Exhibit 1

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF WAKE 11 CVS 16896
11 CVS 16940

MARGARET DICKSON, et al.,

Plaintiffs,

vs.

ROBERT RUCHO, in his official capacity only as the Chairman of the North Carolina Senate Redistricting Committee, et al.,

Defendants.

NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP, et al.,

Plaintiffs,

vs.

STATE OF NORTH CAROLINA, et al.,

Defendants.

DEPOSITION OF ERIKA CHURCHILL

9:39 A.M.
TUESDAY, MARCH 20, 2012

POYNER SPRUILL
301 FAYETTEVILLE STREET
SUITE 1900
RALEIGH, NC 27601

By: Denise Myers Byrd, CSR 8340, RPR

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Ballance and Steve Metcalf.

Q. Did you do any work with the House Redistricting Committee?

A. Yes, sir.

Q. Describe your work for the Senate Redistricting Committee and then your work for the House Redistricting Committee.

A. I believe the description would be roughly the same.

Q. All right.

A. We are definitely a limited number in group within the Research Division. When you have a topic of assignment that is unique as redistricting, you kind of do it all.

With the 2001 process, Bill Gilkeson was the lead staff attorney. He functioned as an intermediary between the staff and the members and kind of helped relay information what needed to be done, that kind of thing.

I was one of the staff that got the tasks of assignment for both House, Senate and Congressional. Generally, they turned on making sure that we had bill text that accurately reflected the map that was to be considered by the General Assembly and supporting information to

explain to the members what that map meant.
Q. Did you actually draw maps?
A. In 2001?
Q. Yes.
A. That was a long time ago.
Q. Best of your memory.
A. I don't remember drawing any statewide maps. I do remember drawing amendments to statewide maps.
Q. For the House or the Senate or both?
A. For House and Senate, yes, sir.
Q. Do you recall working with Richard Morgan in drawing some maps in the early 2000s?
A. Not in the 2001 round. I do remember doing that in 2003 when he was co-speaker.
Q. So we had multiple rounds of redistricting back in that time thanks to Mr. Farr. Did your role -- you were involved in the drawing of the first plans in the ways you've described.
A. Yes, sir, as committee staff.
Q. And those plans were declared unconstitutional?
A. Yes.
Q. And the legislature came back and drew new plans --
A. Yes, sir.
Q. -- in a bit of a hurry?
A. 2002, yes, sir.

Q. Were you involved in that process?
A. Yes.
Q. What was your role in that process?
A. Very similar to the 2001 process.
Q. And then the legislature comes back in 2003 and draws again?
A. Yes.
Q. House and Senate?
A. Just House and Senate, no Congressional.
Q. What was your role in 2003?
A. In 2003 I was still committee staff, and I honestly do not remember if it was House, Senate or both, but in 2003, functioning very similar to how I had in 2001 and 2002, the plans were drawn outside of the General Assembly. They were imported into our system and then modified accordingly.

Any time you have two different mapping databases, you run the risk that the maps are not going to import exactly alike because it depends on the database they're drawn off of. In 2003 that was done. There was some parts that still needed to be filled in. I was involved with Speaker Morgan in filling in those blank parts.
Q. And you were the map drawer in that sense?
A. In terms of -- yes, I was in the room being told

VTD lines?

A. No, sir, I don't believe they are. There again you have the levels of geography that you choose to assign. There are counties that are kept whole in accordance with the Stephenson opinion and the House and the Senate, I believe there are whole counties in the Congressional plan, and then you have some that the VTD is the unit of assignment and remains whole and intact and then you have other areas that the census blocks was used as the level-of-assignment layer.

Q. Okay. That's what I wanted to get you to explain. So there are -- in the plans there are VTDs that are kept whole and there are VTDs that are divided into different districts; is that correct?

A. Yes, sir. When you read the session log, that's actually how it reads, you read the hierarchy, you read -- after following District 1, you'll see the whole counties, they're involved in District 1. If the county is split, then you'll see the name of the county and a colon, and whether it's a VTD that is whole or if the VTD -- if you see a semicolon -- if a VTD is split, then you see a semicolon and a list of census blocks numbers.

Q. Good. Thank you very much.

I wanted to go back on one topic that you testified on direct examination and that was you, I believe, testified that in 2001, 2002 and 2003 the redistricting plans were based upon maps that came from some other source; is that correct?

A. Yes, sir. Just like this round of redistricting, the initial maps that came in for the staff to work up in terms of committee staff.

(Brief Interruption.)

BY MR. FARR:

Q. Let's talk about 2001. I think there were 2000, 2001, 2002 and I think it was 2003 carrying over into 2004 was the final round as I remember it.

In 2001, what do you recall about where the maps originally came from?

A. I believe in 2001, 2002 very similar structure where the map came from an outside source. It had been drawn in a software system outside of the General Assembly's.

The ISD -- our Information Systems Division imported it into our system and we began to work it up doing something very similar to what we did this time, identifying if there were any misassignments of geography.

The whole concept as it was this time was

to make sure that the plan that came forward in terms of a bill was the plan that was intended to be the one -- in other words, the one that came from outside got into our system looking exactly the same.

Q. Was there a typical person you worked with who relayed the outside maps to the General Assembly staff?

A. Generally in 2001, 2002 and 2003 that was Kevin LeCount.

Q. Can you spell that for the court reporter.

A. In terms of the Democratic party plans.

I think it's might be L-E-C-O-U-N-T.

Q. So he -- when you say Democratic party plans, what did you mean by that?

A. The plans that came from the majority party that were ultimately the plans that were enacted by the General Assembly.

Q. Was Kevin LeCount an employee of the General Assembly?

A. No, sir, he was not, to the best of my knowledge.

Q. Do you know who he was employed by?

A. No, sir.

Q. Were the maps that he initially relayed to the General Assembly staff, were they drawn on the

General Assembly's computers or someplace else?
A. They were drawn somewhere else.
At the time the General Assembly had its own software system that had been developed internally at the General Assembly, and it was not available to anyone outside of the General Assembly.
Q. What happened in the 2003-2004 timeframe?
A. It was a very similar process. In fact, an identical process for the Senate plan.
In 2003, the membership of the House was split along party lines and there was a co-speakership. I have kind of always assumed because of that the House plan was developed slightly differently in that we had a plan that came in that was not a complete, whole state plan. That plan that was not a complete, whole state plan was reviewed jointly by Speaker Black and Speaker Morgan and there were changes made according to that plan.
Q. Who was the source of this House plan, was that Mr. LeCount or somebody else?
A. Yes, sir, that was Mr. LeCount.
Q. In 2003 and 2004 did you observe Mr. LeCount making any adjustments in the plan after it was imported

into the state system?

A. Yes, sir, we kind of by default developed a process where we were simultaneously running the mapping system that he was using and the mapping system of the General Assembly in making identical assignments in both simultaneously.

Q. Where was the location for it, that process?

A. Speaker Morgan's conference room.

Q. Did Mr. LeCount interact with you or the staff in 2001 or 2002 to make changes on the maps after they had been originally imported?

A. Yes, sir.

Q. Do you recall how that worked?

A. Generally at the instruction of the Chairs at that point who were giving us instruction, we would import the plan and then would run the reports to make sure it was contiguous and all the areas were assigned. And again, in 2001-2002-2003 timeframe the General Assembly did use the precinct as the unit of assignment of geography.

We also ran a report to see what was split there. If we saw something that looked questionable, we would give a call -- and we were generally told to call Kevin and work through it so we generally called Kevin and worked through it.

Q. So in the 2001, 2002 and 2003 and 2004 redistricting years, you worked with Mr. LeCount to make adjustments to the plans after they had been imported originally?

A. Yes. Although I think all the drawing was finished by 2003. I don't know that it was fully implementable because of the pre-clearance process, but I think all the drawing was finished by 2003.

Q. So any interactions with Mr. LeCount in the 2003-2004 timeframe would have been completed by the end of the year in 2003?

A. Yes, with regard to any changes to the maps.

Q. I think that's all I have.

MR. SPEAS: I have a couple questions.

FURTHER EXAMINATION

BY MR. SPEAS:

Q. Put on your map drawer hat. You've had experience drawing lines. If I am drawing the line of -- that separates one district from another, I can follow a census block line, correct?

A. Correct.

Q. I can follow a VTD line?

A. In terms of units of assignment available in the General Assembly's computer, the opportunities are the census block, which is the smallest unit, the

Exhibit 2

STATE OF NORTH CAROLINA

CONGRESSIONAL REDISTRICTING COMMITTEE MEETING

COPY

BEFORE: Representative Ed McMahan
Congressional Redistricting
Committee

Representative Thomas Wright
Congressional Redistricting
Committee

TRANSCRIPT

OF

MEETING

At Raleigh, North Carolina
November 14, 2001 - 11:17 a.m.

Reported by:
Amy L. Poythress, CVR

Capital Reporting
General Court Reporting

Post Office Box 19418
Raleigh, NC 27619
(919) 787-7775

REPRESENTATIVE ELLIS: Thank you, Mr. Chairman.

Representative Wright, did you substantially draw this plan?

REPRESENTATIVE WRIGHT: Yes, sir.

REPRESENTATIVE ELLIS: Follow-up, please.

REPRESENTATIVE MCMAHAN: Yes, follow-up, Representative Ellis.

REPRESENTATIVE ELLIS: One of the concerns that I think the population is concerned about in this, and there's a lot of things I think most of the time a lot of them think they're in Washington, but I know one thing that they are concerned about is the commonality in interest, and I've heard that repeatedly in talking to people in my district.

In looking at the 2nd District, can you explain for me what commonality you believe southeastern Wake County has with southern and eastern Sampson?

REPRESENTATIVE WRIGHT: Well, common interest is what common interest is, Representative Ellis, and what we looked at

here, again, was performance and with the intent of certainly keeping the Democratic advantage or one party's advantage in the performance in this district. So it's based on voting patterns and how these citizens typically vote and the other interests that they had, we thought that certainly represented a good mix of the rural and urban.

REPRESENTATIVE ELLIS: Follow-up, please.

REPRESENTATIVE WRIGHT: I yield.

REPRESENTATIVE ELLIS: Thank you. I don't know -- what I'm hearing you say is that you were interested in combining these areas because of political performance and the anticipated outcome of the vote, but I'm more interested in the economic or the geographic continuity in these areas. And I'm just -- I don't see that this area of Wake County has any common interest with that area of Sampson County. And so I want to know how the people of North Carolina are better served by such a broad expanse in geography.

that's correct.

REPRESENTATIVE DAUGHTRY: Mr. Chairman.

REPRESENTATIVE MCMAHAN: Yes, Representative Daughtry.

REPRESENTATIVE DAUGHTRY: Question for Representative Wright.

REPRESENTATIVE WRIGHT: Yes, sir.

REPRESENTATIVE DAUGHTRY:: When following up with that question and also the question about commonalities of interest that Representative Ellis mentioned regarding lower Sampson and east Wake, my understanding was that the 2nd District and the 13th were drawn in such a way as they are drawn without regard for commonality of interest but to make sure that the incumbent Democrat was to be re-elected, and the 13th, my understanding was the reason it was drawn so that it would snake down into Guilford county was to make sure it stayed a Democrat district, without regard to any -- any kinds of traditional criteria -- for example, commonalities of interest or keeping counties or keeping communities together, but simply

done to make sure that the 13th was a Democrat district, and, second, was a more stronger Democrat district than it is now. Is that correct?

REPRESENTATIVE WRIGHT: Partly correct, yes, sir.

REPRESENTATIVE DAUGHTRY: Partly correct. Follow-up.

REPRESENTATIVE MCMAHAN: Follow-up.

REPRESENTATIVE DAUGHTRY: What's the other part?

REPRESENTATIVE WRIGHT: You know, part of what you said was certainly one of the considerations, but we used several variables and several considerations as we were drawing this, and that's why I said earlier the common interest question certainly was considered as we were drawing this in addition to looking at ways to enhance the performance Democratically or for one party or another.

REPRESENTATIVE MCMAHAN: Follow-up, Representative Daughtry?

REPRESENTATIVE DAUGHTRY: Yes. I mean,

Exhibit 3

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, et al.,

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON REDISTRICTING, et al.,

Defendants.

PLAINTIFFS' OBJECTIONS TO REMEDIAL PLANS

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INTRODUCTION

This Court gave Legislative Defendants clear and simple instructions for drawing remedial districts. The Court ordered that "Legislative Defendants and their agents shall conduct the entire remedial process in full public view," and that, "[t]o the extent that Legislative Defendants wish to retain one or more individuals who are not current legislative employees to assist in the map-drawing process, Legislative Defendants must seek and obtain prior approval from the Court to engage any such individuals." Decree ¶¶ 8, 9. The Court ordered that "partisan considerations and election results data shall not be used in the drawing of legislative districts in the Remedial Maps," Judgment COL ¶ 169, and "no effort may be made to preserve the cores of invalidated 2017 districts," Decree ¶ 6. And the Court made clear that any efforts to protect incumbents must be "reasonable" and limited to avoiding pairing incumbents into the same district. Judgment COL ¶ 168.

One of the two chambers of the General Assembly violated every one of these commands. In violation of the Court's transparency requirements, the House Redistricting Committee secretly engaged two of Legislative Defendants' experts, including a political consultant who specializes in elections data analytics and who helped Legislative Defendants in drawing the unconstitutional 2011 Plans, to analyze Dr. Chen's maps and data before the House moved forward with its process. Legislative Defendants' counsel also emailed partisanship data on Dr. Chen's maps to every member of the House Redistricting Committee, just hours after the announcements that each chamber would use one of Dr. Chen's simulations as its base map. The House then permitted the incumbents of each relevant county grouping to revise their own districts to their personal liking, and to do so largely outside of public earshot.

These procedural violations would provide ample grounds to throw out the House's remedial plan (the "Proposed House Plan") in its entirety, but in an effort to limit the scope of

relief the Court must grant, Plaintiffs focus their objections here on five House county groupings where the House's procedural violations led to the most significant substantive violations of the Court's Decree. These five groupings are: (1) Columbus-Pender-Robeson; (2) Forsyth-Yadkin; (3) Cleveland-Gaston; (4) Brunswick-New Hanover; and (5) Guilford. Incumbents in these groupings acted with partisan intent and impermissibly sought to preserve the cores of their prior districts, in violation of the Court's mandates. Indeed, as detailed in Dr. Chen's new expert report attached as Exhibit A, Dr. Chen has created new simulations for these five groupings that avoid pairing the current incumbents, and he finds that in four of the five groupings the Proposed House Plan is an extreme, pro-Republican partisan outlier. Two of the groupings are 100% outliers—the adopted map, as amended by the incumbents, is more favorable to Republicans than all 1,000 of Dr. Chen's simulations for that grouping. Dr. Chen also finds that the only grouping that is not a partisan outlier, Guilford County, nonetheless replicates the prior version of one of the districts in the grouping. Dr. Chen further finds that the amendments to the base map in Guilford County and several of the other groupings significantly subordinated compactness in service of partisan advantage.

This Court gave the General Assembly an opportunity to draw remedial maps and cure their prior constitutional violations. Although its process was not without flaws, the Senate has done so. But the House has not. The Court should pay no heed to the threats in Legislative Defendants' most recent filing and should direct the Referee to redraw these five House groupings.

SUMMARY OF LEGISLATIVE PROCEEDINGS

A. Legislative Defendants Fail to Explain When, How, and Why They Chose Dr. Chen's Simulated Maps to Serve as the Base Maps for the Remedial Plans

On September 9, six days after this Court's Judgment, Legislative Defendants held their first hearings. Senator Newton, who now serves as a co-chair of the Senate Redistricting Committee, announced that he and his co-chairs had decided to select one of Dr. Chen's simulated maps from the litigation to serve as the "base map" for the new Senate plan. Several hours later at the opening hearing of the House Redistricting Committee, Representative Lewis stated that he independently had decided also to use one of Dr. Chen's simulations as the base map for the new House plan. 9/9/19 House Comm. Tr. at 16:21-17:21; *see also id.* at 45:20-23 (Representative Lewis claiming he had not been "aware of exactly what approach the Senate was going to take until this morning"). Neither the House nor Senate Committee leadership explained who was involved in the decision to use Dr. Chen's simulated plans (*e.g.*, whether it included outside counsel or consultants), when those discussions took place, or what analysis was done of Dr. Chen's maps before deciding to use them as the base maps. Legislative Defendants' most recent filings still do not provide any of this information. Legislative Defendants have not indicated whether they, their counsel, or their consultants analyzed the partisan attributes of Dr. Chen's simulated maps in deciding to use them as a central foundation of the remedial process. When Representative Hawkins asked the leadership of the House Committee whether they had consulted with counsel who had access to partisanship data on Dr. Chen's maps, Representative Hall, who was serving as Chair of the House Redistricting Committee, invoked attorney-client privilege. 9/10/19 House Comm. Tr. at 85:19-86:4.

There is reason to believe that partisan considerations did factor into Legislative Defendants' choice of Dr. Chen's maps. Whereas the Senate used Dr. Chen's Simulation Set 2

that sought to avoid pairing the incumbents in place at the time each relevant district was drawn in 2011 or 2017, the House ultimately used Dr. Chen's Simulation Set 1 that did not consider incumbency at all. Legislative Defendants have not explained why the House and Senate pulled their base maps from different simulation sets. Notably, the set chosen by each chamber is the one that is relatively more favorable to Republicans. Based on the 2010-2016 statewide elections that Dr. Chen employed to measure partisanship, House Simulation Set 1 produces a distribution of seats more favorable to Republicans than House Simulation Set 2. *See* PX1 at 27 (final row listing distribution of seats in House Simulation Sets 1 and 2). In contrast, Senate Simulation Set 2 produces a distribution of seats slightly more favorable to Republicans than Senate Simulation Set 1. *Id.* at 58 (listing distribution of seats in Senate Simulation Set 1 and 2).

B. Legislative Defendants' Counsel Sends Partisanship Data on Dr. Chen's Maps to the Entire House Redistricting Committee and Political Staff

Shortly after the leaders of the House and Senate Committees announced their intent to use Dr. Chen's simulated plans, legislative staff emailed counsel for Plaintiffs and Legislative Defendants requesting shapefiles and block assignment files for Dr. Chen's simulated maps as well as an Excel spreadsheet listing scores for compactness, split VTDs, and split municipalities for each map. Ex. B (9/9/19 3:10 PM email from Churchill). Plaintiffs' counsel responded that they would send the requested information later that day. *Id.* (9/9/19 3:22 PM email from Jones). Nonetheless, Legislative Defendants' counsel proceeded send emails to both the House and Senate Committees with a link to a repository containing all of Dr. Chen's backup files that Plaintiffs had transmitted to all Defendants with his opening expert report on April 8, 2019. *Id.* (9/9/19 3:50 PM and 4:24 PM email from Riggins); Ex. C (9/9/19 4:21 email from Riggins). Legislative Defendants' counsel's emails containing the link to these backup files went to dozens of recipients, including *all* members of the House and Senate Redistricting Committees, several

political staffers for Representative Lewis, and career staff. Ex. B; Ex. C. All of these recipients were also able to forward the link to anyone else, and any subsequent recipient could have downloaded the files available through the link.

The files that Legislative Defendants distributed—on the first day of the legislative process, within hours after the announcements that Dr. Chen's simulated maps would serve as the base maps—contained extensive partisanship data on every district in every one of Dr. Chen's simulated plans. That is because Dr. Chen analyzed the partisan characteristics of his simulated plans in his opening expert report. The screenshots copied below show some of the partisanship data that was in the files that Legislative Defendants' counsel sent. In these files, which relate to one of Dr. Chen's 2,000 simulated House maps, the numbers in Column A (*e.g.*, "G1.1") represent the label for each district in the plan, the next two columns contain the compactness scores for each district, and the numbers in the columns to the right represent the number of votes received by the Democratic ("D"), Republican ("R"), and Libertarian ("L") candidates in a particular election for that simulated district (*e.g.*, "EL10G_USS" means the 2010 general election for U.S. Senate). In the fourth-to-last column in the second screenshot below, the column "rshare17" indicates the average Republican vote share in the given simulated districts using the ten statewide elections from 2010 to 2016 that Dr. Chen used to measure partisanship in his report.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC	AD	AE	AF	AG	AH	AI	AJ	AK	AL	AM	AN	AO	AP	AQ
1	IDs	reock	polsbypopper	group	PL10AA_TOT	PL10VA_TOT	EL10G_USS_D	EL10G_USS_R	EL10G_USS_L	EL10G_USS_W	EL10G_USS_T	EL12G_PR_D	EL12G_PR_R	EL12G_PR_L	EL12G_PR_W1	EL12G_PR_W2	EL12G_PR_TO	EL12G_GV_D	EL12G_GV_R	EL12G_GV_L	EL12G_GV_W1	EL12G_GV_W2	EL12G_GV_TO	EL12G_LG_D	EL12G_LG_R	EL12G_LG_TO	EL14G_USS_R	EL14G_USS_D	EL14G_USS_L	EL14G_USS_W	EL14G_USS_T	EL16G_PR_R	EL16G_PR_D	EL16G_PR_L	EL16G_PR_WI	EL16G_PR_TO	EL16G_USS_R	EL16G_USS_D	EL16G_USS_L	EL16G_USS_T	EL16G_GV_D	EL16G_GV_R	EL16G_GV_L
2	G1.1	0.454091	0.411402	1	75628	56630	7683	11258	473	6	19420	14735	17374	284	8	60	32461	13103	18357	682	1	7	32150	14573	16977	31550	10907	8901	850	43	20701	18148	15018	852	325	34343	18251	14631	1156	34038	16056	17474	619
3	G1.2	0.307377	0.246165	1	75503	59058	7763	13754	556	19	22092	14140	20796	313	10	56	35315	12521	21687	751	1	3	34963	13927	20373	34300	13473	9244	880	30	23627	20667	14815	943	389	36814	21129	14242	1212	36583	15976	20027	664
4	G2.1	0.498231	0.317935	2	82809	64021	7018	15475	550	4	23047	9982	23740	412	7	98	34239	8864	24505	728	0	8	34105	10703	22333	33036	15065	6794	1345	61	23265	28012	8029	835	344	37220	27275	8123	1417	36815	10324	26005	699
5	G2.2	0.356438	0.261501	2	83426	64496	5999	16523	590	6	23118	10106	25668	447	14	96	36331	9047	26461	810	0	10	36328	11086	24337	35423	16059	6300	1441	73	23873	29299	8174	942	363	38778	28600	8292	1601	38493	10673	27005	902
6	G2.3	0.516974	0.333981	2	82856	64640	7761	13900	689	18	22368	15142	21594	303	6	72	37117	14039	22130	667	0	10	36846	15903	20062	35965	13615	9782	1289	65	24751	22745	13141	735	290	36911	22145	13115	1316	36576	14970	20980	728
7	G2.4	0.508466	0.278664	2	83319	64502	7941	16930	719	14	25604	10493	25386	505	7	117	36508	8857	27047	627	1	7	36539	10979	24502	35481	15992	6658	1572	81	24303	28871	8724	875	347	38817	27691	8899	1806	38396	10695	27239	798
8	G3.1	0.53553	0.318387	3	76052	53352	5171	13343	444	13	18971	12309	23563	395	18	93	36378	8835	26724	615	3	9	36186	11648	23502	35150	14132	7280	779	98	22289	25170	13288	1344	521	40323	25571	12424	1834	39829	14090	24947	1043
9	G3.2	0.49978	0.425911	3	75837	56542	7733	9852	248	7	17840	14701	16872	208	5	66	31852	12987	18341	371	1	7	31707	15290	15638	30928	9998	8295	696	41	19030	18663	12299	596	219	31777	18298	12005	1033	31336	12377	18697	464
10	G3.3	0.48454	0.453419	3	76351	51500	5304	14089	479	12	19884	12482	24838	356	7	71	37754	9176	27591	663	3	6	37439	11829	24669	36498	15845	7631	789	74	24339	27372	14616	1518	650	44156	28400	13487	1769	43656	15311	27601	993
11	G6.1	0.463689	0.278242	6	75491	58327	8783	13981	450	14	23228	15032	20453	253	2	61	35801	14373	20699	575	0	4	35651	16150	18809	34959	13602	10552	1178	105	25437	21334	13841	671	291	36137	20973	13381	1271	35625	13911	21474	500
12	G6.2	0.411915	0.243694	6	75773	58207	6789	13899	406	9	21103	13166	20452	291	3	77	33989	11737	21267	653	0	12	33669	13405	19695	33100	13718	8486	827	42	23073	20940	12553	965	344	34802	21081	12010	1377	34468	12758	21062	718
13	G8.1	0.512436	0.357101	8	83430	59498	7716	10527	364	8	18615	14308	17323	328	0	72	32031	13342	17792	699	0	9	31842	14885	16245	31130	10309	8825	911	37	20082	18562	13835	1027	333	33757	18324	13808	1265	33397	14920	17776	840
14	G8.2	0.634373	0.519199	8	83434	62046	7629	12449	383	6	20467	12483	20186	313	1	65	33048	11503	20783	639	1	13	32939	13361	19081	32442	12311	7816	892	39	21058	21551	12234	878	336	34999	21291	12286	1191	34768	12958	21159	719
15	G8.3	0.417933	0.204564	8	83434	62500	6648	15135	288	3	22074	11225	23168	207	0	10	34610	10712	23356	409	0	6	34483	11992	21902	33894	15288	7526	909	32	23755	24108	11190	696	259	36253	23855	11023	986	35864	11596	24052	443
16	G8.4	0.505295	0.331582	8	83429	60611	7544	15801	444	11	23800	12869	24638	380	1	100	37988	11610	25518	722	1	15	37866	13534	23578	37112	15636	8362	989	51	25038	27565	13124	1117	371	42177	27406	13094	1397	41897	14613	26743	735
17	G8.5	0.629125	0.352975	8	83433	59843	7857	14249	461	9	22576	14662	22446	371	0	106	37585	13322	23353	740	0	8	37423	15096	21580	36676	14075	9207	989	42	24313	25357	15604	1200	446	42607	25197	15512	1542	42251	16877	24773	812
18	G9.1	0.457765	0.268662	9	77062	60510	11293	10362	451	8	22114	21920	15370	410	0	100	37800	19432	16639	1090	2	11	37174	21541	14772	36313	8963	13682	1029	39	23713	17947	22282	1354	549	42132	18192	21411	1819	41422	23630	16803	1155
19	G9.2	0.627018	0.508728	9	79867	64851	8369	16199	552	12	25132	16363	23760	513	2	143	40781	13595	25239	1229	0	12	40075	15010	22928	38828	14098	10733	1262	49	26142	24291	18364	1722	665	45042	24923	17508	1948	44379	20733	22543	1295
20	G9.3	0.207556	0.325577	9	77140	60933	9012	16226	584	15	25837	17288	22490	469	2	108	40357	14556	24059	1164	0	9	39788	17148	21593	38741	13531	11868	1477	46	26922	23816	18064	1446	603	43929	23752	17444	2098	43294	20393	21868	1245
21	G9.4	0.491621	0.379108	9	76029	63230	9386	19704	631	9	29730	15135	26508	336	4	69	42052	12702	28078	872	0	4	41656	15674	25099	40773	17809	10897	1706	39	30451	31991	15524	1144	448	49107	31382	14977	2024	48383	16873	30603	1111
22	G10.1	0.382739	0.360153	10	78607	62653	13252	11454	690	16	25412	23703	17674	588	3	218	42186	21680	18544	1439	0	11	41674	23488	17293	40781	10866	16616	1109	24	28615	18350	24927	1281	1179	45737	18200	25340	1728	45268	27287	16835	1324
23	G10.2	0.55907	0.420114	10	82348	64434	12019	12922	672	13	25626	22981	19133	548	6	219	42887	20919	20083	1367	0	16	42405	22853	18722	41575	11617	15766	1133	41	28557	19574	25175	1552	1178	47479	19834	25164	1967	46965	27286	18337	1521
24	G10.3	0.484765	0.324295	10	77363	62391	13724	12229	714	22	26689	23934	17892	585	4	199	42614	21783	18912	1396	0	8	42099	23513	17766	41279	11389	17073	1204	41	29707	17791	25347	1453	1137	45728	18055	25387	1838	45280	27299	16704	1449
25	G11.1	0.415077	0.297654	11	80583	62648	7775	12560	459	4	20798	12509	20296	399	4	119	33327	9957	22744	602	0	14	33317	13025	19411	32436	12953	8156	1379	41	22529	23640	10421	908	414	35383	22734	10576	1614	34924	12311	22126	777
26	G11.2	0.430138	0.32811	11	78139	60662	6359	13857	500	10	20726	10566	20925	345	5	78	31919	13112	18233	544	1	9	31902	11866	18962	30828	12969	7305	1253	28	21555	24469	8342	704	329	33844	22797	9135	1310	33242	10573	22012	827
27	G12.1	0.434942	0.470454	12	82683	60163	7098	16495	539	0	24132	13613	25794	440	0	0	39847	9726	29442	735	0	0	39903	13605	24940	38545	15323	8775	1188	94	25380	28328	15031	1428	561	45348	28141	14676	2132	44949	16422	27631	1138
28	G12.2	0.370726	0.384435	12	80880	61151	5311	14541	544	12	20408	9929	24951	412	1	131	35424	7453	27293	601	0	3	35350	10067	24396	34463	14587	5752	1349	57	21745	27647	8388	886	364	37285	26444	8419	2020	36883	9876	26302	949
29	G12.3	0.486494	0.361344	12	82262	62939	7669	16348	548	11	24576	14100	24532	371	9	103	39115	11783	28547	651	0	13	38994	13783	24439	38222	15581	8663	1174	51	25469	26362	12744	1064	445	40615	26070	12423	1773	40266	14403	25057	971
30	G12.4	0.41191	0.306688	12	82734	62735	10539	11479	418	11	22447	15868	18281	289	0	31	34469	14464	19292	556	0	21	34333	17326	15877	33203	11549	10732	1327	67	23675	20310	13693	633	187	34823	19231	13679	1305	34215	14789	19172	569
31	G12.5	0.36849	0.269749	12	81191	62583	8015	15451	483	15	23964	14092	23708	377	1	78	38256	11496	26078	562	0	8	38144	14239	22893	37132	14923	8748	1464	72	25207	26235	11971	874	314	39394	25033	12010	1997	39040	13248	25105	888
32	G12.6	0.478684	0.385388	12	82951	59797	7576	12729	459	0	20764	16639	21312	395	0	0	38341	12894	24615	719	0	0	38228	16511	20689	37200	12581	9895	878	57	23411	22825	18110	1249	550	42734	23002	17296	1967	42265	19019	22351	1151
33	G15.1	0.641377	0.648773	15	79963	64885	20516	5410	552	16	26494	36779	8940	681	1	158	46559	33133	10917	1478	1	34	45563	35243	9155	44398	4623	26046	640	27	31336	6265	41399	1447	987	50098	8776	39876	1075	49727	42043	6884	874
34	G15.2	0.383157	0.382081	15	77557	59777	13974	11940	627	10	26551	22470	18193	459	5	110	41237	20719	19111	1043	0	17	40890	22483	17604	40087	11641	16100	867	29	28637	18319	23316	1171	507	43313	19100	22672	1255	43027	24336	18032	774
35	G16.1	0.310037	0.311311	16	76570	58084	6582	12941	469	14	20006	13137	20642	374	3	89	34245	10236	23242	596	1	3	34078	12715	20653	33368	12810	7915	1035	56	21816	21609	12003	1041	494	35147	21418	11608	1684	34710	13185	20799	917
36	G16.2	0.331601	0.324308	16	77788	59479	6065	14762	558	12	21397	10927	23892	396	5	127	35347	8111	26479	567	0	11	35168	10585	23768	34353	14615	6368	1178	67	22228	26698	9198	932	344	37172	25795	9123	1777	36695	10565	25454	898
37	G17.1	0.378661	0.435931	17	83299	67798	18240	6589	446	13	25288	34318	10761	485	4	69	45637	31359	12317	1348	0	21	45045	33327	10785	44112	5876	23519	596	32	30023	7179	40152	1384	915	49630	9656	38637	1042	49335	40409	8118	827
38	G17.2	0.611405	0.574322	17	83260	63726	17182	9839	439	12	27472	31788	13388	387	2	61	45626	29218	14711	1162	0	13	45104	31236	13067	44303	8784	20861	702	28	30375	12176	33219	1159	731	47285	13500	32348	1203	47051	33657	12704	781
39	G17.3	0.424919	0.412725	17	82632	64482	17075	13312	676	11	31074	26944	19441	488	0	90	46963	24514	20876	1169	0	15	46574	26445	19183	45628	13390	20899	991	33	35313	19143	30711	1492	788	52134	20636	29852	1432	51920	31878	19303	944
40	G17.4	0.507148	0.522292	17	81901	60924	17841	3842	260	10	21953	36535	6844	321	2	44	43746	34362	8080	850	0	30	43322	35846	6995	42841	3699	21223	429	36	25387	6877	37629	1082	645	46233	7871	37018	1065	45954	37708	7566	776
41	G19.1	0.538772	0.564094	19	77200	59268	8406	12510	395	7	21318	13781	20307	297	10	81	34476	13238	20601	428	0	7	34274	14495	18910	33405	12377	8972	1112	58	22519	22201	12089	699	290	35279	21457	12116	1263	34836	12997	21478	596
42	G19.2	0.374666	0.311214	19	75824	57892	5050	11896	421	0	17367	10704	21114	368	0	0	32186	8491	23093	534	0	4	32122	10696	20577	31273	12173	6055	1001	43	19272	23621	9753	851	322	34547	22685	9727	1683	34095	10795	22722	804
43	G19.3	0.432778	0.422179	19	75634	57968	6118	14339	489	0	20946	12734	23719	364	0	0	36817	9899	26323	561	0	10	36793	12406	23396	35802	14500	7888	914	65	23367	25399	13187	1212	503	40301	25426	12689	1777	39892	14220	25014	897
44	G19.4	0.453982	0.301257	19	75506	56797	6155	9733	356	4	16248	13014	16791	274	3	15	30097	11442	18195	421	0	7	30065	13124	16249	29373	9651	7122	718	29	17520	19056	11112	533	276	30977	18221	11075	1270	30566	11810	18340	589
45	G20.1	0.27596	0.206179	20	80388	61917	9212	14516	476	9	24213	14300	21138	313	2	81	35834	13862	20977	717	0	7	35563	15630	19194	34824	12636	9273	1456	54	23419	25017	13125	854	247	39243	24138	12842	1557	38537	14188	23640	844
46	G20.2	0.410266	0.209604	20	80999	59266	7326	7118	217	4	14665	14978	11647	165	0	50	26840	15200	10876	420	0	9	26505	16773	9231	26004	7213	8117	567	29	15926	13092	11377	468	149	25086	12512	11324	545	24381	11168	13289	249
47	G20.3	0.302713	0.159112	20	83096	61952	8862	7770	238	19	16889	16392	12283	260	0	83	29018	16875	11230	512	0	9	28626	18572	9371	27943	7045	8898	745	19	16707	14439	12731	462	173	27805	13843	12624	607	27074	12494	14609	281
48	G21.1	0.382393	0.322027	21	82738	60612	8469	10955	338	12	19774	17109	17986	256	3	69	35423	16023	18317	689	1	5	35035	17741	16625	34366	11321	9957	848	28	22154	19041	16611	917	329	36898	18950	16299	1176	36425	16680	19094	766
49	G21.2	0.547969	0.453525	21	76234	55239	6843	3853	170	6	10872	15121	6474	170	0	48	21813	14085	6775	536	0	6	21402	14904	6256	21160	3559	7568	312	14	11453	6500	13845	638	262	21245	6701	13493	805	20999	13544	6840	596

	A	CK	CL	CM	CN	CO	CP	CQ	CR	CS	CT	CU	CV	CW	CX	CY	CZ	DA	DB	DC	DD	DE	DF	DG	DH	DI	DJ	DK	DL	DM	DN	DO	DP	DQ	DR	DS	DT	DU	DV	DW	DX	DY	DZ
1	IDs	EL08G_GV_R	EL08G_GV_L	EL08G_GV_TO	EL08G_LG_D	EL08G_LG_R	EL08G_LG_L	EL08G_LG_TO	EL08G_PR_D	EL08G_PR_R	EL08G_PR_L	EL08G_PR_W	EL08G_PR_TO	EL08G_SP_D	EL08G_SP_R	EL08G_SP_L	EL08G_SP_TOT	EL08G_SPI_D	EL08G_SPI_R	EL08G_SPI_TO	EL08G_USS_D	EL08G_USS_R	EL08G_USS_L	EL08G_USS_W	EL08G_USS_T	EL10G_SP_D	EL10G_SP_R	EL10G_SP_L	EL10G_SP_TOT	EL10G_USS_D.	EL10G_USS_R.	EL10G_USS_L.	EL10G_USS_W	EL10G_USS_T	rvotes 17	dvotes 17	rvotes 11	dvotes 11	rvotes 11	rshare 17	right	left	repseat
2	G1.1	14141	1061	30699	14860	14308	883	30051	14616	16105	189	55	30965	9715	7078	147	16940	15144	14222	29366	15530	14181	973	11	30695	4276	4426	62	8764	7683	11258	473	6	19420	164329	135116	180215	180789	0.4992	0.5488	180215	180789	FALSE
3	G1.2	16940	1144	33043	14194	17028	1013	32235	14302	18754	247	85	33388	8940	8175	141	17256	14612	16758	31370	15571	16463	1053	8	33095	3992	4934	77	9003	7763	13754	556	19	22092	193265	132151	213309	176742	0.5469	0.5939	213309	176742	TRUE
4	G2.1	18434	1160	34717	13639	19100	1102	33841	11637	22652	329	156	34774	5929	7886	220	14035	13585	19117	32702	14294	19098	1338	11	34741	2506	5063	122	7691	7018	15475	550	4	23047	234768	88678	253533	167445	0.6022	0.7258	253533	167445	TRUE
5	G2.2	20006	1520	36336	13280	20935	1348	35563	11584	24262	385	174	36405	6083	9684	200	15967	13046	21515	34561	14104	20655	1627	18	36404	2500	6639	120	9259	5999	16523	590	6	23118	249219	88700	285074	168533	0.6285	0.7375	285074	168533	TRUE
6	G2.3	16557	1309	36622	17642	16797	1277	35716	15914	20660	279	113	36966	9949	7452	222	17623	17321	17287	34608	18158	17022	1456	22	36658	3626	3767	170	7563	7761	13900	689	18	22368	199787	132000	230672	219328	0.5126	0.6022	230672	219328	TRUE
7	G2.4	22101	1014	36774	13223	21354	1229	35806	11565	24711	383	251	36910	5923	8845	206	14974	13302	21207	34509	14203	20929	1606	15	36753	3084	5255	187	8526	7941	16930	719	14	25604	247868	93339	277271	167744	0.6231	0.7264	277271	167744	TRUE
8	G3.1	23181	710	33166	10585	20830	846	32261	11964	21137	215	109	33425	5900	11310	140	17350	11468	19612	31080	12516	19238	1234	18	33006	2480	5980	33	8493	5171	13343	444	13	18971	227949	110876	244785	130527	0.6522	0.6728	244785	130527	TRUE
9	G3.2	15863	420	29826	14322	14304	530	29156	13816	16004	146	76	30042	10318	6790	115	17223	14745	13571	28316	15028	13845	808	11	29692	4932	3626	62	8620	7733	9852	248	7	17840	162216	120910	174479	178679	0.4941	0.5729	174479	178679	FALSE
10	G3.3	23262	646	33027	10323	21007	813	32143	11865	21189	211	90	33355	5998	10928	126	17052	11017	19843	30860	12282	19455	1107	24	32868	2545	5493	55	8093	5304	14089	479	12	19884	246942	117539	245412	128972	0.6555	0.6775	245412	128972	TRUE
11	G6.1	13755	784	34191	16828	15908	816	33552	14903	19338	136	24	34401	10124	6434	131	16689	16284	16374	32658	16325	16854	981	5	34165	4905	3729	91	8725	8783	13981	450	14	23228	192200	134413	207204	209497	0.4972	0.5885	207204	209497	FALSE
12	G6.2	13948	755	32225	14062	16717	863	31642	13541	18586	181	95	32403	8651	8163	146	16960	14429	16368	30797	14044	17175	952	14	32185	3745	4795	55	8595	6789	13899	406	9	21103	193447	116183	201563	168894	0.5441	0.6248	201563	168894	TRUE
13	G8.1	14286	916	30349	14788	13867	957	29612	13953	16339	201	104	30597	8150	5339	157	13646	15419	13491	28910	15026	14297	1047	16	30386	4179	4306	60	8545	7716	10527	364	8	18615	162572	130581	188528	192792	0.4944	0.5546	188528	192792	FALSE
14	G8.2	16366	763	31218	13804	16017	827	30648	12230	18818	170	86	31304	7667	6711	128	14506	14084	16022	30106	13891	16399	901	10	31201	3249	4059	63	8171	7629	12449	383	6	20467	190838	115993	209554	171623	0.5498	0.622	209554	171623	TRUE
15	G8.3	17815	598	33267	13789	18037	625	32451	11197	22230	115	56	33598	7299	8038	124	15461	13132	18530	31662	12913	19665	735	9	33322	4225	3084	62	11371	6648	15135	288	3	22074	217619	104982	226394	158025	0.5889	0.6746	226394	158025	TRUE
16	G8.4	20200	852	35380	14112	19656	862	34630	12884	22385	196	93	35558	7488	8656	158	16302	14624	19311	33935	14296	20053	1017	15	35381	3460	6452	89	10001	7544	15801	444	11	23800	240859	122192	258215	175441	0.5954	0.6634	258215	175441	TRUE
17	G8.5	18428	822	34577	15126	17749	921	33796	14422	20068	191	110	34791	8315	7659	139	16113	15814	17259	33073	15496	18017	1022	19	34554	4237	6334	89	10660	7857	14249	461	9	22576	220951	140100	231211	187452	0.5523	0.612	231211	187452	TRUE
18	G9.1	12173	1400	34037	19579	12185	1594	33358	20735	13811	188	118	34852	11580	5025	162	16767	19842	12383	32225	21673	11248	1208	14	34143	5010	3304	89	8403	11293	10362	451	8	22114	154065	199654	153757	246197	0.3844	0.4356	153757	246197	FALSE
19	G9.2	19971	1633	38741	15733	20072	1764	37569	17294	21827	253	170	39544	7540	8412	190	16142	16419	19605	36024	18933	18368	1585	24	38910	2737	4725	63	7525	8369	16199	552	12	25132	222041	157975	254004	200964	0.5583	0.5843	254004	200964	TRUE
20	G9.3	19054	1645	38019	15714	19526	1826	37066	16925	21401	211	164	38701	7630	7536	174	15340	16766	18849	35615	18985	17564	1615	17	38181	2994	4791	79	7864	9012	16226	584	15	25837	213346	162585	249144	208106	0.5449	0.5675	249144	208106	TRUE
21	G9.4	20609	1672	39207	15387	21244	1786	38417	15217	24009	251	144	39621	6812	8835	224	15871	16202	20845	37047	18624	18956	1740	13	39333	3647	7267	114	11028	9386	19704	631	9	29730	272175	143879	254683	198173	0.5624	0.6542	254683	198173	TRUE
22	G10.1	15067	1681	40434	22351	15547	1655	39553	23611	16821	312	237	40981	13057	6732	221	20010	23094	15101	38195	23959	15010	1604	15	40588	6922	4276	98	11296	13252	11454	690	16	25412	164276	228106	192327	276461	0.4103	0.4187	192327	276461	FALSE
23	G10.2	16539	1600	40381	20718	17260	1567	39545	22246	18297	261	226	41030	12179	7534	212	19925	21582	16600	38182	22627	16304	1603	14	40548	6435	4801	96	11332	12019	12922	672	13	25626	178523	223856	210174	253936	0.4529	0.4437	210174	253936	FALSE
24	G10.3	15640	1584	40967	22340	16259	1510	40109	23751	17338	306	239	41634	13598	7237	207	21042	22953	15799	38752	24081	15508	1540	15	41144	7545	4655	112	12312	13724	12229	714	22	26689	165675	229973	201009	276141	0.4213	0.4187	201009	276141	FALSE
25	G11.1	19257	758	34196	15157	17402	974	33533	13619	20211	247	147	34224	7790	8418	251	16459	14933	17931	32864	15726	17079	1308	11	34124	3028	3922	110	7060	7775	12560	459	4	20798	201189	107939	224678	181542	0.5531	0.6508	224678	181542	TRUE
26	G11.2	16971	1020	31369	17931	12779	758	31468	10923	20660	223	133	31939	6092	6431	238	12761	13253	16583	29836	14190	16178	1210	14	31592	2683	4054	135	6872	6359	13857	500	10	20726	200190	95771	209502	162843	0.5627	0.6764	209502	162843	TRUE
27	G12.1	25540	848	37751	12727	22924	1144	36795	13528	23974	258	14	37774	6169	9457	148	15774	13624	21658	35282	15139	20832	1579	0	37550	2336	4148	68	6552	7098	16495	539	0	24132	252119	129673	284621	166353	0.6311	0.6604	284621	166353	TRUE
28	G12.2	23611	843	34551	10728	21901	1154	33783	10370	23858	293	126	34647	5207	9844	140	15191	11316	21470	32786	12015	20860	1597	14	34486	2103	6074	97	8274	5311	14541	544	12	20408	238692	84124	284629	142312	0.6667	0.7394	284629	142312	TRUE
29	G12.3	21880	1103	37917	14396	21504	1154	37054	14424	23402	268	124	38218	7881	9559	195	17635	14924	21004	36018	15939	20738	1267	21	37965	3436	6344	108	9888	7669	16348	548	11	24576	236116	122238	274329	183076	0.5998	0.6589	274329	183076	TRUE
30	G12.4	15482	691	33950	17821	14399	858	33078	15872	17951	231	134	34188	10286	4892	147	15325	17852	14300	32152	18615	14058	1180	22	33875	4607	2579	128	7314	10539	11479	418	11	22447	171841	140471	182906	230778	0.4421	0.5502	182906	230778	FALSE
31	G12.5	22918	815	37885	14991	20983	1062	37036	14447	23153	252	144	37996	8344	9339	206	17889	15530	20269	35799	16304	20068	1421	16	37809	3575	4955	119	8649	8015	15451	483	15	23964	229406	119369	262790	189810	0.5806	0.6577	262790	189810	TRUE
32	G12.6	20935	743	34973	14419	18653	1064	34136	15474	19366	200	9	35049	8218	7461	117	15796	15336	17606	32942	16575	16971	1298	1	34845	3094	3320	45	6459	7576	12729	459	0	20764	205797	153754	228710	183630	0.5547	0.5724	228710	183630	TRUE
33	G15.1	11022	2158	45042	32685	9036	1853	43574	37075	8526	322	205	46128	20957	3972	201	25130	33576	8890	42466	35212	8967	1156	28	45363	10444	1641	42	12127	20516	5410	552	16	26494	77301	354228	114564	388740	0.2276	0.1791	114564	388740	FALSE
34	G15.2	15304	1553	39193	21941	14993	1378	38312	22276	16948	283	137	39644	13341	6806	141	20288	22364	14998	37362	22858	15286	1150	19	39313	8025	3826	63	11914	13974	11940	627	10	26551	170951	212611	195622	270579	0.4196	0.4457	195622	270579	FALSE
35	G16.1	21161	734	34086	13276	19072	1065	33413	13851	19900	246	139	34136	7873	9567	183	17623	14022	18584	32606	14671	18048	1277	14	34010	2795	5414	57	8266	6582	12941	469	14	20006	196698	111938	263330	179977	0.594	0.6373	263330	179977	TRUE
36	G16.2	23768	755	35315	11908	21547	1129	34584	11800	23089	244	173	35306	6532	10928	224	17684	12457	21215	33672	13252	20421	1510	20	35203	2360	6105	52	8517	6065	14762	558	12	21397	232853	90698	293235	165050	0.6399	0.7197	293235	165050	TRUE
37	G17.1	11089	2263	42454	29776	10005	1559	41340	33308	9699	223	137	43367	17981	3849	135	21965	30850	9623	40473	31701	9920	976	13	42610	6613	1750	30	8393	18240	6589	446	13	25288	89382	337250	122984	361938	0.2536	0.2095	122984	361938	FALSE
38	G17.2	14100	1683	43300	27956	13216	1256	42428	29030	14385	224	146	43785	15939	5220	157	21316	28378	13135	41513	28912	13522	966	13	43413	6718	2561	45	9324	17182	9839	439	12	27472	124259	294977	161342	334176	0.3256	0.2964	161342	334176	FALSE
39	G17.3	16790	1679	43000	24607	15899	1531	42037	25843	17011	306	174	43334	14818	6798	147	21763	25456	15423	40879	26016	15775	1254	20	43065	9174	4829	52	14055	17075	13312	676	11	31074	185157	269441	197487	298895	0.3979	0.4073	197487	298895	FALSE
40	G17.4	6430	952	38895	31724	5815	939	38478	33137	5926	144	84	39291	20419	2489	117	23025	32029	5926	37955	32163	5989	755	21	38928	8630	1200	47	9877	17841	3842	260	10	21953	66849	332688	75429	383461	0.1644	0.1673	75429	383461	FALSE
41	G19.1	19361	575	34767	18900	14733	692	34325	14060	20603	186	138	34987	9003	6341	134	15478	16195	16595	32790	16961	16601	1128	15	34705	4110	2679	108	6897	8406	12510	395	7	21318	192265	121608	219712	206128	0.5159	0.6126	219712	206128	TRUE
42	G19.2	19425	570	29565	10522	17715	790	29027	9969	19461	166	10	29606	5631	8617	97	14345	10666	17330	27996	11307	16944	1188	0	29439	2501	5161	57	7719	5050	11896	421	0	17367	203683	91719	222395	129806	0.6314	0.6895	222395	129806	TRUE
43	G19.3	22840	648	34094	11859	20562	875	33296	12141	21800	173	21	34135	6142	9291	98	15531	12506	19549	32055	13432	19279	1200	0	33911	2895	5760	52	8707	6118	14339	489	0	20946	229127	115474	254389	149996	0.6291	0.6649	254389	149996	TRUE
44	G19.4	15990	461	28708	13601	13977	694	28272	12269	16327	168	38	28802	8189	6439	155	14783	13251	14177	27428	13747	13865	1026	4	28642	3691	3586	72	7349	6155	9733	356	4	16248	162534	108150	187848	165949	0.5309	0.6005	187848	165949	TRUE
45	G20.1	15084	1488	34470	16403	15811	1467	33681	14566	20002	222	122	34912	9637	7019	486	17142	16318	16066	32384	17350	15643	1513	12	34518	5429	4946	121	10496	9212	14516	476	9	24213	208054	130170	204647	206797	0.4974	0.6151	204647	206797	FALSE
46	G20.2	7739	373	25357	16554	7507	614	24675	13677	11786	122	61	25646	10225	2498	156	12879	15836	8522	24358	14501	10585	419	8	25513	4497	1670	72	6239	7326	7118	217	4	14665	107218	120888	114101	203244	0.3595	0.47	114101	203244	FALSE
47	G20.3	7504	492	27906	19066	7465	649	27180	15775	12237	153	99	28264	12181	2466	164	14811	18249	8364	26613	17165	10264	564	13	28006	5813	1504	93	7410	8862	7770	238	19	16889	115150	134984	111671	238101	0.3193	0.4604	111671	238101	FALSE
48	G21.1	14730	699	33700	17621	14550	832	33003	16212	17677	130	62	34081	10952	6756	159	17867	17412	14975	32387	17611	15289	828	7	33735	4614	3886	61	8561	8469	10955	338	12	19774	168857	152571	192986	214572	0.4735	0.5253	192986	214572	FALSE
49	G21.2	6857	527	22916	15281	6779	557	22617	15820	7502	80	57	23459	11067	3795	114	14976	15417	6894	22311	15574	6906	505	5	22990	4199	1541	30	5770	6843	3853	170	6	10872	59924	126840	89023	185535	0.3242	0.3209	89023	185535	FALSE

Once the House and Senate Redistricting Committees announced the specific Chen base map that was selected for each grouping, any recipient of the backup files that Legislative Defendants' counsel sent on September 9 could have looked up the partisanship data for any given district. At the Committees' request, Dr. Chen had also sent PDFs to the Committees of each simulated House and Senate map, and those PDFs labeled the districts using the same labels of "1.1," "1.2," etc. that appear in Dr. Chen's backup files containing all the partisanship data. *See, e.g.*, Ex. F (one of the PDFs that Dr. Chen provided to the Committees).

While career staff from the Legislative Services Office stated that they did not complete downloading the backup files that Legislative Defendants' counsel distributed, Legislative Defendants never disclosed whether any other recipients of the email downloaded the files. Several members of the House Redistricting Committee asked Representative Lewis to have the General Assembly's IT staff investigate whether anyone using the General Assembly's network clicked on the link in the email from Legislative Defendants' counsel, and Representative Lewis pledged that he would have the IT staff conduct such an investigation. 9/10/19 House Comm. Tr. at 81:1-82:18. But, to Plaintiffs' knowledge, Representative Lewis never reported back whether IT conducted such an investigation and if so what it found.[1]

Legislative Defendants' failure to conduct such an inquiry is particularly troubling because their counsel failed to take prompt action to prevent recipients of the email from accessing the files. Legislative Defendants' counsel sent the email containing the link at 4:24 p.m. on September 9. Ex. D (9/9/19 4:24 PM email from Riggins). Twenty minutes later, Plaintiffs' counsel replied all to the same email thread notifying all recipients (including all

[1] The findings of any such investigation would not have been conclusive in any event, since the email containing the link could have been forwarded and anyone could have clicked on the link and downloaded the files from a network outside of the General Assembly.

members of the House Redistricting Committee) that the files contained partisanship data and should not have been sent. *Id.* (9/9/19 4:45 PM email from Jones). When Plaintiffs' counsel did not hear back right away, Plaintiffs' counsel sent another email 15 minutes later asking Legislative Defendants' counsel to confirm they had removed all of the files from the link. Ex. E (9/9/19 4:59 PM email from Jacobson). Legislative Defendants' counsel did not respond until over two hours later, at 7:09 p.m., indicating only then that the link was disabled. Ex. D (9/9/19 7:09 PM email from Riggins). Thus, there was a nearly three-hour window between the time when Legislative Defendants' counsel transmitted the link to the partisanship data and when counsel stated that the link was no longer active.

No one, including this Court, has any way of knowing which recipients of the email from Legislative Defendants' counsel downloaded the files and accessed the comprehensive partisanship data collected there about Dr. Chen's simulated maps. And of course, Legislative Defendants, their counsel, and all of their consultants and experts have had unfettered access to the backup files showing the partisanship of every district in Dr. Chen's simulated maps since April 8, when Dr. Chen submitted his opening expert report and accompanying backup files.

C. Legislative Defendants' Counsel and the House Redistricting Committee Likely Gather and Analyze Partisanship Data on Dr. Chen's House Maps

Even beyond the likelihood that individual members of the House Redistricting Committee downloaded and accessed partisanship data on Dr. Chen's simulated maps, there is reason to believe that Legislative Defendants' counsel and their experts analyzed partisanship data on Dr. Chen's House maps and used it to guide the House redistricting process.

As mentioned, on the first day of public hearings, legislative staff asked Plaintiffs' counsel to send the shapefiles, block assignment files, and an Excel spreadsheet for Dr. Chen's maps. Dr. Chen proceeded to assemble this large volume of data, and Plaintiffs' counsel

transmitted the requested materials to legislative staff and Committee members late at night after the first day of hearings.

Whereas the Senate Committee promptly began the process of picking base maps from Dr. Chen's simulations the morning after Plaintiffs' counsel transmitted the necessary data, the House Committee did not. Rather, on September 10 at the first House Committee hearing after receiving the data, Representative Lewis announced that "the defendants' counsel have asked for a chance to review" the data sent by Plaintiffs' counsel to purportedly "make sure, indeed, that this is the same information that was before the Court." 9/10/19 House Comm. Tr. at 4:19-22. Representative Lewis did not explain what exactly Legislative Defendants' "review" would entail. Representative Lewis also did not disclose that Legislative Defendants' counsel were having two outside experts—including a political consultant named Clark Bensen who has previously assisted Legislative Defendants in gerrymandering districts in North Carolina—conduct this review of Dr. Chen's maps and data. *See* Leg. Defs. Br. at 27.

It was not until late in the evening on Wednesday, September 11—nearly two full business days after the House Committee received Dr. Chen's maps and data from Plaintiffs' counsel—that the House Committee re-commenced its process. Legislative Defendants now say that their outside counsel and consultants were ensuring the "accuracy and authenticity" of the data that Plaintiffs' counsel had sent. Leg. Defs. Br. at 27. But Legislative Defendants have not explained how this review was conducted, let alone why their counsel and consultants needed nearly two full days to conduct this purported review.

It appears likely that Legislative Defendants' counsel or their consultants were instead organizing and/or reviewing partisanship data on Dr. Chen's simulated House maps during this two-day period. When Plaintiffs' counsel sent Dr. Chen's maps and data to the House and

Senate Committees, Plaintiffs' counsel noted in the transmission email that, because Legislative Defendants' counsel had improperly sent the backup files containing partisanship data, Dr. Chen had relabeled the numbers for his 4,000 statewide plans; *e.g.*, he may have changed the map originally labeled "Map 1" to "Map 376." But, unfortunately, this measure could not have prevented Legislative Defendants' counsel or their experts from matching the new map numbers to the old ones. For instance, in the Excel spreadsheet he provided, Dr. Chen reported the statewide Polsby-Popper and Reock compactness scores for each of his 4,000 statewide plans. In his April 8 backup files, Dr. Chen had provided those same Polsby-Popper and Reock scores for each of the 4,000 plans. Hence, Legislative Defendants' counsel or their experts would have needed only to identify the old and new map numbers that had the same compactness scores to know which old map number corresponded to which new number. There are many other ways Legislative Defendants' counsel or their experts could have matched up the maps as well during their two-day review.

In addition, during this two-day gap, Legislative Defendants' outside counsel and consultants may have been comparing the partisanship of the top 5 unique maps in each relevant House grouping in Simulation Set 1 versus Simulation Set 2. On the first two days of the legislative hearings, Representative Lewis insisted that the House Committee would use Simulation Set 2 and not Set 1. *See, e.g.*, 9/9/19 House Comm. Tr. at 73:13-21; 9/10/19 House Comm. Tr. at 58:20-24, 61:6-14. But when the House Committee finally re-convened after Legislative Defendants' outside counsel and consultants finished their review, Representative Lewis announced that he had changed his mind and that the House would be using Set 1 instead of Set 2. 9/11/19 House Comm. Tr. at 3:16-18. Given that Dr. Chen had listed his top 5 unique maps in each grouping in Set 1 and Set 2 in the Excel spreadsheet he provided, Legislative

Defendants' counsel and consultants could have analyzed partisanship data for those top 5 unique maps in each grouping and concluded that Simulation Set 1 was better for House Republicans, on net. Representative Lewis' explanation for his change of heart—that he suddenly saw merit in the arguments against Simulation Set 2—is dubious at best. *See id.*

Indeed, Legislative Defendants' reliance on "their non-testifying expert" Clark Bensen raises enormous red flags. Mr. Bensen runs a political consulting firm known as "POLIDATA" that specializes in "collecting election data" at "multiple levels of political geography." Ex. G. In 2011, Legislative Defendants relied on Mr. Bensen to provide political data for them in drawing the 2011 plans. *See* Ex. H at 55-56 (Dale Oldham stating in deposition that Mr. Bensen "provided data" for use in North Carolina's 2011 redistricting); *see also* Ex. I (additional documents produced in discovery in *Dickson* involving Mr. Bensen). Further, according to his resume, Mr. Bensen previously served as the director of "Political Analysis" for the Republican National Committee (RNC), where his duties were to "undertake the collection, compilation, systematization and analysis of politically related data." Ex. J at 4.[2] Here is a biography that Mr. Bensen himself wrote describing his experience as a political consultant who specializes in analyzing elections data:

> An attorney by training and a data analyst by practice, Clark Bensen has been involved in projects related to the art of politics for over thirty years. He has been involved in redistricting and census issues throughout the previous three reapportionment cycles and has developed political and census datasets for every state in the nation. His company, a demographic and political research firm, is also the publisher of the POLIDATA ® DEMOGRAPHIC AND POLITICAL GUIDES.
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> As a data analyst familiar with both census and political data, he has developed countless political, demographic, and other datasets for analysis. Development of

[2] Mr. Bensen filed this resume in connection with his service as an expert in *Wilson v. Kasich*, No. 12-0019 (Ohio), *available at* https://moritzlaw.osu.edu/electionlaw/litigation/documents/volume7.pdf/.

> election datasets for every level of geography has been a specialty since 1974. For several projects he has been responsible for the establishment of a nationwide database of demographic and political information. Development of block-level datasets with combined census information and estimated political data are the key elements for many analyses related to districting and voting rights litigation.
>
> Clark Bensen has been actively involved in elective politics for the past three decades. His participation has included service at every level of local, state and national politics, moving to Washington following the 1980 elections. He focuses on database development, analysis, and publication while developing political and census datasets for political stakeholders, the press, and academics as well as providing litigation support for politically-related legal actions.

Ex. J at 17.

The notion that Mr. Bensen was not conducting partisanship analysis for Legislative Defendants and their counsel during the remedial process is not credible.

D. House Incumbents Draw Their Own Districts

After the House and Senate Committees picked base maps from Dr. Chen's simulations, each Committee began amending its base for the ostensible purpose of unpairing incumbents. The entire framework of selecting a base map from Dr. Chen's simulations that paired incumbents and then allowing the incumbents to manually unpair themselves was ill-conceived, *see infra*, but the process was far worse in the House than in the Senate. In the Senate, only two of the seven Senate groupings required unpairing incumbents, and for those two groupings, legislators at least worked together on a bipartisan consensus basis to achieve the unpairing. Moreover, while Senator Hise improperly ejected the public and the press from the mapmaking area in the Senate Committee room while incumbents were developing their amendments, the Senate Committee room was at least small enough that the public in the back of the room could hear most of the discussions amongst the legislators.

That was not true in the House, which carried out the incumbency protection process very differently. In the House, for each county grouping, Representative Lewis called up to the

mapmaking computer terminal the incumbents who lived in that particular grouping, and he allowed those incumbents to redraw the districts to unpair themselves. In other words, incumbents got to pick and choose how they wanted to amend their own districts from the base map, ostensibly in the name of unpairing themselves but in many cases for obvious partisan purposes. *See infra*. Making matters worse, the incumbents made these changes largely outside of public earshot and without explaining each change that was being made. The House Committee room is much larger than the Senate Committee room, and the mapmaking terminals were at the front of the room several hundred feet away from where the public could sit in the back. And the audio of the computer terminal on the live feed was often difficult or impossible to hear. Thus, while the public could see House districts lines being moved on the screen, it could not hear the hushed discussions amongst incumbent legislators—who were huddled around the computer terminal—as those legislators were moving the boundaries of their own districts.

E. The House Map Passes on a Party-Line Vote

The material differences between the House and Senate processes were apparent to legislators and reflected in the final roll call votes. While a number of Democrats voted for the Proposed Senate Plan, every Democrat in both chambers voted against the Proposed House Plan. The Proposed House Plan thus passed both chambers on straight party-line votes.

Legislative Defendants misleadingly quote several statements from Democratic Senators as support for their erroneous assertion that the process used by both chambers "received the support of Democratic members." Legs. Defs. Br. at 5. All of the quotes reproduced in Legislative Defendants' brief related solely to the Senate's process and not the House. Democrats in both chambers consistently expressed opposition to the House Committee's process, actions, and ultimately the House map.

Legislative Defendants also erroneously suggest that Democrats opposed only one particular House grouping (the Columbus-Pender-Robeson grouping). Legislative Defendants assert that, for every other House grouping, the House Committee "adopted the map" unanimously. *See* Leg Defs. Br. at 17-20. What actually happened was that, within minutes of the incumbents of each grouping revising their districts from the base map, Representative Lewis asked whether any Committee members wanted to voice objections. *See, e.g.*, 9/12/19 House Comm. Tr. at 34:6-15. This request was made before Committee members even had any time to closely review the revisions from the base map. When the House later called a separate vote on all of the House groupings other than Columbus-Pender-Robeson, all but eight House Democrats voted against it. 9/13/19 House Floor Sess. at 591:1-12.

ARGUMENT

I. The House's Process Violated the Court's Decree

The House's remedial mapmaking process violated this Court's Decree in a host of ways. The violations include that: the House Committee enlisted Legislative Defendants' outside counsel and consultants to assist in the mapmaking process, without securing Court approval and outside of public view; Legislative Defendants provided partisanship data on Dr. Chen's simulated maps to House Committee members; House incumbents sought to preserve "communities of interest," a criterion not permitted by the Court; and House incumbents ignored compactness in amending the maps to protect themselves.

A. Legislative Defendants Improperly Provided Partisanship Data to House Members and Relied on Outside Counsel with Access to Partisanship Data

1. The House Committee violated this Court's Decree by having Legislative Defendants' outside counsel and consulting experts assist in the House's remedial process. This Court directed that, "[t]o the extent that Legislative Defendants wish to retain one or more

individuals who are not current legislative employees to assist in the map-drawing process, Legislative Defendants must seek and obtain prior approval from the Court to engage any such individuals." Decree ¶ 9. The Court further provided that "Legislative Defendants *and their agents* shall conduct the *entire remedial process* in full public view." *Id.* ¶ 8 (emphases added).

The House Committee violated both of these provisions in having Legislative Defendants' outside counsel and consultants conduct a secret two-day review of the maps and Excel spreadsheet that Dr. Chen provided. Legislative Defendants' outside counsel and consultants are not "current legislative employees," and the Court did not authorize these attorneys and consultants to assist the House Redistricting Committee in its remedial process. Legislative Defendants' outside counsel and consultants, moreover, conducted their two-day analysis of Dr. Chen's maps and data outside of "public view," even though they are "agents" of Legislative Defendants subject to the Court's Decree.[3] The House Committee's reliance on Dr. Thornton and Mr. Bensen—two consultants with extensive experience sorting and analyzing elections data—is an especially flagrant violation of the Court's order. *See* Leg. Defs. Br. at 27. Dr. Thornton analyzed the partisanship of Dr. Chen's maps for her expert report, LDTX286 at 30-33, and Mr. Bensen is a political consultant who specializes in analyzing political data, including for use in redistricting generally and for redistricting in North Carolina specifically. Indeed, in 2011, Mr. Bensen provided granular North Carolina elections data to Legislative Defendants to help them draw the 2011 Plans. *See* Exs. H, I. Had Legislative Defendants sought

[3] As described previously, unlike the House Committee, the Senate Committee did not have outside counsel or consultants review Dr. Chen's data to purportedly ensure it was "accurate and authentic" before picking a base map. Legs. Defs. Br. at 26. Instead, the Senate Committee immediately began the process of picking a base map the morning after Plaintiffs' counsel transmitted Dr. Chen's maps and data. That the Senate Committee did not need outside counsel or consultants to "review" the data only further calls into question the House Committee's actions.

the Court's permission to have Mr. Bensen and Dr. Thornton assist in the remedial process, as was required by the Court's Decree, Plaintiffs would have vigorously opposed the request.

The House Committee's violations of the Court's Decree are all the more troubling given that Legislative Defendants' outside counsel and consultants have had access to partisanship data on all of Dr. Chen's maps since April 8. As already explained, there are strong indications that counsel and/or the consultants did assemble and analyze partisanship data on the maps, and the mere fact that this Court cannot be certain such did not occur casts an enormous shadow over the House's process and final maps. But in any event, the work performed by Legislative Defendants' outside counsel and consultants during the remedial process violates the Court's Decree no matter the nature of the work, since that work was done outside of "public view" and without approval of the Court. *See* Decree ¶¶ 8, 9.

2. Legislative Defendants independently violated the Court's order that "election results data shall not be used in the drawing of legislative districts in the Remedial Maps," Judgment COL ¶ 169, by transmitting "elections data" for each of Dr. Chen's maps to all House Committee members and several political staffers for Representative Lewis on the very first day of hearings. Legislative Defendants will likely claim that there is no direct proof that any recipients of the email downloaded and used the elections data. But Legislative Defendants appear to have not investigated that question and they have provided no accounting to the Court of who accessed the link. The fact that this Court has no way of knowing one way or the other whether House members or staff accessed the data suffices to find a violation of the Court's order. And it provides reason to reject any House grouping where House incumbents exercised significant discretion in amending (or choosing not to amend) the base map.

B. The House's Incumbency Protection Process Violated Multiple Aspects of the Court's Judgment and Decree

This Court ordered that "[t]he mapmakers may take reasonable efforts to not pair incumbents unduly in the same election district." Decree ¶ 5(g). The House's efforts to avoid pairing incumbents were not "reasonable."

The House's entire approach to incumbency protection—*i.e.*, starting with one of Dr. Chen's maps that paired incumbents and then allowing incumbents to manually unpair themselves—was unreasonable. If Legislative Defendants wanted to use one of Dr. Chen's maps but also to avoid pairing the current incumbents, they could have simply asked Dr. Chen to run a new version of his Simulation Set 2 that avoided pairing the current incumbents (Dr. Chen's Simulation Set 2 avoided pairing the incumbents in office in 2011 or 2017 when the relevant districts were drawn). That would have been straightforward—Dr. Chen has now done so for the five House groupings described in detail below—and it would have allowed for a set of non-partisan simulated maps in which incumbency protection did not subordinate traditional districting criteria and could not be manipulated for partisan gain. Representative Lewis acknowledged on the second day of hearings that this "idea has been floated." 9/10/19 House Comm. Tr. at 62:13-17; *cf.* 9/17/19 Senate Comm. Tr. at 21:25-22:1 (Representative Lewis claiming, "I don't think anyone in the House Committee suggested a Chen Set 3" along these lines).

The House instead started with maps that paired incumbents and had the incumbents contort the district lines to unpair themselves, guaranteeing that the compactness of many groupings would be mangled. This process also opened the door to partisan manipulation, especially because the House entrusted the incumbents from each grouping to amend their own

districts rather than having the whole House Committee perform the unpairing. The House's process took the notion of having "representatives choose their own voters" to the extreme.

As no surprise given this fatally flawed process, the House's incumbency protection efforts led to multiple violations of the Court's Decree. In addition to improperly pursuing partisan goals in the specific House groupings described in the section to follow, the House's incumbency protection efforts violated the following aspects of the Court's order.

1. The House improperly sought to preserve "communities of interest" in amending the base map. Legislative Defendants explicitly state in their September 23 filing that House Committee made changes to the base map not "simply to unpair incumbents," but also "to preserve communities of interest." Leg. Defs. Br. at 16. Representative Hall, the Chair of the House Committee, stated the same after the House's revisions to the base map were complete. He told the Senate Committee that House incumbents "knew their areas as to where particular neighborhoods are and communities of interest," and took this into account in revising their districts. 9/17/19 Senate Comm. Tr. at 17:6-18:3. This violates the Court's Decree. The Court directed that the criteria set forth in Paragraph 5 of its Decree "shall *exclusively* govern the redrawing of districts in the House and Senate." Decree ¶ 5 (emphasis added). Preserving communities of interest is not one of the exclusive criteria that the Court permitted the House to apply. Indeed, this Court noted in its judgment that "Legislative Defendants expressly declined to include 'communities of interest' as a criterion for the 2017 Plans," Judgment FOF ¶ 200, and the Court did not include communities of interest as a criterion for the remedial process for this reason.

As documented further below, it is apparent that in some cases the House used "communities of interest" as a smokescreen for reverting to the invalidated districts and/or

putting incumbents into more politically favorable districts. But regardless, given that the House by its own admission applied a criterion that the Court did not permit, the House's process on its face violates the Court's order.

2. The House entirely ignored compactness in protecting incumbents. There was little, if any, mention of compactness throughout the process of revising the House groupings from the base map. And there were never any calculations presented in the House as to how the revisions to a grouping from the base map affected the compactness scores for that grouping.

As a result, the House subordinated compactness just like it did in the 2017 House Plan. In striking down the 2017 House Plan, this Court credited Dr. Chen's finding that the 2017 House Plan "subordinate[d] the traditional districting criterion of compactness" and produced districts that were "less compact than they would be under a map-drawing process that prioritizes and follows the traditional districting criteria." Judgment FOF ¶ 93. Dr. Chen reached this conclusion after finding that the 2017 House Plan was less compact than all 2,000 of his House plans in Simulation Set 1 and Simulation Set 2. Remarkably, the same is true of the new Proposed House Plan. Dr. Chen compared the compactness of the 14 House groupings that this Court ordered to be redrawn to those same 14 groupings in his House Simulations Set 1 and 2. Dr. Chen found that, across these 14 groupings, the Proposed House Plan has a lower Polsby-Popper score than all 2,000 plans in both House Simulation 1 and House Simulation 2, and has a lower Reock score than the overwhelming majority of the simulated plans as well. Chen 9/27 Report at 63-66. If the 2017 House Plan improperly subordinated compactness, then the Proposed House Plan necessarily does as well.

In the event that Legislative Defendants argue that the Proposed House Plan is good enough on compactness because it is more compact than the 2011 Plan that preceded the 2017

Plan, this Court should reject that argument for the same reasons it did at trial. This Court held that "Dr. Chen's interpretation and application" of the compactness criterion in the 2017 Adopted Criteria—that all else being equal, more compact districts are preferable to less compact districts—"is fully consistent with the guidance provided by Legislative Defendants at the time of the 2017 redistricting." Judgment FOF ¶ 142; *see* Trial Tr. at 257:14-18. This Court rejected Legislative Defendants' argument that the Adopted Criteria meant that the General Assembly should seek only to meet some minimum compactness threshold tied to the 2011 Plans but do no better. Judgment FOF ¶¶ 142, 143. The House was on full notice of the proper application of the compactness requirement in this Court's Decree and simply ignored it.

***

All of the above violations of the Court's Decree led to a Proposed House Map that is an extreme partisan outlier. As Dr. Chen details in his attached report and is shown below, based on the ten statewide elections from 2010-2016 that Dr. Chen used to assess partisanship, the Proposed House Map produces more Republican-leaning seats than nearly 95% of Dr. Chen's House Simulation Set 1 plan and nearly 98% of Dr. Chen's House Simulation Set 2 plans.[4] Chen 9/27 Report at 2-4 (Figures 1 and 2).

[4] In contrast, the Proposed Senate Plan is not at outlier relative to the distribution of Dr. Chen's simulated Senate plans, although it is at the more Republican-favorable end of the distribution. Chen 9/27 Report at 2, 5-6.

Figure 1:
House Simulation Set 1 (Following Only Non−Partisan Redistricting Criteria):
Democratic−Favoring Districts in HB 1020 House Plan Versus 1,000 Simulated Plans
(Measured Using 2010−2016 Election Composite)

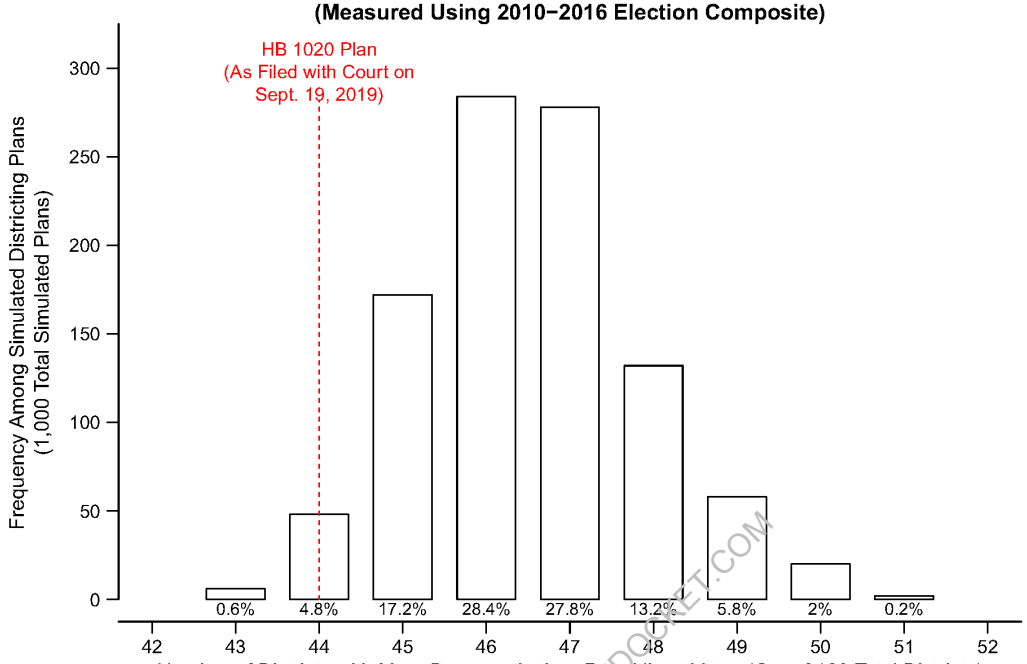
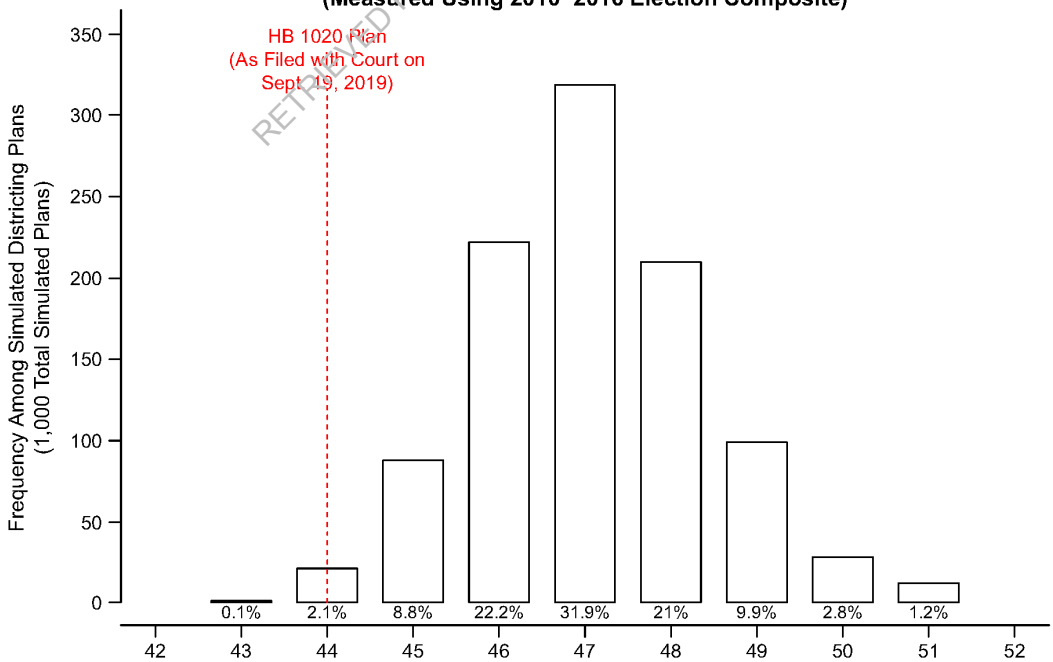


Figure 2:
House Simulation Set 2 (Following Non−Partisan Redistricting Criteria and Avoiding Incumbent Pairings):
Democratic−Favoring Districts in HB 1020 House Plan Versus 1,000 Simulated Plans
(Measured Using 2010−2016 Election Composite)



The 2017 House Plan was "an extreme partisan outlier," Judgment FOF ¶ 102, and that continues to be the case with the Proposed House Plan. The Proposed House Plan cannot stand in its current form.

II. The Court Should Reject Five House Groupings in the Proposed House Plan

For all of the reasons provided above, the Court would be justified in rejecting the entire House Plan. However, to limit the scope of relief sought and facilitate the expeditious adoption of final plans, Plaintiffs focus their objections on the specific House groupings where the above process violations had the most significant substantive effects. Specifically, Plaintiffs focus on the five House groupings where the House's incumbency protection process was carried out with clear partisan intent, significantly subordinated traditional districting criteria, and/or improperly reverted to the prior 2017 version of districts with the grouping. These five House groupings are: (1) Columbus-Pender-Robeson; (2) Forsyth-Yadkin; (3) Gaston-Cleveland; (4) Brunswick-New Hanover; and (5) Guilford.

To aid the Court's evaluation of these groupings, Dr. Chen created a new Simulation Set 3 for these five groupings that avoided pairing the current incumbents in office. Dr. Chen's Simulation Set 3 is identical to his Simulation Set 2 in all respects except Set 3 avoids pairing the current incumbents rather than the incumbents in office in 2011 or 2017. Chen 9/27 Report at 1. Dr. Chen finds that, in four of the five groupings, the Proposed House Plan is an extreme partisan outlier relative to the districts in his Simulation Set 3. In other words, the Proposed House Map in these four groupings is an extreme partisan outlier—in three of the groupings, an over 99% outlier—relative to the possible configurations of the grouping that would emerge under a non-partisan process that applied the traditional districting criteria and avoided pairing the current incumbents. In Guilford County, the only of the five groupings that is not a partisan outlier, the

Proposed House Plan significantly subordinates compactness and creates one district (HD 58) that is nearly identical to the invalidated 2017 version of that district.

A. Columbus-Pender-Robeson

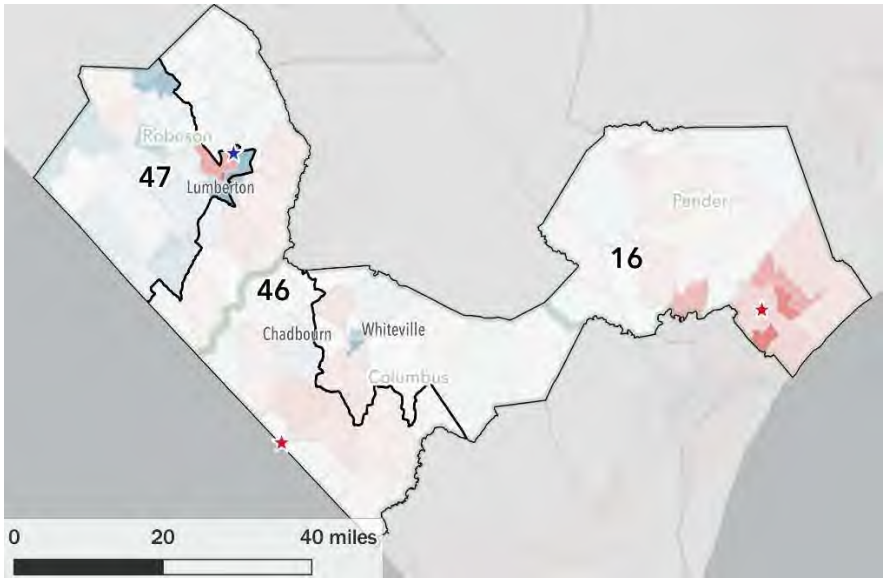
In finding that the 2017 version of this county grouping was an "extreme partisan gerrymander," this Court gave "weight to the analysis of Plaintiffs' experts." Judgment FOF ¶ 333. Plaintiffs' expert Dr. Cooper had explained that the 2017 map not only packed Democratic voters in Robeson County into House District 47, but also cracked Democratic voters in Columbus County across House Districts 46 and 16. In particular, Dr. Cooper explained that "the Democratic areas of Chadbourne [were] cracked from the Democratic voters in and around Whiteville, helping to ensure that neither HD-46 nor HD-16 would elect a Democrat." PX253 at 70 (Cooper Report). This Court highlighted this cracking in its opinion. The Court held that "Legislative Defendants cracked African American voters" in groupings including Columbus-Pender-Robeson "where cracking Democratic voters would maximize Republican victories." Judgment FOF ¶¶ 688-69. Chadbourn, Whiteville, and their surrounding communities are the heavily African-American areas of Columbus County that the 2017 House Plan cracked.

The base map that Legislative Defendants selected from Dr. Chen's simulations cured this cracking, as it kept Whiteville, Chadbourn, and their immediately surrounding areas together in House District 46. But the Republican incumbents in this grouping proceeded to reinstate the prior gerrymander. While the base map paired Republican incumbents Jones and Smith in House District 16, Jones lives in a VTD on the border with House District 46, which had no incumbent under the base map, meaning that unpairing him should not have been difficult. Rather than make minimal, non-partisan changes to unpair the two incumbents, the incumbents swapped a total of 11 VTDs between District 16 and 46 in a blatant effort to make District 46

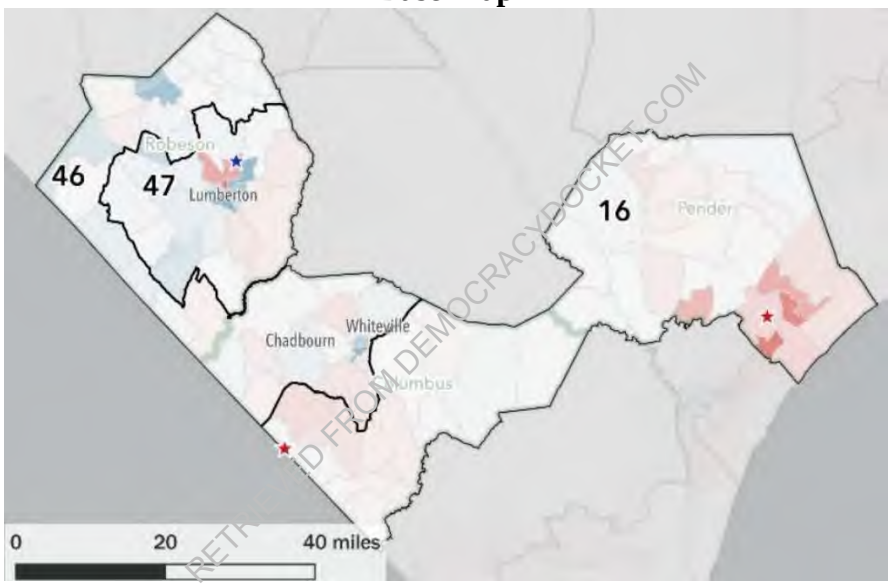
more favorable for Republicans. The amended map again cracks the Democratic voters of Columbus County, again separating the VTDs in and around Whiteville and Chadbourn.

The below maps show the 2017 House Plan's version of this grouping, the base map, and the amended Proposed House Plan for this grouping. In these maps and all to follow, the color-coding of VTDs represents the Democratic or Republican vote margin in the 2016 Attorney General race, implemented the same way as in Dr. Cooper's opening expert report. The blue star represents the home address of the Democratic incumbents and the red stars represent the home addresses of the Republican incumbents.

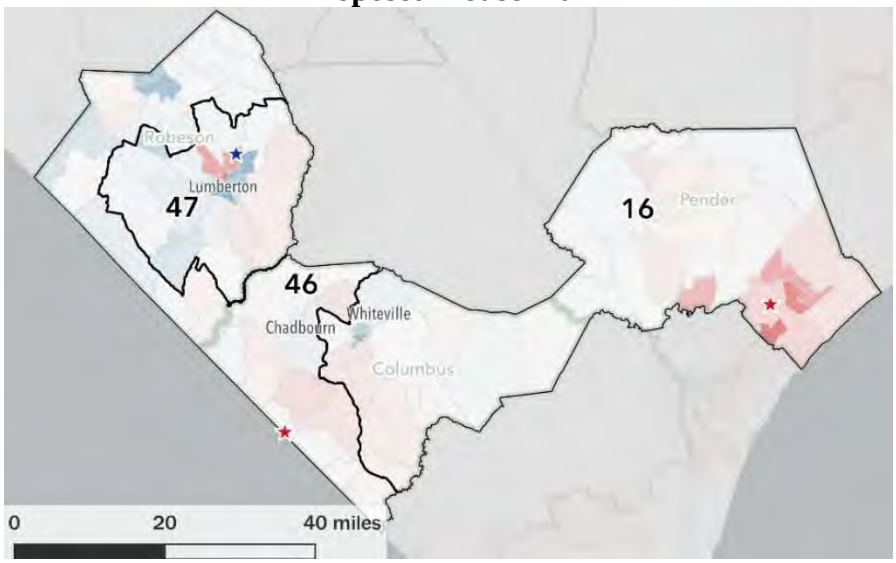
2017 House Plan



Base Map



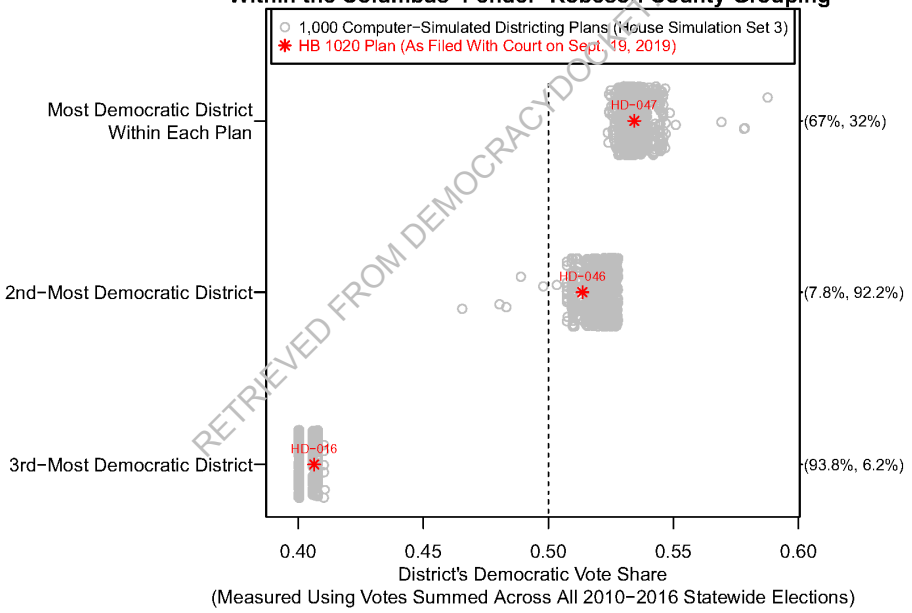
Proposed House Plan

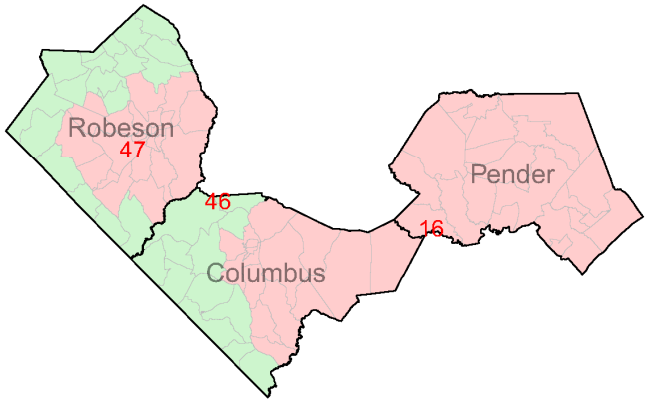


The revisions to the base map cracking Columbus County's Democratic voters anew have significant partisan effects. The revisions made House District 46 roughly two points more Republican than the base map, while House District 16 remained a safe Republican seat despite adding more Democratic voters. Chen 9/27 Report at 13 (Table 2a).

This cracking also rendered House District 46 an extreme outlier relative to the versions of the district found in Dr. Chen's Simulation Set 3. As shown below and in Dr. Chen's report, the Proposed House Plan's version of House District 46 is less Democratic than its corresponding district in over 92% of plans in Dr. Chen's Simulation Set 3.

Figure 5: House Simulation Set 3:
Democratic Vote Share of the HB 1020 and Computer−Simulated Districts Within the Columbus−Pender−Robeson County Grouping





HB 1020 Plan (As Filed With Court on Sept. 19, 2019) (3 Districts)

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None of Legislative Defendants' explanations for the amendments that were made to this grouping withstand scrutiny. Legislative Defendants appear to suggest that the amendments were made to preserve communities of interest, as they note that members of the public from Columbus County "expressed the view that Columbus County should be kept as whole as possible." Leg. Def. Br. at 20-21. Communities of interest is not a permissible criterion under the Court's Decree, and this explanation does not make sense anyway. Due to the county traversal rule, this grouping necessarily must split Columbus County between House District 46 and House District 16. No configuration of this grouping can keep Columbus County more "whole" than any other. Legislative Defendants also note that the Proposed House Plan does not pair the incumbents in this grouping, but Representative Darren Jackson proposed two different amendments that would have unpaired the incumbents while making fewer changes to the base map, and Republicans rejected these amendments on a party-line vote. 9/13/19 House Floor Sess. at 539:14-552:4. Dr. Chen's Simulation Set 3 also establishes that there are numerous configurations of this grouping that would avoid pairing the current incumbents.[5] The House Committee clearly acted with impermissible partisan intent in revising this country grouping.

B. Forsyth-Yadkin

This Court found that the 2017 House Plan version of the Forsyth-Yadkin grouping unlawfully "packed Democratic voters into House Districts 71 and 72" and "then cracked the remaining Democratic voters in this grouping across the remaining districts." Judgment FOF ¶ 405. The Court explained that, "in order to join Republican VTDs, House District 75 traverse[d] an extremely narrow passageway on the border of Forsyth County," and that House

[5] Dr. Chen also found that all of his Set 3 simulations for this grouping avoid splitting any VTDs and most do not split any municipalities either. Chen 9/27 Report at 19-20. More than 40% of the simulations are equally or more compact than the Proposed House Plan using Reock, and about a third are using Polsby-Popper. *Id.* at 16-18.

District 75 also "wrap[ped] around the city [of Winston-Salem] to include Republican-dominated VTDs on either side of Forsyth County." *Id.* The Court also relied on Dr. Chen's findings that, compared to Simulation Set 1, "two of the districts in this grouping (House Districts 71 and 75) [were] extreme partisan outliers above the 95% level," and that four districts were outliers above the 94% level compared to Set 2. *Id.* ¶ 409.

The incumbents in this grouping recreated the prior gerrymander and then some. The base map had paired Republican incumbent Donny Lambeth with a Democratic incumbent in southern Forsyth County. At the very onset of making revisions to the base map at the mapmaking terminal, Representative Lambeth instructed staff to "take the 75th out to Kernersville because I've represented it in the past." 9/12/19 House Comm. Hr'g Video at 7:12:00-10.[6] Representative Lambeth then reiterated a minute later in proposing a revision: "I've represented Kernersville in the past." *Id.* at 7:13:50-7:13:59. The remainder of the discussion among the incumbents in this grouping is inaudible, but the incumbents from Districts 71 and 75 engaged in lengthy deliberations at the mapmaking terminal.

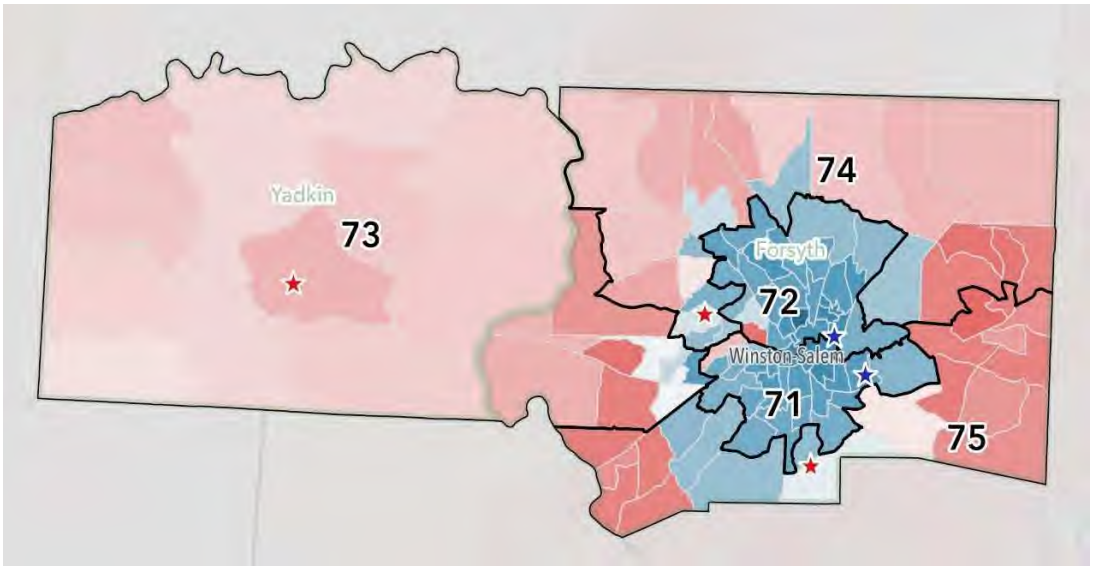
The Proposed House Plan that emerged from this process is an obvious gerrymander. In particular, in amending the base map, the boundaries of House Districts 71 and 75 were amended to pack three additional heavily Democratic VTDs into House District 71 and move the Republican incumbent Lambeth into a safe Republican district. The House recreated the specific features of the prior gerrymander of House District 75 in the process. Once again, "in order to join Republican VTDs, House District 75 traverses an extremely narrow passageway on the border of Forsyth County," and once again, House District "wrap[s] around the city [of Winston-

[6] *Available at* Redistricting 2019 Live Stream, https://www.ncleg.gov/Video/Redistricting2019 (at "Legislative Office Building Room 643 feed). Conservations that occurred at the mapmaking do not appear on the transcripts provided by Legislative Defendants but in some instances are audible on the live stream.

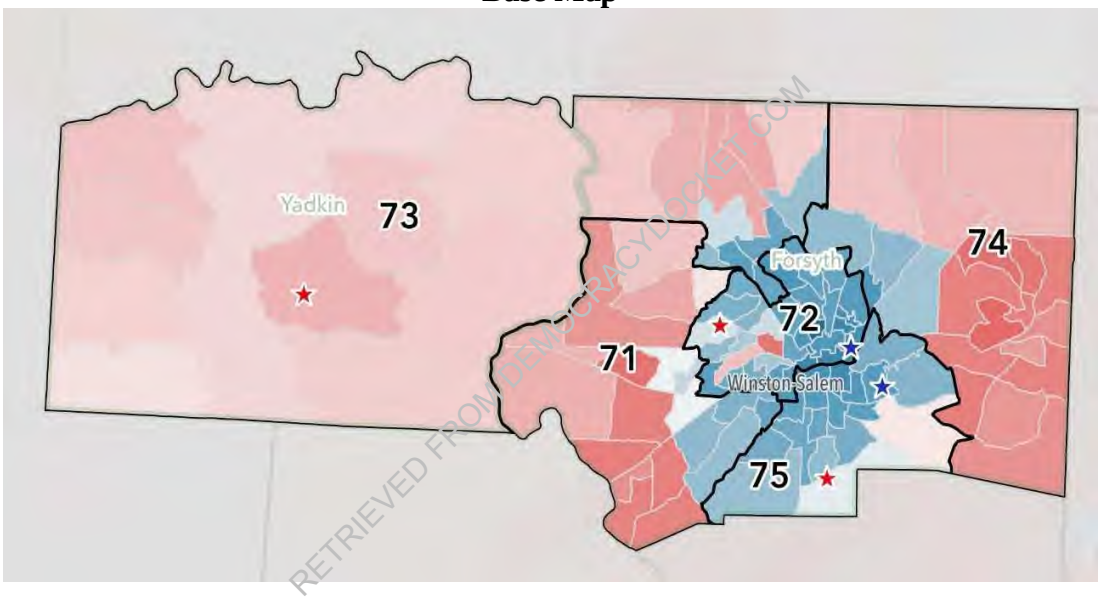
Salem] to include Republican-dominated VTDs on either side of Forsyth County." Judgment FOF ¶ 405.

The map of the Proposed House Plan for this grouping—including the perfect division of Democratic and Republican voters on the east side of Forsyth County—lays bare the patent gerrymandering of this grouping.

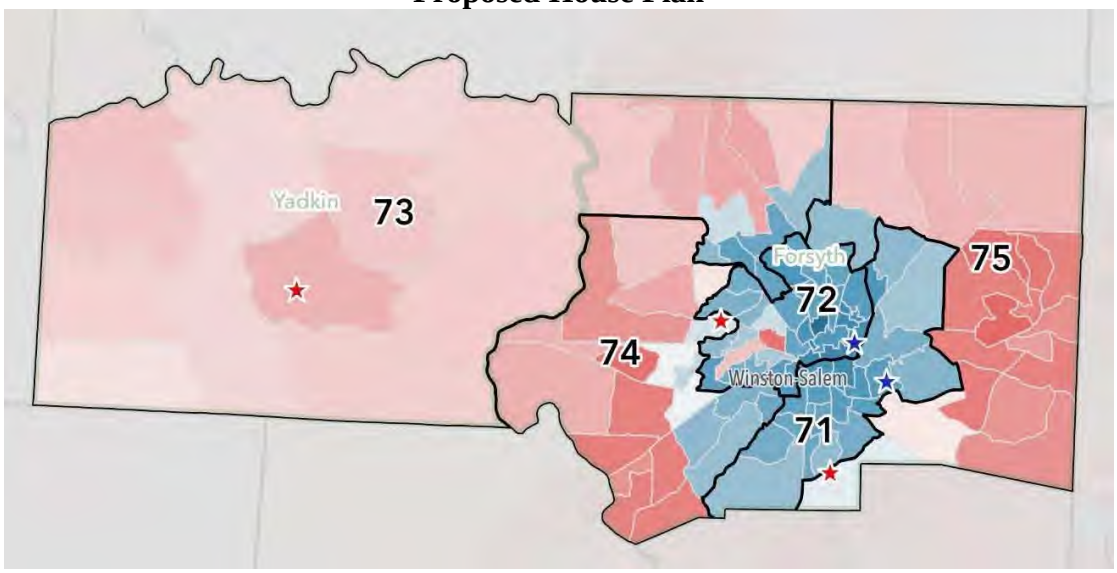
2017 House Plan



Base Map



Proposed House Plan



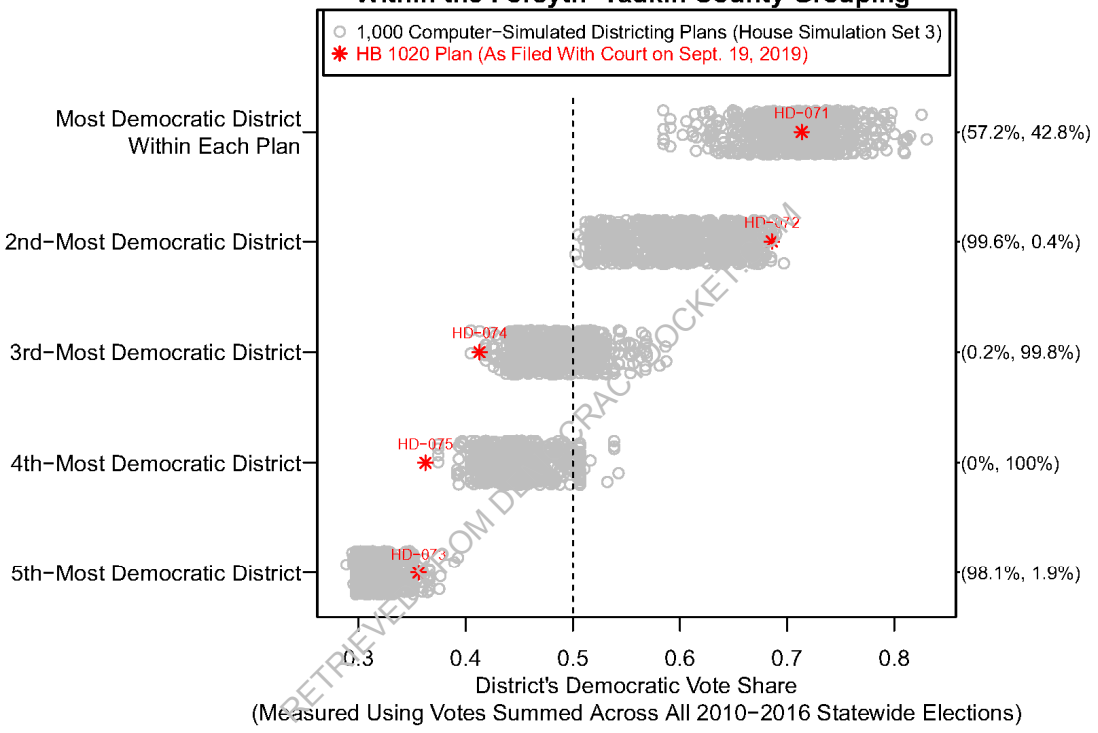
The House Committee's amendments to the base map inured to the benefit of the incumbents in this grouping and to the Republican Party as a whole. The House Committee amended four districts in this grouping from the base map, and these amendments made the districts of all four affected incumbents more politically favorable for those incumbents than the districts in which they were placed into under the base map. Chen 9/27 Report at 23; *see also supra* (showing district of each incumbent under base map). Most notably, the amendments made House District 75 roughly 3.5 percentage points more Republican and House District 71 over two percentage points more Democratic using the 2010-2016 statewide elections. *Id.*

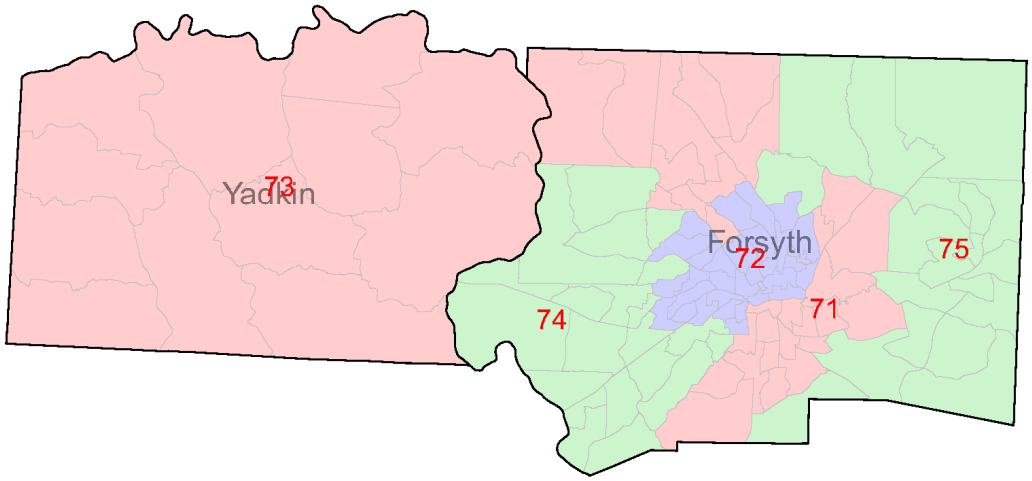
In making these revisions, the House explicitly violated this Court's Decree that "the invalidated 2017 districts may not be used as a starting point for drawing new districts, and no effort may be made to preserve the cores of invalidated 2017 districts." Decree ¶ 6. Representative Lambeth openly stated that the revisions he was making to House District 75 were to allow him to regain areas that he has "represented it in the past," *i.e.*, under the unconstitutional 2017 House Plan. 9/12/19 House Comm. Hr'g Video at 7:12:00-10. While the House Committee asked staff to confirm that the revisions to this grouping were "minimal changes" necessary to accommodate incumbents, 9/12/19 House Comm. Tr. at 69:7-11, even a cursory review of the base map reveals that there were several other ways to unpair the incumbents that would have moved fewer VTDs.

The end result of the gerrymandering and core retention efforts in this grouping was to produce four districts that are extreme partisan outliers compared to their corresponding districts in Dr. Chen's Simulation Set 3. As shown below and in Dr. Chen's report, the Proposed House Plan has four districts that are above 98% outliers compared to the Set 3 plans that also avoid pairing the current incumbents. The Proposed House Plan thus is an even more extreme

gerrymander that the unconstitutional 2017 House Plan version of this grouping, which only had one district that was above a 98% outlier compared to Set 1 and two districts that were that level of an outlier compared to Set 2. *Compare* Chen 9/27/19 Report at 26 *with* PX1 at 94, 112.

Figure 11: House Simulation Set 3:
Democratic Vote Share of the HB 1020 and Computer−Simulated Districts
Within the Forsyth−Yadkin County Grouping





HB 1020 Plan (As Filed With Court on Sept. 19, 2019) (5 Districts)

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The House Committee significantly subordinated compactness in pursuing these partisan ends. The House's amendments to the base map lowered the compactness of each of the four districts that were altered, and significantly lowered the compactness of the grouping as a whole. The amendments lowered the average Reock score of the grouping from 0.464 to 0.415 and lowered the average Polsby-Popper score of the grouping from 0.380 to 0.300. Chen 9/27 Report at 24 (Table 3b). The final Proposed House Plan is an extraordinary outlier in its lack of compactness compared to Dr. Chen's Simulation Set 3. As shown below and in Dr. Chen's report, the Proposed House Plan has a lower Reock score than 99.9% of the plans in Simulation Set 3 and a lower Polsby-Popper than over 99% of the Set 3 plans. *Id.* at 27-29 (Figures 12-14).[7]

[7] Almost all of Dr. Chen's Simulation Set 3 plans for this grouping do not split any additional municipalities or VTDs compared to the Proposed House Plan. Chen 9/27 Report at 30-31 (Figures 15-16).

Figure 12: Forsyth−Yadkin County Grouping:
House Simulation Set 3 (Following Non−Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):
Average Reock Score in HB 1020 Plan Versus 1,000 Simulated Plans

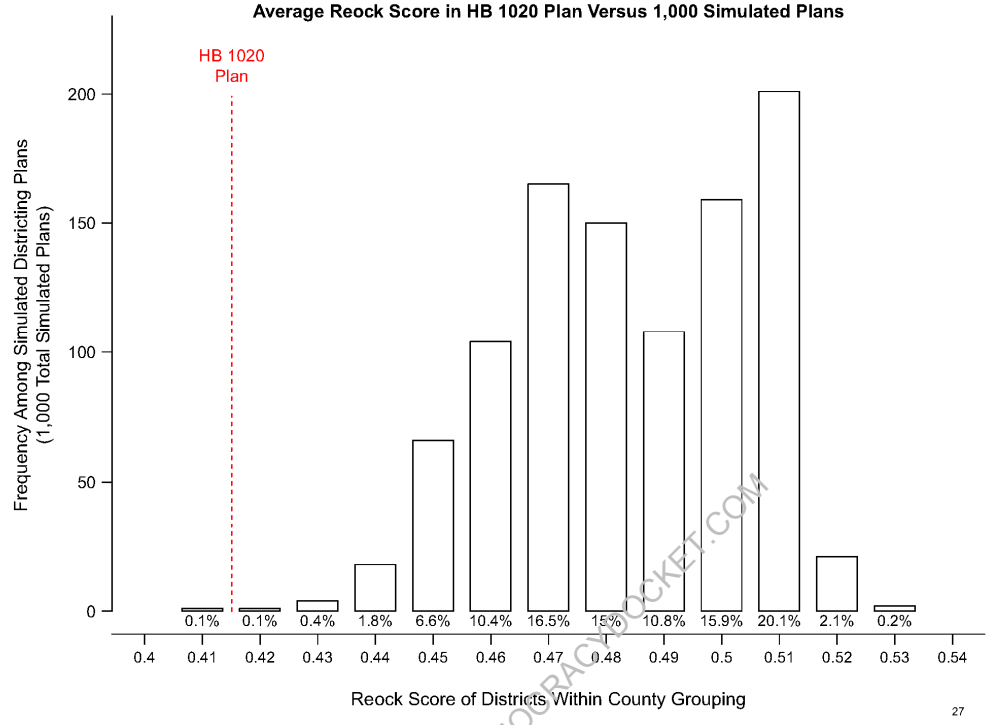

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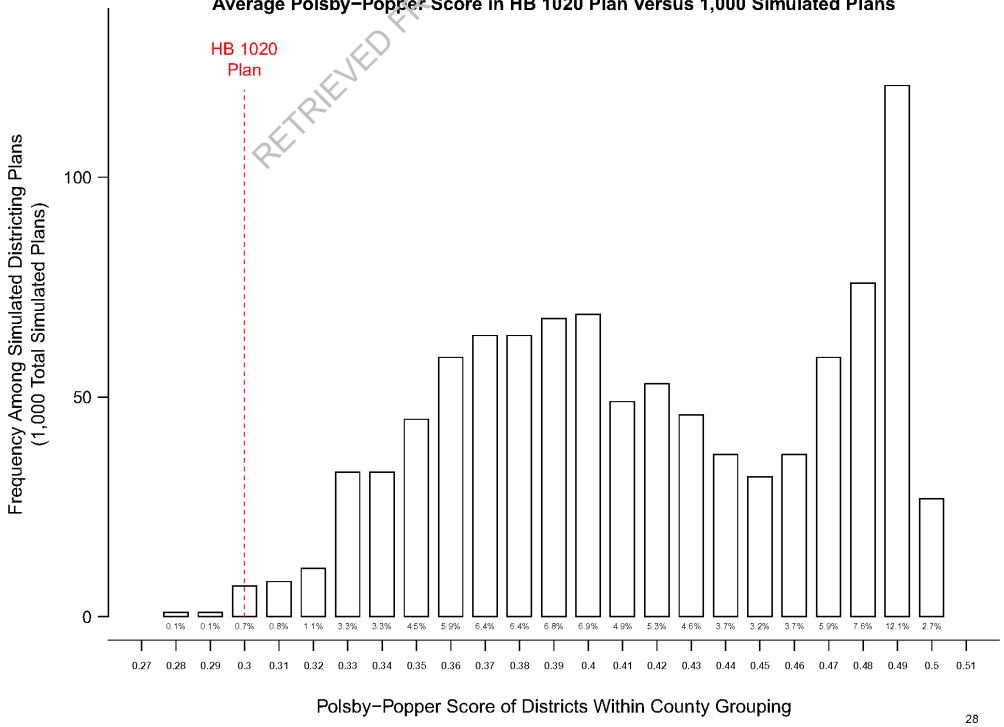
Figure 13: Forsyth−Yadkin County Grouping:
House Simulation Set 3 (Following Non−Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):
Average Polsby−Popper Score in HB 1020 Plan Versus 1,000 Simulated Plans



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The House also split additional municipalities to accomplish its partisan and incumbency protection objections. Whereas the base map split only Winston Salem, the Proposed House Plan additionally splits Walkertown and Kernersville. Chen 9/27 Report at 25 (Table 4). These municipalities were also split under the 2017 House Plan, *id.*, further illustrating the extent to which the House recreated the prior gerrymander.

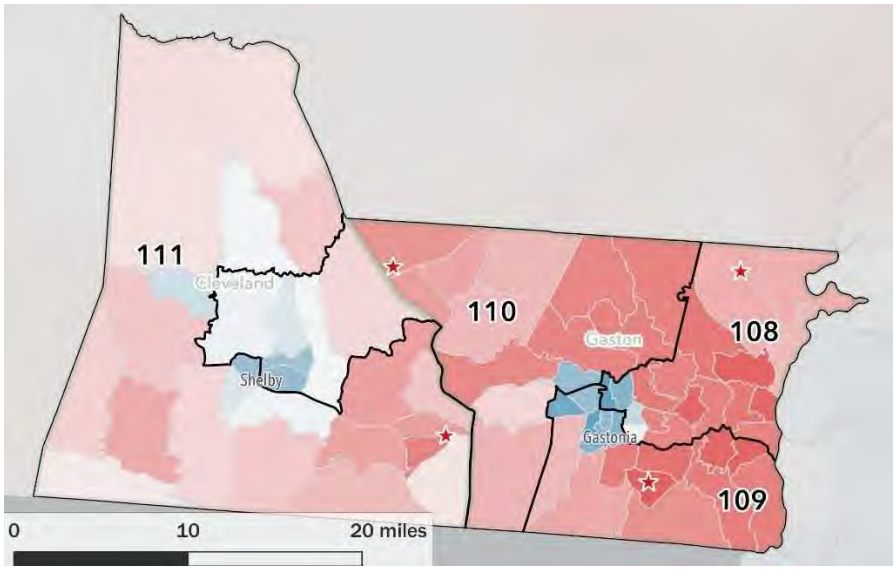
The Proposed House Plan is an extreme gerrymander that improperly seeks to retain the cores of the prior districts and subordinates traditional districting criteria, all in violation of the Court's order.

C. Cleveland-Gaston

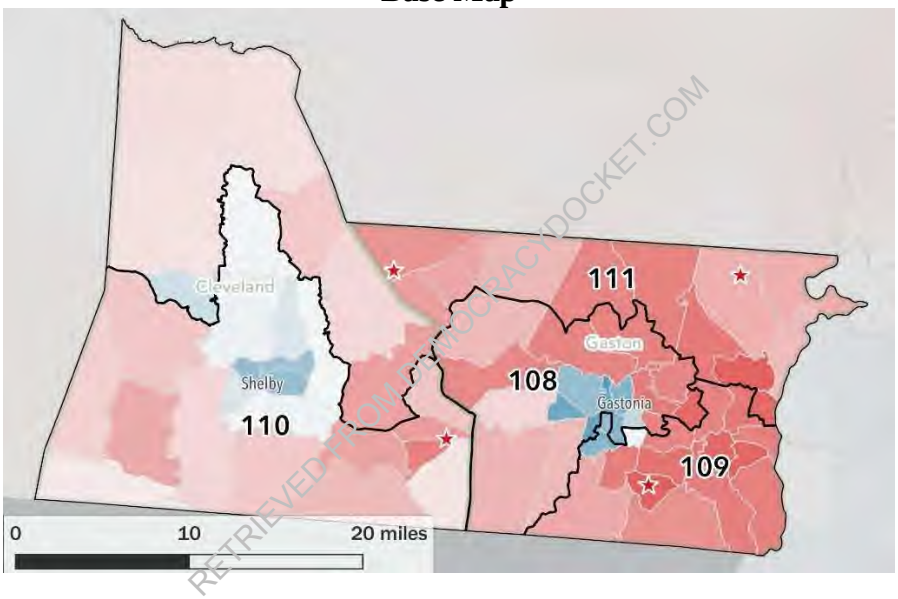
This Court described the 2017 House Plan version of the Cleveland-Gaston grouping as a "textbook example of cracking." Judgment FOF ¶ 485. The Court explained that "[t]he Democratic voters in Gastonia [were] cracked across House Districts 108, 109, and 110," diluting the influence of these Democratic voters. *Id.*

History repeats itself. The base map for this grouping split Gastonia across just two districts, but the Republican incumbents in this grouping substantially altered the districts to again crack Gastonia across three districts (House Districts 108, 109, and 110). The incumbents moved a total of 13 VTDs from the base plan and even split one VTD in the process—the same VTD that was split under the 2017 House Plan. Chen 9/27 Report at 37 (Table 6). The maps below demonstrate this clear return to the prior gerrymander via the cracking of Gastonia. In the second set of maps, the gold shading shows the municipal boundaries of Gastonia.

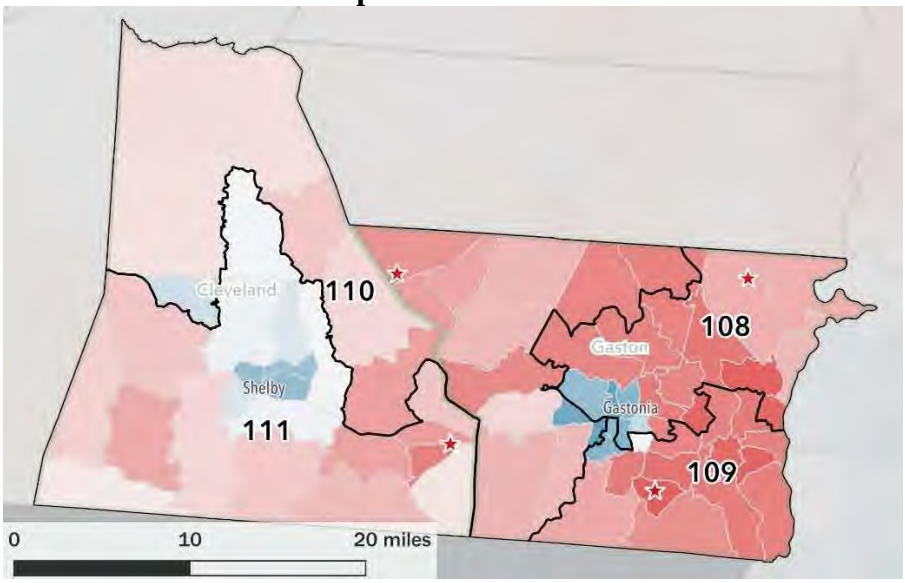
The 2017 House Plan



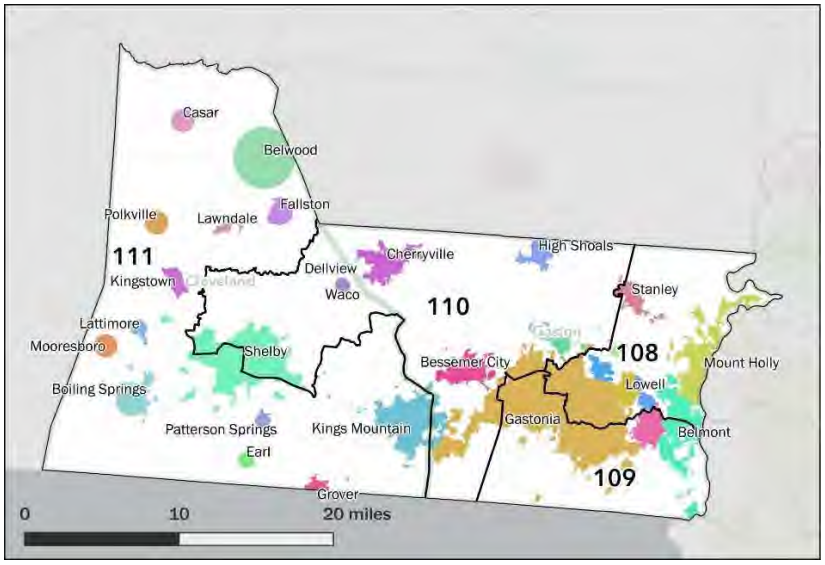
Base Map



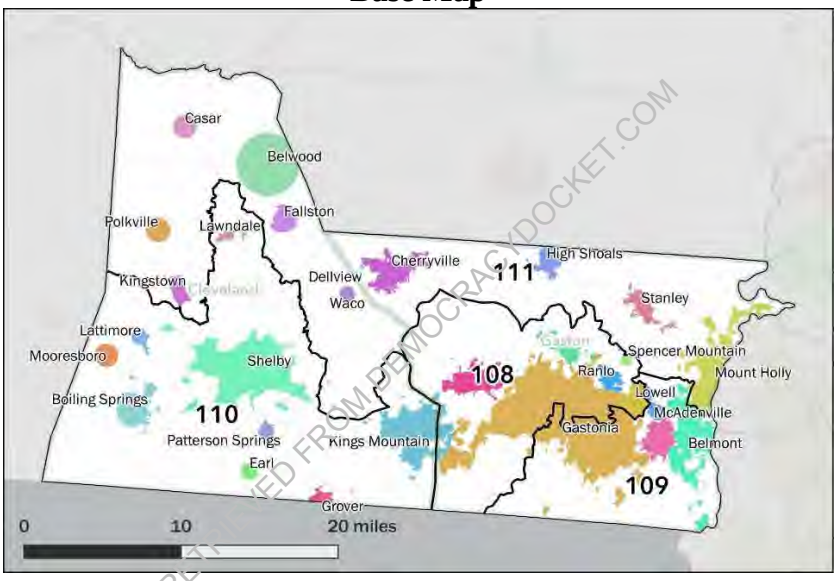
Proposed House Plan



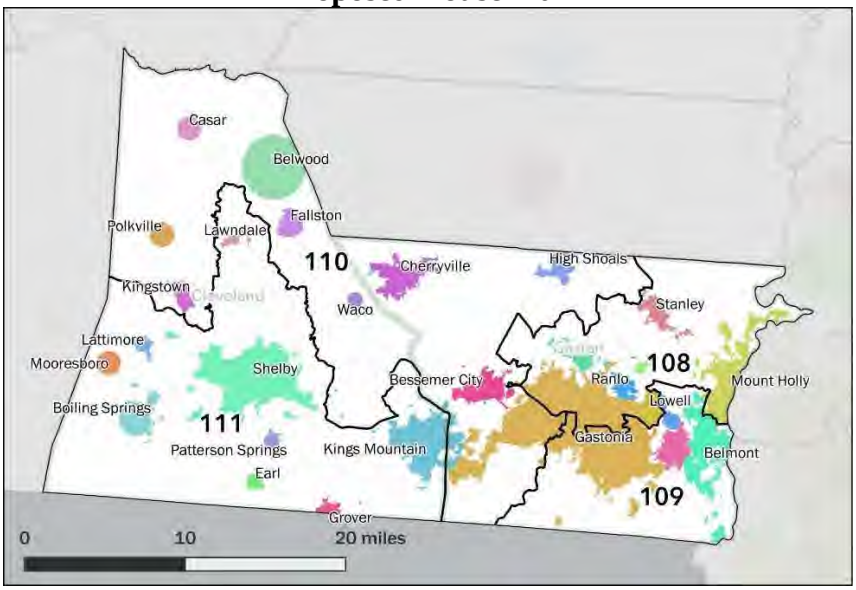
2017 House Plan



Base Map

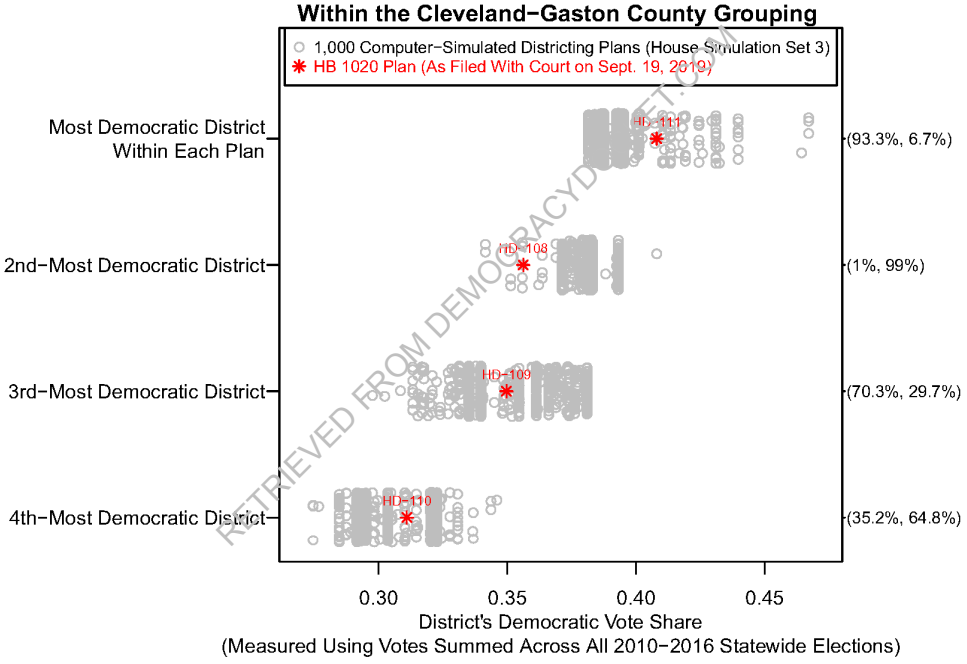


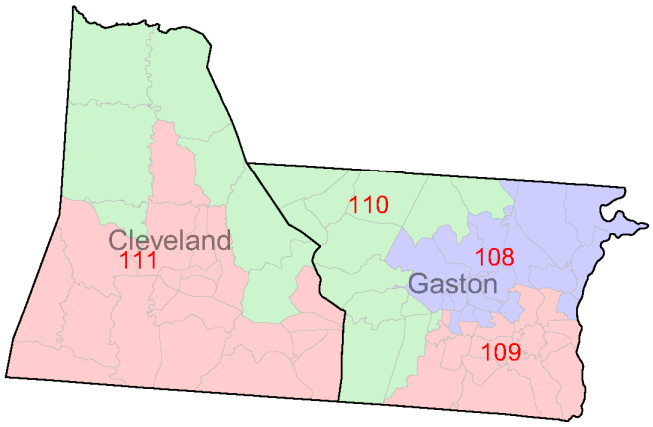
Proposed House Plan



The incumbents' amendments to this grouping had substantial partisan effects. The revisions caused House District 108 to become 5.62 percentage points more Republican relative to the base map using the 2010-2016 statewide elections, while House District 110 remained a safe Republican seat despite adding more Democratic voters. Chen 9/27 Report at 35 (Table 5a). Consistent with this swing, Dr. Chen finds that House District 108 is an extreme partisan outlier compared to his Simulation Set 3 plans. The Proposed House Plan's version of District 108 is more favorable to Republicans than the corresponding district in 99% of Dr. Chen's Set 3 plans.

Figure 17: House Simulation Set 3:
Democratic Vote Share of the HB 1020 and Computer−Simulated Districts
Within the Cleveland−Gaston County Grouping





HB 1020 Plan (As Filed With Court on Sept. 19, 2019) (4 Districts)

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The incumbents in the Cleveland-Gaston grouping significantly subordinated compactness in pursuing these partisan ends. The revisions to the base map lowered the average Reock score of the grouping from 0.411 to 0.395 and the average Polsby-Popper score from 0.283 to 256. Chen 9/27 Report at 36 (Table 5b). The Proposed House Plan is now less compact than the invalidated version of this grouping from the 2017 House Plan, and it is an extreme outlier in comparison to Dr. Chen's Simulation Set 3. As shown below and in Dr. Chen's report, the Proposed House Plan has a lower average Reock score for this grouping than 99.6% of the plans in Simulation Set 3 and a lower Polsby-Popper than 98.5% of the plans in Set 3. *Id.* at 39-41 (Figures 18-20).[8]

[8] Most of Dr. Chen's Set 3 plans for this grouping split zero VTDs, whereas the Proposed House Plan splits one. Chen 9/27 Report at 43. Most of the Set 3 plans split one more municipality than the Proposed House Plan, but 11.5% of the Set 3 plans split the same number of municipalities or fewer. *Id.* at 42. This does not reflect when municipalities are split multiple times, such as the Proposed House Plan's splitting of Gastonia across three districts.

Figure 13: Forsyth−Yadkin County Grouping:
House Simulation Set 3 (Following Non−Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):
Average Polsby−Popper Score in HB 1020 Plan Versus 1,000 Simulated Plans

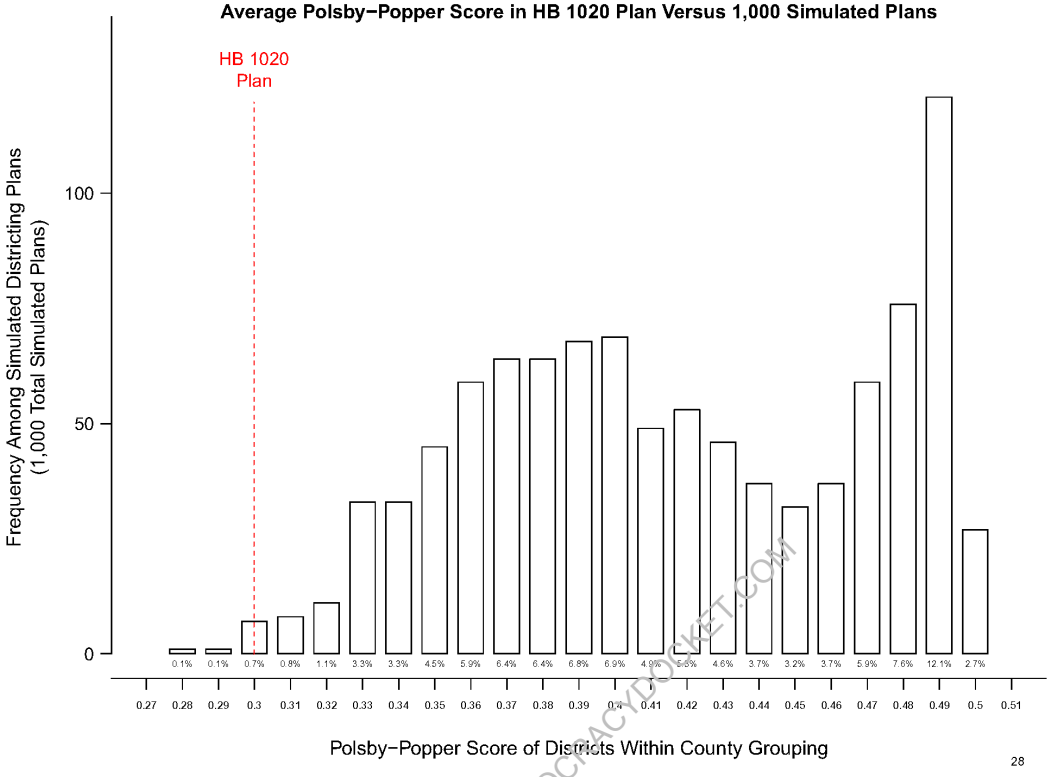

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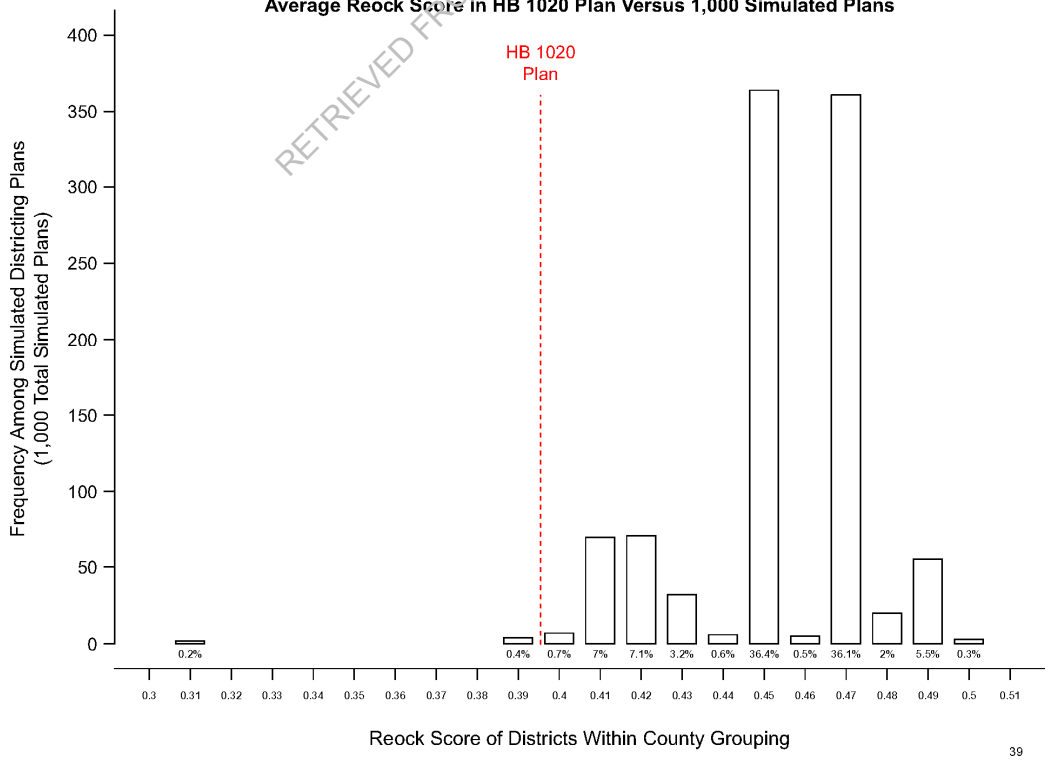
Figure 18: Cleveland−Gaston County Grouping:
House Simulation Set 3 (Following Non−Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):
Average Reock Score in HB 1020 Plan Versus 1,000 Simulated Plans



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Dr. Chen's Set 3 thus demonstrates that the Proposed House Plan for this grouping is a pro-Republican gerrymander that cannot be explained by an effort to avoid pairing incumbents. The Proposed House Plan is an extreme partisan gerrymander that unnecessarily splits Gastonia across three districts and subordinates compactness, in violation of the Court's order.

D. Brunswick-New Hanover

Unlike the prior groupings, the House acted with impermissible partisan intent in *not* unpairing incumbents in the Brunswick-New Hanover grouping. The base map for this grouping paired two Republicans incumbents in House District 20, Representative Holly Grange and Representative Ted Davis. Representative Lewis asked Representatives Grange and Davis whether they wanted to revise the districts to unpair themselves, like the incumbents in the other groupings were doing. 9/12/19 House Comm. Tr. at 37:2-5. Representative Grange answered that, although she has preliminarily indicated that she intends to "run[] for another office," she had not "filed for any election yet" and wanted to be unpaired from Representative Davis. *Id.* at 37:1-17. Representative Grange stated that it would be an inappropriate "political consideration" to not unpair the current incumbents based on whether she may run for another office. *Id.*

Representative Lewis then agreed that it would be proper for these two incumbents to revise their districts. Representative Lewis stated that the House Committee should attempt to "un-pair these incumbents, *which has been our intent from -- from the start here*." 9/12/19 House Comm. Tr. at 37:22-23. Representative Lewis thus invited the incumbents in the grouping to the mapmaking terminal to carry out the unpairing process.

The subject of whether to unpair Representatives Davis and Grange again arose while the incumbents were huddled around the mapmaking terminal. Representative Grange reiterated that she believed it was proper, and indeed necessary, to avoid pairing incumbents in this grouping even though she may ultimately run for another office. Representative Grange stated that "I

don't think that what I'm going to do [in terms of running for Governor] should matter at this point because the maps are supposed to be based on incumbency." 9/12/19 House Comm. Hr'g Video at 5:34:20-33. Representative Grange added: "incumbency is supposed to be reflected [inaudible] nobody is officially running for office." *Id.* at 5:28:30-50.

A review of the base map reveals that there were a number of possible ways to unpair Representatives Grange and Davis, and legislative staff explained several of these options to the incumbents huddled around the mapmaking terminal. 9/12/19 House Comm. Hr'g Video at 5:26:30-5:31:30. Representative Davis, however, was dissatisfied with these potential changes. *See id.* He lamented that he would "lose" particular communities if certain changes were made to unpair him and Representative Davis. *Id.* at 5:30:08-15. He stated that he had "been representing for eight years" certain areas that he "no longer [would] be representing" under an option that staff proposed. *Id.* at 5:34:00-12.

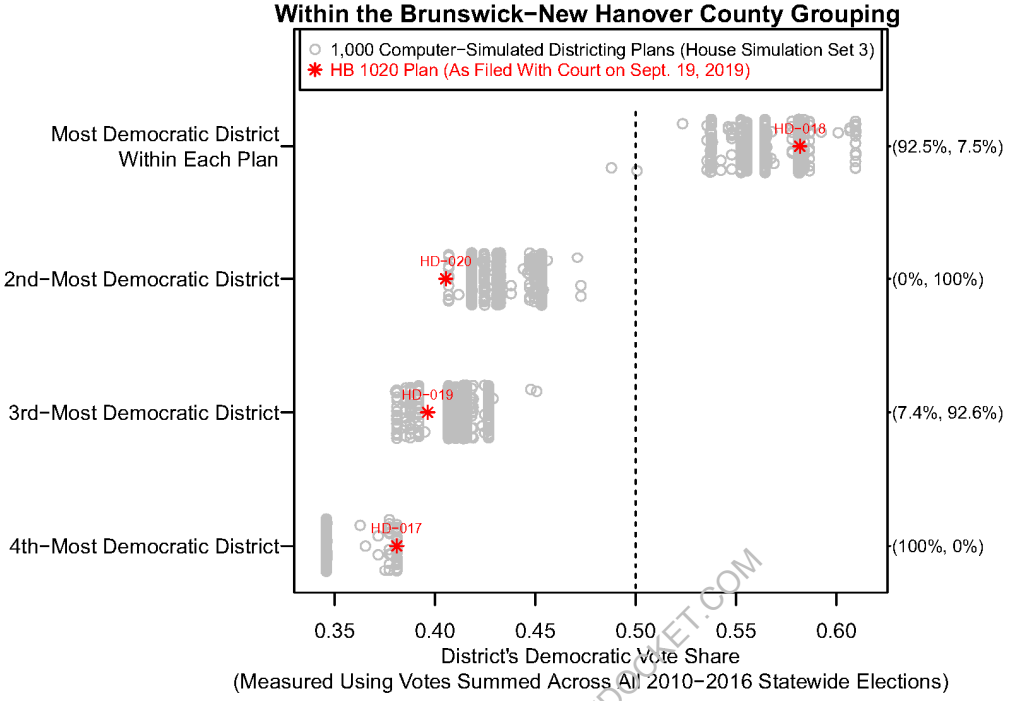
After a lengthy discussions at the computer terminal, but during which the incumbents did not actually move any VTDs on the screen to try to unpair the two incumbents, the incumbents took a break. Over the next hour, Representative Grange and Representative Davis each entered and re-entered the hearing room several times, and Representative Davis at one point could be seen talking on his cell phone. 9/12/19 House Comm. Hr'g Video at 6:09-6:17. After nearly an hour passed, Representative Davis returned to the room and whispered something to Representative Lewis. *Id.* at 6:38:55-6:39:18. Several minutes later, Representative Lewis announced that "[t]he Chair has been informed that there are no incumbency changes to make to this map, therefore, no changes to the Chen Map would be in order." 9/12/19 House Comm. Tr. at 46:10-12. Representative Lewis provided no explanation why the incumbents no longer were seeking to be unpaired. Nor did he explain why he was permitting the incumbents to remain

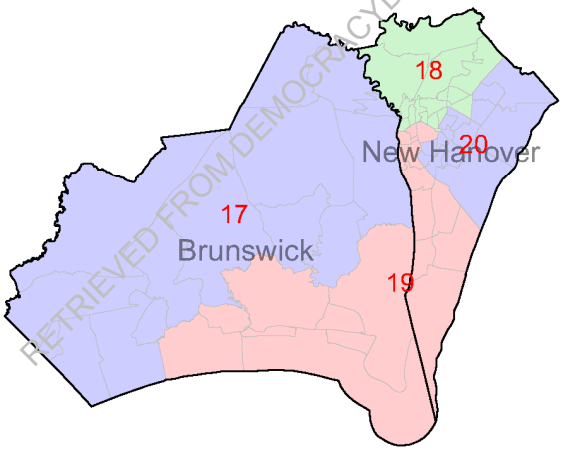
paired, unlike in all other groupings, despite stating earlier that his "intent . . . from the start" was to unpair the incumbents in this and all other groupings. *Id.* at 37:22-23.

Representative Grange did later provide a purported explanation for her change in positions. During a House floor debate on September 13, Representative Grange admitted that the incumbents could have found a "viable solution" to unpairing themselves. 9/13/19 House Floor Sess. at 555:8-556:9. But Representative Grange stated that she "withdrew [her] objection to the [base] map that I was double bunked with Representative Davis for the reason that in the *Covington* case, there was precedent set that an incumbent member that was not running for reelection, that map was thrown out." *Id.* at 560:19-25. It seems apparent that Legislative Defendants' counsel, who were also counsel in *Covington*, directly or indirectly supplied this justification to Representative Grange—in a discussion that was not public. Of course, Legislative Defendants' counsel and their experts had partisanship data on the base map.

The most plausible inference from this sequence of events is that Legislative Defendants or their counsel directed the incumbents in this grouping to not unpair themselves because doing so would be politically disadvantageous to Republicans. Dr. Chen's Simulation Set 3 confirms as much. Dr. Chen finds that all four districts in this grouping are over 92% partisan outliers compared to their corresponding districts in Set 3, and two of the districts are 100% outliers. Chen 9/27 Report at 47-48. As shown below and in Dr. Chen's report, House District 20—the district that pairs Representatives Grange and Davis—is one of these districts that is an 100% outlier, as it is less Democratic than its corresponding district in all of the 1,000 simulations that avoid pairing the current incumbents.

Figure 23: House Simulation Set 3:
Democratic Vote Share of the HB 1020 and Computer−Simulated Districts Within the Brunswick−New Hanover County Grouping





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The House's adoption of the base map that pairs incumbents violates this Court's order in at least three respects. First, the decision seems to have been made based on discussions involving Legislative Defendants' counsel behind closed doors. This Court directed that "Legislative Defendants and their agents shall conduct the entire remedial process in full public view," Decree ¶ 9, and the conversations where Legislative Defendants' counsel apparently directed the incumbents to not amend the base map did not occur "in full public view." This

apparent violation of the Court's transparency requirements is highly material because Legislative Defendants' counsel and their consultants had partisanship data on the base map and all of the individual VTDs. Legislative Defendants' counsel surely knew that amending the base map to unpair the two incumbents would produce a less Republican district.

Second, and relatedly, the House violated this Court's prohibition that "partisan considerations . . . shall not be used in the drawing of legislative districts in the Remedial Maps." Judgment COL ¶ 169. While avoiding pairing incumbents was an optional criterion, once the House decided to apply that criterion, it had to do so evenhandedly across-the-board and not only when it served one political party's partisan interests. As detailed throughout this brief, the House repeatedly unpaired incumbents to the detriment of the Democratic Party. The House's decision not to unpair the incumbents in this grouping—and only in this one grouping—was based on impermissible "partisan considerations."

Third, Representative Davis improperly acted "to preserve the core[]" of his prior district under the invalidated 2017 House Plan. Representative Davis rejected an option for unpairing him from Representative Grange because it would cause him to lose certain areas he had "been representing for eight years." 9/12/19 House Comm. Hr'g Video at 5:34:00-12. This House grouping is one that was drawn in 2011 and unchanged in 2017, and thus Representative Davis' reference to areas that he had "been representing for eight years" was a direct reference to the composition of the 2017 House Plan version of this grouping. Representative Davis affirmatively acted to preserve the core of his prior district, contrary to the Court's order.

The pretextual explanation offered for the decision to not unpair the incumbents in this grouping—because of a purported "precedent" set in the *Covington* case—further illustrates that improper considerations were at play. 9/13/19 House Floor Sess. at 560:18-24. Contrary to

Representative Grange's assertion, it is not true that the proposed map in *Covington* "was thrown out because it was drawn to take incumbency into account when [Representative Larry Bell] had already announced that he was not running for reelection." *Id.* at 560:25-561:2. The *Covington* court rejected the General Assembly's proposed House District 21 because it retained "the very problems that rendered the prior version of the district unconstitutional." *Covington v. North Carolina*, 283 F. Supp. 3d 410, 440 (M.D.N.C. 2018). "[I]n order to draw Representative Bell's residence into House District 21, the General Assembly retained much of the bizarre shape of the Sampson County portion of the district and divided a precinct and municipality along racial lines." *Id.* Here, in contrast, unpairing Representatives Grange and Davis would not require retaining the problematic aspects of the 2017 House Plan.[9] Moreover, Representative Bell in *Covington* swore under oath that he did "not intend to run for re-election to the General Assembly." *Covington*, ECF No. 211-1. Representative Grange has made no such assertion; to the contrary, she repeatedly stated during the hearings that she is not "officially running for" another office yet. 9/12/19 House Comm. Hr'g Video at 5:28:30-50; *see also* 9/12/19 House Comm. Tr. at 37:1-17 ("frankly, nobody has filed for any election yet").

Because improper political considerations and non-public deliberations drove the House's decision to treat this grouping unlike every other grouping, the Court must reject the Proposed House Plan for this grouping.

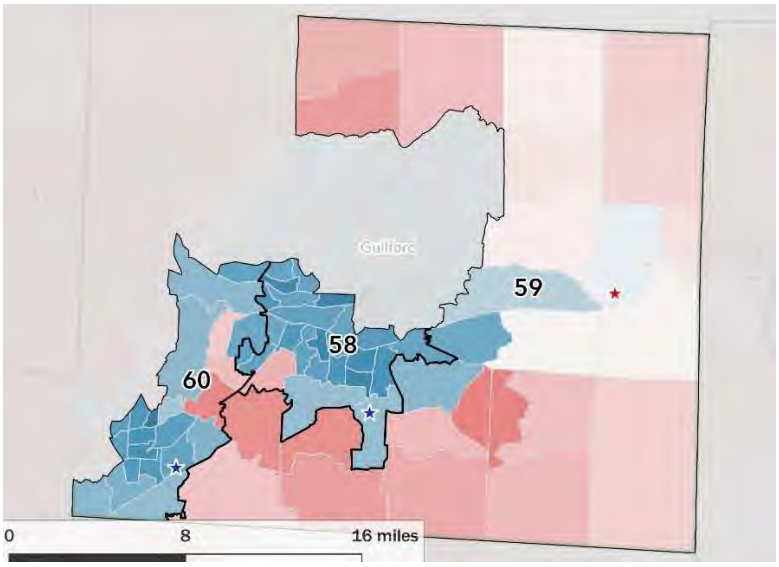
[9] Dr. Chen's Simulation Set 3 demonstrates that unpairing the incumbents would not subordinate traditional criteria other. All of Dr. Chen's simulations of this grouping in Set 3 split the same number of municipalities as the proposed House Plan, and nearly a quarter of the simulations also do not split any VTDs. Chen 9/27 Report at 50-51 (Figures 27-28). While the simulations have slightly lower Reock scores than the Proposed House Plan, over 80% of the simulations have better Polsby-Popper scores. *Id.* at 47-49 (Figures 24-26).

E. Guilford

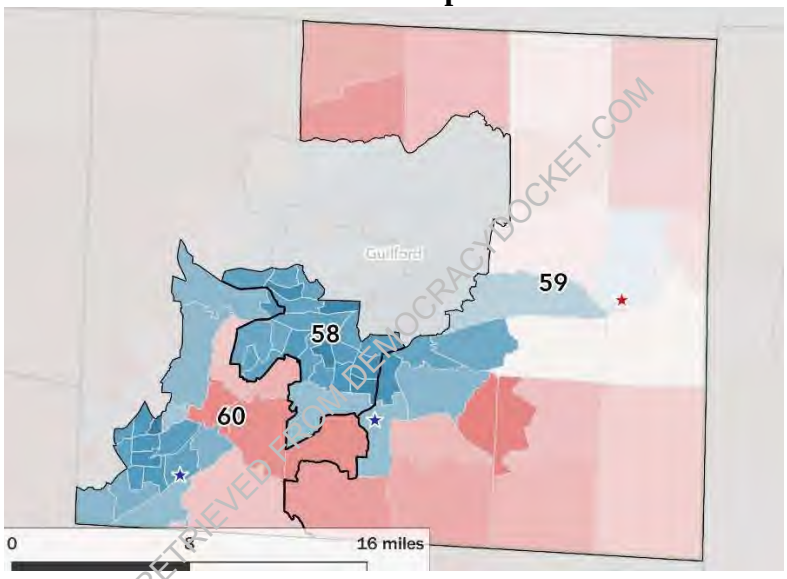
This Court found that the 2017 House Plan version of the Guilford grouping impermissibly "packed Democratic voters into House Districts 58 and 60 to make House District 59 favorable to Republicans." Judgment FOF ¶ 384. This Court found especially problematic that "House District 58 ha[d] 'boot-like appendages' to grab Democratic VTDs and ensure these voters could not make House District 59 competitive or Democratic-leaning." *Id.* (quoting Dr. Cooper's testimony).

The Proposed House Plan recreates this feature of House District 58—and in fact reverts House District 58 almost entirely to its prior boundaries. As shown below, the base map for this grouping paired two representatives in House District 60, and to unpair these incumbents the House added the "boot-like," heavily Democratic VTD in southern Guilford County back to House District 58. The result is that House District 58 is a near-replica of the 2017 version of the district. Dr. Chen finds that th*e 86% of the population* in the proposed House District 58 overlaps with the invalidated 2017 version of the district. Chen 9/27 Report at 61-62.

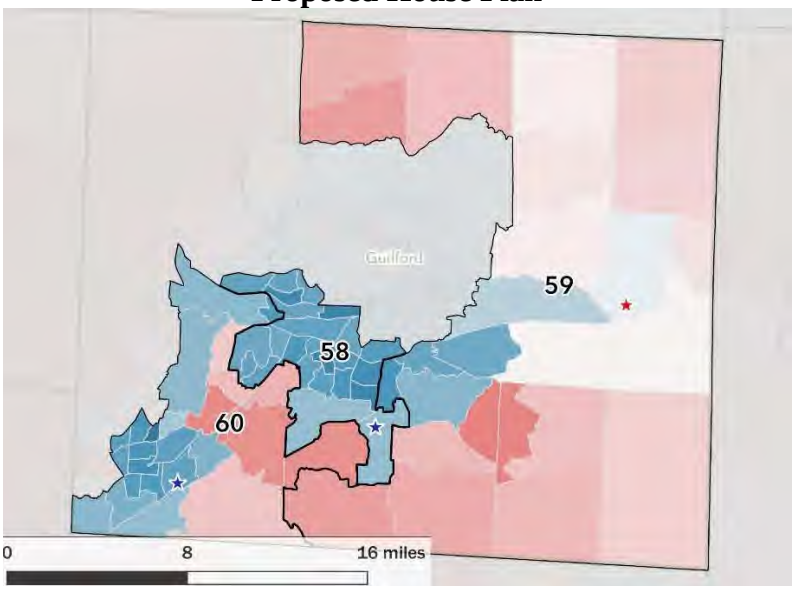
2017 House Plan



Base Map



Proposed House Plan



While Dr. Chen does not find that the Proposed House Plan for this grouping is an extreme outlier in partisanship relative to his Simulation Set 3, the extraordinarily high overlap between the proposed and old versions of House District 58 violates this Court's prohibition on "preserv[ing] the cores of invalidated 2017 district." Decree ¶ 9. And the consequence of changing House District 58 to recreate its old boundaries was to make House District 59 more favorable to Republicans. Chen 9/27 Report at 54 (Table 7a).

Moreover, Dr. Chen does find that the Proposed House Plan is an extreme outlier in its lack of compactness. The revisions to the base map for this grouping significantly subordinated compactness. The revisions lowered the Reock and Polsby-Popper scores of both House District 58 and House District 59, and for House District 58 in particular. The Reock score of House District 58 fell from 0.445 to 0.334, and the Polsby-Popper score of the district fell from 0.241 to 0.174. Chen 9/27 Report at 55 (Table 7b). The average compactness scores for the grouping correspondingly dropped as well: the average Reock score for the grouping dropped from 0.440 to 0.401, and the average Polsby-Popper score dropped from 0.264 to 0.232. *Id.* And, as shown below and in his expert report, Dr. Chen finds that the Proposed House Plan for Guilford County is less compact than 100% of his Set 3 simulations using Polsby-Popper and 99.8% of the Set 3 simulations using Reock. *Id.* at 56-58 (Figures 29-31).

Figure 29: Guilford County Grouping:
House Simulation Set 3 (Following Non−Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):
Average Reock Score in HB 1020 Plan Versus 1,000 Simulated Plans

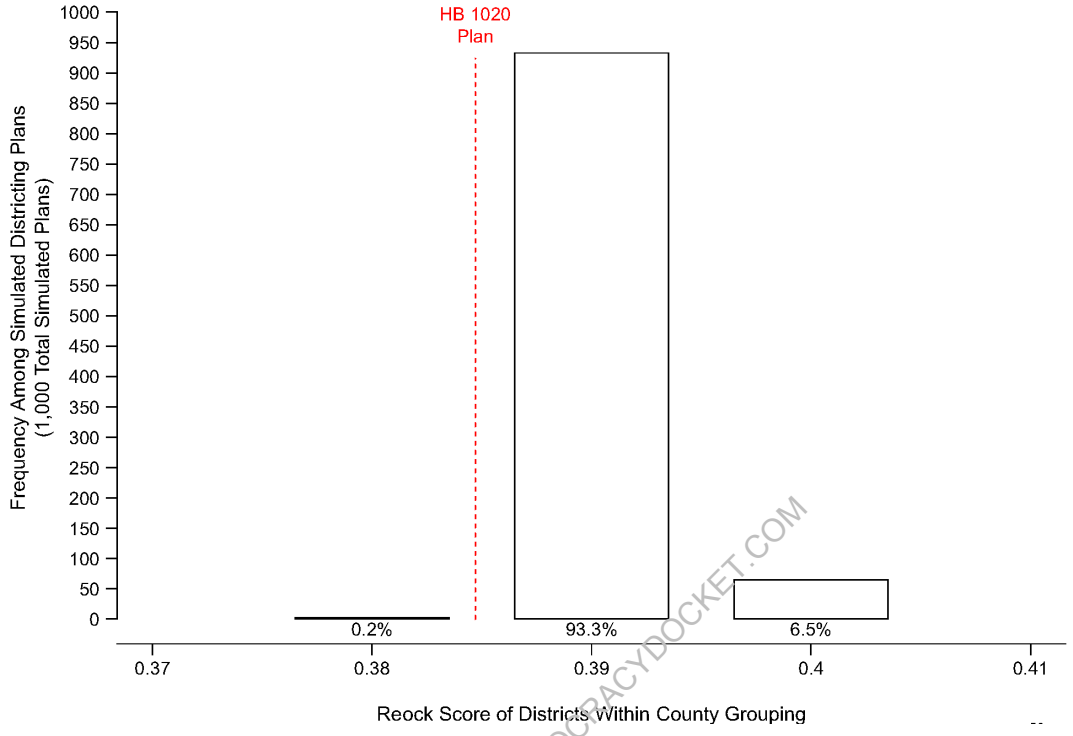
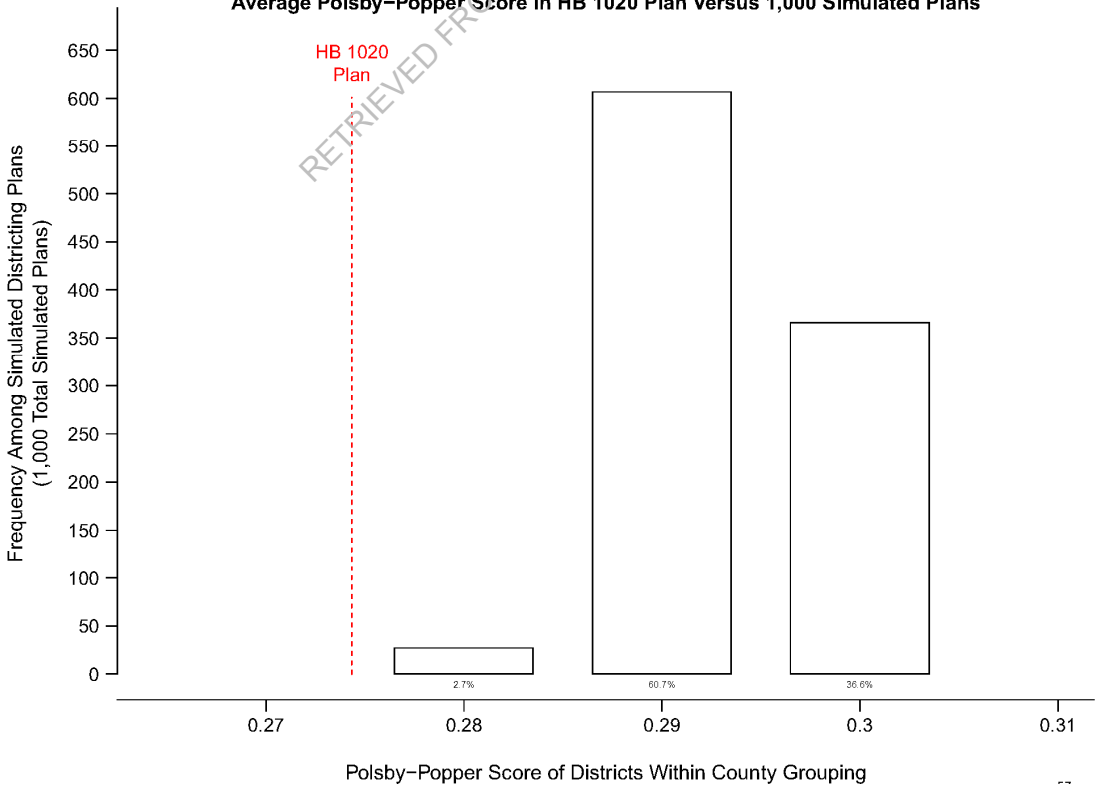


Figure 30: Guilford County Grouping:
House Simulation Set 3 (Following Non−Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):
Average Polsby−Popper Score in HB 1020 Plan Versus 1,000 Simulated Plans



In short, in the name of unpairing incumbents, the House substantially recreated one of the invalidated 2017 districts in this grouping and rendered this grouping less compact than nearly 100% of the nonpartisan possibilities in Dr. Chen's Simulation Set 3.

III. The Referee Should Redraw the Five House Groupings

The Court should direct the Referee to draw from a blank slate all five of the House groupings described above, following the criteria set forth in the Court's Decree. The Court retained the Referee "to develop remedial maps for the Court should the General Assembly fail to enact lawful Remedial Maps within the time allowed." Decree ¶ 13. The General Assembly failed to enact lawful remedial districts in these five groupings, and accordingly the Referee should now "develop remedial plans" for these groupings as specified in the Court's Decree.

The Court should reject Legislative Defendants' request that the Court adopt the base map for those groupings where the Court finds issue with the revisions that were made. That suggestion should be rejected for at least three reasons. First, it would result in different criteria being applied in different groupings. There would be some groupings (that the Court does not change from the Proposed House Plan) in which an incumbency protection criterion was applied to intentionally unpair incumbents from the base map, but other groupings (where the Court would revert to the base map) where no incumbency protection criterion is applied and incumbents remain paired. The same criteria should apply in all groupings. Allowing otherwise would in fact violate a motion passed by the House Committee "to treat all of the incumbents the same" by unpairing incumbents in every House grouping. 9/12/19 House Comm. Tr. at 12:8-9. Second, the base maps themselves are infected by the House's myriad procedural violations of the Court's Decree, including the apparent reliance on political consultants and partisan data in deciding to switch from Set 2 to Set 1. And third, adopting the base map would not remedy the

violation in Brunswick-New Hanover, since the problem there is that the House adopted the base map for impermissible partisan and core retention reasons.

Legislative Defendants' assertion that "[t]he Court has no guiding principle by which to guide its own line drawing" is false. Leg. Defs. Br at 24. The Court set forth specific criteria to govern the drawing of remedial districts, and those criteria are the ones that the General Assembly itself adopted in 2017. Decree ¶ 5. The Referee's "guiding principle" in redrawing these five groupings will be these General Assembly-endorsed criteria. Legislative Defendants' assertion that having the Referee redraw districts "will necessarily raise questions," Leg. Defs. Br. at 24, is not grounded in law but rather is a thinly-veiled threat that this Court should not countenance.

While Plaintiffs believe that the appropriate course of action is for the Referee to simply redraw these groupings, if it would assist the Court or the Court otherwise deems it appropriate, Plaintiffs would be happy to provide the Court with any relevant data and files from Dr. Chen's Simulation Set 3 for these five House groupings.

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court reject the General Assembly's Proposed House Plan in the Columbus-Pender-Robeson, Forsyth-Yadkin, Cleveland-Gaston, Brunswick-New Hanover, and Guilford groupings, and direct the Referee to draw new remedial districts in these groupings.

Respectfully submitted this the 27th day of September, 2019

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CERTIFICATE OF SERVICE

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This the 27th day of September, 2019.

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Exhibit 4

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, *et al.* *Plaintiffs,*	)	
v.	)	ORDER
Representative DAVID R. LEWIS, in his official capacity as Senior Chairman of the House Select Committee on Redistricting, *et al.*, *Defendants.*	)	

This matter comes before the undersigned three-judge panel for review of Remedial Redistricting Maps (hereinafter "Remedial Maps") enacted by the North Carolina General Assembly on September 17, 2019, N.C. Sess. Laws. 2019-219 (Senate Bill 692) and 2019-220 (House Bill 1020), to apportion the legislative districts within North Carolina. The Remedial Maps were enacted following entry of the September 3, 2019, Judgment of this Court wherein the Court held that certain districts in the 2017 House and Senate plans (hereinafter "2017 Enacted Maps") were unconstitutional partisan gerrymanders. The Court ordered that twenty-one Senate districts contained within seven county groupings and fifty-six House districts contained within fourteen county groupings be redrawn in conformance with the mandate of its Judgment.

Following the enactment of the Remedial Maps, Plaintiffs submitted objections to the new maps. Plaintiffs raised no specific objections to the twenty-one new districts drawn in the Remedial Senate Maps. Plaintiffs raised no specific objection to thirty-seven House Districts contained within nine county groupings in the Remedial House Map, but did raise specific objections to nineteen House Districts contained within five county groupings. *See,*

generally, Plaintiffs' Objections to the Remedial Plans (Sept. 27, 2019). The county groupings and House Districts that are the subject of the Plaintiffs' objections are:

a. Columbus-Pender-Robeson (HD-16, -46, & -47);

b. Forsyth-Yadkin (HD-71, -72, -73, -74, & -75);

c. Gaston-Cleveland (HD-108, -109, -110, & -111);

d. Brunswick-New Hanover (HD-17, -18, -19, & -20); and

e. Guilford (HD-58, -59, & -60).

All parties have had a full opportunity to submit memoranda supporting or opposing the Remedial Maps. The Court has examined each of the seventy-seven newly-drawn Senate and House districts in the Remedial Maps, and in particular the nineteen districts objected to by Plaintiffs, as well as the transcripts, video and written record of the General Assembly proceedings, and the arguments of counsel. The findings and conclusions of the Court are set out below.

In this Court's September 3, 2019, Judgment, the Court required that remedial maps conform to specific criteria. Certain of the Court's criteria governed the *process* required of the General Assembly if it chose to enact remedial maps, while other criteria set out *substantive requirements* for any remedial maps enacted.

I. Compliance with the Procedural Requirements of the September 3, 2019, Judgment of the Court.

With respect to the process that the Court required of the General Assembly, the following criteria were set out in the Court's Judgment:

> a. Legislative Defendants and their agents shall conduct the entire remedial process in full public view. At a minimum, this requires all map drawing to occur at public hearings, with any relevant computer screen visible to legislators and public observers. Legislative Defendants and their agents shall not undertake any steps to draw or revise the new districts outside of public view.

b. In redrawing the relevant districts in the Remedial Maps, the invalidated 2017 districts may not be used as a starting point for drawing new districts, and no effort may be made to preserve the cores of invalidated 2017 districts.

c. Election Data. Partisan considerations and election results data shall not be used in the drawing of legislative districts in the Remedial Maps.

d. To the extent that Legislative Defendants wish to retain one or more individuals who are not current legislative employees to assist in the map-drawing process, Legislative Defendants must seek and obtain prior approval from the Court to engage any such individuals.

In reviewing the actions of the General Assembly that led to the enactment of the Remedial Maps, the Court is satisfied that the process chosen and implemented by both the House and Senate of the General Assembly comported with the procedural requirements of the Court's Judgment. Several aspects of the General Assembly's process, and several of the Plaintiffs' objections thereto, merit further discussion.

a. Requirement that the remedial redistricting process be conducted in full public view.

In contrast to the unconstitutional 2017 Enacted Maps, the remedial redistricting process was conducted in full public view, as ordered by the Court. To comply with the Court's mandate, both the Senate and the House conducted the vast majority of the remedial redistricting process in public hearings, broadcast by audio and video livestream, so that Plaintiffs and interested public could view the process in its entirety. A record of the entire proceedings has been made and preserved and is available not only to the Court, but to the public for inspection and scrutiny.

Plaintiffs, in their *Objections to the Remedial Plans,* make note of some apparent lapses in transparency that predictably and justifiably give rise to suspicion. These lapses are detailed in *Plaintiffs' Objections to the Remedial Plans* on pages 2-7. For example, Plaintiffs suspect that Rep. David Lewis, chair of the House Redistricting Committee,

conferred with Republican redistricting strategists to determine which dataset of simulated maps created by Plaintiffs' expert Dr. Jowei Chen, Set 1 or Set 2, ought to be used as the base map in the remedial process. Rep. Lewis denies taking such action, but if Rep. Lewis had consulted in private regarding the partisan consequences of choosing either Set 1 or Set 2, the Court does not accept Legislative Defendants' rationalization that such a consultation would not be "'map drawing' but 'map *picking*'" and therefore not in violation of the Court's mandate that the "entire remedial process" be conducted in "full public view." *Leg. Defs' Memorandum Regarding House and Senate Remedial Maps (hereinafter "Leg. Defs' Memorandum"), p. 12 (Sept. 23, 2019) (emphasis original).* On the other hand, the Court notes that the House Redistricting Committee's ultimate choice to use Set 1 as the starting point for the remedial process was made with unanimous and bipartisan approval by the House Redistricting Committee after thorough debate in public. *Tr. H. Redistricting Comm., Sept. 11, 2019 at 17:3-22.*

The Court is satisfied, despite the lapses identified by Plaintiffs, that the efforts made by the General Assembly to ensure that the remedial process was conducted in public view were reasonable and complied with the Court's mandate. It is noteworthy to the Court that both Legislative Defendants and ranking Democratic members of the General Assembly concur that "the level of public access provided to the committee process was unprecedented in the history of the General Assembly, regardless of the type of committee or subject matter involve." *Leg. Defs' Memorandum at 10.* Democratic Minority Leader Senator Dan Blue, during Senate floor debate on the Senate's remedial plan, stated that "[f]or this process, the rules that have been applied have been evenly administered. It is a transparent, open, process, more transparent than anything I've seen in this legislature, especially with redistricting" and "[o]ne of the mainstays of a democratic government is transparency and that's why I think this process worked so well." *Senate Floor Debate*

Transcript, Sept. 16, 2019, at 20:7-12; 22:15-17. As such, the Court overrules the objections of Plaintiffs to the extent the objections challenge the General Assembly's compliance with the mandate of the Court that the remedial process be conducted in full public view.

b. Requirement that invalidated 2017 districts not be used as a starting point for drawing new districts and there be no effort to preserve the cores of invalidated districts.

The Court finds and concludes that the General Assembly's use of Set 2 (Senate) and Set 1 (House) of the simulated maps created by Dr. Chen as the datasets from which to select the base Remedial Senate and House Maps comports with the mandate of the Court that invalidated 2017 districts not be used as a starting point for drawing new districts. The Court has previously found, in its September 3, 2019, Judgment, that these simulated maps – both Set 1 and Set 2 – were created by an algorithm designed by Dr. Chen to maximize traditional redistricting criteria and to disregard partisan criteria and the cores of the 2017 districts. *See Judgment, ¶ 83-86, 113-114.* The Court accorded Dr. Chen's testimony and methodology great weight in the liability phase of this litigation and again does so here.

The Court further concludes that the methodology adopted by the General Assembly to select the ultimate House and Senate base remedial maps, through a random process from among the various simulated maps contained in Dr. Chen's datasets, was reasonable. The methodology utilized by the General Assembly rank-ordered the simulated maps for each county grouping by optimizing traditional, nonpartisan redistricting criteria computed by Dr. Chen, and then selected a map, through a random drawing, from the top five rank-ordered maps to serve as the base district maps for that grouping. The process was overseen by nonpartisan staff and conducted in public view. Notably, the base map selection process received broad bipartisan support in both the House and Senate Redistricting Committees. The Court recognizes that other methodologies might have been

chosen that could have resulted in maps that more reliably optimized traditional and nonpartisan redistricting criteria. For example, the decision to randomly draw a base map from county groupings where Dr. Chen's simulation showed that only a few unique maps could possibly be drawn within the group raises the possibility that the "optimal" map was supplanted by a map significantly less optimal through the random drawing process.[1] Nonetheless, despite these possible shortcomings in the chosen methodology, the decision to consistently employ and abide by random choice to choose among simulated maps created through a nonpartisan algorithm was reasonable. As such, the Court overrules the objections of Plaintiffs to the extent the objections challenge the General Assembly's compliance with the mandate of the Court that invalidated 2017 districts not be used as a starting point for drawing new districts and there be no effort to preserve the cores of invalidated districts.

c. Requirement that no partisan consideration or election results data be used in the drawing of legislative districts in the Remedial Maps.

The Court is satisfied that significant and reasonable efforts were taken by the General Assembly to attempt to limit partisan consideration and election results data from being used in the remedial redistricting process. The Court finds and concludes that to the degree that this mandate could be achieved, it was significantly aided by public and media scrutiny and the transparency of the remedial process.

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[1] For example, in the simulations produced by Dr. Chen for the Franklin-Nash House county grouping, due to the relatively small number of VTDs and municipalities in that grouping, only five unique maps could possibly be drawn while comporting with traditional and legal redistricting criteria. *See, Testimony of Dr. Chen, Trial Tr. 357:10-358:15.* As such, the random choice of one of those five possible simulated maps for this House grouping might (with a 1:5 chance) have resulted in choosing the fifth-most optimal choice – i.e. the "worst" choice – rather than the more optimal first choice.

Plaintiffs, in their *Objections to the Remedial Plans,* raise a serious concern regarding the use of election data or partisan data. Specifically, Plaintiffs have provided evidence to the Court that shortly after the House and Senate Redistricting Committees announced that Dr. Chen's simulated maps would be used to select the base map, counsel for the Legislative Defendants, responding to a request from legislative staff for shapefiles and block assignments for those maps, sent an email containing a link to Dr. Chen's backup files to dozens of recipients, including all members of the House and Senate Redistricting Committees. Dr. Chen's backup files contained extensive partisanship data on every district in every one of Dr. Chen's simulated maps. With these files, any recipient could look up the partisan composition of any district in any of Dr. Chen's simulated maps. The link was emailed by Legislative Defendants' counsel at 4:21 p.m. on September 9, 2019; Plaintiffs counsel objected to the distribution of the data shortly thereafter at 4:45 p.m., and the link was disabled at or about 7:09 p.m.

Legislative Defendants, in their *Reply Brief*, report that no central staff member completed the download of the partisan dataset, and that of the members of the House Redistricting Committee,[2] only two, one Republican member and one Democratic member, had, through their staff, downloaded the data at issue. Legislative Defendants further report that as to the data downloaded by the Republican member's staff, the zip file containing the partisan data was never accessed; with respect to the Democratic member's data, counsel argues there is no evidence that the Democratic member or her office used the data or sought to inject partisan changes into the maps. Legislative Defendants' counsel

[2] Legislative Defendants only report the potential use of data by members of the House and House staff members because "Plaintiffs only attack the House" and are not raising objections to the Senate Remedial Maps. *Reply Brief at 14.*

also note the complexity of the partisan data, asserting that it is "entirely unusable for a non-expert in political data analysis." *Reply Brief at 14.*

The Court finds and concludes that the distribution of partisan data by email to legislative staff and members of the Redistricting Committees by counsel for Legislative Defendants is a serious breach of this Court's mandate. However, the Court further finds that the distribution was inadvertent, and the potential damage was mitigated by public scrutiny and the vigilance of Plaintiffs' counsel and their prompt objection. As such, the Court concludes that this breach alone is not sufficient to invalidate the remedial map drawing process. The Court overrules the objections of Plaintiffs to the extent the objections challenge the General Assembly's compliance with the mandate of the Court that no partisan consideration or election results data be used in drawing the remedial maps.

d. Requirement that Legislative Defendants obtain prior approval of the Court to retain individuals who are not current legislative employees to assist in the map-drawing process.

Plaintiffs, in their *Objections to the Remedial Plans,* establish that Legislative Defendants, without seeking prior approval of the Court, utilized the services of Clark Bensen, who operates a political consulting firm known as "POLIDATA," during the remedial map drawing process. Plaintiffs note that Mr. Bensen is an attorney by training, and according to his resume, has been involved in "redistricting and census issues throughout the previous three reapportionment cycles and has developed political and census datasets for every state in the nation" and that "development of election datasets for every level of geography has been a specialty since 1974." *Id. at 5.* Mr. Bensen previously served as director of "Political Analysis" for the Republican National Committee where his duties were to "undertake the collection, compilation, systemization and analysis of

politically related data." *Id.* In 2011, Legislative Defendants relied upon Mr. Bensen to provide political data for them in drawing the 2011 plans. *Id.*

Legislative Defendants, by way of affidavit of Mr. Bensen, confirm that Mr. Bensen was contacted by email on September 9, 2019, inquiring about his availability to "analyze 1,000 districting plans" in a short period of time. *Bensen Affidavit,* ¶ *7.* He responded that he had limited availability, and he was then requested to "simply compare the two sets of 1,000 plans with two of the sets of 1,000 plans that Dr. Chen had provided during the liability stage, for the purposes of verifying that the plans submitted by Dr. Chen during the remedial stage appeared to be the same plans that had been submitted previously.'" *Id.*, ¶¶ *7-8.* Mr. Bensen further reports that he conducted this comparison on September 10, 2019, and by 2:30 p.m. that same day, he reported to counsel for Legislative Defendants that "it appeared to [him] 'like almost all of the old plans are included." *Id.*, ¶ *16.* He states that "he had neither the time nor the instructions to undertake" any other review associated with the remedial maps and that comparison of datasets was the sole task he performed. *Id.*, ¶ *17.* Mr. Bensen denies that he conducted any partisan analysis of any simulated districts in the data provided and did not provide any information to counsel or anyone else about partisan performance of the simulated districts. *Id.*, ¶ *18.*

Plaintiffs also object to the utilization of Dr. Janet R. Thornton during the remedial map drawing process without prior authorization of the Court. Dr. Thornton testified as an expert on behalf of the Legislative Defendants during the liability phase of this litigation. Like Mr. Bensen, Dr. Thornton has provided an affidavit stating that her role, at all times prior to the enactment of the Remedial House and Senate Maps, was limited to the single task, on September 10, 2019, of verifying that the datasets provided to the General Assembly were in fact the same datasets that Dr. Chen had produced for the purposes of

the litigation. *Thornton Affidavit, ¶¶ 3-6.* She further states that between September 3, 2019, and September 29, 2019, she did not "review the partisan make-up or review political information for the county groupings for the remedial plan." *Id., ¶ 7.*

Legislative Defendants respond to Plaintiffs' objection by stating, in summary, that the fact that outside personnel would be verifying that the data received by the General Assembly were identical to the data Dr. Chen had utilized during the liability phase of the litigation was discussed in public redistricting committee meetings (*see, e.g. Tr. S. Redistricting Comm., Sept. 10, 2019, at 50:10-15).* Moreover, Legislative Defendants argue, the authentication of data is not "assistance in the map-drawing process." *Reply Brief at 10.* The Court agrees. There is no direct evidence contradicting the affidavits of Mr. Bensen and Dr. Thornton, and taking their sworn testimony as true, the Court concludes that their assistance in authenticating and verifying data does not violate the specific mandate of the Court. As such, the Court overrules the objections of Plaintiffs to the extent the objections challenge the General Assembly's compliance with the mandate of the Court that Legislative Defendants obtain prior approval of the Court to retain outside individuals to assist with the remedial process.

II. Compliance with the Substantive Requirements of the September 3, 2019, Judgment of the Court.

The Court, in its Judgment of September 3, 2019, required that any remedial maps enacted by the General Assembly comport with a number of substantive criteria. The criteria are as follows:

> a. Equal Population. The mapmakers shall use the 2010 federal decennial census data as the sole basis of population for drawing legislative districts in the Remedial Maps. The number of persons in each legislative district shall comply with the +/- 5 percent population deviation standard established by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E. 2d 377 (2002).

b. Contiguity. Legislative districts shall be comprised of contiguous territory. Contiguity by water is sufficient.

c. County Groupings and Traversals. The mapmakers shall draw legislative districts in the Remedial Maps within county groupings as required by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E. 2d 377 (2002) (*Stephenson I*), *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*), *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*) and *Dickson v. Rucho*, 368 N.C. 481, 781 S.E.2d 460 (2015) (*Dickson II*). Within county groupings, county lines shall not be traversed except as authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*. The county groupings utilized in the 2017 House and Senate Maps shall be utilized in the Remedial Maps.

d. Compactness. The mapmakers shall make reasonable efforts to draw legislative districts in the Remedial Maps that improve the compactness of the districts when compared to districts in place prior to the 2017 Enacted Legislative Maps. In doing so, the mapmaker may use as a guide the minimum Reock ("dispersion") and Polsby-Popper ("perimeter") scores identified by Richard H. Pildes and Richard G. Neimi in *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483 (1993).

e. Fewer Split Precincts. The mapmakers shall make reasonable efforts to draw legislative districts in the Remedial Maps that split fewer precincts when compared to districts in place prior to the 2017 Enacted Legislative Maps.

f. Municipal Boundaries. The mapmakers may consider municipal boundaries when drawing legislative districts in the Remedial Maps.

g. Voting Rights Act. Any Remedial Maps must comply with the VRA and other federal requirements concerning the racial composition of districts.

h. Incumbency Protection. The mapmakers may take reasonable efforts to not pair incumbents unduly in the same election district.

With respect to each criteria (a) through (f), as to the maps as a whole, there is no evidence that the General Assembly did not comply, and Plaintiffs do not object to the Remedial Maps as a whole on these grounds. As such, the Court finds and concludes that the Remedial House and Senate Maps, as a whole, comport with the legal requirements of

equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of compactness, fewer split precincts, and consideration of municipal boundaries when compared to the districts in place prior to the 2017 Enacted Maps.

a. Mandate that the Remedial Maps comply with the VRA and other federal requirements concerning the racial composition of districts.

The Court further finds and concludes that the Remedial Maps comply with criterion (g) above, namely that the Remedial Maps comply with the Voting Rights Act and other federal requirements concerning the racial composition of districts. In the Court's Judgment of September 3, 2019, the Court stated that any parties "may submit briefing, which may attach expert analysis, on whether the *Gingles* factors are met in particular counties and county groupings and/or the minimum BVAP needed in particular counties and county groupings for African Americans to be able to elect candidates of their choice to the General Assembly." Plaintiffs submitted such a brief, including expert analysis of Jowei Chen, Ph.D. (report dated September 17, 2019) and Lisa Handley, Ph.D. (report dated September 17, 2019). No other parties submitted briefs or expert analysis on this issue within the time allowed by the Court. The Court finds the analysis performed by Dr. Chen and Dr. Handley to be credible and adopts their conclusions. A separate Order shall be issued by this Court detailing the findings of fact that support these conclusions.

b. Mandate that the General Assembly may take reasonable efforts to not pair incumbents unduly in the same election district.

In its September 3, 2019, Judgment, the Court adopted the criterion that the General Assembly "may take reasonable efforts to not pair incumbents unduly in the same election district." The Court recognizes that this criterion permits a degree of legislative discretion to enter into the remedial process and, indeed, a degree of political discretion. It

is not surprising, therefore, that each of Plaintiffs' challenges to the enacted House Remedial Maps – namely, their objections to five of fourteen House county groups redrawn pursuant to the Court's Judgment – arise largely as a result of the exercise of this legislative discretion to unpair incumbent legislators who had been paired by Dr. Chen's simulated maps.

In applying this criterion, the Court finds noteworthy and appropriate that the House Redistricting Committee recognized that changes made to base maps to unpair incumbents ought to be "extremely narrow, tailored, precise, and thoughtful." *Video record of House Redistricting Committee, Sept. 12, 2019, 3:24:19-3:26.* Accordingly, the Committee adopted the following directives: (1) no changes would be made to the House base maps derived from Dr. Chen's dataset where no incumbent members were paired; (2) where incumbent members were paired in a single district, the paired district and the corresponding empty district would be the sole districts altered to unpair the paired members, and those alterations should be as few as possible; and, (3) a legislator who informed the Committee that he or she did not intend to run for re-election would not be treated as an incumbent for the purposes of unpairing. *See, Legislative Defendants' Memo Re House and Senate Remedial Maps, at 16 and n. 3; Video record, Sept. 12, 2019, 3:07:00-3:09:44; 3:22:48; 3:24:19-3:29:00.* These directives were applied uniformly by the House Redistricting Committee to all county groupings under its consideration. The Court finds and concludes that these directives reflect a reasonable effort by members of the Committee to preserve the nonpartisan and traditional redistricting criteria optimized in Dr. Chen's maps and are therefore consistent with the Court's mandate.

In its September 3, 2019, Judgment, the Court observed that "[a]t its most basic level, partisan gerrymandering is defined as: 'the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power'" *Ariz.*

State Legislature v. Ariz. Indep. Redistricting Comm'n, 135 S. Ct. 2652, 2658 (U.S. 2016). With this in mind, the Court finds it significant that the House Redistricting Committee voted unanimously to adopt twelve of the fourteen remedial county groupings under its consideration and one other grouping received only one "no" vote. Only one county grouping, the Robeson-Columbus-Pender county grouping, provoked disagreement among the Committee members. The House Redistricting Committee is comprised of seventeen members – seven Democrats and ten Republicans. The Speaker Pro Tempore, a Republican, participated as an *ex officio* voting member as well. The Court finds and concludes that unanimous or nearly unanimous consensus across party lines within the Committee for thirteen of fourteen remedial county groupings is significant evidence that, for at least those thirteen groupings, partisan gerrymandering has been significantly abated.

Plaintiffs, in their *Objections to the Remedial Maps*, challenge five county groupings in the House Remedial Maps. Four of the groupings challenged were altered from Dr. Chen's base map to unpair incumbents. One county grouping, Brunswick – New Hanover, is challenged by Plaintiffs because the General Assembly did *not* unpair incumbents. The Court considers each of Plaintiffs' objections to these five county groupings in the House Remedial Map.

i. Brunswick-New Hanover County Grouping (HD-17, HD-18, HD-19, and HD-20)

The base map for this county grouping, which was selected in accordance with the methodology described above from Dr. Chen's simulated maps, paired two Republican incumbents in House District 20: Representative Holly Grange and Representative Ted Davis. The base map had the highest Reock score (*i.e.*, most compact) of all possible simulations, split no VTDs, and split the lowest number of municipalities (one). The

simulated map created three Republican districts and one Democratic district, as did every other simulated map generated by Dr. Chen's Set 1 algorithm for that county grouping except one, which created four Republican districts.

Plaintiffs object to adoption of this county grouping map because the General Assembly did not unpair Rep. Grange and Rep. Davis in HD-20. Plaintiffs do not propose an alternative map that unpairs the incumbents in HD-20, but suggest that had Rep. Grange and Rep. Davis been unpaired, Democratic voters might have been distributed more efficiently in HD-18, -19 and -20, presumably making one of the three Republican districts more competitive for a Democratic candidate. By failing to unpair Rep. Grange and Rep. Davis, Plaintiffs contend, Legislative Defendants perpetuated a partisan gerrymander in this county grouping.

Rep. Grange, however, announced her intention to run for Governor in 2020 several months prior to the drafting of the Remedial Map. Although Rep. Grange initially asked the House Redistricting Committee that she be unpaired from Rep. Davis, she later withdrew her request. *Tr. House Floor, Sept. 13, 2019, Vol. II at 560:15-561:5.* Because a person cannot file for both a House seat and the Office of Governor, it was reasonable for the General Assembly to disregard Rep. Grange's incumbency and treat the county grouping as one with no paired incumbents. Therefore, consistent with the directives adopted by the House Redistricting Committee, no changes were made to the simulated base map for this county grouping. The base map for Brunswick-New Hanover, with no alterations, was unanimously adopted by the bipartisan House Redistricting Committee.

In weighing all of these factors, the Court finds and concludes that the Brunswick-New Hanover remedial districts were not adopted in violation of the Court's mandate because: (1) the remedial map for the Brunswick-New Hanover county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably

comply with its mandate; (2) the districts within the county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of compactness, fewer split precincts, and consideration of municipal boundaries; (3) the decision not to alter the base map was consistent with a self-imposed limitation on the Redistricting Committee's discretion that the Court has found to be appropriate and uniformly applied; (4) no alternative map that better achieved these objectives was offered by Plaintiffs; and, (5) the remedial county grouping map was adopted unanimously by the House Redistricting Committee. Therefore, the objection of Plaintiffs to this county grouping is denied.

ii. Guilford County Grouping (HD-58, HD-59 and HD-60)

The Guilford County grouping contains six total House districts, but three of these districts (HD-57, HD-61, and HD-62) are frozen in both the computer-simulated plans as well as in the enacted House Remedial Map pursuant to the Court's September 3, 2019, Judgment. The base map for this county group, which was selected from Dr. Chen's simulated maps in accordance with the methodology described above, paired two incumbents in House District 59. To unpair these two incumbents, one VTD from HD-59 was moved in HD-58. No other changes were required. The House Redistricting Committee unanimously adopted the Guilford County remedial map.

Plaintiffs object to the Guilford County remedial map adopted by the General Assembly because, they contend, in the name of unpairing incumbents, the House substantially recreated one of the invalidated 2017 districts in this grouping (HD-58), rendering this grouping a statistical outlier with respect to compactness. Plaintiffs do not contend that the alteration to the base map rendered the county grouping a statistical outlier with respect to partisanship, and the change had no effect on the number of split

VTDs (0) or split municipalities (0). Plaintiffs do not propose an alternative map that unpairs the incumbents in HD-59.

In weighing all of these factors, the Court finds and concludes that the Guilford county remedial districts were not adopted in violation of the Court's mandate because: (1) the remedial map for the Guilford county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably comply with its mandate; (2) the districts within the county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of fewer split precincts, and consideration of municipal boundaries; (3) the decision to unpair the incumbents in HD-59 was achieved by as few alterations as possible (in this case, one VTD), which was consistent with a self-imposed limitation on the Redistricting Committee's discretion that the Court has found to be appropriate and uniformly applied; (4) the modest reduction in compactness of HD-58 and HD-59 to achieve unpairing of incumbents was not unreasonable; (5) no alternative map that better achieved these objectives was offered by Plaintiffs; and, (6) the remedial county grouping map was adopted unanimously by the House Redistricting Committee. Therefore, the objection of Plaintiffs to this county grouping is denied.

iii. Cleveland-Gaston County Grouping (HD-108, HD-109, HD-110 and HD-111)

The base map for the Cleveland-Gaston county grouping, which was selected from Dr. Chen's simulated maps in accordance with the methodology described above, paired two incumbents in House District 111. To unpair these two incumbents, a total of thirteen VTDs were moved from the base plan and one VTD was split. Every simulated map created by Dr. Chen's algorithm for this county grouping results in four Republican districts, three of which have more than 60% Republican vote share and the fourth has more than 55%

Republican vote share in all but a handful of the 1000 maps simulated by Dr. Chen. The House Redistricting Committee unanimously adopted the Cleveland-Gaston county grouping remedial map.

Plaintiffs object to the Cleveland-Gaston county grouping remedial map adopted by the General Assembly because, they contend, the alterations made to unpair incumbents return this county grouping to the prior gerrymander by cracking the municipality of Gastonia into three districts. Plaintiffs point out that the net partisan effect is a swing downward in Democratic vote share in HD-108 from 41.24% to 35.62%, and a swing upward in Democratic vote share in HD-111 from 26.63% to 31.10%. Plaintiffs also establish the districts in the county grouping are made less compact by the alterations made to the base map. Plaintiffs do not propose an alternative map that unpairs the incumbents in HD-111.

Legislative Defendants contend the choices made by the House Redistricting Committee to alter the map to unpair incumbents required a policy decision to either split Gastonia into three districts or to split many other smaller municipalities in northern and western Gaston County. Ultimately, by altering the base map as enacted, no other municipalities were split to achieve the unpairing of the incumbents in HD-111. Legislative Defendants further note that there is no incentive to engage in partisan gerrymandering in this county grouping because of the heavy Republican concentration throughout the entire grouping.

In weighing all of these factors, the Court finds and concludes that the Cleveland-Gaston county grouping remedial districts were not adopted in violation of the Court's mandate because: (1) the remedial map for the Cleveland-Gaston county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably comply with its mandate; (2) the districts within the county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county

grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of fewer split precincts, and consideration of municipal boundaries; (3) the decision to unpair the incumbents in HD-111 was achieved by alterations only to the district with the paired incumbents (HD-111) and to the district with no incumbent (HD-108), which was consistent with a self-imposed limitation on the Redistricting Committee's discretion that the Court has found to be appropriate and uniformly applied; (4) the division of Gastonia so as to avoid the division of other municipalities to achieve unpairing of incumbents was not unreasonable; (5) no alternative map that better achieved these objectives was offered by Plaintiffs; (6) no motive to disadvantage Democratic voters can be discerned in the alterations made; and, (7) the remedial county grouping map was adopted unanimously by the House Redistricting Committee. Therefore, the objection of Plaintiffs to this county grouping is denied.

iv. Forsyth-Yadkin County Grouping (HD-71, HD-72, HD-73, HD-74 and HD-75)

The base map for the Forsyth-Yadkin county grouping, which was selected from Dr. Chen's simulated maps in accordance with the methodology described above, paired two incumbents in House District 75 (one Democrat and one Republican) and two incumbents in House District 72 (one Democrat and one Republican).[3] In HD-75, the incumbents each resided two VTDs away from the nearest border of the base district. In order to attempt to unpair the four incumbents, the bipartisan Forsyth-Yadkin House delegation proposed to alter the base map by moving four VTDs in HD-75, and one VTD in HD-72. During the course of the discussions amongst the members of the delegation at the mapmaking terminal, which was carried out in full public view, Representative Donny Lambeth, the

[3] The House Districts were renumbered in the enacted Remedial House Maps: HD-71 to HD-72, HD-72 to HD-74, HD-74 to HD-75 and HD-75 to HD-71. For consistency, the Court uses the original district numbers in this discussion.

Republican incumbent paired in HD-75, asked to "take the 75th out to Kernersville because I've represented it in the past." *Video Record of House Redistricting Committee, Sept. 12, 2019, 7:12:00-10.* Rep. Lambeth's request was implemented by an alteration to the base map. As a result, two VTDs were removed from HD-75 and added to HD-74 (which includes Kernersville) and, to balance the population between the two districts, two VTDs from HD-74 were moved to HD-75. The base map for the Forsyth-Yadkin county grouping, as altered to unpair four incumbents, was unanimously adopted by the House Redistricting Committee.

Plaintiffs object to the Forsyth-Yadkin county grouping remedial map adopted by the General Assembly because, they contend, the alterations made to unpair incumbents were the result of partisan gerrymandering and resulted in districts that preserved cores of House districts that were declared unconstitutional. Plaintiffs show that as a result of altering four VTDs to unpair the incumbents in HD-75, the Democratic vote share in HD-75 increased from 69.09% to 71.37%, while in HD-74, the Democratic vote share decreased from 39.72% to 36.24%. This, Plaintiffs contend, is evidence of packing and cracking condemned by the Court in its September 3, 2019, Judgment. The alterations further had the effect of decreasing compactness, as compared to the base county grouping map, and split two more municipalities than the base map. Plaintiffs do not propose an alternative map that unpairs the incumbents in HD-75 and HD-72.

While there is no evidence that election result data was used by the Forsyth-Yadkin legislative delegation as they decided how to propose to unpair the incumbents in HD-75, it is reasonable to assume that the incumbents paired in HD-75, Rep. Lambeth (Republican) and Rep. Evelyn Terry (Democrat), both of whom have served in the House for four terms, knew from their extensive political experience that the two VTDs that were moved to place Rep. Lambeth into the Republican leaning HD-74 were two Republican-leaning VTDs, and

conversely, the two VTDs moved from HD-74 into HD-75 to rebalance the population were two Democratic-leaning VTDs. It is also reasonable to assume that Rep. Lambeth and Rep. Terry knew that the alternative means by which they could be unpaired would be to place Rep. Terry, the Democrat, into a safe Republican district, and to leave Rep. Lambeth, the Republican, in a safe Democratic district.

The Court concurs that the decision to alter HD-74 and HD-75 so as to place Rep. Lambeth in HD-74 and leave Rep. Terry in HD-75 was one that was likely made with partisan considerations in mind, although not with past election data on hand. The Court further recognizes that this is an example of where the Court's mandate that allows "reasonable efforts to not pair incumbents unduly in the same election district" permits, as noted above, a degree of legislative discretion to enter into the remedial process and, indeed, a degree of political discretion. And the Court concurs that traditional redistricting criteria of compactness and preserving municipal boundaries were subordinated to unpairing incumbents.

However, the constitutional defect at issue in this litigation is extreme partisan gerrymandering which, as the United States Supreme Court has said is, "[a]t its most basic level . . . the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power." *Ariz. State Legislature,* 135 S. Ct. at 2658. Here, the Court cannot conclude that the choice of how to unpair Rep. Lambeth and Rep. Terry was done to subordinate Democrats or entrench the Republican party in power. The fact that the alterations inured to the mutual benefit of both Democrats and Republicans in a plan that was proposed to the House Redistricting Committee by the bipartisan Forsyth-Yadkin House delegation, and that the plan was unanimously adopted by the full bipartisan Committee, shows that these alterations were not the result of extreme partisan gerrymandering.

In weighing all of these factors, the Court finds and concludes that the Forsyth-Yadkin county grouping remedial districts were not adopted in violation of the Court's mandate because: (1) the remedial map for the Forsyth-Yadkin county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably comply with its mandate; (2) the districts within the county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of fewer split precincts, and consideration of municipal boundaries; (3) the decision to unpair the incumbents in HD-71, HD-72, HD-74, and HD-75 was achieved by alterations only to the districts with the paired incumbents (HD-75 and HD-72) and the districts with no incumbent (HD-74 and HD-71), and by making the fewest alterations possible, which were consistent with self-imposed limitations on the Redistricting Committee's discretion that the Court has found to be appropriate and uniformly applied; (4) the decision to place Rep. Lambeth in HD-74 and leave Rep. Terry in HD-75 was not unreasonable; (5) no alternative map that better achieved these objectives was offered by Plaintiffs; (6) no motive to disadvantage Democratic voters can be discerned in the alterations made; and, (7) the remedial county grouping map was adopted unanimously by the House Redistricting Committee. Therefore, the objection of Plaintiffs to this county grouping is denied.

v. Columbus-Pender-Robeson County Grouping (HD-16, HD-46 and HD-47)

The base map for the Columbus-Pender-Robeson county grouping, which was selected from Dr. Chen's simulated maps in accordance with the methodology described above, paired two incumbents in HD-16. To unpair these two incumbents, eleven VTDs were altered from the base plan. Of the simulated maps created by Dr. Chen's algorithm for this county grouping, 99.5% of those simulated maps result in two Democratic districts

and one Republican district, and both the base map and enacted Remedial Map for this county grouping have this same ratio.

Plaintiffs object to the Columbus-Pender-Robeson county grouping remedial map adopted by the General Assembly because, they contend, the alterations made to unpair incumbents was an attempt to dilute Democratic voters in HD-46 by moving the Town of Whiteville VTDs into HD-16, thereby making HD-46 more competitive for Republicans. Plaintiffs show that the alterations to the base map resulted in a decrease of the Democratic vote share in HD-46 from 53.30% to 51.37% and an increase in the Democratic vote share in HD-16 from 39.44% to 40.64%.

This county grouping was the subject of extensive negotiation among the members of the House Redistricting Committee, and extensive discussion on the House Floor. Several amendments were offered by Representative Darren Jackson (D-Wake), which failed. The Columbus-Pender-Robeson county grouping remedial map was adopted by the House Redistricting Committee by a divided vote. Plaintiffs have not proposed an alternative map to the Court.

Legislative Defendants contend each possible alternative for unpairing the incumbents in HD-46 and HD-16 would have resulted in municipal splits and VTD splits. They contend that the policy decision of the Committee to preserve traditional redistricting criteria was a sound decision and should not be altered by the Court. The remedial maps proposed by Rep. Jackson would divide one municipality, Tabor City, or, alternatively, divide two VTDs. The enacted Remedial Map for the Columbus-Pender-Robeson county grouping splits no municipalities and splits no VTDs. The compactness scores, when comparing the base map to the enacted Remedial Map, are essentially the same.

In weighing all of these factors, the Court finds and concludes that the Columbus-Pender-Robeson county grouping remedial districts were not adopted in violation of the Court's mandate because: (1) the remedial map for the Columbus-Pender-Robeson county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably comply with its mandate; (2) the districts within the county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of compactness, fewer split precincts, and consideration of municipal boundaries; (3) the decision unpair the incumbents in HD-16 was achieved by alterations only to the district with the paired incumbents (HD-16) and the district with no incumbent (HD-46), which were consistent with a self-imposed limitation on the Redistricting Committee's discretion that the Court has found to be appropriate and uniformly applied; (4) the decision to place the Town of Whiteville in one district, and the Town of Chadbourn in another was not an unreasonable exercise of the discretion in the General Assembly's efforts to unpair incumbents while respecting traditional redistricting criteria; and, (5) no alternative map that better achieved these objectives was offered by Plaintiffs. Therefore, the objection of Plaintiffs to this county grouping is denied.

III. Senate Remedial Maps

Despite receiving no objections from Plaintiffs to the enacted Senate Remedial Maps, the Court has examined the seven county groupings and twenty-one Senate districts that were redrawn in the Senate remedial process. After reviewing the record of the Senate proceedings, the Court finds and concludes that each Senate district redrawn and enacted in the Remedial Maps comports with the Court's mandate because: (1) the Remedial Map for each Senate county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably comply with its mandate; (2) the districts

within each county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of compactness, fewer split precincts, and consideration of municipal boundaries; (3) all decisions to alter the base maps were narrow, reasonable, and received broad bipartisan support; (4) the entire process was conducted in full public view; and, (5) the Senate Remedial Maps were adopted by the Senate with broad bipartisan support.

BASED UPON THE FOREGOING findings and conclusions, the Court ORDERS that the House redistricting plan, N.C. Sess. Laws 2019-220 (House Bill 1020) enacted into law on September 17, 2019, and the Senate redistricting plan, N.C. Sess. Laws 2019-219 (Senate Bill 692) enacted into law on September 17, 2019, are hereby APPROVED by the Court.

SO ORDERED, this the 28th day of October, 2019.

/s/ Paul C. Ridgeway

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the persons indicated below by emailing a copy thereof to the address below, in accordance with the March 13, 2019 Case Management Order:

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This the 28th day of October, 2019.

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Exhibit 5

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 012667

REBECCA HARPER, *et al.*
Plaintiffs,

v.

Representative DAVID R. LEWIS, in his official capacity as Senior Chairman of the House Standing Committee on Redistricting, *et al.*,
Defendants.

ORDER ON INJUNCTIVE RELIEF

THIS MATTER came on for hearing on October 24, 2019, before the undersigned three-judge panel upon Plaintiffs' Motion for Preliminary Injunction, filed September 30, 2019. All adverse parties to this action received the notice required by Rule 65 of the North Carolina Rules of Civil Procedure.

Procedural History

On February 19, 2016, the current North Carolina congressional districts (hereinafter "2016 congressional districts") were established by an act of the General Assembly, N.C. Sess. Laws 2016-1 (hereinafter "S.L. 2016-1"), as a result of litigation in federal court over the congressional districts originally drawn in 2011. On September 27, 2019, Plaintiffs filed a verified complaint in Superior Court, Wake County, seeking a declaration that the 2016 congressional districts violate 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. Plaintiffs seek to enjoin the future use of the 2016 congressional districts. On September 30, 2019, this action was assigned to the undersigned panel by the Chief Justice of the Supreme Court of North Carolina.

On September 30, 2019, Plaintiffs filed a motion for a preliminary injunction seeking to bar Defendants from administering, preparing for, or moving forward with the 2020 primary and general elections in North Carolina for the United States House of Representatives using the 2016 congressional districts. Plaintiffs also filed a motion for expedited briefing and resolution of Plaintiffs' motion for a preliminary injunction. On October 2, 2019, Defendants North Carolina State Board of Elections and its members (collectively hereinafter "State Defendants") notified the Court that, among other things, candidate filing for congressional primaries is set to begin on December 2, 2019. On October 9, 2019, a motion to intervene was filed by three incumbent Congressional Representatives seeking to intervene in this action in both their capacity as Representatives and as residents and voters in three of the congressional districts challenged in Plaintiffs' verified complaint.

On October 10, 2019, the Court granted in part Plaintiffs' motion for expedited briefing, establishing a briefing schedule on Plaintiff's motion for preliminary injunction and setting for hearing Plaintiffs' motion for preliminary injunction and the motion to intervene.

On October 14, 2019, Defendants Representative David R. Lewis, Senator Ralph E. Hise, Jr., Speaker Timothy K. Moore, President Pro Tempore Philip E. Berger, Senator Warren Daniel, and Senator Paul Newton (hereinafter "Legislative Defendants") removed this case to the United States District Court for the Eastern District of North Carolina. On October 21, 2019, State Defendants and Legislative Defendants each filed in federal court a brief in response to Plaintiffs' motion for preliminary injunction in accordance with the Court's October 10, 2019 order. Plaintiffs notified and provided to the Court the

Defendants' briefs on October 22, 2019, and, on the same date, the federal court remanded this case to state court.

On October 22, 2019, the Congressional Representatives seeking to intervene in this case submitted a brief in response to Plaintiffs' motion for preliminary injunction. On October 23, 2019, Plaintiffs filed a motion to strike the Congressional Representatives' response brief, the Congressional Representatives submitted a response brief to Plaintiffs' motion, and Plaintiffs submitted a brief in reply to that response brief. Additionally, on October 23, 2019, Plaintiffs submitted a brief in reply to Legislative Defendants' brief in response to Plaintiffs' motion for preliminary injunction.

These matters came on to be heard on October 24, 2019, during which time the Court granted the Congressional Representatives (hereinafter "Intervenor-Defendants") permissive intervention and notified the parties that Intervenor-Defendants' response brief would be considered by the Court in its discretion. Plaintiffs' motion for preliminary injunction was taken under advisement.

The Court, having considered the pleadings, motions, briefs and arguments of the parties, supplemental materials submitted by the parties, pertinent case law, and the record proper and court file, hereby finds and concludes, for the purposes of this Order, as follows.

Political Question Doctrine

Legislative Defendants contend Plaintiffs' claims—challenges to the validity of an act of the General Assembly that apportions or redistricts the congressional districts of this State—present non-justiciable political questions. Such claims are within the statutorily-provided jurisdiction of this three-judge panel, N.C.G.S. § 1-267.1, and the Court concludes that partisan gerrymandering claims specifically present justiciable issues, as

distinguished from non-justiciable political questions. Such claims fall within the broad, default category of constitutional cases our courts are empowered and obliged to decide on the merits, and not within the narrow category of exceptional cases covered by the political question doctrine. Indeed, as the Supreme Court of the United States recently explained, partisan gerrymandering claims are not "condemn[ed] . . . to echo in the void," because although the federal courthouse doors may be closed, "state constitutions can provide standards and guidance for state courts to apply." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019).[1]

Standing of Plaintiffs

Legislative Defendants and Intervenor-Defendants contend that Plaintiffs lack standing to pursue their claims in this action. The North Carolina Constitution, however, provides: "All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay." N.C. Const. art. I, § 18. "[B]ecause North Carolina courts are not constrained by the 'case or controversy' requirement of Article III of the United States Constitution, our State's standing jurisprudence is broader than federal law." *Davis v. New Zion Baptist Church*, 811 S.E.2d 725, 727 (N.C. Ct. App. 2018) (quotation marks omitted); *accord Goldston v. State*, 361 N.C. 26, 35, 637 S.E.2d 876, 882 (2006) ("While federal standing doctrine can be instructive as to general principles . . . and for comparative analysis, the nuts and bolts of North Carolina standing doctrine are not coincident with federal standing doctrine.").

[1] Likewise, Legislative Defendants' and Intervenor-Defendants' contentions that federal law—*i.e.*, the Elections clause and Supremacy clause of the United States Constitution—serves as a bar in state court to Plaintiffs' action seeking to enjoin the 2016 congressional districts on state constitutional grounds is equally unavailing. Our state courts have jurisdiction to hear and decide claims that acts of the General Assembly apportioning or redistricting the congressional districts of this State run afoul of the North Carolina Constitution.

The North Carolina Supreme Court has broadly interpreted Article I, § 18 to mean that "[a]s a general matter, the North Carolina Constitution confers standing on those who suffer harm." *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 642, 669 S.E.2d 279, 281 (2008). The "gist of the question of standing" under North Carolina law 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." *Goldston*, 361 N.C. at 30, 637 S.E.2d at 879 (quoting *Stanley v. Dep't of Conservation & Dev.*, 284 N.C. 15, 28, 199 S.E.2d 641, 650 (1973)). Although the North Carolina Supreme Court "has declined to set out specific criteria necessary to show standing in every case, [it] has emphasized two factors in its cases examining standing: (1) the presence of a legally cognizable injury; and (2) a means by which the courts can remedy that injury." *Davis*, 811 S.E.2d at 727-28.

Plaintiffs in this case have standing to challenge the congressional districts at issue because Plaintiffs have shown a likelihood of "a personal stake in the outcome of the controversy," *Goldston*, 361 N.C. at 30, 637 S.E.2d at 879, and a likelihood that the 2016 congressional districts cause them to "suffer harm," *Mangum*, 362 N.C. at 642, 669 S.E.2d at 281.

Applicable Legal Standards

At its most basic level, partisan gerrymandering is defined as: "the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2658 (U.S. 2016). Partisan gerrymandering operates through vote dilution—the devaluation of one citizen's vote as compared to others. A mapmaker draws district lines to

"pack" and "crack" voters likely to support the disfavored party. *See generally Gill v. Whitford*, 138 S. Ct. 1916 (2018).

Plaintiffs claim the 2016 congressional districts are partisan gerrymanders that violate 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. Extreme partisan gerrymandering violates each of these provisions of the North Carolina Constitution. *See Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 298-331 (N.C. Sup. Ct. Sept. 3, 2019).

Free Elections Clause

The North Carolina Constitution, in the Declaration of Rights, Article I, § 10, declares that "[a]ll elections shall be free." Our Supreme Court has long recognized the fundamental role of the will of the people in our democratic government: "Our government is founded on the will of the people. Their will is expressed by the ballot." *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875). In particular, our Supreme Court has directed that in construing provisions of the Constitution, "we should keep in mind that this is a government of the people, in which the will of the people--the majority--legally expressed, must govern." *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 428, 26 S.E. 638, 638 (1897) (citing N.C. Const. art. I, § 2). Therefore, our Supreme Court continued, because elections should express the will of the people, it follows that "all acts providing for elections, should be liberally construed, that tend to promote a fair election or expression of this popular will." *Id.* "[F]air and honest elections are to prevail in this state." *McDonald v. Morrow*, 119 N.C. 666, 673, 26 S.E. 132, 134 (1896). Moreover, in giving meaning to the Free Elections Clause, this Court's construction of the words contained therein must

therefore be broad to comport with the following Supreme Court mandate: "We think the object of all elections is to ascertain, fairly and truthfully, the will of the people--the qualified voters." *Hill v. Skinner*, 169 N.C. 405, 415, 86 S.E. 351, 356 (1915) (quoting *R. R. v. Comrs.*, 116 N.C. 563, 568, 21 S.E. 205, 207 (1895)).

As such, 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. In contrast, extreme 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. *See Common Cause*, 18-CVS-014001, slip. op. at 298-307.

Equal Protection Clause

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. Our Supreme Court has held that North Carolina's Equal Protection Clause protects "the fundamental right of each North Carolinian to *substantially equal voting power*." *Stephenson v. Bartlett*, 355 N.C. 354, 379, 562 S.E.2d 377, 394 (2002) (emphasis added). "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 (quoting *Northampton Cnty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 747, 392 S.E.2d 352, 356 (1990) (emphasis added)).

Although the North Carolina Constitution provides greater protection for voting rights than the federal Equal Protection Clause, our courts use the same test as federal courts in evaluating the constitutionality of challenged classifications under an equal

protection analysis. *Duggins v. N.C. State Bd. of Certified Pub. Accountant Exam'rs*, 294 N.C. 120, 131, 240 S.E.2d 406, 413 (1978); *Richardson v. N.C. Dep't of Corr.*, 345 N.C. 128, 134, 478 S.E.2d 501, 505 (1996). Generally, this test has three parts: (1) intent, (2) effects, and (3) causation. First, the plaintiffs challenging a districting plan must prove that state officials' "predominant purpose" in drawing district lines was to "entrench [their party] in power" by diluting the votes of citizens favoring their rival. *Ariz. State Legis.*, 135 S. Ct. at 2658. Second, the plaintiffs must establish that the lines drawn in fact have the intended effect by "substantially" diluting their votes. *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 861 (M.D.N.C. 2018). Finally, if the plaintiffs make those showings, the State must provide a legitimate, non-partisan justification (*i.e.*, that the impermissible intent did not cause the effect) to preserve its map. *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting).

Generally, partisan gerrymandering runs afoul of the State's obligation to provide all persons with equal protection of law because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party. *Cf. Lehr v. Robertson*, 463 U.S. 248, 265, 103 S. Ct. 2985 (1983) ("The concept of equal justice under law requires the State to govern impartially.")

As such, extreme partisan gerrymandering runs afoul of the North Carolina Constitution's guarantee that no person shall be denied the equal protection of the laws. *See Common Cause*, 18-CVS-014001, slip. op. at 307-17.

Freedom of Speech and Freedom of Assembly Clauses

The Freedom of Speech Clause in Article I, § 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 be restrained." The Freedom of Assembly Clause in Article I, § 12

provides, in relevant part, that "[t]he people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances."

"There is no right more basic in our democracy than the right to participate in electing our political leaders"—including, of course, the right to "vote." *McCutcheon v. FEC*, 572 U.S. 185, 191, 134 S. Ct. 1434, 1440 (2014) (plurality op.). "[P]olitical belief and association constitute the core of those activities protected by the First Amendment." *Elrod v. Burns*, 427 U.S. 347, 356, 96 S. Ct. 2673, 2681 (1976). In North Carolina, the right to assembly encompasses the right of association. *Feltman v. City of Wilson*, 238 N.C. App. 246, 253, 767 S.E.2d 615, 620 (2014). Moreover, "citizens form parties to express their political beliefs and to assist others in casting votes in alignment with those beliefs." *Libertarian Party of N.C. v. State*, 365 N.C. 41, 49, 707 S.E.2d 199, 204-05 (2011). And "for elections to express the popular will, the right to assemble and consult for the common good must be guaranteed." John V. Orth, *The North Carolina State Constitution* 48 (1995).

It is "axiomatic" that the government may not infringe on protected activity based on the individual's viewpoint. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828, 115 S. Ct. 2510, 2516 (1995). The guarantee of free expression "stands against attempts to disfavor certain subjects or viewpoints." *Citizens United v. FEC*, 558 U.S. 310, 340, 130 S. Ct. 876, 898 (2010). Viewpoint discrimination is *most* insidious where the targeted speech is political; "in the context of political speech, . . . [b]oth history and logic" demonstrate the perils of permitting the government to "identif[y] certain preferred speakers" while burdening the speech of "disfavored speakers." *Id.* at 340-41, 130 S. Ct. at 899.

The government may not burden the "speech of some elements of our society in order to enhance the relative voice of others" in electing officials. *McCutcheon*, 572 U.S. at 207, 134 S. Ct. at 1450; *see also Winborne v. Easley*, 136 N.C. App. 191, 198, 523 S.E.2d 149, 154 (1999) ("political speech" has "such a high status" that free speech protections have their "fullest and most urgent application" in this context (quotations marks omitted)). The government also may not retaliate based on protected speech and expression. *See McLaughlin*, 240 N.C. App. at 172, 771 S.E.2d at 579-80. Courts carefully guard against retaliation by the party in power. *See Elrod*, 427 U.S. at 356, 96 S. Ct. at 2681; *Branti v. Finkel*, 445 U.S. 507, 100 S. Ct. 1287 (1980); *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 110 S. Ct. 2729 (1990). When patronage or retaliation restrains citizens' freedoms of belief and association, it is "at war with the deeper traditions of democracy embodied in the First Amendment." *Elrod*, 427 U.S. at 357, 96 S. Ct. at 2682 (quotation marks omitted).

When a legislature engages in extreme partisan gerrymandering, it identifies certain preferred speakers (e.g. Republican voters) while targeting certain disfavored speakers (e.g. Democratic voters) because of disagreement with the views they express when they vote. Then, disfavored speakers are packed and cracked into legislative districts with the aim of diluting their votes and, in cracked districts, ensuring that these voters are significantly less likely, in comparison to favored voters, to be able to elect a candidate who shares their views. Moreover, a legislature that engages in extreme partisan gerrymandering burdens the associational rights of disfavored voters to "instruct their representatives, and to apply to the General Assembly for redress of grievances." N.C. Const. art. I, § 12. As such, extreme partisan gerrymandering runs afoul of these important guarantees in the North Carolina Constitution of the freedom of speech and the right of the people of our State to assemble together to consult for their common good, to instruct their

representatives, and to apply to the General Assembly for redress of grievances. *See Common Cause*, 18-CVS-014001, slip. op. at 317-31.

Injunctive Relief

"It is well settled in this State that the courts have the power, and it is their duty in proper cases, to declare an act of the General Assembly unconstitutional—but it must be plainly and clearly the case. If there is any reasonable doubt, it will be resolved in favor of the lawful exercise of their powers by the representatives of the people." *City of Asheville v. State*, 369 N.C. 80, 87-88, 794 S.E.2d 759, 766 (2016) (quoting *Glenn v. Bd. of Educ.*, 210 N.C. 525, 529-30, 187 S.E. 781, 784 (1936)); *State ex rel. Martin v. Preston*, 325 N.C. 438, 449, 385 S.E.2d 473, 478 (1989).

"The purpose of a preliminary injunction is ordinarily to preserve the *status quo* pending trial on the merits. Its issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities." *State ex rel. Edmisten v. Fayetteville Street Christian School*, 299 N.C. 351, 357, 261 S.E.2d 908, 913 (1980). A preliminary injunction is an "extraordinary remedy" and will issue "only (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff's rights during the course of litigation." *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-60 (1983) (emphasis in original); *see also* N.C.G.S. § 1A-1, Rule 65(b). When assessing the preliminary injunction factors, the trial judge "should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted. In effect, the harm alleged by the plaintiff must satisfy a

standard of relative substantiality as well as irreparability." *Williams v. Greene,* 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (1978).

Status Quo

The 2011 congressional districts, enacted by the General Assembly on July 28, 2011, were struck down as unconstitutional racial gerrymanders and ordered to be redrawn on February 5, 2016. *See Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016). As a result, the 2016 congressional districts were then enacted by the General Assembly on February 19, 2016. N.C. Sess. Laws 2016-1. Plaintiffs' challenge to the 2016 congressional districts is a challenge to S.L. 2016-1 as enacted; hence, the status quo which Plaintiffs desire to preserve is the existing state of affairs prior to the enactment of S.L. 2016-1. Therefore, the existing state of affairs—*i.e.*, the status quo—prior to the enactment of S.L. 2016-1 was the period in which no lawful congressional district map for North Carolina existed absent the enactment of a remedial map by the General Assembly.

Plaintiffs are Likely to Succeed on the Merits

Quite notably in this case, the 2016 congressional districts have already been the subject of years-long litigation in federal court arising from challenges to the districts on partisan gerrymandering grounds. *See Rucho*, 318 F. Supp. 3d 777. As such, there is a detailed record of both the partisan intent and the intended partisan effects of the 2016 congressional districts drawn with the aid of Dr. Thomas Hofeller and enacted by the General Assembly. *See Rucho*, 318 F. Supp. 3d at 803-10 (detailing the history of the drawing and enactment of the 2016 congressional districts); *see also* Declaration of Elisabeth S. Theodore (attaching as exhibits a number of documents from the record in federal court); *Rucho,* 139 S. Ct. at 2491-93.

For instance, Dr. Hofeller was directed by legislators "to use political data — precinct-level election results from all statewide elections, excluding presidential elections, dating back to January 1, 2008 — in drawing the remedial plan," and was further instructed to "use that political data to draw a map that would maintain the existing partisan makeup of the state's congressional delegation, which, as elected under the racially gerrymandered plan, included 10 Republicans and 3 Democrats." *Rucho*, 318 F. Supp. 3d at 805 (internal citations omitted).

As another example, the redistricting committee approved several criteria for the map-drawing process, including the use of past election data (*i.e.*, "Political Data") and another labeled "Partisan Advantage," which was defined as: "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." *Id.* at 807. In explaining these two criteria, Representative David Lewis "'acknowledged freely that this would be a political gerrymander,' which he maintained was 'not against the law,'" *id.* at 808 (citation omitted), while also going on to state that he "propose[d] that [the Committee] draw the maps to give a partisan advantage to 10 Republicans and 3 Democrats because [he] d[id] not believe it[would be] possible to draw a map with 11 Republicans and 2 Democrats," *id.* (alterations in original).

Moreover, when drawing the 2016 congressional districts, Dr. Hofeller used "an aggregate variable he created to predict partisan performance" all while "constantly aware of the partisan characteristics of each county, precinct, and VTD." *Id.* at 805-06.

Finally, the redistricting committee, and ultimately the General Assembly as a whole, approved the 2016 congressional districts by party-line vote. *Id.* at 809.

In light of the above, this Court agrees with Plaintiffs and finds there is a substantial likelihood that Plaintiffs will prevail on the merits of this action by showing beyond a reasonable doubt that the 2016 congressional districts are extreme partisan gerrymanders in violation of 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.

Plaintiffs Will Suffer Irreparable Loss Unless the Injunction is Issued

The loss to Plaintiffs' fundamental rights guaranteed by the North Carolina Constitution will undoubtedly be irreparable if congressional elections are allowed to proceed under the 2016 congressional districts. As discussed above, Plaintiffs' have shown a likelihood of succeeding on the merits of their claims that these districts violate multiple fundamental rights guaranteed by the North Carolina Constitution. And as Defendants have emphasized, the 2020 primary elections for these congressional districts—the final congressional elections of this decade before the 2020 census and subsequent decennial redistricting—are set to be held in March of 2020 with the filing period beginning December 2, 2019.

As such, this Court finds that Plaintiffs are likely to sustain irreparable loss to their fundamental rights guaranteed by the North Carolina Constitution unless the injunction is issued, and likewise, issuance is necessary for the continued protection of Plaintiffs' fundamental rights guaranteed by the North Carolina Constitution during the course of the litigation.

A Balancing of the Equities Weighs in Favor of Plaintiffs

On one hand, Legislative Defendants contend a general harm to them will result from issuing the injunction because the General Assembly will be prevented from

effectuating an act of the General Assembly. On the other hand, Plaintiffs' and all North Carolinians' fundamental rights guaranteed by the North Carolina Constitution will be irreparably lost, as discussed above, if the injunction is not granted. Simply put, the people of our State will lose the opportunity to participate in congressional elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. The Court finds that this specific harm to Plaintiffs absent issuance of the injunction outweighs the potential harm to Legislative Defendants if the injunction is granted.

Legislative Defendants and Intervenor Defendants also contend the issuance of the injunction will result in disruption, confusion, and uncertainty in the electoral process for them, candidates, election officials, and the voting public. But, again, such a proffered harm does not outweigh the specific harm to Plaintiffs from the irreparable loss of their fundamental rights guaranteed by the North Carolina Constitution. Moreover, while State Defendants would prefer not to move elections or otherwise change the current schedule for the 2020 congressional primary election, they recognize that proceeding under the 2016 congressional districts "would require the Board to administer an election that violates the constitutional rights of North Carolina voters" and acknowledge that the election schedule can be changed if necessary. State Defs. Response Brief at 2. In that vein, State Defendants agree with Plaintiffs that "it would be appropriate for this Court to issue an injunction that relieves the Board of any duty to administer elections using an unconstitutionally gerrymandered congressional redistricting plan." *Id.*

Finally, Legislative Defendants and Intervenor-Defendants contend Plaintiffs simply waited too long to bring their challenge to the 2016 congressional districts in state court. Plaintiffs, however, filed this action in state court only a matter of months after litigation reached its conclusion in federal court, at a time still prior to the candidate filing

period. While the timing of Plaintiffs' action does weigh against Plaintiffs, the Court does not find that the timing of Plaintiffs' filing of this action should bar them from seeking equitable relief in the form of the requested preliminary injunction.

Consequently, after weighing the potential harm to Plaintiffs if the injunction is not issued against the potential harm to Defendants if injunctive relief is granted, this Court concludes the balance of the equities weighs in Plaintiffs' favor. Indeed, the harm alleged by Plaintiffs is both substantial and irreparable should congressional elections in North Carolina proceed under the 2016 congressional districts.

Conclusion

Under these circumstances, the Court, in its discretion and after a careful balancing of the equities, concludes that the requested injunctive relief shall issue in regard to the 2016 congressional districts. The Court further concludes that security is required of Plaintiffs pursuant to Rule 65(c) of the North Carolina Rules of Civil Procedure to secure the payment of costs and damages in the event it is later determined this relief has been improvidently granted.

This Court recognizes the significance and the urgency of the issues presented by this litigation, particularly when considering the impending 2020 congressional primary elections and all accompanying deadlines, details, and logistics. This Court also is mindful of its responsibility not to disturb an act of the General Assembly unless it plainly and clearly, without any reasonable doubt, runs counter to a constitutional limitation or prohibition. For these reasons, the Court will, upon the forthcoming filing of Plaintiffs' motion for summary judgment, provide for an expedited schedule so that Plaintiffs' dispositive motion may be heard prior to the close of the filing period for the 2020 primary election.

This Court observes that the consequences, as argued by Legislative Defendants and Intervenor-Defendants, resulting from a delay in the congressional primary—*e.g.*, decreased voter turnout, additional costs and labor for the State Board of Elections—would be both serious and probable should the primary schedule be adjusted as a result of this Order and Plaintiffs' ultimate success on the merits of this action. But as discussed above, should Plaintiffs prevail through motion or trial, these consequences pale in comparison to voters of our State proceeding to the polls to vote, yet again, in congressional elections administered pursuant to maps drawn in violation of the North Carolina Constitution.

This Court, however, notes that these disruptions to the election process need not occur, nor may an expedited schedule for summary judgment or trial even be needed, should the General Assembly, on its own initiative, act immediately and with all due haste to enact new congressional districts. This Court does not presume, at this early stage of this litigation, to have any authority to compel the General Assembly to commence a process of enacting new Congressional districts, and this Court recognizes that such a decision is wholly within the discretion of a co-equal branch of government. The General Assembly, however, has recently shown it has the capacity to enact new legislative districts in a short amount of time in a transparent and bipartisan manner, and that the resulting legislative districts, having been approved by this Court, are districts that are more likely to achieve the constitutional objective of allowing for elections to be conducted more freely and honestly to ascertain, fairly and truthfully, the will of the people. *See Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct., October 28, 2019). The Court respectfully urges the General Assembly to adopt an expeditious process, as it did in response to this Court's mandate in the September 3, 2019, Judgment in *Common Cause v. Lewis,* that ensures full transparency and allows for bipartisan participation and consensus to create new

congressional districts that likewise seek to achieve this fundamental constitutional objective.

Accordingly, the Court, in its discretion and for good cause shown, hereby ORDERS that Plaintiffs' motion for preliminary injunction is GRANTED as follows:

1. Legislative Defendants and State Defendants, their officers, agents, servants, employees and attorneys and any person in active concert or participation with them are hereby enjoined from preparing for or administering the 2020 primary and general elections for congressional districts under the 2016 congressional districts established by S.L. 2016-1.
2. Security in an amount of $1,000 shall be required of Plaintiffs pursuant to Rule 65.
3. The Court retains jurisdiction to move the primary date for the congressional elections, or all of the State's 2020 primaries, including for offices other than Congressional Representatives, should doing so become necessary to provide effective relief in this case.

SO ORDERED, this the 28th day of October, 2019.

/s/ Paul C. Ridgeway
Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite
Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton
Alma L. Hinton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties by emailing a copy thereof to the address below, in accordance with the October 10, 2019 Case Management Order:

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This the 28th day of October, 2019.

Kellie Z. Myers
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**Admitted Pro Hac Vice*

Exhibit 6

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 19 CVS 012667

2019 NOV 15 P 4:20

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

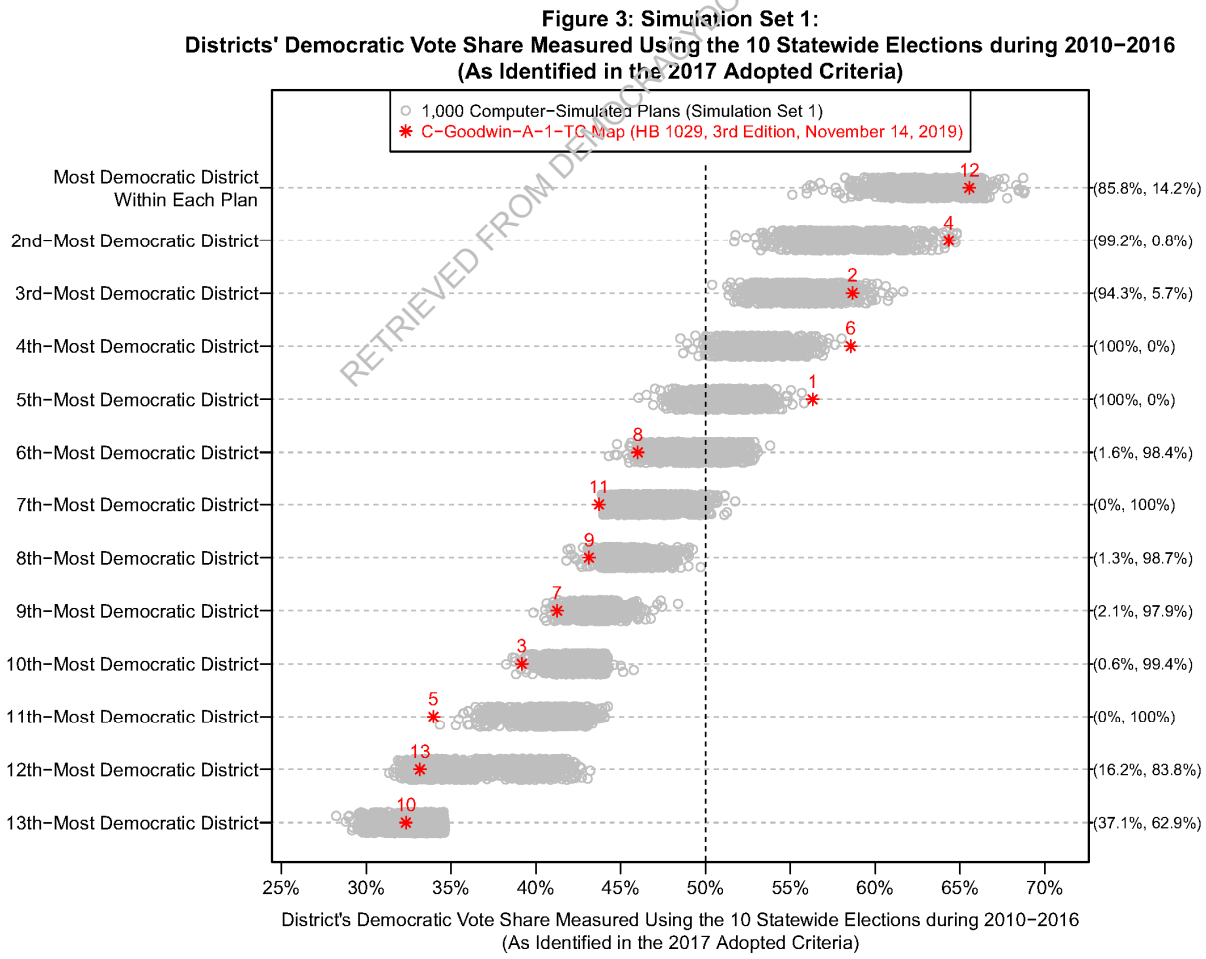
REPRESENTATIVE DAVID R. LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

PLAINTIFFS' MOTION TO SET SCHEDULE FOR REVIEW OF REMEDIAL PLAN

Plaintiffs respectfully request that the Court set a schedule for review of the remedial congressional plan adopted by the General Assembly on November 15, 2019 (the "Remedial Plan"). As in *Common Cause v. Lewis*, the review process here should include briefing by the parties and appointment of a Referee to assist the Court. Plaintiffs further request that the Court hear argument on the Remedial Plan at the December 2, 2019 hearing on summary judgment.

This Court's review is urgently needed because the Remedial Plan is another extreme and obvious partisan gerrymander that violates the constitutional rights of North Carolina voters. Working largely in secret, Legislative Defendants packed and cracked Democratic voters, substantially recreating several of the same gerrymandered districts. As the chart below shows, nearly every district is an extreme partisan outlier compared to Dr. Chen's nonpartisan plans:



As Plaintiffs will explain in their objections brief, this Remedial Plan clearly violates the North Carolina Constitution under the principles announced by this Court in *Common Cause v. Lewis*. Rather than a 10-3 partisan gerrymander, the Remedial Plan is simply an 8-5 partisan gerrymander. If the Remedial Plan were to be accepted, North Carolina voters would be forced to vote, yet again, in unconstitutional elections that predetermine election outcomes and disregard the will of the people.

Legislative Defendants have indicated they will argue that enactment of the Remedial Plan moots this lawsuit, but it does not. Plaintiffs have not received all of the relief requested in their Verified Complaint, including a declaration that the 2016 Plan violated the North Carolina Constitution and the establishment of "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." Two North Carolina redistricting decisions from just last year—this Court's decision in *Dickson* and the U.S. Supreme Court's decision in *Covington*—make clear that this Court retains jurisdiction both to enter the requested declaration concerning the 2016 Plan and to ensure that the Remedial Plan cures the constitutional violations.

Plaintiffs respectfully request that the Court set a briefing schedule on objections, appoint a Referee, and hear argument on these issues at the December 2, 2019 hearing.

BACKGROUND

In their Verified Complaint in this action, Plaintiffs included six requests in the Prayer for Relief:

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.

Compl., Prayer for Relief.

On October 28, 2019, this Court granted Plaintiffs' motion for a preliminary injunction, prohibiting use of the 2016 Plan in the 2020 elections. The Court's order noted that the General Assembly had "discretion" to adopt a remedial plan before entry of a final judgment, and "respectfully urge[d] the General Assembly to adopt an expeditious process" that "ensures full

transparency and allows for bipartisan participation and consensus to create new congressional districts" that comply with the North Carolina Constitution. Order on Inj. Relief at 17-18.

On October 30, 2019, Speaker Moore announced that Legislative Defendants would create a joint House and Senate Select Committee to draw a remedial plan (the "Select Committee"). As part of this announcement, Speaker Moore reportedly stated: "My thought is to go ahead and go forward drawing districts . . . *maybe we can moot the lawsuit*."[1]

The process employed by the Select Committee leaders was neither transparent nor bipartisan. At the outset of the very first meeting on November 5, 2019, Republican Senators made clear that they had already decided to use as the "base map" a plan that was drawn at a simulation exercise organized by Common Cause in 2016 (the "Common Cause Map"). The partisanship of every district in the Common Cause Map has been subject to extensive evaluation, including in the federal *Rucho* litigation, where Legislative Defendants themselves commented on the partisan leanings of the map. Moreover, even though the Select Committee adopted criteria that banned any use of racial data in constructing the new districts, the drawers of the Common Cause Map had explicitly used racial data in drawing several of the districts.

Starting from this base map, Senators Hise and Newton then made substantial revisions, overhauling many of the districts. They did so without input from any Democratic members. Instead, Senators Hise and Newton amended the base map based on secret discussions with unknown individuals outside of the public hearing room. Throughout the revisions process, Senators Hise and Newton repeatedly left the public hearing room to go to a back room, returning 15 or 20 minutes later and directing staff to implement specific changes that had been developed outside of public view. Seemingly every time Senator Hise departed for the back

[1] https://twitter.com/ludkmr/status/1189651617970298885 (emphasis added).

room, he asked for seven hard copies of the latest version of the map to take with him. The identities of the seven people who were in that back room is unknown.

The House and Senate Standing Committees on Redistricting each passed the Hise-Newton map on straight party-line votes on November 14 and 15, 2019. The full House and Senate passed the Remedial Plan as House Bill 2019, on November 14 and 15, 2019, again on straight party-line votes. No Democrat in either chamber voted for the Remedial Plan.

ARGUMENT

I. The Court Should Appoint a Referee and Issue a Schedule for Legislative Defendants to Submit the Remedial Plan and for Objections

This Court should enter an order to govern review of the Remedial Plan similar to the Court's September 13, 2019 order in *Common Cause v. Lewis*. It would have three main parts:

First, the Court should direct Legislative Defendants to submit to the Court, no later than three days from this filing, the block equivalency files, shapefiles, and color maps in .PDF format for the Remedial Plan. The Court should further direct Legislative Defendants to submit to the Court, no later than one week from this filing, the following materials:

- Transcripts of all Select Committee hearings, House and Senate Standing Redistricting Committee hearings, and floor debates;
- The stat pack for the Remedial Plan and relevant prior plans;
- The criteria applied in drawing the Remedial Plan;
- A description of the process for drawing and enacting the Remedial Plan, including the choice of a base map and how the Remedial Plan purportedly complies with each of the adopted criteria;

- The identity of all participants involved in the process of drawing and enacting the Remedial Plan, including the identifies of all persons consulted during the mapdrawing process outside of public view; and
- Any alternative maps considered by the Select Committee, the House and Senate Standing Redistricting Committees, or the General Assembly.

Second, the Court should set a briefing schedule for objections to the Remedial Plan. Plaintiffs respectfully suggest that objections be due ten days from this filing (*i.e.*, on November 25, 2019), and that any responses be due four days after that (*i.e.*, on November 29, 2019). Plaintiffs request that the Court then hear argument on the objections and any related issues at the December 2, 2019 hearing.

Third, the Court should immediately appoint a Referee to (1) assist the Court in reviewing the Remedial Plan; and (2) develop a remedial plan for the Court should the Court determine that the General Assembly's Remedial Plan does not cure the constitutional violations found in this case or is otherwise impermissible. Plaintiffs respectfully submit that the Court should again appoint Dr. Persily to serve as Referee.

II. This Case Is Not Moot

Based on recent public statements, Plaintiffs anticipate that Legislative Defendants will argue this case is now moot because the General Assembly enacted the Remedial Plan to replace the 2016 Plan. But that is not so. Under hornbook mootness principles and directly on-point precedent, the passage of the Remedial Plan does not moot this case, and this Court retains

jurisdiction to ensure the adoption of a remedial plan that cures the constitutional violations alleged in the Complaint.

It is well-settled that actions by defendants subsequent to the filing of a lawsuit do not moot a case unless they "provide plaintiffs the relief they sought" in the complaint. *Wilson v. N.C. Dep't of Commerce*, 239 N.C. App. 456, 460, 768 S.E.2d 360, 364 (2015); *accord Lambeth v. Town of Kure Beach*, 157 N.C. App. 349, 352, 578 S.E.2d 688, 690 (2003). This principle applies with full force where plaintiffs challenge a statute and the General Assembly then repeals or amends the statute. "The repeal of a challenged statute does not have the effect of mooting a claim . . . if the repeal of the challenged statute does not provide the injured party with adequate relief or the injured party's claim remains viable." *Bailey & Assocs., Inc. v. Wilmington Bd. of Adjustment*, 202 N.C. App. 177, 182, 689 S.E.2d 576, 582 (2010). In other words, a case is not moot if a "statutory amendment does not provide plaintiffs the relief they sought." *Wilson*, 239 N.C. App. at 460, 768 S.E.2d at 364.

The enactment of the Remedial Plan does not provide Plaintiffs all the relief sought in the Complaint. Of the six requests in Plaintiffs' Prayer for Relief, only the second request, which sought a permanent injunction against use of the 2016 Plan in the 2020 elections, is even arguably moot. The other five requested forms of relief all remain unfulfilled. In particular, the Complaint requested that this Court "declare that the 2016 Plan is unconstitutional and invalid," and that the Court "[e]stablish 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." Compl., Prayer for Relief ¶¶ a, c. As Plaintiffs will set forth more fully in their objections to the Remedial Plan, the General Assembly has "fail[ed] to enact new congressional districting plans

comporting with the North Carolina Constitution" because the Remedial Plan is another extreme partisan gerrymander. Accordingly, Plaintiffs' request that this Court "[e]stablish a new congressional districting plan that complies with the North Carolina Constitution" remains very much live. Plaintiffs' request for a declaration that the 2016 Plan is unconstitutional also remains live, and once this Court enters that declaration, this Court has the inherent authority to ensure that the constitutional violations it has found are cured.

Two recent redistricting cases in North Carolina are directly on point. First, in *Dickson v. Rucho*, this Court entered a declaratory judgment for the state-court plaintiffs after federal courts struck down the 2011 state legislative plans and remedial plans were adopted. *See* Order and Judgment on Remand from N.C. Supreme Court, *Dickson v. Rucho*, No. 11 CV 16896 (N.C. Super. Feb. 11, 2018). This Court rejected Legislative Defendants' argument that the request for declaratory relief was moot because the 2011 plans had been repealed and replaced by new plans. This Court "conclude[d] that the Plaintiffs [were] entitled to declaratory judgment in their favor" on both their federal and state constitutional claims. *Id.* at 5.

If declaratory relief was warranted in *Dickson*, it is necessarily warranted here as well. In *Dickson*, the General Assembly had repealed the challenged 2011 plans as a result of separate federal litigation, in which the federal courts had already declared the 2011 plans unconstitutional and were ensuring that the remedial plans cured the racial gerrymandering violations found there. Here, the General Assembly replaced the 2016 congressional plan as a result of *this* litigation, and no other court will declare the 2016 Plan unconstitutional or ensure that the Remedial Plan cures the 2016 Plan's constitutional infirmities. Plaintiffs' interests in a declaratory judgment thus are even more compelling than in *Dickson*. Plaintiffs maintain a right to have the 2016 Plan declared unconstitutional by a court, and this Court's entry of a declaratory

judgment will remove any conceivable doubt that this Court has jurisdiction to review whether the Remedial Plan cures the constitutional violations. "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15 (1971); *see also North Carolina v. Covington*, 137 S. Ct. 1624, 1625 (2017) ("Relief in redistricting cases is fashioned in the light of well-known principles of equity.") (internal quotation marks omitted).

In any event, this Court can and must review the Remedial Plan regardless of whether the Court enters a declaratory judgment regarding the 2016 Plan. The U.S. Supreme Court's 2018 decision in *Covington* makes that clear. In *Covington*, after the General Assembly enacted remedial state legislative plans, the plaintiffs submitted objections to the district court. The court sustained some of the objections and had a special master redraw the relevant districts. On appeal, Legislative Defendants argued—exactly as they will argue here—that the "plaintiffs' lawsuit challenged only the 2011 Plan, and those claims became moot when the legislature repealed the law creating the 2011 Plan and replaced it with the 2017 Plan." *North Carolina v. Covington*, Jurisdictional Statement, No. 17-1364, 2018 WL 1532754, at *19 (U.S. Mar. 26, 2018). Legislative Defendants contended that the "plaintiffs had two options: They could either amend their complaint to add challenges to the 2017 law or file a new lawsuit challenging it." *Id.* Legislative Defendants insisted that the plaintiffs had no right to "pursue[] their challenges to the 2017 Plan only through 'objections' pressed in a so-called remedial proceeding." *Id.*

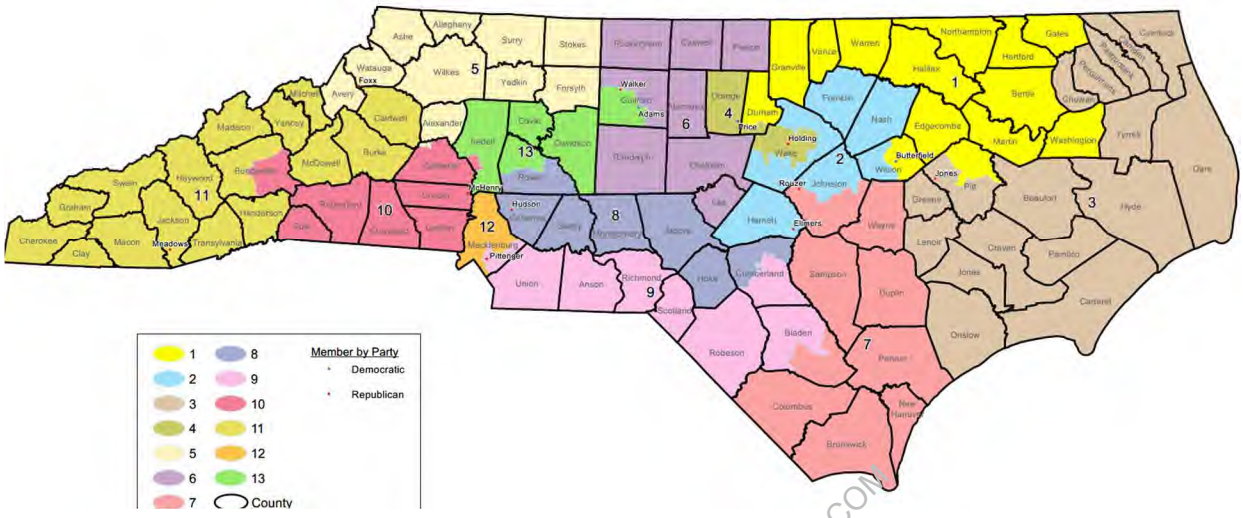
In an 8-1 decision, the U.S. Supreme Court rejected these arguments. The Supreme Court held that Legislative Defendants "misunderstand the nature of the plaintiffs' claims." *North Carolina v. Covington*, 138 S. Ct. 2548, 2552 (2018). As the Court explained, the

Covington plaintiffs' claims "[arose] from the plaintiffs' allegations that they ha[d] been separated into different districts on the basis of race," and "it is the segregation of the plaintiffs—not the legislature's line-drawing as such—that gives rise to [such] claims." *Id.* at 2552-53 (alterations omitted). Consequently, "the plaintiffs' claims that they were organized into legislative districts on the basis of their race *did not become moot simply because the General Assembly drew new district lines around them*." *Id.* (emphasis added).

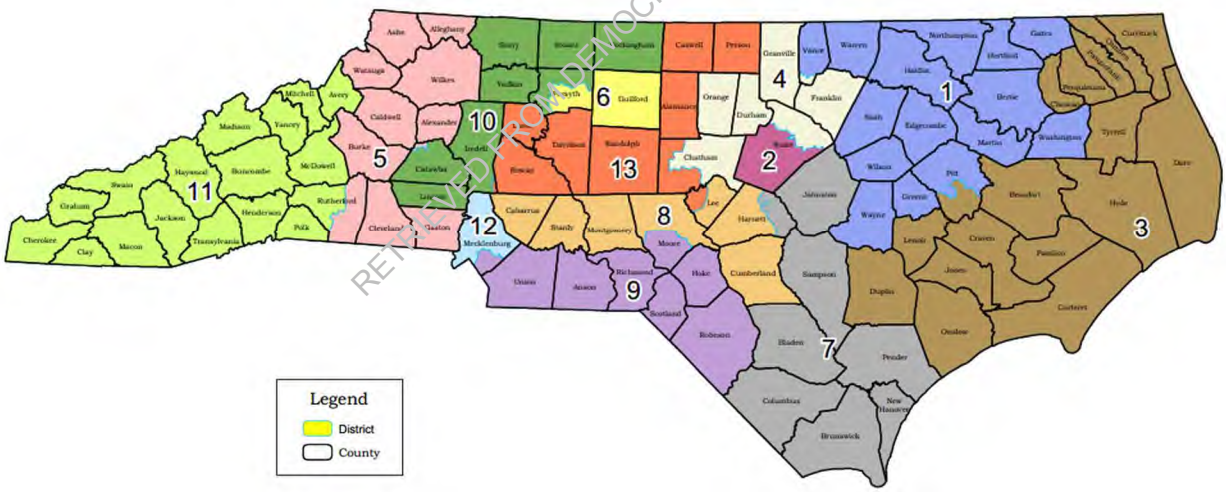
The same is true here with respect to Plaintiffs' partisan gerrymandering claims. The claims in this case "arise from the plaintiffs' allegations that they have been separated into different districts on the basis of [partisanship]." *Id.* at 2552-53 (alterations omitted). "[P]laintiffs' claims that they were organized into legislative districts on the basis of their [partisanship] did not become moot simply because the General Assembly drew new district lines around them" in the Remedial Plan. *Id.* "Because the plaintiffs assert[] that they remain[] segregated on the basis of [partisanship], their claims remain[] the subject of a live dispute," and this Court "properly retain[s] jurisdiction." *Id.*

Indeed, like in *Covington*, Plaintiffs will contend that "some of the new districts [are] mere continuations of the old, gerrymandered districts." *Id.* Even a cursory inspection of the Remedial Plan and the 2016 Plan shows that Districts 1, 3, 7, 8, 9, and 12 substantially overlap with the prior versions of those districts in the 2016 Plan:

2016 PLAN



REMEDIAL PLAN



This case would not be moot regardless, but it certainly cannot be moot where the Remedial Plan recreates much of the prior districts, including specific gerrymandered features of the 2016 Plan that Plaintiffs successfully challenged here.

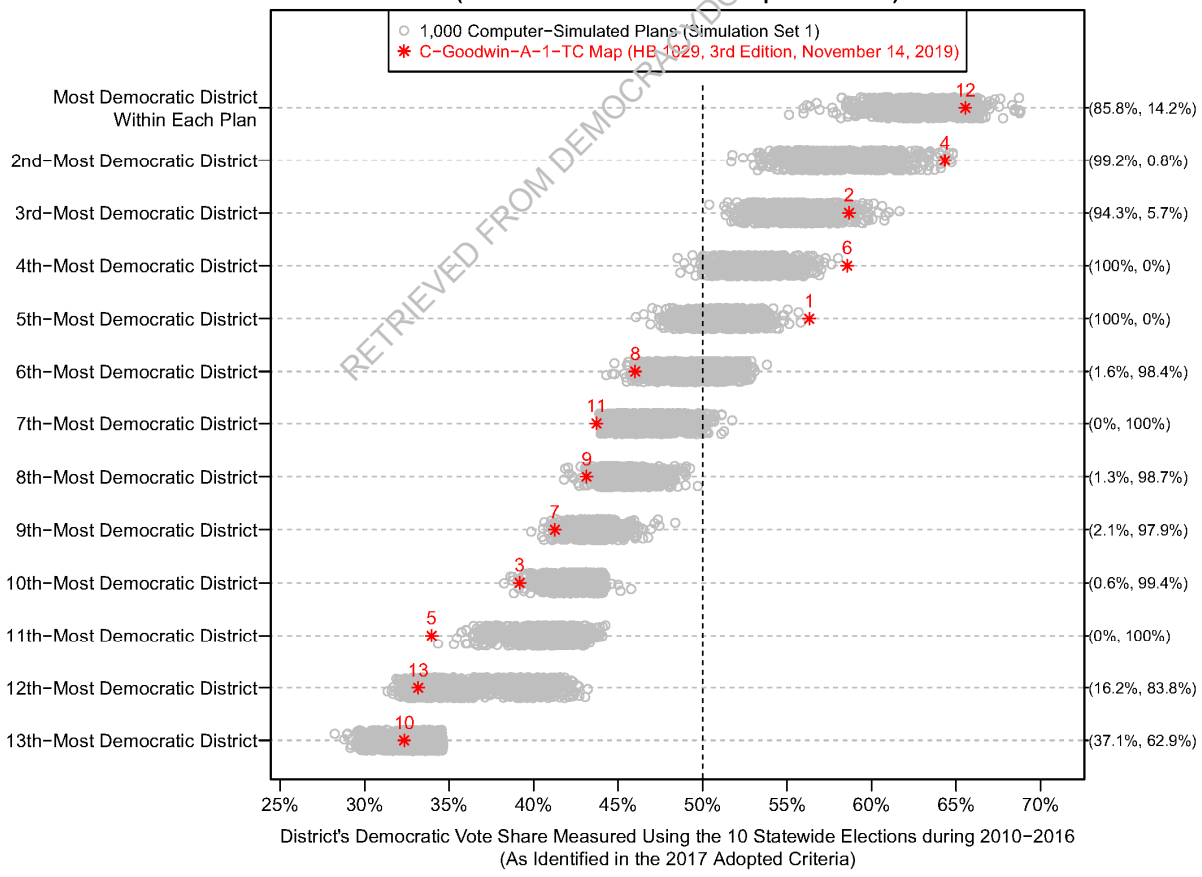
It makes no difference that Legislative Defendants enacted the Remedial Plan voluntarily, prior to final judgment. If anything, the voluntary nature of the Remedial Plan weighs against a finding of mootness. "[T]he standard . . . for determining whether a case has been mooted by the defendant's voluntary conduct is stringent." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000). "[T]he party asserting mootness" maintains a "heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again." *Id.* Here, there is not merely a risk that the offending conduct will "start up again." *Id.* Plaintiffs will show that it has already reoccurred with the unconstitutional partisan gerrymandering of the Remedial Plan. And because Legislative Defendants have repeated their unconstitutional actions, Plaintiffs have not obtained the relief sought in the Complaint.

Finding this case moot would allow the General Assembly "to avoid meaningful review" in this case and future redistricting cases. *Thomas v. N.C Dep't of Human Res.*, 124 N.C. App. 698, 706, 478 S.E.2d 816, 821 (1996). It would mean that the General Assembly could pass any unlawful congressional plan, and then, when voters sue, replace it with another unlawful plan before the Court rules. This cycle could repeat over and over, in a game of legal whack-a-mole, until the next election is near and Legislative Defendants claim it is too late to change their most recent plan. The North Carolina Constitution does not permit citizens' rights to be endlessly violated in such a manner. It guarantees that "every person for an injury done . . . 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. This Court's review of the Remedial Plan is necessary to abide by that guarantee here for Plaintiffs and millions of North Carolina voters.

The Court's review of the Remedial Plan is especially urgent given both the upcoming election schedule and the extremeness of the partisan gerrymander under the Remedial Plan.

Plaintiffs will establish that the Remedial Plan could not have been the product of anything other than partisan intent. For instance, the chart below (which is the same as that presented in the introduction) compares each district under the Remedial Plan to its corresponding district in Dr. Chen's Simulation Set 1 plans, using the 2010-2016 statewide elections as a measure of partisanship. The chart reveals that at least 10 of 13 districts are extreme partisan outliers—they are more extreme in partisanship than their corresponding district in over 94% of the simulations. And remarkably, 9 of 13 districts are outliers above the 97.9% level. The Remedial Plan packs Democratic voters into five districts that are overwhelmingly Democratic, in order to ensure that the remaining eight districts are neither competitive nor Democratic-leaning.

Figure 3: Simulation Set 1:
Districts' Democratic Vote Share Measured Using the 10 Statewide Elections during 2010–2016
(As Identified in the 2017 Adopted Criteria)



Plaintiffs will establish that the Remedial Plan was intentionally designed to predetermine an 8-5 Republican advantage in North Carolina's congressional delegation, in violation of the North Carolina Constitution.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an order setting the requested briefing schedule on objections to the Remedial Plan, appointing Dr. Persily as Referee to assist the Court in its review of the Remedial Plan, and setting argument on these issues for December 2, 2019 at the existing hearing on summary judgment.

Respectfully submitted this the 15th day of November, 2019

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to the following persons at the following addresses which are the last addresses known to me:

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Counsel for the Legislative Defendants

This the 15th day of November, 2019.

Burton Craige, NC Bar No. 9180

Exhibit 7

STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 19 CVS 012667
REBECCA HARPER, *et al.* *Plaintiffs,* v. Representative DAVID R. LEWIS, in his official capacity as Senior Chairman of the House Standing Committee on Redistricting, *et al.*, *Defendants.*	ORDER

On November 20, 2019, this Court, on its own motion, enjoined the filing period for the 2020 congressional primary elections in North Carolina until further order of the Court.

The Court, in its discretion and pursuant to its inherent authority, hereby ORDERS that the injunction entered by the Court on November 20, 2019, delaying the filing period for Congressional candidates until further order of this Court is set aside, and it is FURTHER ORDERED that the North Carolina State Board of Elections may immediately accept for filing any notices of candidacy from candidates seeking party primary nominations for the House of Representatives of the United States for congressional districts as defined by the newly-enacted Session Law 2019-249.

SO ORDERED, this the 2nd day of December, 2019.

/s/ Paul C. Ridgeway
Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite
Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton
Alma L. Hinton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties by emailing a copy thereof to the address below, in accordance with the October 10, 2019 Case Management Order:

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This the 2nd day of December 2019.

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Trial Court Administrator
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*Admitted Pro Hac Vice

Exhibit 8

Joint Meeting of Committees

August 12, 2021

House Committee on Redistricting

Senate Committee on Redistricting and Elections

Criteria Adopted by the Committees

- **Equal Population.** The Committees will use the 2020 federal decennial census data as the sole basis of population for the establishment of districts in the 2021 Congressional, House, and Senate plans. The number of persons in each legislative district shall be within plus or minus 5% of the ideal district population, as determined under the most recent federal decennial census. The number of persons in each congressional district shall be as nearly as equal as practicable, as determined under the most recent federal decennial census.

- **Contiguity.** No point contiguity shall be permitted in any 2021 Congressional, House, and Senate plan. Congressional, House, and Senate districts shall be compromised of contiguous territory. Contiguity by water is sufficient.

- **Counties, Groupings, and Traversals.** The Committees shall draw legislative districts within county groupings as required by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) (*Stephenson I*), *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*), *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*) and *Dickson v. Rucho*, 368 N.C. 481, 781 S.E. 2d 460 (2015) (*Dickson II*). Within county groupings, county lines shall not be traversed except as authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*.

  Division of counties in the 2021 Congressional plan shall only be made for reasons of equalizing population and consideration of double bunking. If a county is of sufficient population size to contain an entire congressional district within the county's boundaries, the Committees shall construct a district entirely within that county.

- **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. The Committees will draw districts that comply with the Voting Rights Act.

- **VTDs.** Voting districts ("VTDs") should be split only when necessary.

- **Compactness.** The Committees shall make reasonable efforts to draw legislative districts in the 2021 Congressional, House and Senate plans that are compact. In doing so, the Committee may use as a guide the minimum Reock ("dispersion") and Polsby-Popper ("permiter") scores identified by Richard H. Pildes and Richard G. Neimi in *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483 (1993).

- **Municipal Boundaries.** The Committees may consider municipal boundaries when drawing districts in the 2021 Congressional, House, and Senate plans.

- **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.

- **Member Residence.** Member residence may be considered in the formation of legislative and congressional districts.

- **Community Consideration.** So long as a plan complies with the foregoing criteria, local knowledge of the character of communities and connections between communities may be considered in the formation of legislative and congressional districts.

Exhibit 9

STATE OF NORTH CAROLINA

COUNTY OF WAKE

FILED
2021 DEC -2 P 12: 21
WAKE CO., C.S.C.
BY

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

NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS, et al.,

Plaintiffs,

vs.

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

Defendants.

AFFIDAVIT OF SEAN P. TRENDE

Now comes affiant Sean P. Trende, having been first duly cautioned and sworn, deposes and states as follows:

1. I am over the age of 18 and am competent to testify regarding the matters discussed below.

2. I currently reside at 1146 Elderberry Loop, Delaware, OH 43015. My e-mail is trende.3@buckeyemail.osu.edu.

3. I have been retained in this matter by the Legislative Defendants, and am being compensated at $400.00 per hour for my work in this case.

4. My *curriculum vitae* is attached to this report as Exhibit 1.

EXPERT CREDENTIALS

5. I am currently enrolled as a doctoral candidate in political science at The Ohio State University. I have completed all of my coursework and have passed comprehensive examinations in both methods and American Politics. My coursework for my Ph.D. and

M.A.S. included, among other things, classes on G.I.S. systems, spatial statistics, issues in contemporary redistricting, machine learning, non-parametric hypothesis tests and probability theory. I expect to receive my Ph.D. in May of 2021. My dissertation focuses on applications of spatial statistics to political questions.

6. I joined RealClearPolitics in January of 2009. I assumed a fulltime position with RealClearPolitics in March of 2010. My title is Senior Elections Analyst. RealClearPolitics is a company of around 40 employees, with offices in Washington D.C. It produces one of the most heavily trafficked political websites in the world, which serves as a one-stop shop for political analysis from all sides of the political spectrum and is recognized as a pioneer in the field of poll aggregation. It produces original content, including both data analysis and traditional reporting. It is routinely cited by the most influential voices in politics, including David Brooks of *The New York Times*, Brit Hume of *Fox News*, Michael Barone of *The Almanac of American Politics*, Paul Gigot of *The Wall Street Journal*, and Peter Beinart of *The Atlantic*.

7. My main responsibilities with RealClearPolitics consist of tracking, analyzing, and writing about elections. I collaborate in rating the competitiveness of Presidential, Senate, House, and gubernatorial races. As a part of carrying out these responsibilities, I have studied and written extensively about demographic trends in the country, exit poll data at the state and federal level, public opinion polling, and voter turnout and voting behavior.

8. In particular, understanding the way that districts are drawn and how geography and demographics interact is crucial to predicting United States House of Representatives races, so much of my time is dedicated to that task.

9. I am currently a Visiting Scholar at the American Enterprise Institute, where my publications focus on the demographic and coalitional aspects of American Politics. My first paper focused on the efficiency gap, a metric for measuring the fairness of redistricting plans.

10. I am the author of *The Lost Majority: Why the Future of Government is up For Grabs and Who Will Take It.* In this book, I explore realignment theory. It argues that realignments are a poor concept that should be abandoned. As part of this analysis, I conducted a thorough analysis of demographic and political trends beginning in the 1920s and continuing through the modern times, noting the fluidity and fragility of the coalitions built by the major political parties and their candidates.

11. I co-authored the 2014 *Almanac of American Politics*. The Almanac is considered the foundational text for understanding congressional districts and the representatives of those districts, as well as the dynamics in play behind the elections. PBS's Judy Woodruff described the book as "the oxygen of the political world," while NBC's Chuck Todd noted that "[r]eal political junkies get two *Almanacs*: one for the home and one for the office." My focus was researching the history of and writing descriptions for many of the newly-drawn districts, including tracing the history of how and why they were drawn the way that they were drawn.

12. I have spoken on these subjects before audiences from across the political spectrum, including at the Heritage Foundation, the American Enterprise Institute, the CATO Institute, the Bipartisan Policy Center, and the Brookings Institution. In 2012, I was invited to Brussels to speak about American elections to the European External Action Service, which is the European Union's diplomatic corps. I was selected by the United States Embassy in Sweden to discuss the 2016 elections to a series of audiences there, and was selected by the United

States Embassy in Spain to fulfil a similar mission in 2018. I was invited to present by the United States Embassy in Italy, but was unable to do so because of my teaching schedule.

13. In the winter of 2018, I taught American Politics and the Mass Media at Ohio Wesleyan University. I taught Introduction to American Politics at The Ohio State University for three semesters from Fall of 2018 to Fall of 2019. In the Springs of 2020 and 2021, I taught Political Participation and Voting Behavior at The Ohio State University. This course spent several weeks covering all facets of redistricting: How maps are drawn, debates over what constitutes a fair map, measures of redistricting quality, and similar topics.

14. It is my policy to appear on any major news outlet that invites me, barring scheduling conflicts. I have appeared on both Fox News and MSNBC to discuss electoral and demographic trends. I have been cited in major news publications, including *The New York Times*, *The Washington Post*, *The Los Angeles Times*, *The Wall Street Journal*, and *USA Today*.

15. I sit on the advisory panel for the "States of Change: Demographics and Democracy" project. This project is sponsored by the Hewlett Foundation and involves three premier think tanks: The Brookings Institution, the Bipartisan Policy Center, and the Center for American Progress. The group takes a detailed look at trends among eligible voters and the overall population, both nationally and in key states, to explain the impact of these changes on American politics, and to create population projections, which the Census Bureau abandoned in 1995. In 2018, I authored one of the lead papers for the project: "In the Long Run, We're All Wrong," available at https://bipartisanpolicy.org/wp-content/uploads/2018/04/BPC-Democracy-States-of-Change-Demographics-April-2018.pdf.

16. I previously authored an expert report in *Dickson v. Rucho*, No. 11-CVS-16896 (N.C. Super Ct., Wake County), which involved North Carolina's 2012 General Assembly and

Senate maps. Although I was not called to testify, it is my understanding that my expert report was accepted without objection. I also authored an expert report in *Covington v. North Carolina*, Case No. 1:15-CV-00399 (M.D.N.C.), which involved almost identical challenges in a different forum. Due to what I understand to be a procedural quirk, where my largely identical report from *Dickson* had been inadvertently accepted by the plaintiffs into the record when they incorporated parts of the *Dickson* record into the case, I was not called to testify.

17. I authored two expert reports in *NAACP v. McCrory*, No. 1:13CV658 (M.D.N.C.), which involved challenges to multiple changes to North Carolina's voter laws, including the elimination of a law allowing for the counting of ballots cast in the wrong precinct. I was admitted as an expert witness and testified at trial. My testimony discussed the "effect" prong of the Voting Rights Act claim. I did not examine the issues relating to intent.

18. I authored reports in *NAACP v. Husted*, No. 2:14-cv-404 (S.D. Ohio), and *Ohio Democratic Party v. Husted*, Case 15-cv-01802 (S.D. Ohio), which dealt with challenges to various Ohio voting laws. I was admitted and testified at trial in the latter case (the former case settled). The judge in the latter case ultimately refused to consider one opinion, where I used an internet map-drawing tool to show precinct locations in the state. Though no challenge to the accuracy of the data was raised, the judge believed I should have done more work to check that the data behind the application was accurate.

19. I served as a consulting expert in *Lee v. Virginia Board of Elections*, No. 3:15-cv-357 (E.D. Va. 2016), a voter identification case. Although I would not normally disclose consulting expert work, I was asked by defense counsel to sit in the courtroom during the case and review testimony. I would therefore consider my work *de facto* disclosed.

20. I filed an expert report in *Mecinas v. Hobbs*, No. CV-19-05547-PHX-DJH (D. Ariz. 2020). That case involved a challenge to Arizona's ballot order statute. Although the judge ultimately did not rule on a motion in limine in rendering her decision, I was allowed to testify at the hearing.

21. I authored two expert reports in *Feldman v. Arizona*, No. CV-16-1065-PHX-DLR (D. Ariz.). Plaintiffs in that case challenged an Arizona law prohibiting the collection of voted ballots by third parties that were not family members or caregivers and the practice of most of the state's counties to require voters to vote in their assigned precinct. My reports and testimony were admitted. Part of my trial testimony was struck in that case for reasons unrelated to the merits of the opinion; counsel for the state elicited it while I was on the witness stand and it was struck after Plaintiffs were not able to provide a rebuttal to the new evidence.

22. I authored an expert report in *Smith v. Perrera*, No. 55 of 2019 (Belize). In that case I was appointed as the court's expert by the Supreme Court of Belize. In that case I was asked to identify international standards of democracy as they relate to malapportionment claims, to determine whether Belize's electoral divisions (similar to our congressional districts) conformed with those standards, and to draw alternative maps that would remedy any existing malapportionment.

23. I authored expert reports in *A. Philip Randolph Institute v. Smith*, No. 1:18-cv-00357-TSB (S.D. Ohio), *Whitford v. Nichol*, No. 15-cv-421-bbc (W.D. Wisc.), and *Common Cause v. Rucho*, NO. 1:16-CV-1026-WO-JEP (M.D.N.C.), which were efficiency gap-based redistricting cases filed in Ohio, Wisconsin and North Carolina.

24. I also authored an expert report in the cases of *Ohio Organizing Collaborative, et al v. Ohio Redistricting Commission, et al* (No. 2021-1210); *League of Women Voters of Ohio, et al v. Ohio Redistricting Commission, et al* (No. 2021-1192); *Bria Bennett, et al v. Ohio Redistricting Commission, et al* (No. 2021-1198). These cases are pending in original action before the Supreme Court of Ohio.

25. I currently serve as one of two special masters appointed by the Supreme Court of Virginia to redraw the districts that will elect the commonwealth's representatives to the House of Delegates, state Senate, and U.S. Congress.

SUMMARY OF WORK PERFORMED

26. I certify that the images attached as Exhibit 2 are true and correct copies of images that I created and that I describe below.

27. To create these images, I first downloaded county-level shapefiles from the United States Census Bureau. Using R, a widely utilized statistical programming tool, I joined county-level vote totals for U.S. presidential races in 2012, 2016 and 2020.

28. Attached as Exhibit 2-A are maps I generated with counties colored red if the Republican candidate won that county, and blue if the Democratic candidate won that county.

29. I then centered these results on national popular vote results for the respective years, an accepted mechanism that is used to enable analysts to compare results that occur in differing electoral environments. *See, e.g.*, Bernard Fraga, "Candidates or Districts? Reevaluating the Role of Race in Voter Turnout," 60 *Am. Jrnl. Pol. Sci.* 97, 115 (2016). Because the national popular vote reflected reasonably close Democratic wins in all four years, the effect of doing this computation is marginal.

30. Attached as Exhibit 2-B are maps I generated with counties colored red if the Republican candidate performed better in the county than they did nationally, and blue if the Republican candidate performed worse in the county that they did nationally. If the Republican candidate performed better in the county than they did nationally, I refer to that performance as "leaning" Republican.

31. As shown in Table 1 below, in 2012, the Republican presidential candidate won 70 of North Carolina's 100 counties. In 2016, the Republican presidential candidate won 76 counties, and in 2020, the Republican presidential candidate won 75 counties.

32. As shown in Table 1 below, in 2012, the number of counties in North Carolina that leaned[1] Republican in the Presidential Election was 73 out of 100, in 2016 that figure was 77 out of 100, and in 2020 that figure was 80 out of 100.

TABLE 1

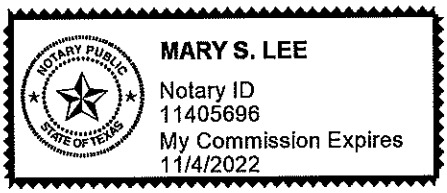
Election Year	# of N.C. Counties that voted Republican	# of N.C. Counties that leaned Republican
2012	70/100	73/100
2016	76/100	77/100
2020	75/100	80/100

[1] "Leaned" is as defined in ¶ 30.

Executed on December 1, 2021

DocuSigned by:
Sean P. Trende
D329B1A55F6D4B4...
Sean P. Trende

Sworn or affirmed before me and subscribed in the presence the 1st day of December, 2021, in the state of Texas and County of Harris



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Notary Public

Exhibit 1

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EDUCATION

Ph.D., The Ohio State University, Political Science, expected 2022.

M.A.S. (Master of Applied Statistics), The Ohio State University, 2019.

J.D., Duke University School of Law, *cum laude*, 2001; Duke Law Journal, Research Editor.

M.A., Duke University, *cum laude*, Political Science, 2001. Thesis titled *The Making of an Ideological Court: Application of Non-parametric Scaling Techniques to Explain Supreme Court Voting Patterns from 1900-1941*, June 2001.

B.A., Yale University, with distinction, History and Political Science, 1995.

PROFESSIONAL EXPERIENCE

Law Clerk, Hon. Deanell R. Tacha, U.S. Court of Appeals for the Tenth Circuit, 2001-02.

Associate, Kirkland & Ellis, LLP, Washington, DC, 2002-05.

Associate, Hunton & Williams, LLP, Richmond, Virginia, 2005-09.

Associate, David, Kamp & Frank, P.C., Newport News, Virginia, 2009-10.

Senior Elections Analyst, RealClearPolitics, 2009-present.

Columnist, Center for Politics Crystal Ball, 2014-17.

Gerald R. Ford Visiting Scholar, American Enterprise Institute, 2018-present.

BOOKS

Larry J. Sabato, ed., *The Blue Wave*, Ch. 14 (2019).

Larry J. Sabato, ed., *Trumped: The 2016 Election that Broke all the Rules* (2017).

Larry J. Sabato, ed., *The Surge: 2014's Big GOP Win and What It Means for the Next Presidential Election*, Ch. 12 (2015).

Larry J. Sabato, ed., *Barack Obama and the New America*, Ch. 12 (2013).

Barone, Kraushaar, McCutcheon & Trende, *The Almanac of American Politics 2014* (2013).

The Lost Majority: Why the Future of Government is up for Grabs – And Who Will Take It (2012).

PREVIOUS EXPERT TESTIMONY

Dickson v. Rucho, No. 11-CVS-16896 (N.C. Super. Ct., Wake County) (racial gerrymandering).

Covington v. North Carolina, No. 1:15-CV-00399 (M.D.N.C.) (racial gerrymandering).

NAACP v. McCrory, No. 1:13CV658 (M.D.N.C.) (early voting).

NAACP v. Husted, No. 2:14-cv-404 (S.D. Ohio) (early voting).

Ohio Democratic Party v. Husted, Case 15-cv-01802 (S.D. Ohio) (early voting).

Lee v. Virginia Bd. of Elections, No. 3:15-cv-357 (E.D. Va.) (early voting).

Feldman v. Arizona, No. CV-16-1065-PHX-DLR (D. Ariz.) (absentee voting).

A. Philip Randolph Institute v. Smith, No. 1:18-cv-00357-TSB (S.D. Ohio) (political gerrymandering).

Whitford v. Nichol, No. 15-cv-421-bbc (W.D. Wisc.) (political gerrymandering).

Common Cause v. Rucho, No. 1:16-CV-1026-WO-JEP (M.D.N.C.) (political gerrymandering).

Mecinas v. Hobbs, No. CV-19-05547-PHX-DJH (D. Ariz.) (ballot order effect).

Fair Fight Action v. Raffensperger, No. 1:18-cv-05391-SCJ (N.D. Ga.) (statistical analysis).

Pascua Yaqui Tribe v. Rodriguez, No. 4:20-CV-00432-TUC-JAS (D. Ariz.) (early voting).

COURT APPOINTMENTS

Appointed as Voting Rights Act expert by Arizona Independent Redistricting Commission

Appointed redistricting expert by the Supreme Court of Belize in *Smith v. Perrera*, No. 55 of 2019 (one-person-one-vote).

INTERNATIONAL PRESENTATIONS AND EXPERIENCE

Panel Discussion, European External Action Service, Brussels, Belgium, *Likely Outcomes of 2012 American Elections.*

Selected by U.S. Embassies in Sweden, Spain, and Italy to discuss 2016 and 2018 elections to think tanks and universities in area (declined Italy due to teaching responsibilities).

Selected by EEAS to discuss 2018 elections in private session with European Ambassadors.

TEACHING

American Democracy and Mass Media, Ohio Wesleyan University, Spring 2018.

Introduction to American Politics, The Ohio State University, Autumn 2018, 2019, 2020, Spring 2018.

Political Participation and Voting Behavior, Spring 2020, Spring 2021.

REAL CLEAR POLITICS COLUMNS

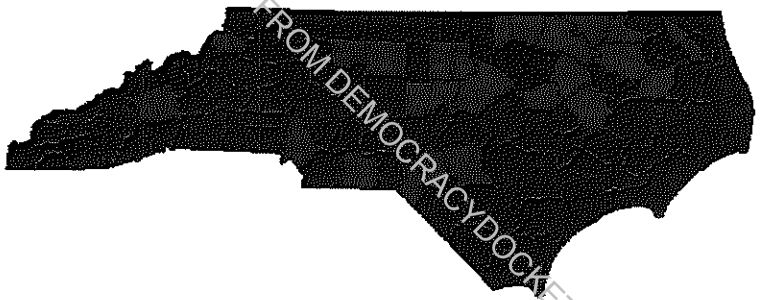
Full archives available at http://www.realclearpolitics.com/authors/sean_trende/

Exhibit 2

Exhibit 2-A

Republican Wins and Losses, County-Level Two-Party Presidential Vote in NC, 2012

Republican Wins and Losses, County-Level Two-Party Presidential Vote in NC, 2016

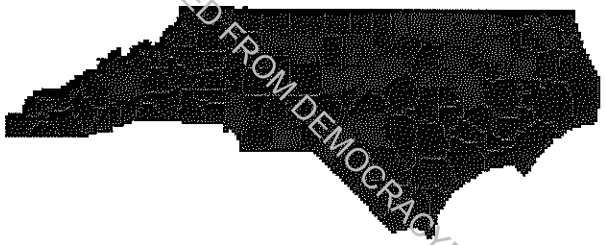


Republican Wins and Losses, County-Level Two-Party Presidential Vote in NC, 2020

Exhibit 2-B

Republican Share of the Centered County-Level Two-Party Presidential Vote in NC, 2012

Republican Share of the Centered County-Level Two-Party Presidential Vote in NC, 2016



Republican Share of the Centered County-Level Two-Party Presidential Vote in NC, 2020