTDs”) should be split only when necessary to comply with the zero deviation population requirements set forth above in order to ensure the integrity of political data.

61. Representative Lewis left no doubt as to how this political data would be used, telling the Joint Committee members he “want[ed] to make clear that to the extent [we] are going to use political data in drawing this map, it is to gain partisan advantage on the map. I want that criteria to be clearly stated and understood.” Joint Comm. Session, Feb. 16, 2016, at 53:24-54:4.

62. The remaining criteria adopted by the Joint Committee were to provide for equal population, to make the districts contiguous, to eliminate the then-current configuration of District 12, to improve the compactness of the existing districts, to keep more counties and VTDs whole than the existing districts, and to avoid pairing incumbents.

63. The Joint Committee adopted the Political Data and Partisan Advantage criteria on a party-line vote. The other criteria were passed on a bipartisan basis. Representative Lewis reassured the Committee that “the criteria that will be available to the mapmaker . . . will only be the criteria that this . . . committee has adopted,” *id.* at 140:8-13, despite knowing that the 2016 Plan was “for the most part finished by the time the criteria were formally adopted by the committee,” Hofeller Dep. at 177:9-14. He later emphasized that “the criteria that this

committee debated and adopted . . . are the criteria that *were used to draw these maps.*” Joint Comm. Session, Feb. 17, 2016, at 43:4-14 (emphasis added).

64. The Joint Committee authorized Representative Lewis and Senator Rucho to engage a consultant to assist the Committee’s Republican leadership in drawing the remedial plan. Representative Lewis and Senator Rucho immediately sent Dr. Hofeller an engagement letter, which he signed the same day. Dr. Hofeller then downloaded the 2016 Plan, which he had completed several days earlier, onto a state legislative computer.

65. Democratic members of the Joint Committee were not allowed to consult with Dr. Hofeller, nor were they allowed access to the state legislative computer on which he downloaded the 2016 Plan.

66. Dr. Hofeller later testified that the 2016 Plan followed the Committee’s Partisan Advantage and Political Data criteria. *See* Hofeller Dep. at 129:14-15.

67. On February 17, 2016, just one day after the Joint Committee adopted the official criteria, Representative Lewis and Senator Rucho presented the 2016 Plan to the Committee. *See* Joint Comm. Session, Feb. 17, 2016, at 11:8-15. During the presentation, Representative Lewis discussed the partisan performance of the proposed districts and asserted that the 2016 Plan would “produce an opportunity to elect ten Republicans members of Congress.” *Id.* at 12:3-7. To prove it, Representative Lewis provided Committee members with spreadsheets showing the partisan performance of the proposed districts in twenty previous statewide elections. *E.g., id.* at 17:4-18:23. The Committee then approved the 2016 Plan on a party-line vote.

68. On February 19, 2016, the North Carolina House of Representatives debated the 2016 Plan. During the debate, Representative Lewis “freely acknowledge[d] that [he] sought partisan advantage.” N.C. House Floor Session, Feb. 19, 2016, at 31:14-17. He defended the

Partisan Advantage criterion by stating: “I think electing Republicans is better than electing Democrats. So I drew this map in a way to help foster what I think is better for the country.” *Id.* at 34:21-23.

69. The North Carolina House and Senate approved the 2016 Plan on February 18 and February 19, 2016, respectively. No Democrat in either chamber voted for the 2016 Plan.

70. In sworn testimony, Senator Rucho confirmed that the 2016 Plan “satisfied” “all criteria,” including the criteria requiring a 10-3 partisan advantage for Republicans. Deposition of Senator Robert A. Rucho (“Rucho Dep.”) 193:24-194:14 (Jan. 25, 2017).

**D. The 2016 Plan Achieves Its Intended Effect of Propelling Ten Republican Congressional Candidates to Electoral Victory Every Two Years**

71. The 2016 Plan has achieved precisely its intended partisan effects—a guaranteed 10-3 Republican advantage in North Carolina’s congressional delegation.

72. In the 2016 elections, Democratic congressional candidates in North Carolina won a combined 47% of the statewide vote, and yet won only 3 of 13 seats (23%).

73. The results are even more striking in 2018. Despite the blue wave that year, and despite the fact the two-party statewide vote was essentially a tie, Democrats were unable to flip a single seat. In fact, adjusting for a district that a Republican won in an uncontested race in 2018, Democrats won a *majority* of the statewide vote in the 2018 congressional elections, but still won only 3 of the state’s 13 congressional seats.

74. The results of the individual races in 2018 reveal how Legislative Defendants achieved this remarkable feat. The following table shows each party’s share of the two-party vote in the districts that the party won in 2018:<sup>1</sup>

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<sup>1</sup> For District 9, this table uses the results of the September 2019 special elections. To adjust for the uncontested race in District 3, this table assigns the Democratic and Republican candidates the share of the two-party vote received by each candidate in the special election held in District 3 in September 2019.

District	Democratic Vote Share	Republican Vote Share
1	69.9%	
4	75.1%	
12	73.1%	
2		52.8%
3		100.0%
5		57.0%
6		56.5%
7		56.5%
8		55.3%
9		51.0%
10		59.3%
11		60.4%
13		53.1%
<b>Statewide Vote Share Before Adjusting for Uncontested Race</b>	<b>48.9%</b>	<b>51.1%</b>
<b>Statewide Vote Share After Adjusting for Uncontested Race</b>	<b>50.9%</b>	<b>49.1%</b>
<b>Percentage of Seats Won</b>	<b>23.1%</b>	<b>76.9%</b>

75. This table demonstrates the 2016 Plan's packing and cracking in action. In the three seats that Democrats won, the Democratic candidate won enormously lopsided victories, earning between 69.9% and 75.1% of the vote in each of these districts. In contrast, victorious Republican candidates won their seats by much smaller margins, winning between 51.0% and 60.4% of the vote in all contested districts. The 2016 Plan thus guaranteed that Democrats would win three seats by very large margins, while Republicans would win the lion's share of seats by much smaller, although still comfortable, margins.

76. Extensive expert analysis conducted for purposes of the federal partisan gerrymandering challenge to the 2016 Plan confirms that the 2016 Plan is an intentional, extreme partisan gerrymander that dilutes Democratic votes and prevents Democratic voters from electing candidates of their choice. Dr. Jowei Chen, a professor of political science at the

University of Michigan, generated 3,000 nonpartisan simulated maps respecting North Carolina's political geography and traditional redistricting principles including equal population, contiguity and compactness, and avoiding splitting counties and VTDs. Dr. Chen concluded that the 2016 Plan was extraordinarily anomalous and heavily gerrymandered, and that the gerrymander caused a three to five seat shift in favor of the Republican Party. Dr. Jonathan Mattingly, the chairman of the Duke Mathematics Department, generated over 24,000 nonpartisan simulated maps respecting North Carolina's political geography and traditional redistricting principles including equal population, contiguity and compactness, and avoiding splitting counties and VTDs. Dr. Mattingly likewise concluded that the 2016 Plan was extraordinarily anomalous and heavily gerrymandered, and that the gerrymander caused as many as three seats to shift in favor of the Republican Party.

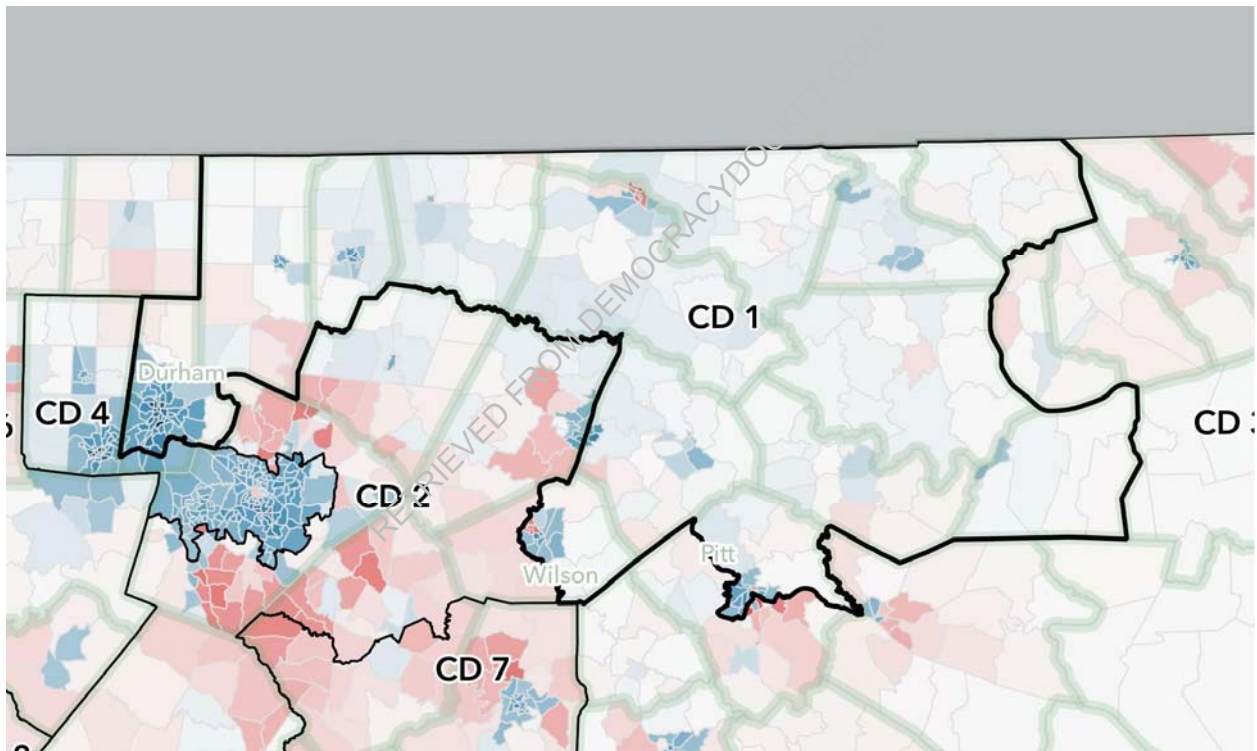
**E. The 2016 Plan Packs and Cracks Democratic Voters in Every District**

77. The 2016 Plan meticulously packs and cracks Democratic voters in each and every district—without exception. The sections below describe some of the most egregious examples of cracking and packing in each district.

### Congressional District 1

78. District 1 is a packed Democratic district that stitches together the heavily Democratic areas of Durham, Wilson, and Pitt Counties with a handful of rural Democratic counties in the northeastern portion of the State.

79. The following image (and others below) shows the district's boundaries and the partisanship of its VTDs using the results of the 2016 North Carolina Attorney General race, with darker blue shading for the VTDs that voted more heavily Democratic, darker red for VTDs that voted more heavily Republican, and lighter shading for VTDs that were closer to a tie:



80. The 2016 Plan divides Pitt County for partisan ends, placing Pitt County's most Democratic VTDs in District 1 to the north, while putting the county's more moderate and Republican VTDs in District 3 to the south.

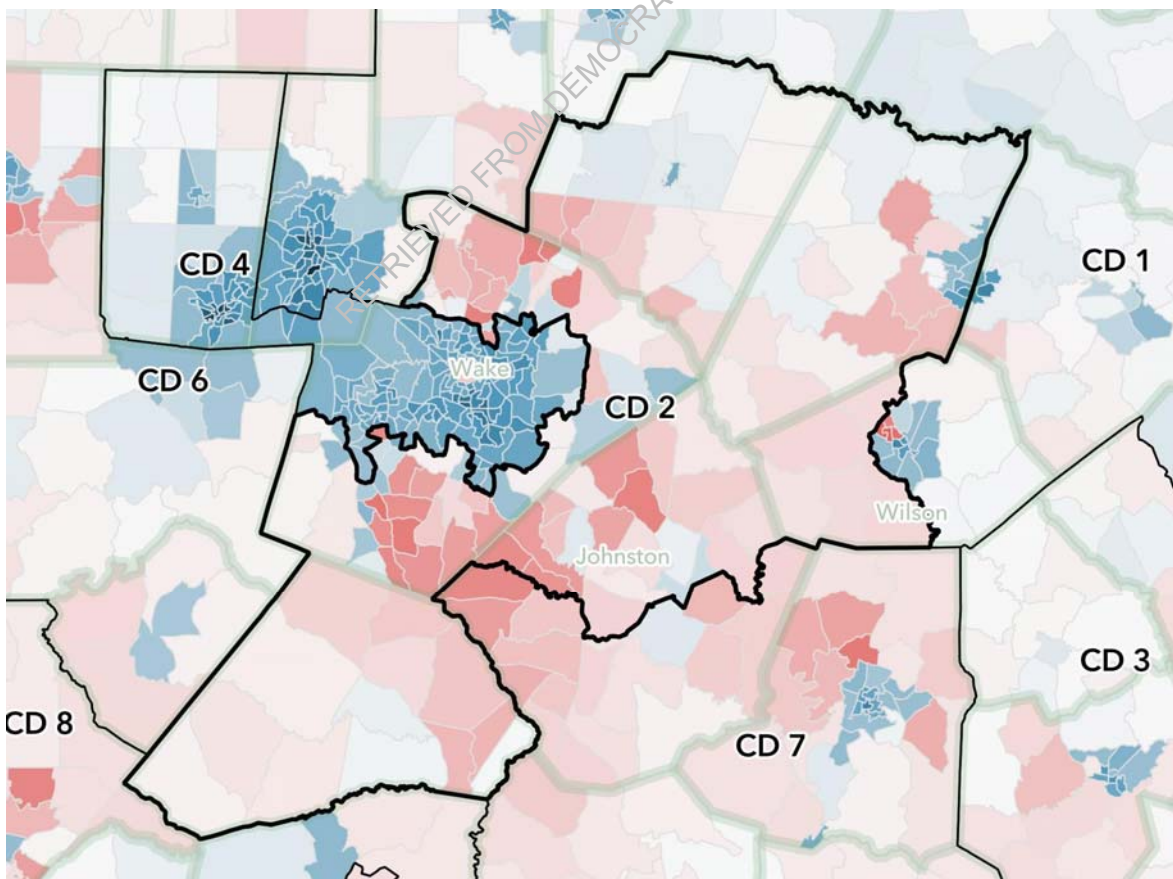
81. The 2016 Plan does the same in Wilson County. In dividing Wilson County, the plan builds a fence between Democratic and Republican voters, nearly straight down the middle

of the county, putting the Democratic VTDs in District 1 to the east and the Republican VTDs in District 2 to the west.

82. The 2016 Plan's packing of Democratic voters in District 1 has produced an overwhelmingly Democratic district. In 2016 and 2018, the Democratic candidate won District 1 with 70.3% and 69.9% of the vote, respectively.

### **Congressional District 2**

83. District 2 cracks Democratic voters. It carefully avoids the most Democratic areas of Wake County (to the west) and Wilson County (to the east), instead picking up only those counties' moderate and Republican-leaning VTDs. The map further cracks the Democratic voters of Johnston County, splitting them between District 2 to the north and District 7 to the south. The following image shows this extreme cracking of Democratic voters:

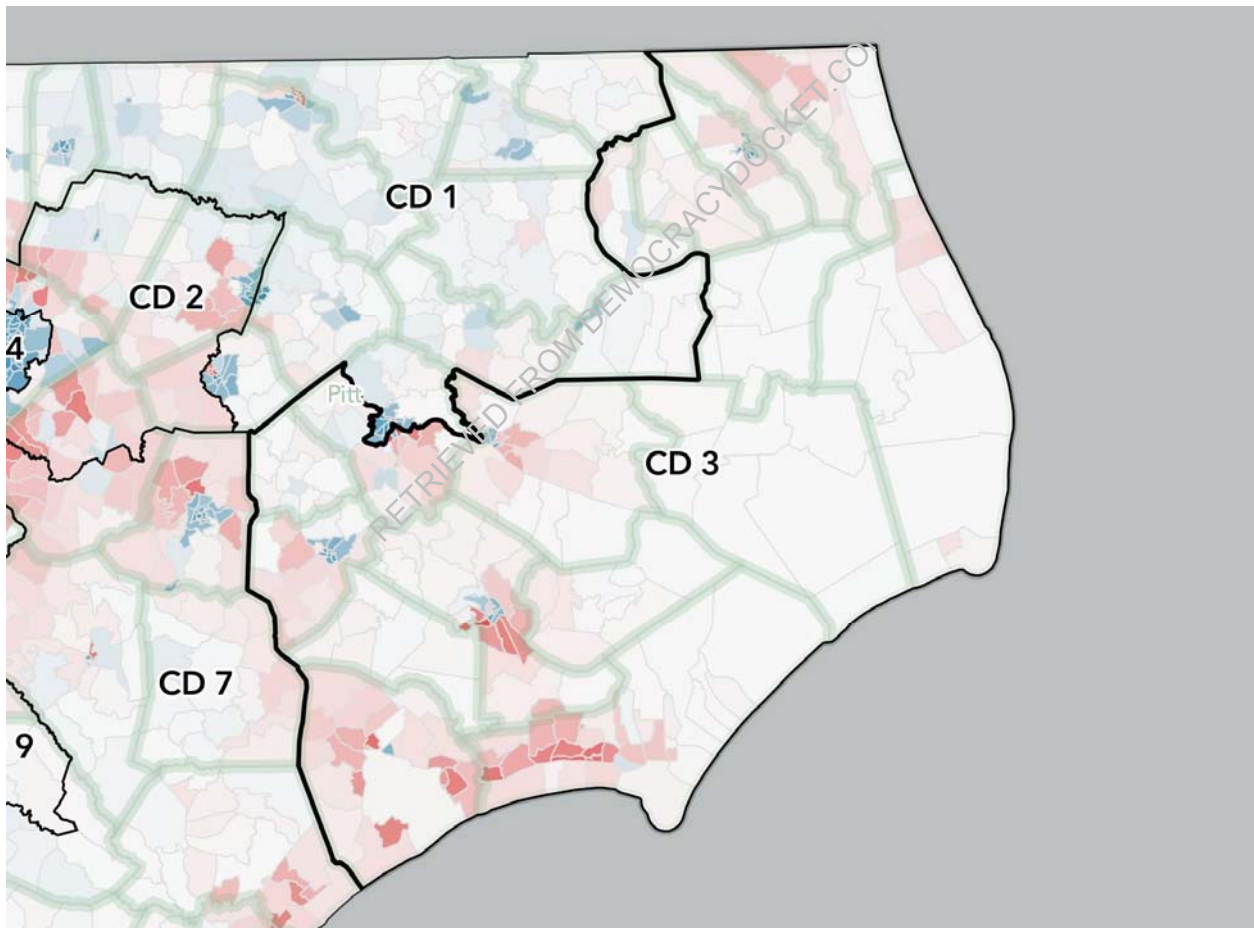




84. Legislative Defendants' extreme gerrymandering of this district has ensured that it remains a Republican seat. The Republican candidate won District 2 with 56.7% and 52.8% of the vote in 2016 and 2018, respectively.

### **Congressional District 3**

85. Legislative Defendants likewise engineered District 3 to be a safe Republican seat. Whereas District 1 was the recipient of all of Pitt County's most Democratic VTDs, District 3 contains all of Pitt County's most Republican VTDs. The district further avoids a handful of moderate and Democratic counties in eastern North Carolina.

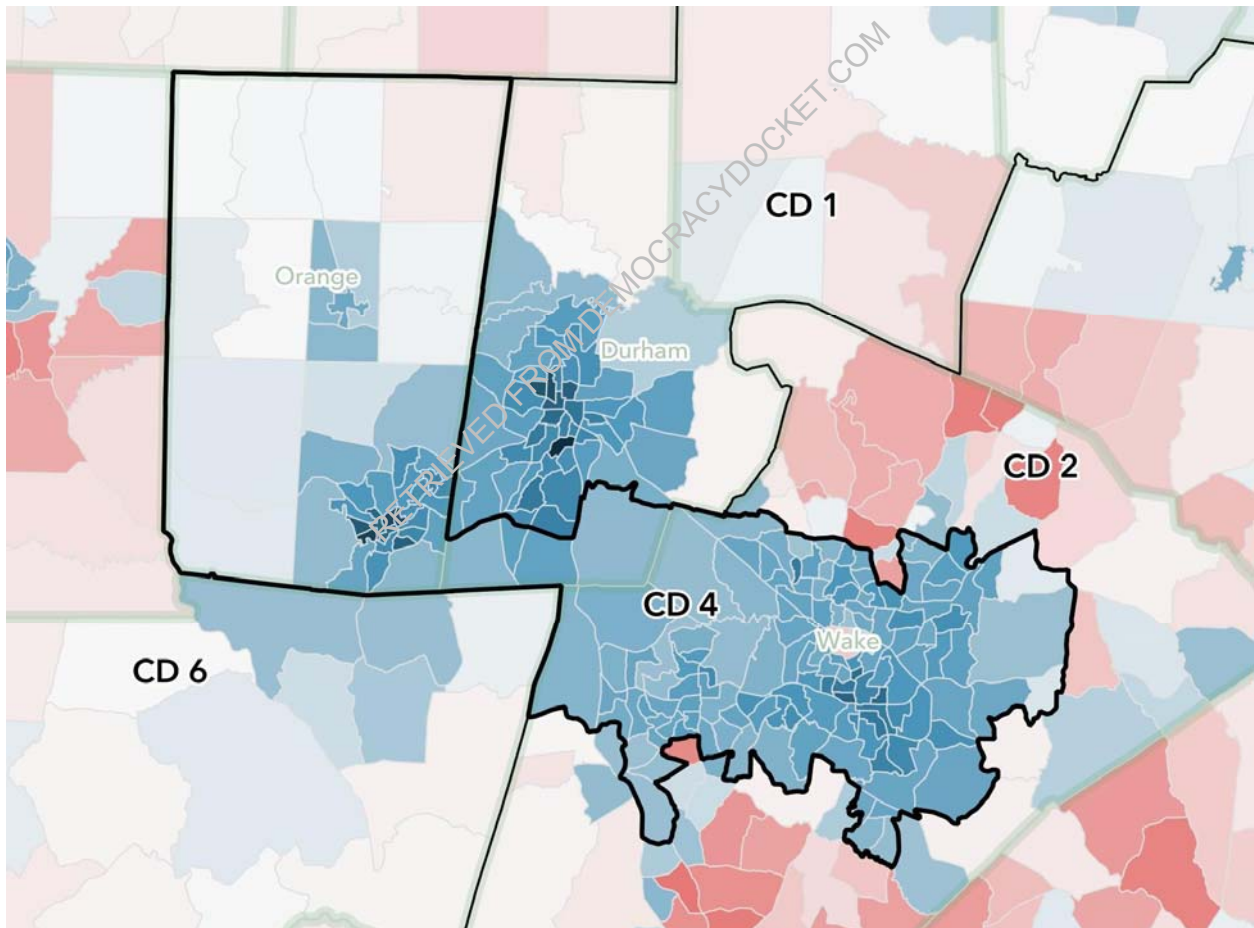


86. District 3 has performed as designed. The Republican candidate won uncontested in 2018, and won 67.2% of the vote in 2016.



### Congressional District 4

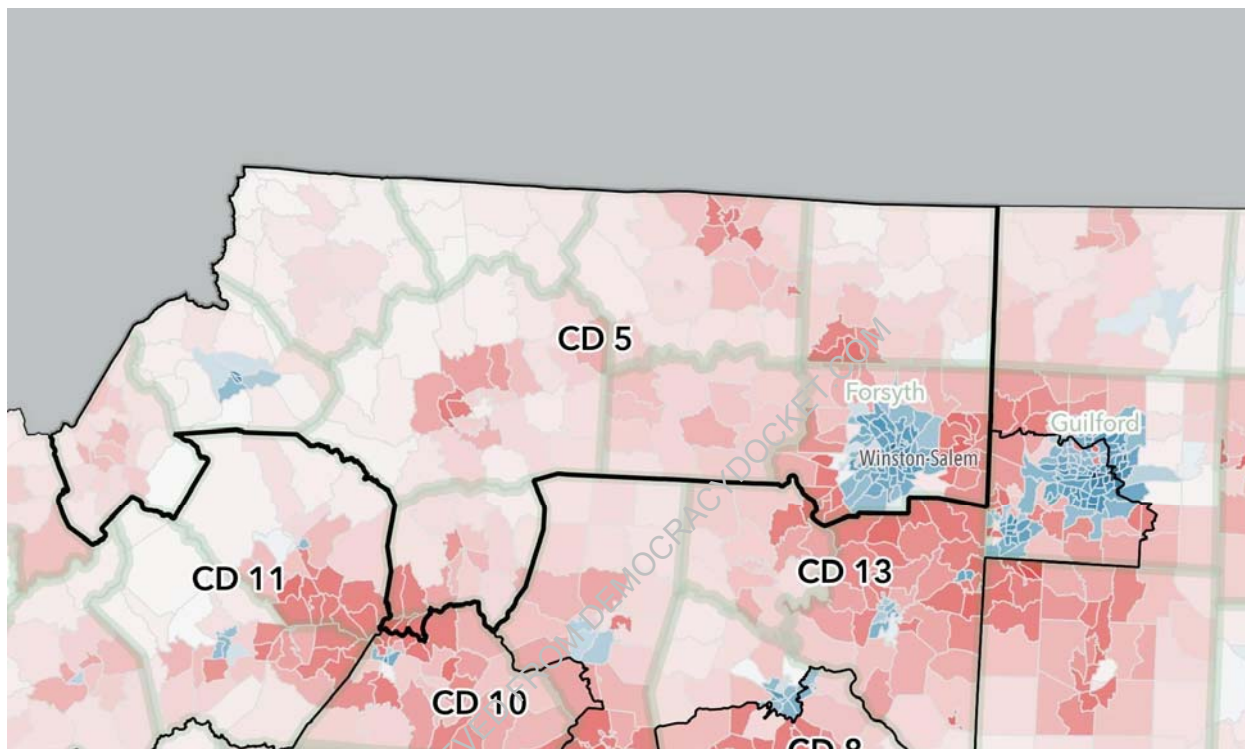
87. District 4 is a clear example of the subordination of traditional districting principles to partisan ends. Dr. Hofeller admitted in sworn testimony that he intentionally drew District 4 to be “predominantly Democratic.” Hofeller Dep. at 192:7-16. To achieve maximum packing of Democratic voters, Legislative Defendants connected Wake County’s most Democratic VTDs with the extremely Democratic VTDs in southern Durham County as well as the entirety of Democratic-leaning Orange County. This allowed Wake County’s more Republican VTDs to be put into District 2 to ensure a Republican seat.



88. The result of this packing is that the Democratic candidate has won District 4 by lopsided margins, winning 68.2% and 75.1% of the vote in 2016 and 2018, respectively.

### Congressional District 5

89. Legislative Defendants constructed District 5 to minimize the voting power of Democratic voters in Forsyth County. The 2016 Plan connects Winston-Salem's predominantly Democratic voters with far-flung rural communities to the west.

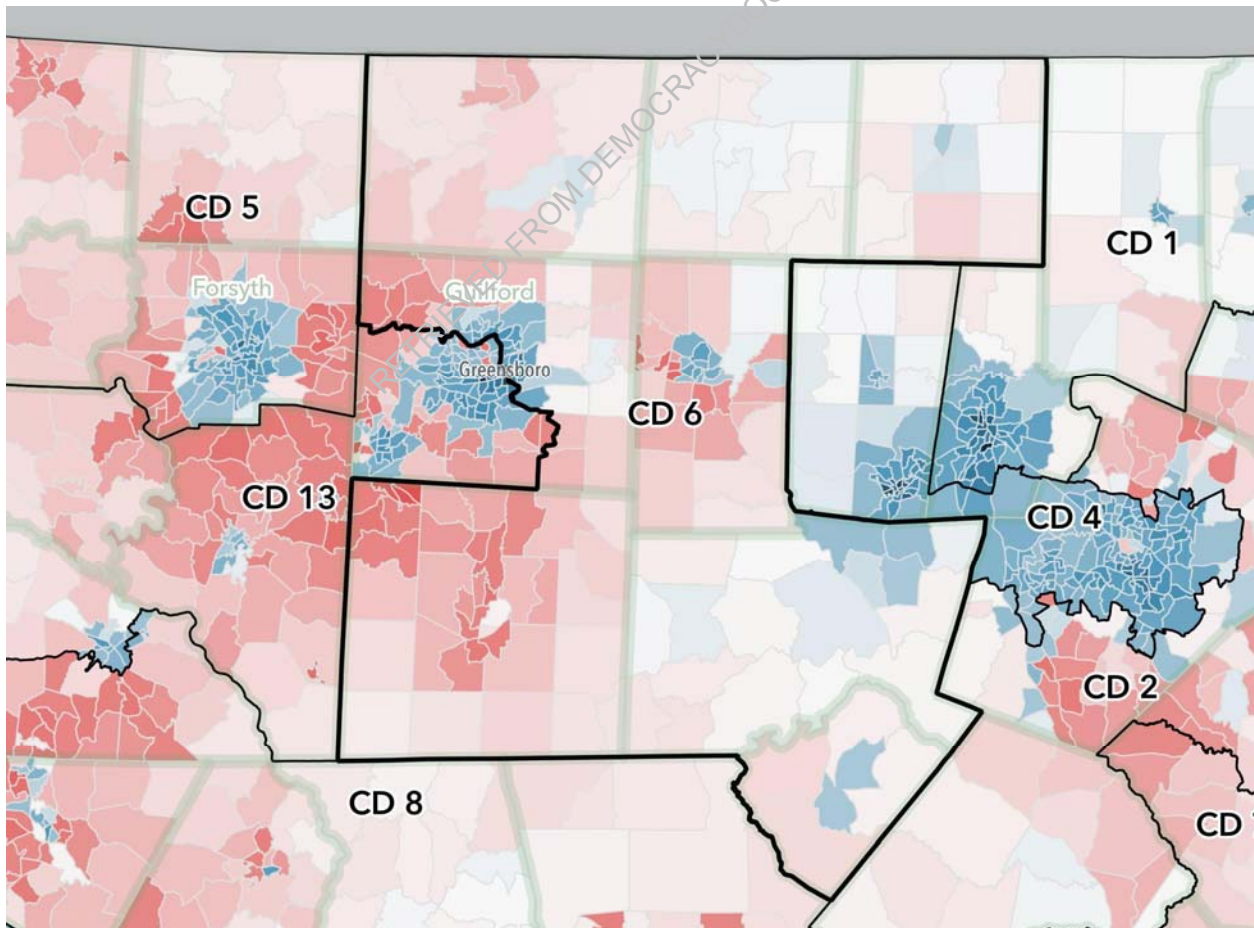


90. Legislative Defendants succeeded in wasting the votes of the Democratic voters of Forsyth County. District 5 elected a Republican by comfortable margins in the 2016 and 2018 elections, with 58.4% and 57.3% of the vote, respectively.

### Congressional District 6

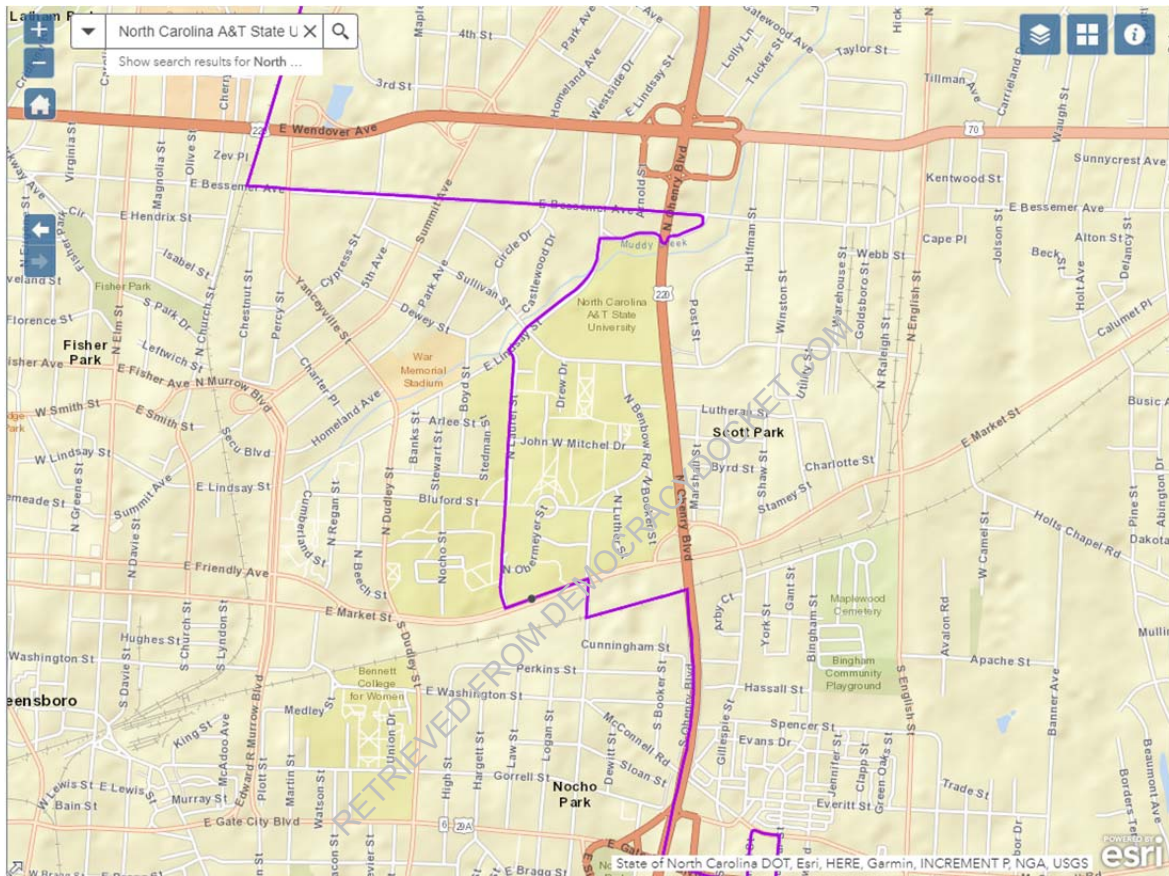
91. Greensboro is the third-largest city in North Carolina and home to one of the largest concentrations of Democratic voters in the state. It also fell victim to one of the most egregious examples of cracking in the 2016 Plan.

92. As shown in the image below, the 2016 Plan splits Greensboro—and Guilford County—and subsumes each half within a much larger concentration of Republican voters. The southwestern half of Guilford County is now part of District 13 and the other half belongs to District 6, cracking that causes both districts to be safe Republican seats. As noted previously, the map also separates the Democratic voters in both of these districts from Forsyth County's Democratic voters in District 5.





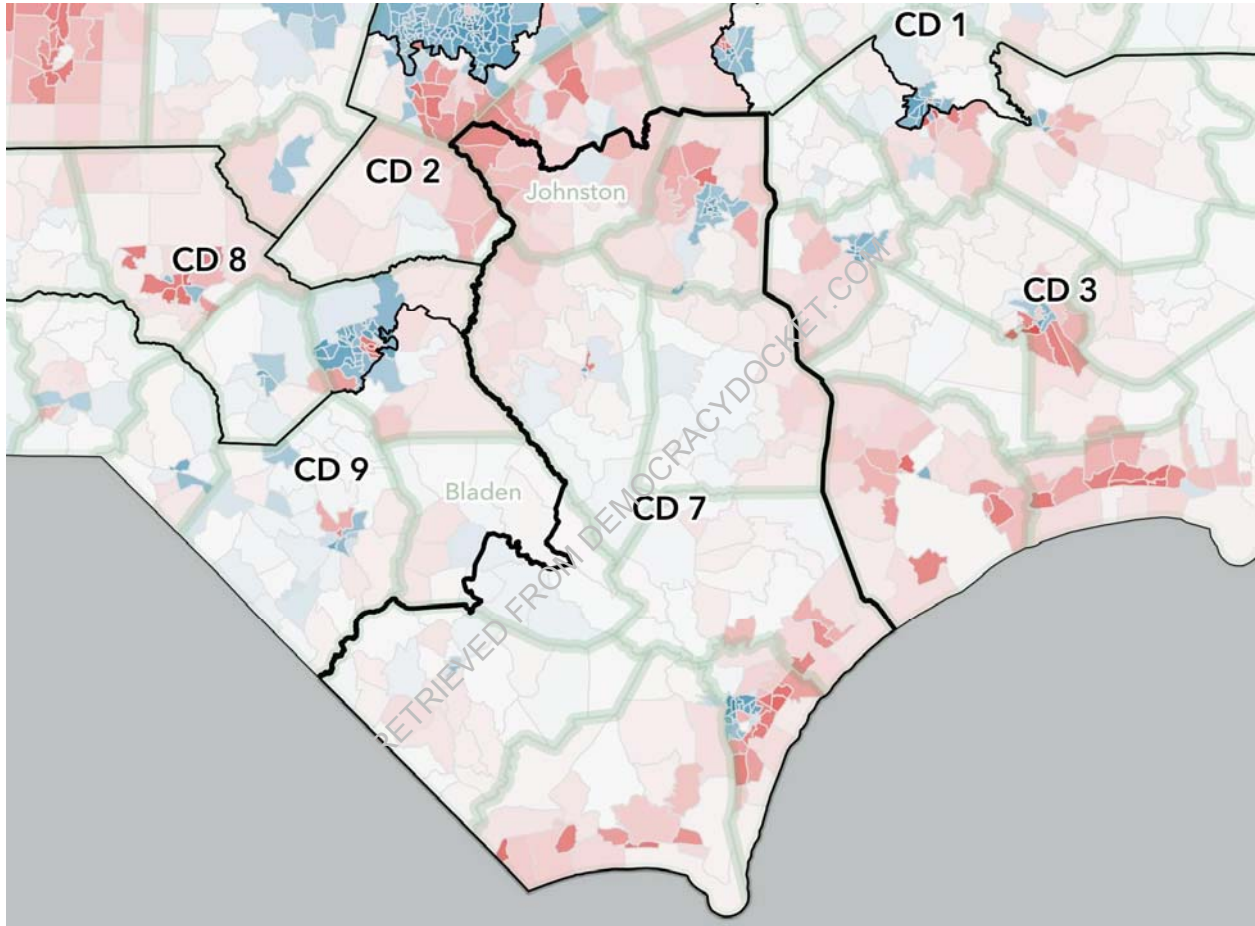
93. In cracking Greensboro's Democratic voters, Legislative Defendants split the campus of North Carolina A&T State University, which is the largest historically black university in the country. The district boundary cuts straight through the campus, placing the west side of campus in District 13 and the east side of campus in District 6, as shown below:



94. As a result of this cracking, the Republican candidate has won District 6 by comfortable margins, with 59.2% and 56.5% of the vote in 2016 and 2018, respectively.

### Congressional District 7

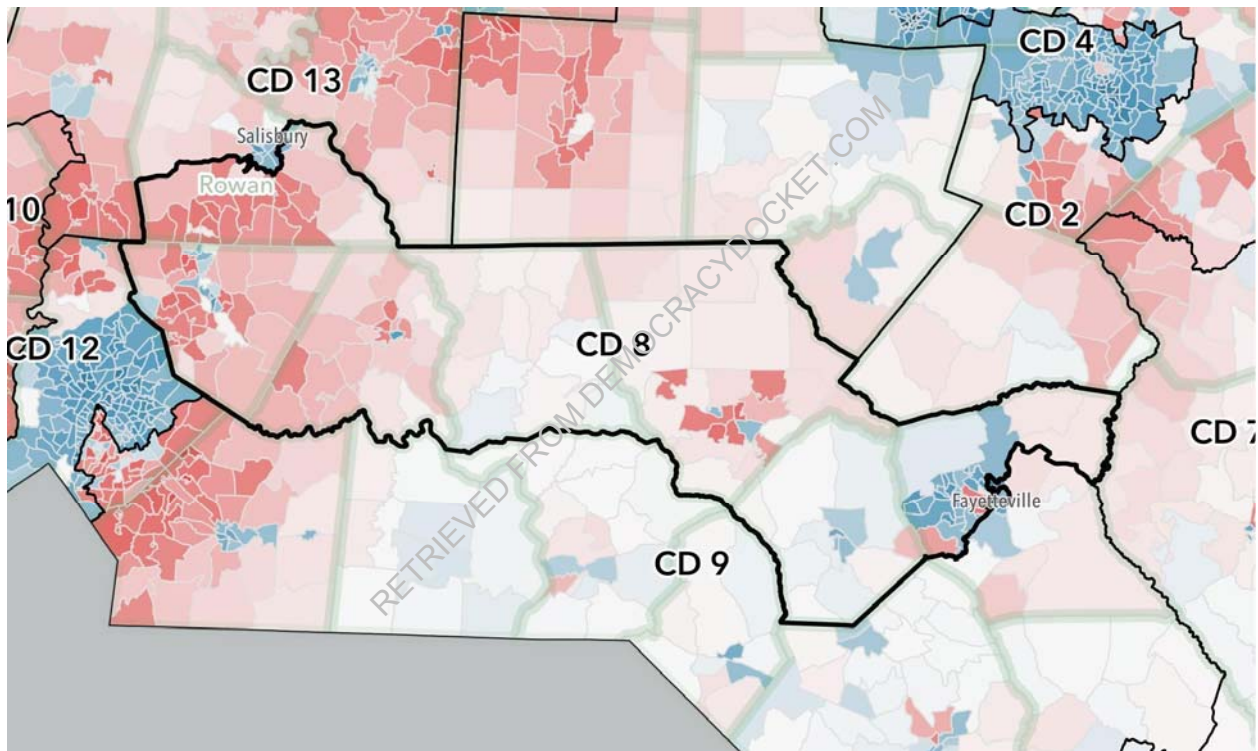
95. The 2016 Plan cracks Democratic voters in District 7. As already explained, at the north end of District 7, the map cracks Johnston County's Democratic voters between Districts 7 and 2. Likewise, on the west side of District 7, the map cracks Democratic voters in Bladen County, splitting the most heavily Democratic VTDs between Districts 7 and 9.



96. As a result of this cracking, District 7 has remained a safe Republican seat. The Republican candidate won District 7 with 60.9% and 56.5% of the vote in 2016 and 2018, respectively.

### Congressional District 8

97. Fayetteville is North Carolina's sixth most-populous city and is heavily Democratic. The 2016 Plan cracks Fayetteville's Democratic voters nearly down the middle, placing one group in District 8 and the other in District 9. District 8 then slices to the west, picking up Republican voters in county after county until stopping halfway through Rowan County, right before the district would hit the Democratic voters of Salisbury, who are carefully excluded from District 8 and placed into District 13 instead.

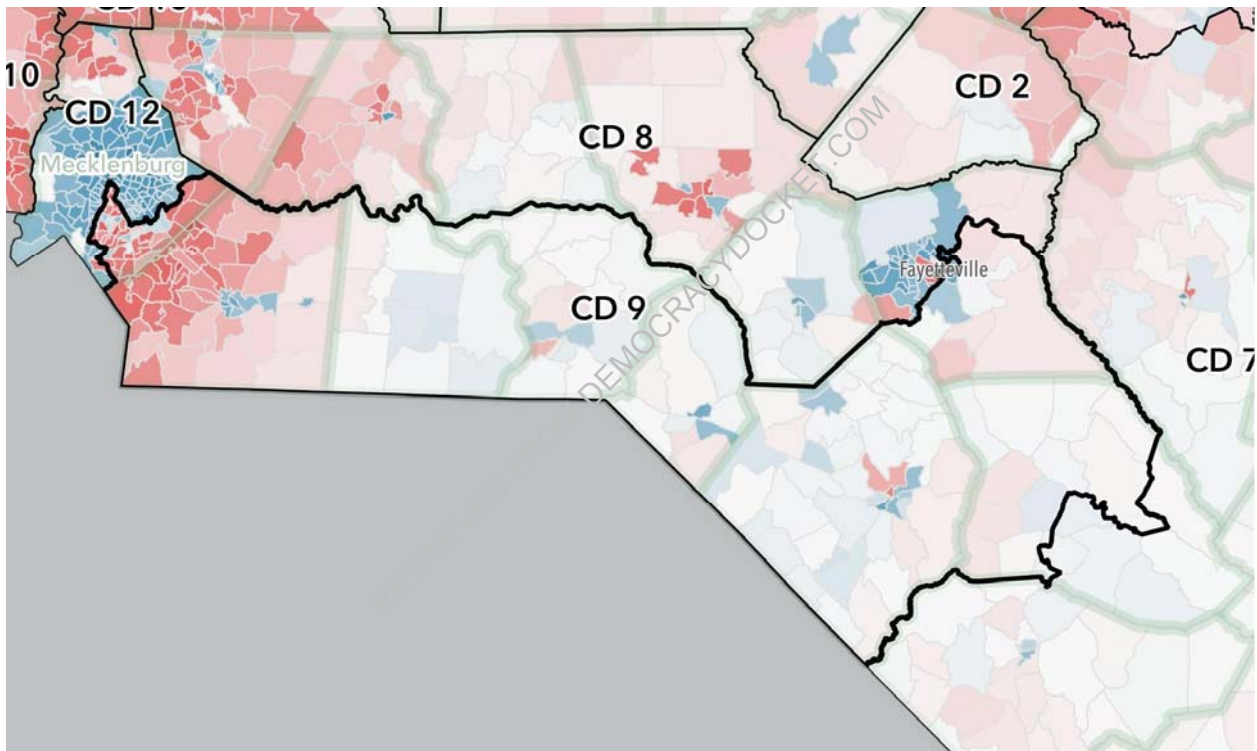


98. As a result of this cracking, District 8 has remained a safe Republican seat. The Republican candidate won District 8 with 58.8% and 55.3% of the vote in 2016 and 2018, respectively.



### Congressional District 9

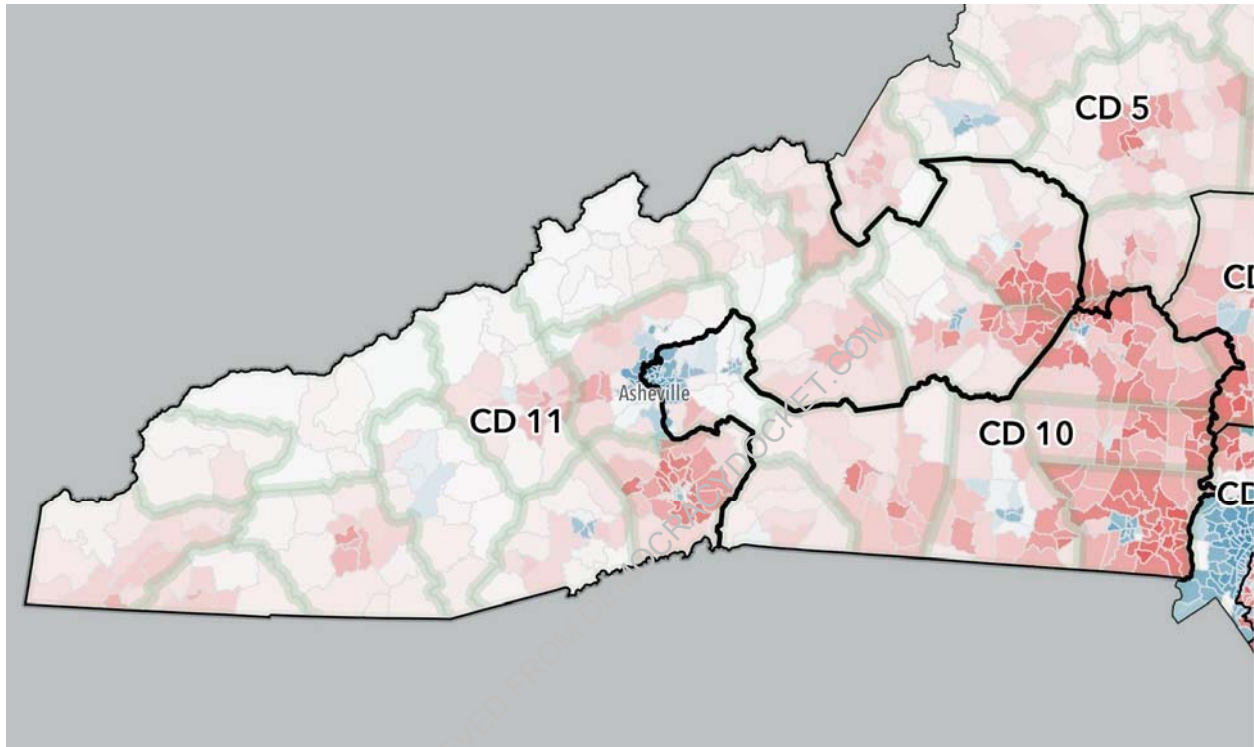
99. District 9 is a near mirror image of District 8. District 9 contains the other half of Fayetteville’s Democratic voters and then, like District 8, stretches west to pick up Republican voters. District 9 reaches into Mecklenburg County and picks up the “pizza slice” in Mecklenburg County that contains the county’s most Republican-leaning VTDs. District 9’s boundaries carefully exclude virtually all of Mecklenburg County’s Democratic VTDs, which instead are packed into District 12.



100. In the elections under the 2016 Plan, District 9 has bent but not broken, remaining a Republican seat. Even the fact that District 9’s 2018 Republican candidate was involved in a high-profile election-fraud scandal that resulted in the invalidation of the 2018 election results for that district could not counterbalance the extreme gerrymander. The Republican candidate won the September 2019 special election in District 9 with 51% of the vote.

### Congressional Districts 10 and 11

101. The 2016 Plan egregiously cracks Asheville's Democratic voters between Districts 10 and 11 to create two safe Republican seats. This cracking dilutes the voting power of Asheville's Democratic voters and ensures that they cannot elect a candidate of their choice.



102. The boundary between Districts 10 and 11 splits the campus of UNC Asheville in two, even going so far as to place students living on different sides of the same residential dormitory into different congressional districts, as shown in the image below:<sup>2</sup>

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<sup>2</sup> See *Two UNC Asheville Dorms Are Bisected by Gerrymandered District Boundaries*, Districks (Oct. 26, 2018), <https://blog.districks.com/2018/10/26/two-unc-asheville-dorms-are-bisected-by-gerrymandered-district-lines/>.

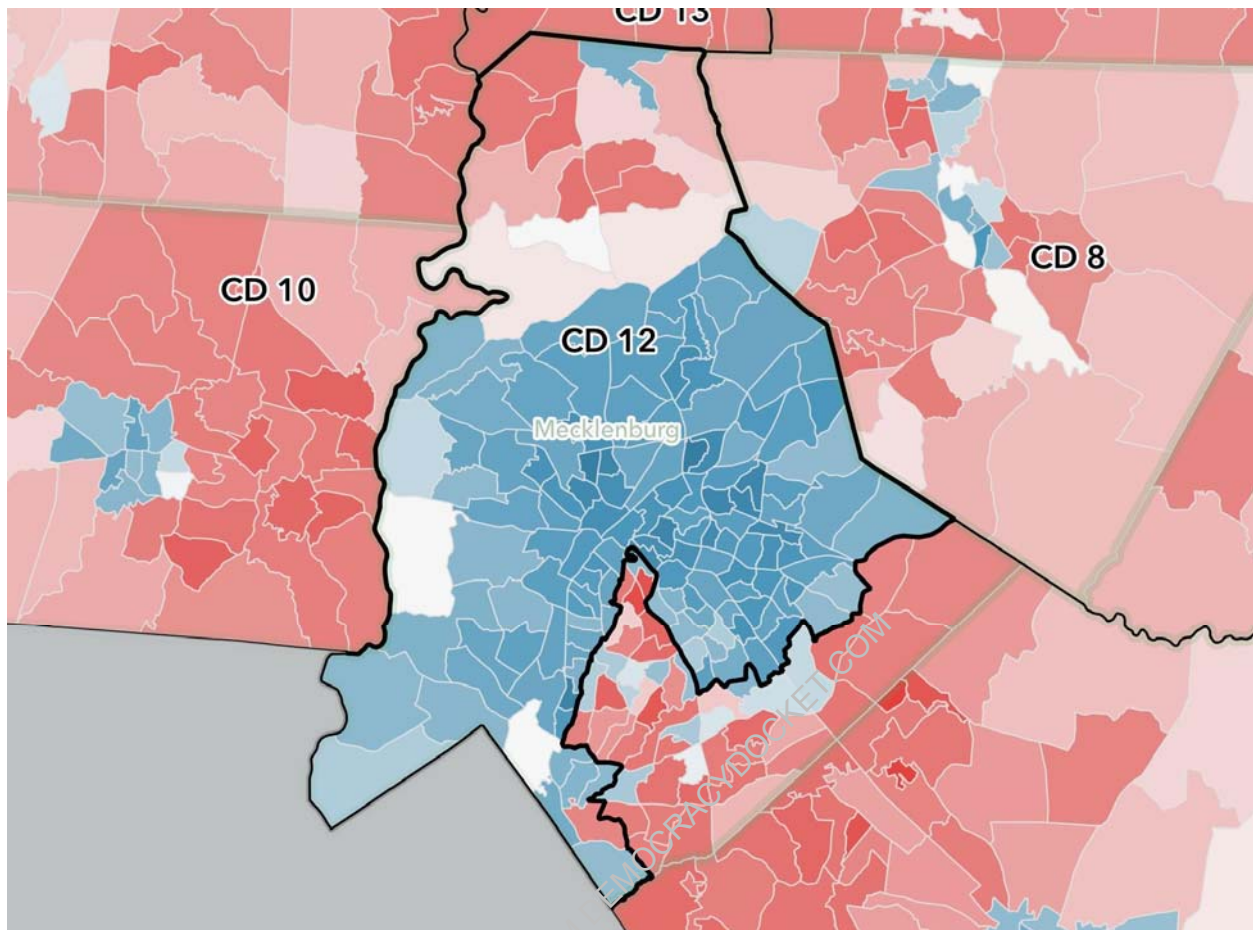




103. The cracking of Asheville’s Democratic voters has been successful. The Republican candidates in Districts 10 and 11 won both seats with between 58% and 63% of the vote in the 2016 and 2018 elections.

#### **Congressional District 12**

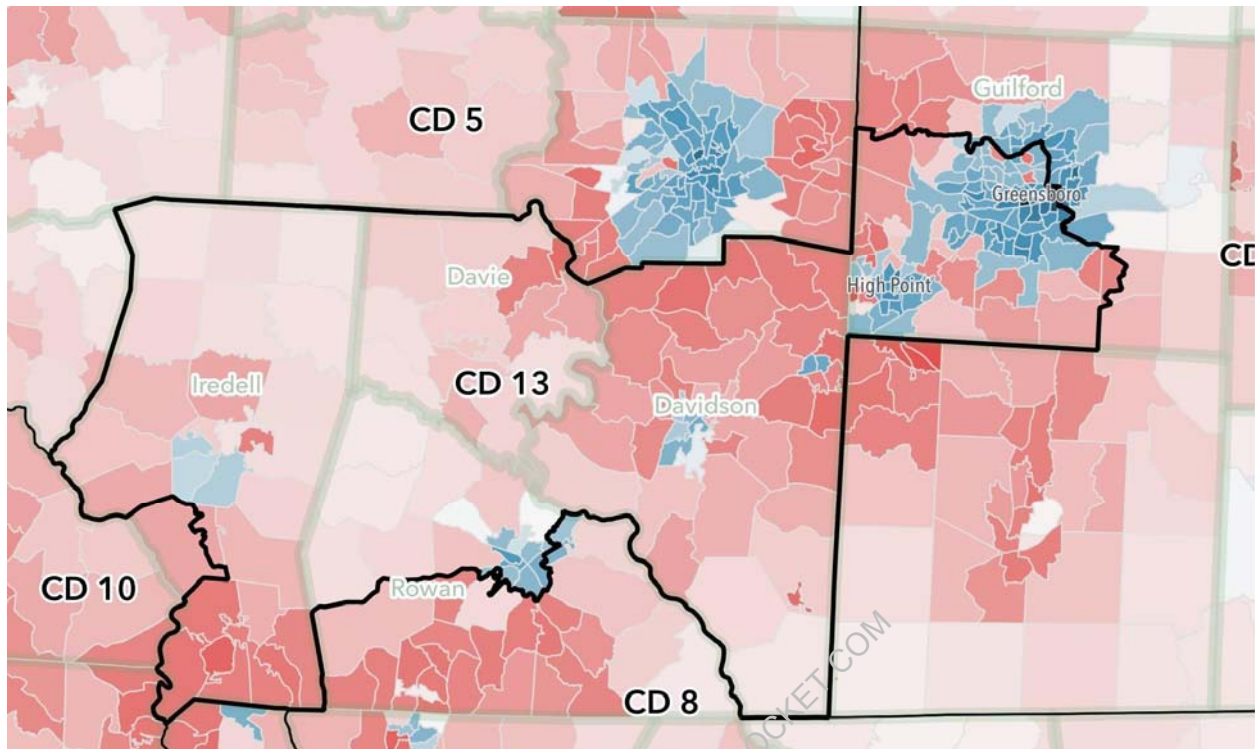
104. District 12 is another packed Democratic district. Dr. Hofeller admitted in sworn testimony that he intentionally drew District 12 to be “predominantly Democratic.” Hofeller Dep. 192:7-16. District 12 packs all of Mecklenburg County’s most Democratic VTDs, carefully excluding the Republican-leaning “pizza slice” in the southern part of Mecklenburg County to ensure that District 12 is an overwhelmingly Democratic district.



105. As a result of this packing, the Democratic candidate won District 12 with 67.0% and 73.1% of the vote in 2016 and 2018, respectively.

### **Congressional District 13**

106. District 13 contains the other cracked half of Guilford County. District 13 groups Guilford County's heavily Democratic voters in and around Greensboro and High Point with overwhelmingly Republican areas in Davidson, Davie, Rowan, and Iredell Counties, ensuring that Guilford County's Democratic voters cannot elect a Democrat.



107. The Republican candidate won District 13 in 2016 and 2018 with 56.1% and 53.1% of the vote, respectively.

**F. Legislative Defendants Did Not Draw Any District in the 2016 Congressional Map to Comply with the Voting Rights Act**

108. Legislative Defendants and Dr. Hofeller expressly stated both during and after the 2016 redistricting process that they did not create any district in an effort to comply with the Voting Rights Act (VRA). *See* Hofeller Dep. 145:9-146:8, 183:22-184:9.

109. The 2016 Adopted Criteria provided as follows: “Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts.”

110. Legislative Defendants stated over and over again that they were not making any effort to draw districts on account of the VRA because they had concluded that the third *Gingles* factor was not met with respect to any district. The third *Gingles* factor requires the existence of legally sufficient white bloc voting against the candidate of choice of African Americans.

Representative Lewis and Senator Rucho stated that, because they did not believe there was sufficient racially polarized voting, they had concluded that the VRA did not require the creation of any minority opportunity congressional districts. *See* Lewis Dep. at 38:15-19, 51:15-19, 86:2-4, 118:23-119:23, 179:13-21; Deposition of Representative David Lewis (“Lewis Dep. II”) at 242:9-13 (Apr. 28, 2017); Rucho Dep. at 31:2-8. Representative Lewis told the Joint Committee that “the *Harris* opinion found that there was not racially polarized voting in the state, and therefore, the race of the voters should not be considered.” Joint Comm. Session, Feb. 16, 2016, at 27:11-14.

**G. The U.S. Supreme Court Holds that Partisan Gerrymandering Claims Are Left to State Courts Applying State Constitutions**

111. In August 2016, the North Carolina Democratic Party, Common Cause, and more than a dozen individual North Carolina voters sued Representative Lewis, Senator Rucho, and other state defendants in federal court, asserting that the 2016 Plan was a partisan gerrymander in violation of the *federal* constitution. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2491 (2019).

112. After a four-day trial, a three-judge federal district court unanimously concluded that the General Assembly “drew and enacted the 2016 Plan with intent to subordinate the interests of non-Republican voters and entrench Republican control of North Carolina’s congressional delegation.” *Common Cause v. Rucho*, 279 F. Supp. 3d 587, 672 (M.D.N.C. 2018). The court further found that “the 2016 Plan achieved the General Assembly’s discriminatory partisan objective.” *Id.* The court therefore held the 2016 Plan violated the Fourteenth Amendment’s Equal Protection Clause and Article I of the U.S. Constitution. The court further held, with one dissenter, that the 2016 Plan also violated the First Amendment. *Id.*

113. The U.S. Supreme Court reversed, holding that partisan gerrymandering claims are not justiciable under the *federal* constitution. *Rucho*, 139 S. Ct. at 2506-07. Nonetheless, the

Court observed that partisan gerrymanders like the 2016 Plan are “incompatible with democratic principles.” *Id.* And, of particular relevance here, the Court recognized that the 2016 Plan is “highly partisan, by any measure.” *Id.* at 2491. While the decision ultimately holds that “partisan gerrymandering claims present political questions beyond the reach of the *federal* courts,” the Court made clear that its conclusion “does not condone excessive partisan gerrymandering[,] [n]or does [its] conclusion condemn complaints about districting to echo into a void.” *Id.* at 2507 (emphasis added).

114. Instead, the U.S. Supreme Court noted that “[t]he States . . . are actively addressing the issue on a number of fronts” under *state* constitutional provisions. *See id.* The Court made clear that “[p]rovisions in state statutes and *state constitutions* can provide standards and guidance for *state courts* to apply.” *Id.* (emphases added).

#### **H. The Superior Court Strikes Down North Carolina’s State Legislative Maps Under the North Carolina Constitution**

115. On September 3, 2019, a three-judge panel of this Court unanimously invalidated North Carolina’s state House and state Senate 2017 redistricting plans (“2017 Plans”) under the North Carolina Constitution. *See Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 10.

116. The *Common Cause* Court explained that North Carolina’s state legislative maps and the 2016 Congressional Plan “arose in remarkably similar circumstances.” *Id.* at 298. “[B]oth the 2016 Congressional map and the 2017 legislative maps were required after a federal court declared existing maps unconstitutional; both were drawn under the direction of many of the same actors working on behalf of the Republican-controlled General Assembly; both were drawn by Dr. Thomas Hofeller; both were drawn in large part before the General Assembly’s redistricting committee met and approved redistricting criteria; and both, as has been found . . .

with respect to the 2017 legislative maps, were drawn with the intent to maximize partisan advantage and, in fact, achieved their intended partisan effects.” *Id.*

117. The Court found that the 2017 state legislative maps “do not permit voters to freely choose their representative, but rather representatives are choosing voters based upon sophisticated partisan sorting.” *Id.* at 10.

118. The Court determined that the plaintiffs had standing to challenge the state legislative maps, and that their challenges were justiciable under the North Carolina Constitution. *Id.* at 292-98, 331-41. And, on the merits, the Court held that the state legislative maps were partisan gerrymanders that violated the North Carolina Constitution’s Free Elections Clause, Art. I, § 10, Equal Protection Clause, Art. I, § 19, and Free Speech and Assembly Clauses, Art. I, §§ 12, 14. *See Common Cause*, 18-CVS-014001, slip. op. at 7-10.

119. The 2016 Plan violates the North Carolina Constitution in the exact same ways as the 2017 state legislative maps that were recently invalidated in *Common Cause*.

**COUNT ONE**  
**Violation of the North Carolina Constitution’s**  
**Free Elections Clause, Art. I, § 10**

120. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

121. Article I, Section 10 of the North Carolina Constitution, which has no counterpart in the U.S. Constitution, provides that “All elections shall be free.”

122. North Carolina’s Free Elections Clause traces its roots to the 1689 English Bill of Rights, which declared that “Elections of members of Parliament ought to be free.” Bill of Rights 1689, 1 W. & M. c. 2 (Eng.); *see* John V. Orth, *North Carolina Constitutional History*, 70 N.C. L. Rev. 1759, 1797-98 (1992).

123. This provision of the 1689 English Bill of Rights was a product of the king’s efforts to manipulate parliamentary elections, including by changing the electorate in different

areas to achieve “electoral advantage.” J.R. Jones, *The Revolution of 1688 in England* 148 (1972). The king’s efforts to maintain control of parliament by manipulating elections led to a revolution. After dethroning the king, the revolutionaries called for a “free and lawful parliament” as a critical reform. Grey S. De Krey, *Restoration and Revolution in Britain: A Political History of the Era of Charles II and the Glorious Revolution* 241, 247-48, 250 (2007).

124. North Carolina has strengthened the Free Elections Clause since its adoption to reinforce its principal purpose of preserving the popular sovereignty of North Carolinians. The original clause, adopted in 1776, provides that “elections of members, to serve as Representatives in the General Assembly, ought to be free.” N.C. Declaration of Rights, VI (1776). Nearly a century later, North Carolina revised the clause to state that “[a]ll elections ought to be free,” thus expanding the principle to include all elections in North Carolina. N.C. Const. art. I, § 10 (1868). And another century later, North Carolina adopted the current version which provides that “[a]ll elections *shall* be free.” As the North Carolina Supreme Court later explained, this change was intended to “make [it] clear” that the Free Elections Clause and the other rights secured to the people by the Declaration of Rights “are commands and not mere admonitions” to proper conduct on the part of the government. *N.C. State Bar v. DuMont*, 304 N.C. 627, 635, 639, 286 S.E.2d 89, 97 (1982) (internal quotations omitted).

125. Based on the text and history of North Carolina’s Free Elections Clause, “the meaning of the Free Elections Clause is that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. This . . . is a fundamental right of the citizens enshrined in our Constitution’s Declaration of Rights, a compelling governmental interest, and a cornerstone of our democratic form of government.” *Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 298-306.

126. “[P]artisan gerrymandering . . . strikes at the heart of the Free Elections Clause.” *Id.* at 305. “[E]xtreme partisan gerrymandering—namely redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others—is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 302. Simply put, “[e]lections are not free when partisan actors have tainted future elections by specifically and systematically designing the contours of the election districts for partisan purposes and a desire to preserve power.” *Id.* at 305.

127. The 2016 Plan violates the Free Elections Clause in the same way as the invalidated 2017 state legislative plans. In creating the 2016 Plan, Legislative Defendants “specifically and systematically design[ed] the contours of the election districts for partisan purposes and a desire to preserve power.” *Id.* at 305. The 2016 Plan “unlawfully seek[s] to predetermine election outcomes in specific districts” and across the state as a whole. *Id.* Because of Legislative Defendants’ extreme partisan gerrymandering of the 2016 Plan, congressional elections in North Carolina are not “conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 302.

128. Legislative Defendants openly admitted all of this with respect to the 2016 Plan. They expressly stated—and even made an official part of the 2016 Adopted Criteria—that they were endeavoring to maintain “Partisan Advantage” such that, for each election under the new map, Republicans would win 10 seats in North Carolina’s congressional delegation and Democrats would win only 3 seats. The 2016 Adopted Criteria on their face violate the Free Elections Clause.



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

129. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

130. Article I, Section 19 of the North Carolina Constitution provides in relevant part that “[n]o person shall be denied the equal protection of the laws.”

131. North Carolina’s Equal Protection Clause affords broader protections to its citizens in the voting rights context than the U.S. Constitution’s equal protection provisions. *See Stephenson v. Bartlett*, 355 N.C 354, 376-81 & n.6, 562 S.E.2d 377, 393-95 & n.6 (2002); *Blankenship v. Bartlett*, 363 N.C. 518, 523-24, 681 S.E.2d 759, 763 (2009).

132. Irrespective of its federal counterpart, North Carolina’s Equal Protection Clause protects the right to “substantially equal voting power.” *Stephenson*, 355 N.C. at 379, 562 S.E.2d at 394. “It is well settled in this State that the right to vote on equal terms is a fundamental right.” *Id.* at 378, 562 S.E.2d at 393 (internal quotation marks omitted). Thus, the North Carolina Supreme Court has enforced the State’s Equal Protection Clause to invalidate other redistricting schemes, such as the combined use of single-member and multi-member districts in a redistricting plan that “impermissibly distin[guished] among similarly situated citizens” and thus “necessarily implicate[d] the fundamental right to vote on equal terms.” *Id.* at 377-78, 562 S.E.2d at 393.

133. Partisan gerrymandering violates North Carolina’s Equal Protection Clause. “[P]artisan gerrymandering runs afoul of the State’s obligation to provide all persons with equal protection of law because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party.” *Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 307.

134. The 2016 Plan violates North Carolina’s Equal Protection Clause in the same ways as the invalidated 2017 state legislative plans. In drawing the 2016 Plan, Legislative Defendants “acted with the intent, unrelated to any legitimate legislative objection, to classify voters and deprive citizens of the right to vote on equal terms.” *Id.* at 312. The 2016 Plan’s intentional classification of, and discrimination against, Democratic voters is plain. The Republican leaders of the Joint Committee explicitly used “partisan advantage” and “political data” as criteria in drawing the congressional district lines. Specifically, the 2016 Adopted Criteria *required* drawing congressional district lines to give Republicans control of 10 of the 13 congressional seats. *See id.* And Legislative Defendants succeeded in this goal. Republicans maintained control of 10 of the 13 seats following the 2016 and 2018 congressional elections, despite losing the statewide vote in 2018. The Joint Committee’s intent is also laid bare by the packing and cracking of particular Democratic communities.

135. These efforts have produced discriminatory effects for Plaintiffs and other Democratic voters. On a statewide basis, Democrats receive far fewer congressional seats than they would absent the gerrymander. The grossly disproportionate number of seats that Republicans have won and will continue to win in the congressional delegation relative to their share of the statewide vote cannot be explained or justified by North Carolina’s political geography or any legitimate redistricting criteria. The packing and cracking of Democratic voters under the 2016 Plan burdens the representational rights of Democratic voters individually and as a group and discriminates against Democratic candidates and organizations individually and as a group. “[P]acking dilutes the votes of Democratic voters such that their votes, when compared to the votes of Republican voters, are substantially less likely to ultimately matter in deciding the election results.” *Common Cause*, 18-CVS-014001, slip. op. at 314. And “the

entire purpose of cracking likeminded voters across multiple districts is so they do not have sufficient ‘voting power’ to join together and elect a candidate of their choice.” *Id.* Legislative Defendants can offer no legitimate justification for their overriding partisan intent in drawing the 2016 Plan.

**COUNT THREE**  
**Violation of North Carolina Constitution’s**  
**Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14**

136. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

137. Article I, § 12 of the North Carolina Constitution provides in relevant part: “The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.”

138. Article I, § 14 of the North Carolina Constitution provides in relevant part: “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.”

139. “[T]he North Carolina Constitution’s Free Speech Clause provides broader rights than does federal law.” *Common Cause*, 18-CVS-014001, slip. op. at 318. “In the context of partisan gerrymandering, it is especially important that North Carolina courts give independent force to North Carolina’s constitutional protections.” *Id.* at 319.

140. “Voting for the candidate of one’s choice and associating with the political party of one’s choice are core means of political expression protected by the North Carolina Constitution’s Freedom of Speech and Freedom of Assembly Clauses.” *Id.* at 320. “Voting provides citizens a direct means of expressing support for a candidate and his views.” *Id.* And “[j]ust as voting is a form of protected expression, banding together with likeminded citizens in a political party is a form of protected association.” *Id.* at 321.

141. Irrespective of the U.S. Constitution, the 2016 Plan violates Article I, § 14 of the North Carolina Constitution by “burden[ing] protected expression based on viewpoint by making Democratic votes less effective.” *Common Cause*, 18-CVS-014001, slip. op. at 322. “Legislative Defendants identified certain preferred speakers (Republican voters), while targeting certain disfavored speakers (Plaintiffs and other Democratic voters) for disfavored treatment” because of disagreement with the views they express when they vote. *Id.* (alteration and internal quotation marks omitted). Just as they did in creating the 2017 state legislative plans, “Legislative Defendants analyzed the voting histories of every VTD in North Carolina, identified VTDs that favor Democratic candidates, and then singled out the voters in those VTDs for disfavored treatment by packing and cracking them into districts with the aim of diluting their votes and, in the case of cracked districts, ensuring that these voters are significantly less likely, in comparison to Republican voters, to be able to elect a candidate who shares their views.” *Id.* at 323. “The fact that Democratic voters can still cast ballots under gerrymandered maps changes nothing. The government unconstitutionally burdens speech where it renders disfavored speech *less effective*, even if it does not ban such speech outright.” *Id.* at 323.

142. Irrespective of the U.S. Constitution, the 2016 Plan independently violates Article I, § 12 because it “severely burden[s]—if not outright preclude[s]” the ability of Democratic voters to associate by eroding their ability to “instruct” and “obtain redress” from their members of Congress on issues important to them. *Id.* at 326-27.

143. Irrespective of the U.S. Constitution, the 2016 Plan independently violates Article 1, Sections 12 and 14 of the North Carolina Constitution by retaliating against Plaintiffs and other Democratic voters based on their exercise of political speech. The 2016 Plan takes adverse action against Plaintiffs and other Democratic voters, retaliates against their protected

speech and conduct, and would not have taken the adverse action but for Legislative Defendants' retaliatory intent to pack and crack Democratic voters because of their prior political speech and associations.

144. There is no legitimate state interest in discriminating and retaliating against Plaintiffs because of their political viewpoints, voting histories, and affiliations. Nor can the 2016 Plan be explained or justified by North Carolina's geography or any legitimate redistricting criteria.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendants, and;

a. Declare that the 2016 Plan is unconstitutional and invalid because it violates the rights of Plaintiffs and all Democratic voters in North Carolina under the North Carolina Constitution's Free Elections Clause, Art. I, § 10; Equal Protection Clause, Art. I, § 19; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14;

b. Enjoin Defendants, their agents, officers, and employees from administering, preparing for, or moving forward with the 2020 primary and general elections for Congress using the 2016 Plan;

c. Establish a new congressional districting plan that complies with the North Carolina Constitution, if the North Carolina General Assembly fails to enact new congressional districting plans comporting with the North Carolina Constitution in a timely manner;

d. Enjoin Defendants, their agents, officers, and employees from using past election results or other political data in any future redistricting of North Carolina's congressional

districts to intentionally dilute the voting power of citizens or groups of citizens based on their political beliefs, party affiliation, or past votes.

e. Enjoin Defendants, their agents, officers, and employees from otherwise intentionally diluting the voting power of citizens or groups of citizens in any future redistricting of North Carolina's congressional districts based on their political beliefs, party affiliation, or past votes.

f. Grant Plaintiffs such other and further relief as the Court deems just and appropriate.

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**PATTERSON HARKAVY LLP**



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Narendra K. Ghosh, NC Bar No. 37649  
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*Counsel for Plaintiffs*


*\* Applications for Pro Hac Vice  
admissions forthcoming*

## VERIFICATION

I, AMY CLARE OSEROFF, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.

  
Amy Clare Oseroff

Sworn and subscribed before me this the 24 day of September, 2019.

  
Notary Public

Name: Whitney Anderson

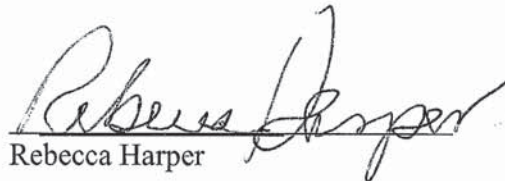
My commission expires: 11/24/23



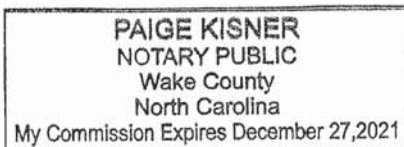


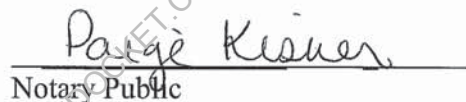
## VERIFICATION

I, REBECCA HARPER, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.

  
Rebecca Harper

Sworn and subscribed before me this the 24 day of September, 2019.



  
Notary Public

Name: Paige Kisner

My commission expires: 12-27-21

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## VERIFICATION

I, DONALD ALLAN RUMPH, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.

  
Donald Allan Rumph

Sworn and subscribed before me this the 24th day of September, 2019.



  
Notary Public

Name: Courtney Gilbert

My commission expires: June 24, 2023

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## VERIFICATION

I, JOHN BALLA, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.

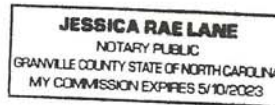
  
\_\_\_\_\_  
John Balla

Sworn and subscribed before me this the 24 day of September, 2019.

  
\_\_\_\_\_  
Notary Public

Name: Jessica Rae Lane

My commission expires: May 10, 2023



## Acknowledgement

STATE OF NC

COUNTY OF Avery

I certify that Richard R. Crows personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: Arnold's Porter Partisan Gary Manning  
Name or description of attached document Litigation in NC

I further certify that (select one of the following identification options):

☐ I have personal knowledge of the identity of the principal(s)

☒ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a NC DL 31906427  
type of identification

☐ A credible witness, \_\_\_\_\_, name of credible witness has sworn or affirmed to me the identity of the principal, and that he or she is not a named party to the foregoing document, and has no interest in the transaction.

Date: 9/21/19




[Signature]  
Notary Public  
Mindi T. Jackson  
Typed or Printed Notary Name

My commission expires: November 21, 2019

## VERIFICATION

I, LILY NICOLE QUICK, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.

  
Lily Nicole Quick

Sworn and subscribed before me this the 23<sup>rd</sup> day of September, 2019.

  
Notary Public

Name: Katredia W. Martin

My commission expires: January 22, 2022



## VERIFICATION

I, GETTYS COHEN JR., hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.

Gettys Cohen Jr.  
Gettys Cohen Jr.

Sworn and subscribed before me this the 24 day of September, 2019.

MARGARITA CORONA MARTINEZ  
NOTARY PUBLIC  
JOHNSTON COUNTY, NC

Margarita Corona Martinez  
Notary Public

Name:

My commission expires:

4/2/2024

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**VERIFICATION**

I, JACKSON THOMAS DUNN, JR., hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.

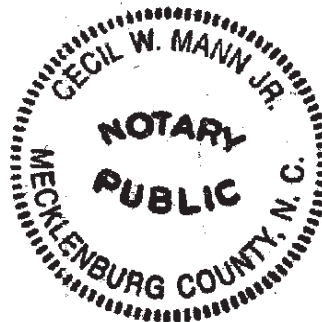
  
Jackson Thomas Dunn, Jr.

Sworn and subscribed before me this the 24 day of September, 2019.

  
Notary Public

Name: Cecil W Mann Jr.

My commission expires: March 20, 2022





Plaintiff Mark S. Peters is a retired Physician Assistant residing in Fletcher, North Carolina, within Congressional District 10. Mr. Peters is registered as an unaffiliated voter and has consistently voted for Democratic candidates for the U.S. House of Representatives. In drawing the 2016 maps, the General Assembly cracked Asheville's Democratic voters between Districts 10 and 11 to make each district more favorable to Republican candidates. In the 2018 elections, the Republican candidate won District 10 with over 59% of the vote.



Mark Peters

County: Buncombe  
State: North Carolina



my Commission expires  
5/13/2020

Kelly K McDill

McDill  
McDill  
9/24/19



## VERIFICATION

I, JOSEPH GATES, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.

  
Joseph Gates

Sworn and subscribed before me this the 24 day of September, 2019.



  
Notary Public

Name: Michael A. Hill

My commission expires: 11/15/2021

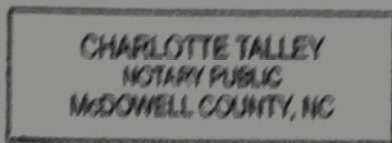
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# VERIFICATION

I, KATHLEEN BARNES, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing VERIFIED COMPLAINT, and that the contents therein are true and accurate as they pertain to me.

  
Kathleen Barnes

Sworn and subscribed before me this the 21<sup>st</sup> day of September, 2019.



  
Notary Public

Name: Charlotte Talley

My commission expires: 3-3-21

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### VERIFICATION

I, VIRGINIA BRIEN, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.

Virginia Brien  
Virginia Brien

Sworn and subscribed before me this the 24<sup>th</sup> day of September, 2019.

Denise K. Hendricks  
Notary Public

Name: Denise K. Hendricks

My commission expires: 6-19-2024



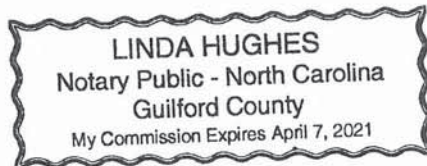
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## VERIFICATION

I, DAVID DWIGHT BROWN, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me.

David Dwight Brown  
David Dwight Brown

Sworn and subscribed before me this the 24 day of September, 2019.



[Signature]  
Notary Public

Name: LINDA HUGHES

My commission expires: APRIL 7, 2021

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