

STATE OF NORTH CAROLINA

FILED

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

COUNTY OF WAKE

2021 DEC 16 A 9:37

COMMON CAUSE,

WAKE CO., C.S.C.

BY

Plaintiff,

v.

PHILIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate*; TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives*; RALPH E. HISE, JR., WARREN DANIEL, PAUL NEWTON, *in their official capacities as Co-Chairmen of the Senate Committee on Redistricting and Elections*; DESTIN HALL, *in his official capacity as Chairman of the House Standing Committee on Redistricting*; THE STATE OF NORTH CAROLINA; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, *in his official capacity as Chair of the State Board of Elections*; STELLA ANDERSON, *in her official capacity as Secretary of the State Board of Elections*; STACY EGGERS IV, *in his official capacity as Member of the State Board of Elections*; JEFF CARMON III, *in his official capacity as Member of the State Board of Elections*; TOMMY TUCKER, *in his official capacity as Member of the State Board of Elections*; KAREN BRINSON BELL, *in her official capacity as Executive Director of the State Board of Elections*,

*Defendants.*

**VERIFIED COMPLAINT FOR  
DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF**

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

Pursuant to N.C.G.S. § 1-253 et seq., and Rules 8, 24, and 57 of the North Carolina Rules of Civil Procedure, Plaintiff Common Cause, through counsel, hereby files this Complaint for declaratory judgment and for injunctive relief.

## I. PRELIMINARY STATEMENT

1. After drawing one unconstitutional redistricting plan after another in the last decade,<sup>1</sup> the North Carolina General Assembly has acted in an unlawful and unconstitutional manner by defiantly ignoring clear direction from the North Carolina Supreme Court on how to draw constitutional maps and once again engaging in extreme partisan gerrymandering. North Carolina state Legislative and Congressional districts are once again extreme outliers, do not reflect or allow to be reflected the will of North Carolina voters, and entrench the power of the current Legislative majority in a manner that will be certain to withstand even high turnout elections where voters widely prefer Democratic candidates. At core, North Carolina's democracy is critically subverted by these actions, and they are inconsistent with the North Carolina Constitution.

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<sup>1</sup> See *Covington v. North Carolina*, 316 F.R.D. 117, 124 (M.D.N.C. 2016), *summarily aff'd*, 137 S. Ct. 2211 (2017) (per curiam) (finding state legislative districts as enacted in S.L. 2011-402 and S.L. 2011-404 violated the Equal Protection Clause of the Fourteenth Amendment); *Covington v. North Carolina*, 283 F. Supp. 3d 410, 434-35 (M.D.N.C. 2018) (finding state legislative districts as enacted in S.L. 2017-207 and S.L. 2017-208 violated the Equal Protection Clause of the Fourteenth Amendment); *North Carolina State Conference of NAACP Branches v. Lewis*, No. 18 CVS 002322, slip op. at 2 (N.C. Super. Ct. Nov. 2, 2018) (finding state legislative districts as enacted in S.L. 2017-207 and S.L. 2017-208 violated Article II, Section 5 of the North Carolina Constitution); *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, at \*333, \*346, \*361-62 (N.C. Super. Ct. Sept. 3, 2019) (finding state legislative districts as enacted in S.L. 2017-207 and S.L. 2017-208 violated Article I, Section 10, Article I, Section 12, Article I, Section 14, and Article 1, Section 19 of the North Carolina Constitution); *Harris v. McCrory*, 159 F. Supp. 3d 600, 622 (M.D.N.C. 2016), *aff'd sub nom.*, *Cooper v. Harris*, 137 S. Ct. 1455 (2017) (finding Congressional districts as enacted in S.L. 2011-403 violated the Equal Protection Clause of the Fourteenth Amendment); *Harper v. Lewis*, No. 19 CVS 012667, 2019 N.C. Super. LEXIS 122, at \*18 (N.C. Super. Ct. Oct. 28, 2019) (order granting preliminary injunction) (finding Congressional districts as drawn in S.L. 2016-1 violated Article I, Section 10, Article I, Section 12, Article I, Section 14, and Article I, Section 19 of the North Carolina Constitution).

2. But the harm does not end here. The incontrovertible evidence of bad actions and bad faith by the current Legislative majority will harm voters of color too. By categorically prohibiting the formal consideration of any racial data in drawing or evaluating districts that would allow legislators to prevent dilution, but acknowledging the obvious familiarity that legislators have with the state's demography that would still allow them to target these voters, the North Carolina General Assembly knowingly destroyed functioning crossover districts that enabled the election of candidates of choice of voters of color. While such districts may not always be compelled by the Voting Rights Act ("VRA"), the destruction of those districts violates North Carolina's equal protection guarantees. To be clear, this case is not a Voting Rights Act case. Plaintiff Common Cause solely brings state law claims under the North Carolina Constitution. This case is one of intentional racial discrimination in violation of the North Carolina Constitution, unconstitutional partisan gerrymandering in violation of the North Carolina Constitution, and the legal need for a reckoning with a General Assembly that has no respect for the rule of law, the rulings of the North Carolina Supreme Court, or co-equal judicial institutions at all.

3. Common Cause files this action to challenge the state House, Senate, and federal Congressional maps ("2021 Enacted Maps") as unconstitutional and invalid, and calls upon this Court to enjoin the 2021 Enacted Maps and to establish new constitutional plans if the General Assembly fails to do so.

4. From the beginning of this process, the Defendant Chairs of the Senate Committee on Redistricting and Elections and the House Committee on Redistricting (the "Redistricting Chairs" of the "Redistricting Committees") have, despite warnings from citizens and legislators of color, stated their intention to contravene the North Carolina Constitution, as interpreted by the North Carolina Supreme Court *Stephenson v. Bartlett*, by prohibiting the formal consideration of

racial data and failing to undertake any racially polarized voting analyses to understand how district lines would affect minority voting strength and representation. *See Stephenson v. Bartlett*, 355 N.C. 354 (2002) (*Stephenson I*) and *Stephenson v. Bartlett*, 357 N.C. 301 (2003) (*Stephenson II*). They did this while acknowledging it would be infeasible to prevent legislators from applying their pre-existing knowledge of North Carolina's demographic and political make-up (and by extension doing so in a way that would harm voters of color) when devising districts. The Redistricting Committees have approved redistricting criteria formally prohibiting any use of racial data, and the Redistricting Chairs have stated that they disallowed consideration of any maps drawn that formally, lawfully and properly utilize racial data, despite their legal obligations to do so. These actions directly contravene the North Carolina Constitution, including: (1) the requirements of the North Carolina Constitution, which affirms the supremacy of federal law under Sections 3 and 5 of Article I; and (2) the requirement that legislators first consider the data necessary to ensure satisfaction of the requirements of federal law in drawing state legislative districts, as explained in *Stephenson I* and *II*. They did so in an unnecessarily chaotic process that stifled public comment in an apparent effort to capitalize on the delay in 2020 Census data and evade judicial review as they did last cycle, which allowed the party currently in power to obtain and maintain a veto-proof supermajority for most of the last decade due to unlawful racial gerrymanders.<sup>2</sup> These tactics should not be tolerated again.

5. Plaintiff Common Cause brings this Declaratory Judgment action seeking a judicial determination that their members and voters they serve are entitled to a redistricting process that adheres to the requirements of Article II, Sections 3 and 5 of the North Carolina Constitution and

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<sup>2</sup> *See Covington v. North Carolina*, 316 F.R.D. 117, 124 (M.D.N.C. 2016), *summarily aff'd*, 137 S. Ct. 2211 (2017) (per curiam).

that the use of purportedly “race-blind” redistricting criteria violates North Carolina law and unlawfully harms voters of color. Defendants Berger, Moore, Hise, Daniel, and Hall (“Legislative Defendants”) intentionally orchestrated an unlawful redistricting process that contravened the requirements of the state Constitution as set forth in *Stephenson I* and *II*. The use of purportedly “race-blind” redistricting criteria in defiance of these requirements, and Legislative Defendants’ failure to conduct any analysis that would prevent vote dilution for voters of color, violates the Equal Protection Clause, Article I, Section 19, of the North Carolina Constitution.

6. Finally, Legislative Defendants have once again persisted in drawing and enacting state Legislative and Congressional maps that are extreme partisan gerrymanders, which intentionally and harmfully dilute the votes of North Carolina’s Democratic voters, in violation of the Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Freedom of Assembly Clauses guaranteed under Article I, Sections 10, 12, 14, and 19 of the North Carolina Constitution. The political analysis of the 2021 Enacted Maps reveal that the purported non-partisan drafting of these maps is implausible given expert analysis of millions of simulated maps that do not use partisan data. Such ensembles of non-partisan maps do not produce the extreme partisan outcomes seen in the 2021 Enacted Maps, and analysis performed by Professor Jonathan Mattingly of Duke University demonstrates that the 2021 Enacted Maps are astonishingly durable and non-responsive to political waves (changes in the state partisan vote shares). Legislative Defendants’ plans will heavily and consistently favor Republican candidates and the Republican Party even if the will of North Carolina’s voters does not.

7. Without judicial intervention, Legislative Defendants’ actions will cause irreparable harm to the rights of Plaintiff Common Cause, its members and the voters it serves, as well as the rights of all North Carolina voters to participate in free elections. The process pursued

by the Redistricting Chairs as described above cannot, as a matter of law, comply with the North Carolina Constitution. The 2021 Enacted Maps are undeniably extremely skewed in favor of the Legislative Defendants' party. North Carolinians are entitled to have their rights enforced by the courts of this State, and should not have to endure yet another set of elections under unconstitutional maps.

## **II. JURISDICTION AND VENUE**

8. Jurisdiction is proper in this Court pursuant to N.C.G.S. § 1-253 et seq. ("Declaratory Judgment Act"), N.C.G.S. § 7A-245(a)(4), and Article 26A of Chapter 1 of the General Statutes.

9. This Court has the power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed, and such declaration shall have the force and effect of a final judgment or decree. *See* N.C.G.S. § 1-253.

10. The purpose of the Declaratory Judgment Act is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.

11. An action under the Declaratory Judgment Act may be used to declare rights of persons. N.C.G.S. § 1-253.

12. The Declaratory Judgment Act is to be liberally construed and administered. N.C.G.S. § 1-264.

13. Under N.C.G.S. § 1-81.1, the exclusive venue for this action is the Wake County Superior Court.

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

15. Removal to federal court is not proper in this matter because all of Plaintiff's causes of action challenge Defendants' enacted maps based upon North Carolina Constitutional law, the

matters in dispute do not arise under or require resolution of federal law, and there is no diversity of jurisdiction. This is a suit involving challenging the enactment of state redistricting law, properly brought in this Court.

16. An actual, justiciable controversy exists between Plaintiff and Defendants at present.

### III. PARTIES

#### *Plaintiff*

17. **Plaintiff Common Cause** is a non-profit nonpartisan democracy organization with over 1.5 million members and local organizations in 30 states, including North Carolina. Common Cause has over 25,000 members, staff and supporters in every district challenged herein of the 2021 Enacted Maps. Since its founding by John Gardner in 1970, Common Cause has been dedicated to fair elections and making government at all levels more representative, open, and responsive to the interests of ordinary people. “For the past twenty-five years, Common Cause has been one of the leading proponents of redistricting reform.”<sup>3</sup> Common Cause also assists voters in navigating the elections process, provides resources for voters to determine their districts and their polling locations, and mobilizes voters to engage in political advocacy. Some of the voters assisted by Common Cause identify as voters of color and/or habitually vote for candidates of the Democratic Party. Unfair and discriminatory redistricting directly frustrates and impedes Common Cause’s core missions of making government more responsive to the interests of communities by diminishing the voices of the voters Common Cause works to engage and forces Common Cause to divert resources toward directly combatting the ill effects of unlawful redistricting. Common

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<sup>3</sup> JONATHAN WINBURN, THE REALITIES OF REDISTRICTING: FOLLOWING THE RULES AND LIMITING GERRYMANDERING IN STATE LEGISLATIVE REDISTRICTING 205 (2008)..

Cause has long advocated for redistricting reform, whether executed by Republicans or Democrats, and for an end to partisan gerrymandering in North Carolina. Partisan gerrymandering frustrates and impedes Common Cause's core mission of increasing voter engagement and making government officials accountable to voters because this practice preordains election results, making voters less likely or willing to engage and government officials less responsive to constituents. It also frustrates and impedes Common Cause's goal of advocating for redistricting reform because the beneficiaries of gerrymandered plans are unlikely to adopt meaningful redistricting reform. Common Cause brings this action on its own behalf and on behalf of its members and supporters who are registered voters in North Carolina. These members and supporters include registered voters in every county in North Carolina, registered Democrats and/or voters who support Democratic candidates in each of the districts alleged to be partisan gerrymanders herein, and voters who identify as Black in each of the effective districts for voters of color that were intentionally and unlawfully dismantled by the 2021 Enacted Maps as alleged herein. Each of these members and supporters have a right to representation in the State Legislature that complies with the North Carolina Constitution, a right to be free of intentional discrimination, and a right to free association.

#### *Defendants*

18. **Defendant Philip E. Berger** is a member of the North Carolina Senate, having been elected to that office by the voters residing in District 30. Mr. Berger serves as the President *Pro Tempore* of the North Carolina Senate. Mr. Berger is sued in his official capacity.

19. **Defendant Timothy K. Moore** is member of the North Carolina House of Representatives, having been elected to that office by the voters residing in District 111. Mr. Moore



serves as the Speaker of the North Carolina House of Representatives. Mr. Moore is sued in his official capacity.

20. **Defendant Ralph E. Hise, Jr.** is a member of the North Carolina Senate, having been elected to that office by the voters residing in Senate District 47. Mr. Hise serves as the Senate Deputy President *Pro Tempore* and the Chairman of the Senate Redistricting and Elections Committee. Mr. Hise is sued in his official capacity.

21. **Defendant Warren Daniel** is a member of the North Carolina Senate, having been elected to that office by the voters residing in District 46. Mr. Daniel serves as the Chairman of the Senate Redistricting and Elections Committee. Mr. Daniel is sued in his official capacity.

22. **Defendant Paul Newton** is a member of the North Carolina Senate, having been elected to that office by the voters residing in District 36. Mr. Newton serves as the Chairman of the Senate Redistricting and Elections Committee. Mr. Newton is sued in his official capacity.

23. **Defendant Destin Hall** is a member of the North Carolina House of Representatives, having been elected to that office by voters residing in District 87. Mr. Hall serves as the Chairman of the House Redistricting Committee. Mr. Hall is sued in his official capacity.

24. Defendants Hise, Daniel, Newton, and Hall together herein shall be referred to as the “**Redistricting Chairs**” and, together with Defendants Moore and Berger, the “**Legislative Defendants.**”

25. **Defendant State of North Carolina** is one of the fifty sovereign states in the United States of America. Article I of the State’s Constitution establishes, “principles of liberty and free government,” which the General Assembly and its members must honor in enacting legislation for the State and its citizens.

26. **Defendant North Carolina State Board of Elections** is the agency responsible for the administration of North Carolina elections, including issuing rules and regulations for the conduct of all elections in the State.

27. **Defendant Damon Circosta** is the Chairman and a member of the North Carolina State Board of Elections. Mr. Circosta is sued in his official capacity.

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

29. **Defendant Stacy Eggers IV** is a member of the North Carolina State Board of Elections. Mr. Eggers is sued in his official capacity.

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

31. **Defendant Tommy Tucker** is a member of the North Carolina State Board of Elections. Mr. Tucker is sued in his official capacity.

32. **Defendant Karen Brinson Bell** is the Executive Director of the North Carolina State Board of Elections. Ms. Brinson Bell is sued in her official capacity.

33. Defendants the North Carolina State Board of Elections, Circosta, Anderson, Eggers, Carmon, Tucker, and Brinson Bell shall together herein be referred to as the “**SBE Defendants**,” and, together with the State of North Carolina, the “**State Defendants**.”

#### **IV. FACTUAL ALLEGATIONS**

##### **A. North Carolina Constitutional Requirements in Redistricting.**

34. The North Carolina Constitution provides that “the General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those

districts” and “shall revise the representative districts and the apportionment of Representatives among those districts.” N.C. Const. art. II, §§ 3, 5.

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

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

*See* N.C. Const. art. II, §§ 3, 5.

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

37. Among the federal requirements applicable to redistricting is compliance with the federal one-person one-vote requirements under the Fourteenth Amendment and the Voting Rights Act (“VRA”), as amended and as proscribed under the Fifteenth Amendment. *Stephenson I*, 355 N.C. at 363-64. Accordingly, *North Carolina law* prohibits any voting qualification or prerequisite that impairs or dilutes, on account of race or color, a citizen’s opportunity to participate in the political process and to elect representatives of their choice. *Id.* This requirement does not command a state to adopt any particular legislative reapportionment plan, but rather prevents the enforcement of redistricting plans having the purpose or effect of diluting the voting strength of legally protected minority groups. *Stephenson I*, 355 N.C. at 364.

38. In *Stephenson v. Bartlett*, the North Carolina Supreme Court sought to harmonize the different North Carolina Constitutional requirements imposed on the redistricting process. 355 N.C. 354; *see also Stephenson II*, 357 N.C. 301. The court developed a methodology for grouping counties together into “clusters” that it held would minimize the splitting of counties, in recognition of the Whole County Provision, while satisfying one-person, one-vote requirements.

39. Importantly, *Stephenson* expressly mandates that “to ensure full compliance with federal law, legislative districts required by the VRA shall be formed prior to the creation of non-VRA districts.” *Stephenson I*, 355 N.C. at 383. In other words, first, any and all districts that are required under the VRA (which requires that districts be drawn without the intent or effect of depriving protected voters of an equal opportunity to elect their candidates of choice) must be drawn.<sup>4</sup> Only after an analysis is performed to ascertain what districts are compelled by the VRA,

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<sup>4</sup> Importantly, Section 2 of the Voting Rights Act prohibits intentional vote dilution (or intentional racial discrimination in redistricting). Likewise, Article I, Section 19 of the North Carolina Constitution prohibits intentional racial discrimination, *see Holmes v. Moore*, 270 N.C. App. 7, 33 (2020), which would prohibit intentional vote dilution in redistricting. Thus, while the *Stephenson* court referenced the VRA, because part of the VRA is identical in purpose and direction to Article I, Section 19, that part of *Stephenson* cannot be read logically to not also incorporate the requirements incumbent on the legislature under the State’s equal protection guarantees. To put it another way, even if the Section 2 effects test (as opposed to its prohibition on intentional

and those districts are drawn, may any work be done to draw clustered districts that harmonize and maximize compliance with North Carolina's Whole County Provision and equal protection guarantees of population equality. "Thus, the process established by [the North Carolina Supreme] Court in *Stephenson I* and its progeny requires that, in establishing legislative districts, the General Assembly first must create all necessary VRA districts, single-county districts, and single counties containing multiple districts." *Dickson v. Rucho*, 368 N.C. 481, 532 (2015), *vacated on other grounds*, 137 S. Ct. 2186 (2017).

40. The trial court in *Stephenson* also instructed that VRA districts should be formed where, "due to demographic changes in population there exists the required [*Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986)] preconditions," a finding that was affirmed by the North Carolina Supreme Court. *Stephenson II*, 357 N.C. at 307. Accordingly, to comply with *Stephenson*, the Legislature must evaluate demographic changes to determine whether there exist the required *Gingles* preconditions. This includes, at the least, considering racial data and, where legislators and members of the public have indicated that there may be VRA concerns, conducting a regionally-focused Racially Polarized Voting ("RPV") study to determine if there is legally significant racially polarized voting. *See, e.g., Thornburg v. Gingles*, 478 U.S. 30, 55–58 (1986). Again, to be clear, there are no allegations or causes of action in this case of any specific districts compelled by the VRA. Plaintiff need not allege a Section 2 claim to show that the Legislature admittedly and unapologetically flouted the North Carolina Supreme Court's instruction by failing

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racial discrimination) did not compel ANY districts under the VRA (and Plaintiff has not alleged in this case that the VRA effects test compels any such districts), the Legislature would still be obligated under the first step of *Stephenson* to examine racial data to ensure it avoids violations of Article I, Section 19. Such a reading of *Stephenson* is reinforced by the harmonizing intent expressly indicated by the North Carolina Supreme Court. *Stephenson I*, 355 N.C. at 393.

to consider any racial data or conduct any RPV analysis, even when made aware of harmful effects on Black voters.

41. In North Carolina, “[a]ll political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.” N.C. Const. art. I, § 2. Here, “the object of all elections is to ascertain, fairly and truthfully, the will of the people – the qualified voters,” and “the machinery provided by the law to aid in attaining the main object – the will of the voters . . . should not be used to defeat the object which they were intended to aid.” *Hill v Skinner*, 169 N.C. 405, 415 (1915) (quoting *R.R. v. Comrs.*, 116 N.C. 563, 568 (1895)). The Free Elections Clause in Article I, Section 10 of the North Carolina Constitution provides that “[a]ll elections shall be free,” and thus requires that elections be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. *See Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, at \*337 (N.C. Super. Ct. Sept. 3, 2019).

42. Partisan gerrymandering at its most basic level involves drawing legislative districts “to subordinate adherents of one political party and entrench a rival party in power,” with the effect of dismantling the fundamental precept of democracy that “voters should choose their representatives, not the other way around.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 791, 824 (2015). It does so by systematically “packing” and “cracking” voters likely to support the disfavored party to dilute their voting power overall. *See Gill v. Whitford*, 138 S. Ct. 1916, 1935–41 (Kagan, J., concurring). Extreme partisan gerrymandering entrenches the political party in power, serving the interest of that political party over the public good, and systematically diluting and devaluing the votes of some citizens compared to others based on political affiliation. *See Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super.

LEXIS 56, at \*339. Overall, extreme partisan gerrymandering prevents elections from ascertaining, fairly and truthfully, the will of the people, and thus violates the Free Elections Clause. *Id.*

43. And even more insidiously, in a state like North Carolina, where the Southern Strategy has been effective, and it is widely known that Black voters overwhelmingly prefer Democratic candidates, partisan gerrymandering is an act of racial discrimination in violation of the State Constitution. *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 222-24. Race and politics are inextricably intertwined in this State, and that is all the more reason for courts to reign in extreme partisan gerrymandering.

**B. The Legislative Defendants Orchestrated a Redistricting Process that Contravenes Applicable Law, Causing an Inevitable Deprivation of Voters' Rights.**

1. The Redistricting Committees' Adopted Criteria Contravene State Constitutional Requirements.

44. On Thursday, August 5, 2021, the Senate Committee on Redistricting and Elections convened a Joint Meeting of the Redistricting Committees to begin discussions about the redistricting process.<sup>5</sup> Following this meeting, staff member Erika Churchill distributed to joint committee members the legislative redistricting criteria ordered by the North Carolina Superior Court for Wake County in its September 3, 2019 Judgment in the matter *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56 (the "2019 Criteria").<sup>6</sup>

45. The 2019 Criteria set forth by the court specifically required that new maps comply with the VRA and other federal requirements concerning the racial composition of districts, and

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

<sup>6</sup> E-mail from Erika Churchill, Staff Attorney, Legislative Analysis Division, N.C. General Assembly, to Joint Committee Members (Aug. 5, 2021).

required within 14 days of the order that the parties to submit briefing and expert analysis on whether VRA districts were required, including consideration of whether the minimum Black Voting Age Population “BVAP” thresholds were met to implicate the VRA. *Id.* at \*417.

46. On Monday, August 9, 2021 the Redistricting Chairs released the “2021 Joint Redistricting Committee Proposed Criteria.”<sup>7</sup> Contrary to the requirements of Article I, Sections 3 and 5 of the North Carolina Constitution, and the aforementioned court orders in *Stephenson v. Bartlett* and *Common Cause v. Lewis*, these criteria outright prohibited *all* formal use of racial data in redistricting, with no exceptions permitting the use of racial data to prevent vote dilution or comply with the VRA:

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.<sup>8</sup>

47. The Redistricting Committees received public comment on the proposed criteria on Tuesday, August 10, 2021. Among those providing public comment were Plaintiff’s Counsel Allison J. Riggs, who described how the criteria prohibiting use of racial data was contrary to applicable law:

It is neither appropriate nor required to draw districts race-blind. As long as redistricting has occurred, it has been a tool used to harm voters of color. Beyond compliance with the VRA, it is entirely appropriate to advance race-equity to consider race in the drawing of districts, to ensure voters of color are not being packed or cracked. Additionally, in *Covington v. North Carolina*, this legislative body tried the same thing with respect to race-blind redistricting. A three-judge panel, including republican and democratic appointees, and a unanimous supreme court, rejected your race-blind remedial drawing of two senate districts and two

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<sup>7</sup> 2021 Joint Redistricting Committee Proposed Criteria, North Carolina General Assembly Joint Redistricting Committee, Aug. 9, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-09-2021/2021%20Joint%20Redistricting%20Committee%20Plan%20Proposed%20Criteria.pdf>.

<sup>8</sup> *Id.* (emphasis in original).



house districts. In fact there is apparently not a federal judge out there who agrees with this approach and we urge you to abandon that criteria.<sup>9</sup>

48. On Thursday, August 12, 2021, the Redistricting Committees met to consider the proposed redistricting criteria and any amendments thereto. During debate on the proposed criteria, Senator Dan Blue stated that the court in *Stephenson* held that the first step of redistricting is determining whether districts are required to comport with the VRA and queried how this would be accomplished without the consideration of racial data. The Redistricting Chairs reiterated the view that consideration of racial data to evaluate whether VRA districts were necessary was not required but failed to explain how VRA compliance would be assessed absent that data.

49. Defendant Newton indicated that if any members presented evidence or new studies of RPV in North Carolina, the Chairs would be willing to examine that evidence.<sup>10</sup>

50. Defendant Daniel then proposed an amendment providing that “[t]he Committee will draw districts that comply with the Voting Rights Act,”<sup>11</sup> again failing to explain how this would or could be done without racial data or any analysis of racially polarized voting patterns. This amendment was adopted into the final criteria.

51. Senator Blue then proposed an amendment titled “Voting Rights Act,” adding the following criteria:

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<sup>9</sup> NCGA Redistricting, *2021-08-10 Committee (Joint)*, YOUTUBE, <https://youtu.be/QFA6QNpqWVWk?t=2084> (Aug. 10, 2021).

<sup>10</sup> NCGA Redistricting, *2021-08-12 Committee (Joint)*, YOUTUBE, <https://youtu.be/gSm2OhE7SIk?t=10321> (Aug. 12, 2021).

<sup>11</sup> *Id.* at 2:58:00; *Amendment to Proposed Criteria #4 (Racial Data) Offered by Senator Daniel*, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Adopted%20Amendments/Racial%20Data.Daniel.pdf>.

As condemned by the United States Supreme Court in *Cooper v. Harris* and *Covington v. State of North Carolina*, African-Americans shall not be packed into any grouping or district to give partisan advantage to any political party.<sup>12</sup>

52. During debate on this amendment, Senator Blue again queried how it would be possible to comply with the VRA without consideration racial data. Senator Clark also repeated these concerns. In response, Defendant Daniel erroneously advised that prior case law, including a 2019 decision, in North Carolina did not require the use of racial data.<sup>13</sup> The amendment offered by Senator Blue failed.

53. Upon information and belief, Defendant Daniel referenced the September 3, 2019 Judgment of the North Carolina Superior Court for Wake County in the matter *Common Cause v. Lewis*, Case No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, to contend that racial data is not required to ensure compliance with the VRA this redistricting cycle. The court held no such thing. In *Common Cause v. Lewis*, the Superior Court struck down 2017 state Legislative plans as unlawful partisan gerrymanders that violated the Free Elections Clause of the North Carolina Constitution, Article I, Section 10. *Id.* at \*333. In its analysis, the court explicitly held that “[a]ny Remedial Maps must comply with the VRA and other federal requirements concerning the racial composition of districts,” and afforded the parties the opportunity to “submit briefing . . . 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 . . . .” *Id.* at \*407–08. In other words, the court in *Common*

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<sup>12</sup> *Amendment to Proposed Criteria (Voting Rights Act) Offered by Senator Blue*, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Proposed%20Amendments/Voting%20Rights%20Act.Amendment.pdf>.

<sup>13</sup> NCGA Redistricting, 2021-08-12 Committee (Joint), YOUTUBE, <https://youtu.be/gSm2OhE7Slk?t=13039>, (Aug. 12, 2021).

*Cause v. Lewis* explicitly required the same analysis that Legislative Defendants are unlawfully chose to skip this cycle.

54. Furthermore, in subsequent orders addressing the remedial maps enacted in *Common Cause v. Lewis*, the court noted that the “need for such localized [RPV] analysis is particularly acute in North Carolina because . . . the existence and extent of white bloc voting varies widely across different county groupings.” Order Supplementing Court Order of October 28, 2019 with Findings and Conclusions Regarding Compliance of Remedial Maps with Federal Voting Rights Act at 4, *Common Cause v. Lewis*, Case No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56. Accordingly, any assertions that courts have definitely held there is no racially polarized voting in North Carolina, and that no RPV analyses are therefore necessary, are both factually and legally incorrect.

55. Hypothetically, it could be that that no districts were compelled by the effects test under Section 2 of the Voting Rights Act, but the Legislature’s process would still be problematic for two reasons:

- a. First, willful ignorance of racial data invites the destruction of effective crossover districts, and such willful exclusion of racial data suggests the consequences are intended – undermining Black voting strength. The intentional destruction of effective crossover districts, even though such districts are not compelled by the VRA, violates equal protection guarantees such as those in Article I, Section 19. *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009).
- b. Second, regardless of whether any districts are actually compelled by the effects test of the VRA, the North Carolina Supreme Court implicitly

demands that the Legislature ascertain whether such districts are compelled and draw the ones compelled. But the only way to know whether there are districts compelled by the effects test of the VRA is to conduct analysis of large populations of minority voters and whether there is racially polarized voting. The Legislature's failure to even conduct any such analysis makes a mockery of the Supreme Court's authority and precedent.

56. The final criteria adopted by the Redistricting Committees prohibited the use of any racial data in the 2021 redistricting process.<sup>14</sup>

2. The Legislative Defendants Mandate the Use of County Clusters That Contravene the North Carolina Constitution.

57. On August 12, 2021, the United States Census Data released block-level data showing North Carolina's population increased from 9,535,483 residents in 2010<sup>15</sup> to 10,439,388 residents in 2020.<sup>16</sup> This 9.5 percent increase gave North Carolina an additional Congressional seat, raising its delegation from 13 members of the House of Representatives to 14 members, and thereby requiring the addition of one Congressional district.<sup>17</sup>

58. The North Carolina population increase reflected in the Census data was not evenly distributed throughout the state, with the vast majority of population increase occurring in urban

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<sup>14</sup> *Criteria Adopted by the Committees*, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Criteria.adopted.8.12.pdf>.

<sup>15</sup> U.S. Census Bureau, *North Carolina: 2010: Population and Housing Unit Census* (2012), <https://www.census.gov/prod/cen2010/cph-2-35.pdf>.

<sup>16</sup> *North Carolina: 2020 Census*, U.S. CENSUS BUREAU (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/north-carolina-population-change-between-census-decade.html>.

<sup>17</sup> *2020 Census: Apportionment of the U.S. House of Representatives*, U.S. CENSUS BUREAU (Apr. 26, 2021), <https://www.census.gov/library/visualizations/2021/dec/2020-apportionment-map.html>.

and suburban areas.<sup>18</sup> Without updating the district lines during the decennial redistricting process, North Carolina’s existing districts for the North Carolina House of Representatives and North Carolina Senate would be substantially unequal in population size and deviation.<sup>19</sup>

59. On Tuesday, October 5, 2021, the House Committee on Redistricting and the Senate Committee on Redistricting and Elections convened separately. In both meetings, the Redistricting Chairs announced in both chambers that they would be limiting the consideration of Senate and House maps to those drawn using county clusters described in the academic paper *N.C. General Assembly County Clusterings from the 2020 Census* (the “Duke Academic Paper”), published on the Duke University website “Quantifying Gerrymandering.”<sup>20</sup>

60. The Duke Academic Paper states: “The one part of *Stephenson v. Bartlett* which this analysis does not reflect is compliance with the Voting Rights Act.”<sup>21</sup>

61. In the meeting of the Senate Committee on Redistricting and Elections, Defendant Hise provided the set of sixteen possible Senate cluster options, based upon the Duke Academic Paper, that would be required for any map to be considered for enactment (the “Duke Senate Clusters”). See “Duke Senate Groupings Maps 11x17.”<sup>22</sup>

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<sup>18</sup> Tyler Dukes, *How Has Your NC Neighborhood Grown Since 2010? Use This Map of Census Data to Find Out*, NEWS & OBSERVER (Aug. 14, 2021), <https://www.newsobserver.com/news/local/article253375248.html>.

<sup>19</sup> Rebecca Tippet, *Preview: What Redistricting Means for NC’s House*, CAROLINA DEMOGRAPHY (Aug. 2, 2021), <https://www.ncdemography.org/2021/08/02/preview-what-redistricting-means-for-ncs-house/>; Rebecca Tippet, *Preview: What Redistricting Means for NC’s Senate*, CAROLINA DEMOGRAPHY (Aug. 3, 2021), <https://www.ncdemography.org/2021/08/03/preview-what-redistricting-means-for-ncs-senate/>.

<sup>20</sup> Christopher Cooper et al., *NC General Assembly County Clusterings from the 2020 Census*, QUANTIFYING GERRYMANDERING (Aug. 17, 2021), <https://sites.duke.edu/quantifyinggerrymandering/files/2021/08/countyClusters2020.pdf>.

<sup>21</sup> *Id.* at 1.

<sup>22</sup> *Duke Senate Groupings Maps 11x17*, North Carolina Senate Redistricting and Elections Committee, Oct. 5, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/10-05-2021/Duke%20Senate%20Groupings%20Maps%2011x17.pdf>.

62. Senator Blue repeatedly asked how leadership had ensured compliance with the VRA, as required under the North Carolina Constitution, in the mandated clusters without any demographic analysis. Senator Marcus stated the committee needed to conduct an RPV study to ensure legal compliance. Defendant Hise confirmed the Chairs' views that no demographic data was legally required, and that there was no directive to staff to order any RPV analysis or provide racial data to members drawing maps.<sup>23</sup>

63. In the meeting of the House Committee on Redistricting, Defendant Hall provided the set of eight possible House cluster options, based upon the Duke Academic Paper, that constituted the set of options eligible for adoption (the "Duke House Clusters"). See "Duke House Groupings Maps 11x17.pdf."<sup>24</sup> Defendant Hall stated that no maps that used cluster options other than the Duke House Clusters would be considered.

64. Representative Harrison questioned how the committee would comply with the VRA as the Duke Academic Paper stated its analysis did not reflect compliance with the VRA as required by *Stephenson*. Representative Reives inquired about the obligations under the VRA and how to comply with them. Defendant Hall stated the committees made a decision not to use racial data, contrary to redistricting criteria used in the previous two sessions, which Defendant Hall alleged to be "the best way" to ensure compliance with the VRA as well as other state and federal law.<sup>25</sup>

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<sup>23</sup> NCGA Redistricting, 2021-10-05 Committee (Senate), YOUTUBE, <https://youtu.be/IphUZPhkqSY?t=2175>, (Oct. 5, 2021).

<sup>24</sup> *Duke House Groupings Maps 11x17*, North Carolina House Redistricting Committee, Oct. 5, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/House2021-182/2021/October%205,%202021/Duke%20House%20Groupings%20Maps%2011x17.pdf>.

<sup>25</sup> NCGA Redistricting, 2021-10-05 Committee (House), YOUTUBE, [https://youtu.be/9UsiS\\_6rUA?t=7961](https://youtu.be/9UsiS_6rUA?t=7961) (Oct. 6, 2021).

3. The Legislature Is Notified that the Mandated County Clusters Violate North Carolina Law.

65. Three days after the proposed County Cluster Maps were publicly released, on Friday, October 8, 2021, counsel for Plaintiff sent a letter to Legislative Defendants informing them that the purportedly “race-blind” redistricting criteria adopted and the mandated county clusters violated well-established redistricting law (the “October 8 Letter”).<sup>26</sup> The October 8 Letter also informed Legislative Defendants of specific areas in the North Carolina Senate and House cluster maps that required examination for VRA Compliance, including:

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

66. Legislative Defendants failed to take any action in response to this letter and the highlighted harm to Black voters. This inaction is strong evidence of the Legislature’s racially discriminatory intent and its violation of the process requirements imposed by the *Stephenson* cases.

67. After draft Senate map, “SST-4”, was made publicly available on the North Carolina Legislature’s website (ncleg.gov),<sup>27</sup> counsel for Plaintiff sent a second letter to

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<sup>26</sup> Letter from SCSJ Attorneys to Legislative Defendants, Oct. 8, 2021, [https://southerncoalition.org/wp-content/uploads/2021/10/SCSJ-correspondence\\_NCGA-redistricting\\_2021.10.082.pdf](https://southerncoalition.org/wp-content/uploads/2021/10/SCSJ-correspondence_NCGA-redistricting_2021.10.082.pdf).

<sup>27</sup> See SST-4, North Carolina Senate Redistricting Committee, Member Submitted Maps [https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/Member%20Submitted%20Maps/SST-4/SST-4\\_19x36.pdf](https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/Member%20Submitted%20Maps/SST-4/SST-4_19x36.pdf) (last visited Dec. 12, 2021).

Legislative Defendants on Monday, October 25, 2021,<sup>28</sup> expressing concern that the cluster “Z1” chosen for this map from Duke Senate Clusters map “Duke\_Senate 02” would obstruct the ability of Black voters to continue electing their candidate of choice. On Tuesday, October 26, 2021, Plaintiff Common Cause sent a letter to Legislative Defendants providing RPV analysis for Senate Districts 1 and 9 in map SST-4 that showed legally significant racially polarized voting in these proposed districts.

68. The Legislature hastily enacted the 2021 Enacted Maps shortly thereafter and with almost unprecedented speed, despite failing to announce any public deadline for the proposal or consideration of maps or timeline for enactment. Specifically:

- a. A proposed version of the state Senate map (“SST-13”) was filed on Friday, October 29, 2021 as Senate Bill 739 (“SB739”) and received its first reading in the Senate that day. It was then referred to the Senate Redistricting Committee on November 1 where the Redistricting Committee adopted a substitute along party lines (“SBK-7”). It then passed its second and third readings in the Senate by November 3 along party lines, and passed all three readings and the House Redistricting Committee without any alteration on November 3 – 4, 2021. SB739 was ratified into law on November 4 as S.L. 2021-173.
- b. A placeholder, blank version of the state House Map was filed on Thursday, October 28, 2021 as House Bill 976 (“HB976”) where it passed its first reading. A committee substitute (“HBK-14”) received a favorable review

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<sup>28</sup> Letter from SCSJ Attorneys to Legislative Defendants, Oct. 25, 2021, <https://southerncoalition.org/wp-content/uploads/2021/10/SCSJ-Letter-Senate-Map-10-25-21-FINAL.pdf>.



and, after one amendment, passed its second and third readings on the House and its first reading in the Senate on November 2, 2021. It received a favorable report from the Senate Redistricting Committee on November 3, 2021 without alteration and passed its second and third readings on November 4, 2021. HB976 was ratified into law on November 4, 2021 as S.L. 2021-175.

- c. A proposed Congressional map (“CST-13”) was filed on October 29, 2021 as Senate Bill 740 (“SB740”) and passed its first reading and received a favorable report from the Senate Redistricting Committee on November 1, 2021. It proceeded unaltered through its second and third readings in the Senate and its first reading in the House on November 2, received a favorable report from the House Redistricting Committee on November 3, and proceeded unaltered through its second and third readings in the House on November 4, 2021. SB740 was ratified into law on November 4, 2021 as S.L. 2021-174.

69. In the rush to finalize maps, Legislative Defendants rejected or tabled multiple amendments offered by other Senate and House legislators intended to require assessment and, as appropriate, to ameliorate the harm that would result to voters of color from the Legislative Defendants’ redistricting process. Legislative Defendants also continued to defend the adopted criteria with inaccurate recitations of applicable law and mischaracterizations of fact. For example, in the meeting of the Senate Committee on Redistricting and Elections on November 2, Defendant Newton stated that “some have asked whether the *Stephenson* cases require that race be used in redistricting,” and then sought to justify the Legislative Defendants’ choice to prohibit use of racial

data by asserting that (1) subsequent case law held that use of racial data or analysis was not legally required, (2) *Stephenson* did not apply because Section 5 of the VRA is not currently enforceable, and (3) it was the duty of other members to propose plans with majority-minority districts (despite unequivocal direction from the Redistricting Chairs that *no plan would be considered if racial data had been used*).

70. Legislative Defendants' flagrant disregard for the redistricting requirements set forth in *Stephenson* certainly confirms that their destruction of crossover districts that were providing Black voters with an opportunity to elect their candidate of choice was a willful and intentional act of racial discrimination in violation of the North Carolina Constitution. These bad acts are not merely abstract but will in fact cause harm to Black voters by reducing the number of districts in which they are effectively able to elect their candidate of choice, in violation of their rights to equal protection, and will frustrate the core missions of Plaintiff Common Cause to make government at all levels more representative, open, and responsive to the interests of ordinary people, including voters of color. Plaintiff forecast to Legislative Defendants that their members and other voters of color would specifically be harmed in *at least* the following areas, and this harm is still ensured given the districts drawn in the final maps proposed by Legislative Defendants and enacted in SB739 and HB976:<sup>29</sup>

- a. Choice of Senate cluster "Z1". The Duke Senate Clusters provided two potential cluster options for the "Z1" cluster in northeast North Carolina. The proposed Senate map "SST-4" (an early draft of the enacted SB739)

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<sup>29</sup> Plaintiff does not concede that there may not be other clusters that raise VRA implications, but those are not the subject of this litigation, which only focuses on the racially discriminatory exclusion of racial data in the select of clusters that the Legislature defined as "legal" and the Legislature's failure to do consider any racial data that is required by the NC Supreme Court in the *Stephenson* cases.

was drafted using the Duke Senate Cluster “Duke\_Senate 02,” which eliminates an effective crossover district, thus obliterating the voting power of Black voters in this area of North Carolina, specifically in Senate District 1. The Legislature had the option to adopt a cluster comprised of Warren, Halifax, Martin, Bertie, Northampton, Hertford, Gates, Camden, Currituck, and Tyrell counties, with a BVAP of 42.33%, and were advised of this by Plaintiff’s counsel on October 25, 2021. While there is racially polarized voting in these counties, collectively and using reconstituted election results, this one-district cluster would have elected the Black-preferred candidate in recent statewide racially contested elections. However, the “Z1” cluster ultimately selected for inclusion in SB739 is comprised of Northampton, Hertford, Bertie, Gates, Perquimans, Pasquotank, Camden, Currituck, Tyrell, and Dare Counties, and dilutes the ability of Black voters to elect their candidates of choice. The BVAP in District 1 of SB739 using this cluster is only 29.49%. There is racially polarized voting in these counties which, collectively and using reconstituted election results, would not have elected the Black-preferred candidate in recent statewide, racially contested elections. Even without explicitly viewing racial data during drafting, any individual with passing familiarity with this area of North Carolina would understand that the choice of this “Z1” cluster in SB739 would destroy Black voters’ ability to continue electing their candidate of choice in a crossover district.

- b. House Cluster “KK2”. The Duke House Clusters provided two configurations for the group of six counties in southeast North Carolina (Wayne, Sampson, Duplin, Onslow, Pender, and Bladen). The 2019 House Remedial Map formed House District 21 from portions of Wayne and Sampson counties, which provided Black voters the opportunity to elect their candidate of choice at 39% BVAP. On October 8, 2021, Plaintiff’s counsel notified Legislative Defendants that House District 21 was providing Black voters the opportunity to elect their candidate of choice, and that it would be possible to create two House districts from the Wayne and Sampson County Cluster. Plaintiff’s counsel also notified Legislative Defendants that voting in Sampson and Wayne Counties was highly racially polarized and thus there was substantial evidence of legally significant racially polarized voting in this cluster. However, the enacted HB976 intentionally dismantled an effective cross-over district that allowed Black voters to elect their candidate of choice.

71. As illustrated above, each of these examples of Senate and House clusters required by the Committee Chairs, and enacted in SB739 and HB976, would deprive Black voters the opportunity to elect candidates of their choice. Under the purportedly “race-blind” criteria adopted by the Legislative Defendants, however, the deleterious consequences on BVAP has not, and in fact cannot, be directly and appropriately considered by the Redistricting Committees.

72. The racially discriminatory impact of this purportedly “race-blind” approach, in violation of Article I, Section 19 of the North Carolina Constitution, has a well-understood detrimental effect on Black representation. Overall, Legislative Defendants’ intentional racially

discriminatory actions will cause a drastic decrease in representation for Black voters in the North Carolina House and Senate, as well as Congress. Of the 12 Senate districts that currently provide a genuine and equitable opportunity for voters of color to elect their candidate of choice (who also identify as Black),<sup>30</sup> four – the districts electing Senator Ernestine Bazemore, Senator Toby Fitch, Senator Ben Clark, and Senator Sydney Batch – are unlikely or certain not to elect candidates of choice for voters of color under SB739.<sup>31</sup> Of the 23 House districts that currently perform and provide a genuine and equitable opportunity for voters of color to elect their candidate of choice (who also identify as Black),<sup>32</sup> five – the districts electing Representative Raymond Smith, Representative James Gailliard, Representative Linda Cooper-Suggs, Representative Howard Hunter II, and Represented Garland Pierce – are unlikely or certain not to elect candidates of choice for voters of color under HB976.<sup>33</sup> Of the two Congressional districts that currently perform and provide a genuine and equitable opportunity for voters of color to elect their candidate of

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<sup>30</sup> Sen. Sydney Batch, current SD 17; Sen. Ernestine Bazemore, current SD 3; Sen. Dan Blue, current SD 14; Sen. Ben Clark, current SD 21; Sen. Don Davis, current SD 5; Sen. Milton F. “Toby” Fitch, current SD 4; Sen. Valerie Foushee, current SD 23; Sen. Natalie Murdock, current SD 20; Sen. Gladys Robinson, current SD 28; DeAndra Salavador, current SD 39; Sen. Joyce Waddell, current SD 40; and Sen. Paul Lowe, current SD 32. Available at: <https://www.ncleg.gov/Members/MemberList/S>.

<sup>31</sup> Laura Leslie, *Minority Lawmakers Likely to Lose Out Under Partisan NC District Maps*, WRAL (November 8, 2021), <https://www.wral.com/minority-lawmakers-likely-to-lose-out-under-partisan-nc-district-maps/19969697/>.

<sup>32</sup> Rep. Howard Hunter, current HD 5, Rep. Kandie Smith, current HD 8, Rep. Raymond Smith, current HD 21, Rep. Shelly Willingham, current HD 23, Rep. Linda Cooper-Suggs, current HD 24, Rep. James D. Gaillard, current HD 25, Rep. Vernetta Alston, current HD 29, Rep. Zack Hawkin, current HD 31, Rep. Terry Garrison, current HD 32, Rep. Rosa U. Gill, current HD 33, Rep. Abe Jones, current HD 38, Rep. Marvin W. Lucas, current HD 42, Rep. Garland Pierce, current HD 48, Rep. Robert T. Reives, current HD 54, Rep. Amos L. Quick, III, current HD 58, Rep. Cecil Brockman, current HD 60, Rep. Amber Baker, current HD 72, Rep. Terry M. Brown,, current HD 92, Rep. Nasif Majeed, current HD 99, Rep. Carolyn Logan, current HD 101, Rep. Brandon Lofton, current HD 104, Rep. Carla Cunningham, current HD 106, Rep. Kelly Alexander, current HD 107, Available at <https://www.ncleg.gov/Members/MemberList/H>.

<sup>33</sup> Laura Leslie, *Minority Lawmakers Likely to Lose Out Under Partisan NC District Maps*, WRAL (November 8, 2021), <https://www.wral.com/minority-lawmakers-likely-to-lose-out-under-partisan-nc-district-maps/19969697/>

choice (who also identify as Black),<sup>34</sup> one – the district electing Congressman G.K. Butterfield – is unlikely to elect candidates of choice for voters of color under SB740. This result could have been avoided had the General Assembly not flagrantly violated the redistricting process mandates issued by the North Carolina Supreme Court. Instead, functioning crossover districts were intentionally destroyed in violation of Article I, Section 19 of the North Carolina Constitution.

73. Significantly, while Legislative Defendants have tried to justify their actions by a purported and erroneous view that it will lower the risk of violations of federal law, they have not expressed the belief that undertaking the first step of *Stephenson* would automatically violate federal law. To the contrary, they have affirmed their belief that it is possible to comply with the requirements of both state and federal law, as set forth in *Stephenson*. For example, in a meeting of the Senate Redistricting Committee on Tuesday, October 5, 2021, Defendant Hise stated that “It is our position that you can comply with both laws at the same time” when asked about compliance with the VRA and the county clusters required by the Whole County Provision under *Stephenson*.

74. Relatedly, Legislative Defendants have also expressed the view that using race to draw maps is not a *per se* violation of federal law, but rather only impermissible if they did not first ensure the *Gingles* preconditions were satisfied before using race (as they failed to do last cycle and as determined by the court in *Covington v. North Carolina*, 316 F.R.D. 117, 176-78 (M.D.N.C. 2016), *summarily aff’d*, 137 S. Ct. 2211 (2017)). For example, in a meeting of the Senate Committee on Tuesday, November 2, 2021, Defendant Newton stated “if we draw districts using race, and we do not satisfy the *Gingles* preconditions, we risk violating the Equal Protections

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<sup>34</sup> Rep. G.K. Butterfield, current CD 1, Rep. Alma Adams, current CD 12. Available at <https://www.congress.gov/members?q=%7B%22member-state%22%3A%22North+Carolina%22%2C%22congress%22%3A117%7D>.

Clause of the Fourteenth Amendment of the United States Constitution.” This statement acknowledges that, if the *Gingles* preconditions were satisfied, the use of race to draw districts would *not* violate the Equal Protections Clause and thus use of race in redistricting is not prohibited by federal law.

75. These views were reinforced by statements from counsel for Legislative Defendants during oral argument in the matter *North Carolina NAACP v. Berger*, in which counsel for Legislative Defendants asserted that Legislative Defendant were not required under law to ascertain what VRA districts are required nor to do any analysis of racial demographic data. *See* Transcript of 30 November 2021 Oral Argument, *NC NAACP v. Berger*, No. 21CVS014476 (Wake Cty. Super. Ct. Nov. 30, 2021) at p. 51 lines 15-17 (“There’s no affirmative duty on the Legislature to engage in any particular process to get a complaint VRA map.”), p. 49, lines 18-19 (“There’s no requirement that we [the Legislature] inform ourselves of that data to comply with the VRA.”), p. 50, lines 11-13 (“There’s been no formal [analysis to determine whether the maps are VRA compliant] . . . the Legislature hasn’t had a hearing or done anything like that. They’re not required to.”).

76. Accordingly, Legislative Defendants’ role in orchestrating a redistricting process that defiantly ignored the unequivocal directions of the highest court in this state is not based upon the belief that doing so would be inconsistent with federal law, including the Equal Protection Clause of the Fourteenth Amendment. Rather, it is based upon an erroneous legal view that the first step of *Stephenson* is not required at all.

**C. The Legislative Defendants Have Continued to Partisan Gerrymander State Legislative and Congressional Maps to Further Entrench Their Party in Power.**

1. The North Carolina Republican Party Has a Long History of Passing Redistricting and Election-Related Laws to Ensure Political Entrenchment and Frustration of the Ability of North Carolina Voters to Elect Their Candidates of Choice.

77. While the mechanics, justifications, and legal arguments have all shifted as strategies and tactics have changed, one dynamic has remained constant: the North Carolina Republican Party's relentless efforts to insulate their political power from the will of the people of North Carolina.

78. In 2010, the North Carolina Republican Party took unified control of the North Carolina General Assembly for the first time since 1870. No sooner were their newfound majorities sworn in than they started working to entrench those majorities, using discriminatory redistricting processes and changes in election laws to place their political power beyond the reach of North Carolina voters. Many of these efforts have been challenged in both state and federal court, and many of these efforts have been struck down by those same courts. While the specific claims at issue have shifted over time, the overall thrust of these cases is clear: the North Carolina Republican Party attempting to entrench its power, by any means necessary, in violation of applicable law. Plaintiff Common Cause's claims in this case are only the latest episode in this saga.

79. The majorities that precipitated the North Carolina Republican Party's unlawful political entrenchment were rooted in partisan machinations from the beginning. In 2010, the North Carolina Republican Party, in coordination with the Republican National Committee, targeted the North Carolina General Assembly via their "REDistricting Majority Project," or "REDMAP." REDMAP sought to identify opportunities to take control of state legislatures throughout the



country ahead of the 2011 decennial redistricting process, in order to use that newfound control to gerrymander maps in favor of Republican candidates.

80. REDMAP was wildly successful, with Republicans winning 18 of the 22 North Carolina House and Senate races targeted in 2010, and giving Republicans control of the both chambers of the General Assembly for the first time since 1870.

81. Republican leadership in the General Assembly immediately put these REDMAP-powered majorities to work in the 2011 redistricting process. Working out of the basement of the North Carolina Republican Party headquarters, a team led by Tom Hofeller drew legislative maps in secret. The goal was clear: to ensure durable Republican majorities in each legislative delegation, regardless of the desires of North Carolina voters.

82. The REDMAP-derived Republican majorities passed the Hofeller-drawn plans without a single Democrat in support, with the express goal of entrenching Republican legislative dominance. The 2011 plans did exactly that. In elections in 2012, 2014, and 2016, the percentage of seats won by Republicans in the House, Senate, and Congressional delegations greatly exceeded the Republican vote share statewide. The 2011 state Legislative plans were struck down as unconstitutional racial gerrymanders in *Covington v. North Carolina*, 316 F.R.D. at 176-78. The *Covington* court found that the Legislature's proffered explanation for the maps as necessary for Voting Rights Act compliance was unjustified. *Id.* at 168-69. The U.S. Supreme Court summarily affirmed this decision. 137 S. Ct. 2211 (2017). A similar finding was made concerning two Congressional districts in *Harris v. McCrory*, 159 F. Supp. 3d 600, 604 (M.D.N.C. 2016), and was also affirmed by the U.S. Supreme Court. *Cooper v. Harris*, 137 S. Ct. 1455, 1481-82 (2017).

83. In the immediate aftermath of the *Covington* decision, before remedial maps undoing the unconstitutional gerrymanders could be passed, the Republican-dominated General

Assembly reached for alternate means to entrench their political power. The day after the Supreme Court affirmed the *Covington* decision, the General Assembly placed a constitutional amendment on the ballot to authorize a voter ID law in North Carolina. The amendment was rife with procedural irregularities, including complete silence as to implementation of the amendment. After the amendment referendum narrowly passed, the outgoing legislature (and its soon-to-disappear Republican supermajority) passed racially discriminatory legislation implementing the amendment. This legislation was vetoed by the Governor, but the Governor's veto was subsequently overridden in a last act of the Republican supermajority in a lame duck session just before a legislature elected under remedial maps would enter office. The amendment was later struck down as intentionally discriminatory on the basis of race. Final Judgment and Order, *Holmes v. Moore*, No. 18-CVS-15292 (N.C. Sup. Ct. Sept. 17, 2021).

2. After the 2011 Plans Were Struck Down, the Legislature Drew Remedial Maps in 2017 and Again Attempted to Entrench Their Political Power.

84. The Legislature sought to defend the subsequently enacted 2017 Plans exclusively as partisan gerrymanders. Republican leaders made repeated public statements about their partisan intentions, and grounded their legal defense of the maps in the theory that partisan gerrymandering was explicitly allowable under both the U.S. and North Carolina Constitutions. After a two-week trial, a three-judge panel struck down the 2017 state Legislative maps as unconstitutional partisan gerrymanders. *Common Cause v. Lewis*, 2019 N.C. Super. LEXIS 56, at \*404-05. Shortly thereafter, the 2017 Congressional maps were also enjoined as unconstitutional partisan gerrymanders. *Harper v. Lewis*, 2019 N.C. Super. LEXIS 122, at \*24-25 (N.C. Sup. Ct. Oct. 28, 2019).

3. The Legislative Defendants Have Continued This Cycle of Gerrymandering By Enacting Partisan Gerrymandered State Legislative and Congressional Maps.

85. The 2021 Enacted Maps all passed along party lines. The State House map, HB976, passed the House on a strict party line vote, with 67 Republican Representatives in favor and 49 Democratic Representatives opposed. HB976 also passed the Senate on a strict party line vote, with 25 Republican Senators in favor and 21 Democratic Senators opposed.

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

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

88. Each of the maps were enacted with the intent to dilute the vote of and impede voters who support candidates not in the majority party in the General Assembly from electing their candidate of choice.

89. Each of the enacted maps will have an extreme and durable discriminatory effect on voters who prefer Democratic candidates.

90. The extreme partisan outcomes produced by each of the challenged maps cannot be explained by any neutral reason.

**D. The Three Challenged Maps Were Enacted with the Intent to Discriminate Against Voters Who Support Democratic Candidates.**

91. Legislative Defendants' claims that they did not use political data are belied by the fact that simulations demonstrate that plans produced without partisan data almost never produce the outcomes seen in the enacted plans.

92. Moreover, Legislative Defendants acknowledged they would not be enforcing the "rule" that partisan and racial data not be used. Upon information and belief, numerous Republican legislators brought with them into the map-drawing room papers upon which they relied in drawing district lines on the public terminals, and the poor audio quality of the livestream made it impossible for the public to hear many of the conversations held between Republican legislators and their staffers.

93. Given the Legislative Defendants' defiant rejection of the rules the North Carolina Supreme Court has imposed on redistricting, the inconsistency between their claims of a transparent process with the opacity of the process that actually occurred; and their failure to meaningfully exclude members from using political data, an inference of improper intent is supported by the circumstantial evidence.

*Congressional Districts at Issue*

94. The Congressional map (SB740) demonstrates cracking and packing of Democratic-performing areas that would not be possible without utilizing political data (or a deep familiarity with the politics of certain areas, which belies the claims of not using any partisan data).

95. While the entire design of the Congressional map is necessary to effectuating the unconstitutional and discriminatory effect orchestrated by Legislative Defendants, the following districts exemplify the packing and cracking strategies used – strategies that highlight the intentional manipulation of district lines in order to achieve unconstitutional goals.

96. In Congressional District 2, the Legislature purposefully excluded Greenville in Pitt County – despite splitting Pitt County to include a microscopic portion of the county in District 2 – in order to undermine Democratic and Black voting strength in this Congressional District. Substantial portions of Greenville, a heavily Black and Democratic city widely known as such to anyone with a passing familiarity of the state’s political geography, have historically been included in that Congressional district, long represented by the candidate of choice of Black voters even though it has, for years, never needed to achieve majority-Black status in order to provide Black voters the opportunity to elect their candidates of choice.

97. Instead of including Greenville, as has historically been done, the Legislature instead chose to add Caswell and Person Counties to Congressional District 2, counties that are overwhelmingly White and overwhelmingly Republican. Again, to believe that map drawers would not be aware of the racial and political implications of this significant change would require abandonment of all common sense and logic, and an assumption that North Carolina legislators do not understand the state’s political geography at all.

98. These changes to Congressional District 2 dramatically reduce the BVAP in the district, from 42.38% to 39.99%, likely destroying a functioning crossover district and dramatically decreasing the Black political performance of the district, leading the Cook Political Report to list this district as a “Toss Up.”<sup>35</sup>

99. Likewise, in Congressional District 4, the Sandhills counties of Cumberland and Sampson Counties are joined with non-Sandhill counties of Harnett and Johnston Counties, which are Triangle suburb counties, and a heavily Republican portion of Wayne County. This decision

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<sup>35</sup> Cook Political Report, *2022 House Race Ratings* (Dec. 9, 2021), <https://www.cookpolitical.com/ratings/house-race-ratings> (last visited Dec. 10, 2021).

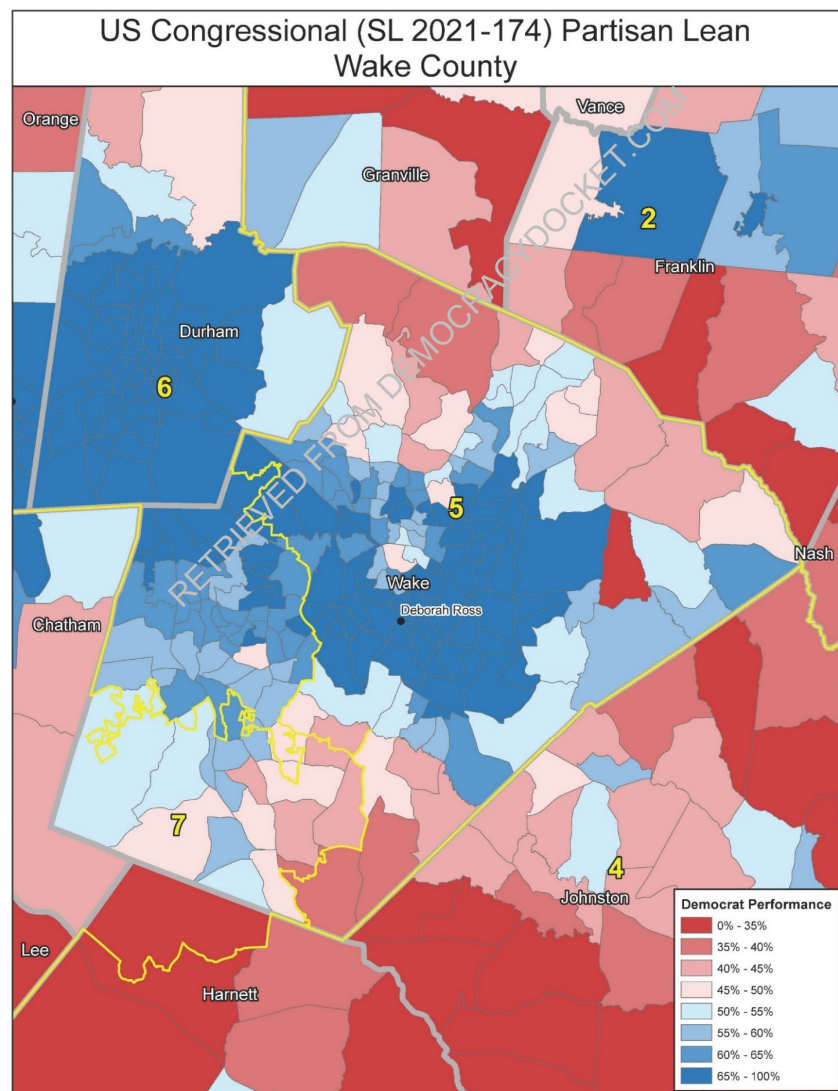
effectively frustrates the ability of Democratic and Black voters in Fayetteville (Cumberland County), widely known to be such, by submerging those voters within a district of heavily White and conservative areas. In court-ordered remedial districts in 2016 and 2019, Cumberland County was never joined with Harnett or Johnston Counties.

100. The Triangle region was subject to extreme packing and cracking in order to effectuate partisan gerrymandering in that region. Wake County, which is overwhelmingly Democratic, is split into 3 different districts in order to prevent the natural emergence of a third Democratic leaning district in the county.

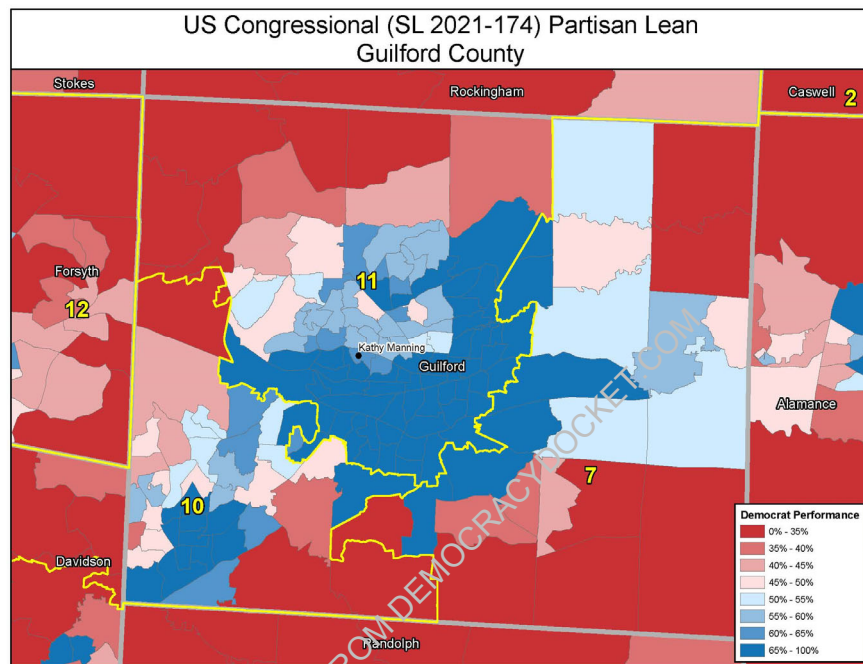
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101. The image below demonstrates that Democratic voters are packed into Congressional District 5. The remainder of Democratic voters in the county are cracked, with half being assigned to the already heavily Democratic district (Congressional District 6) based in Orange and Durham County and the rest being stranded in a Republican-leaning, Triad-based district (Congressional District 7). Such surgical packing and cracking would not be possible without partisan data and an intense familiarity with the political characteristics of the precincts in Wake County – familiarity that Legislative Defendants had.



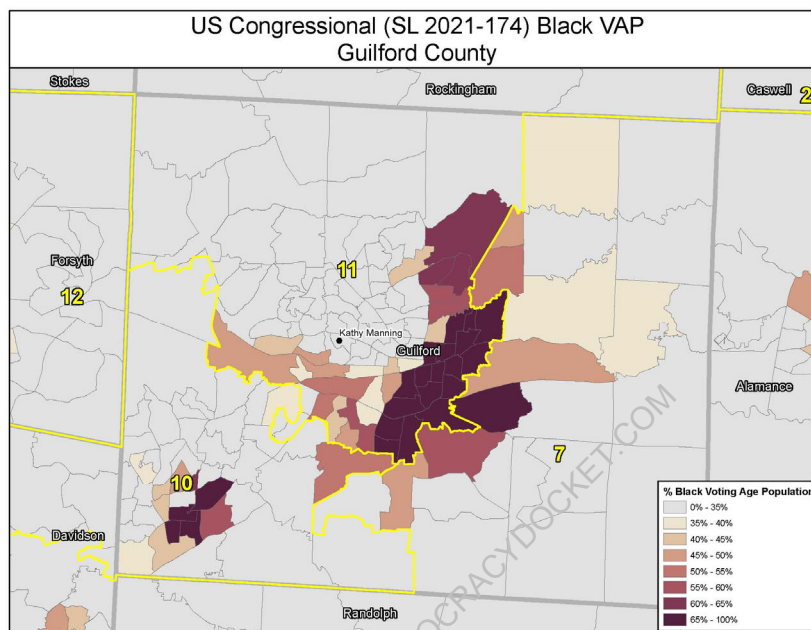
102. The Triad region saw some of the most egregious cracking strategies and gross disregard for communities of interest. As the image below demonstrates, the heavily Black and heavily Democratic Guilford County was cracked into 3 districts – Congressional District 11, Congressional District 7 and Congressional District 10.



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103. The cracking of Black voters in Guilford County was also done with near surgical precision and presents strong evidence of the Legislative Defendants' intentional racial discrimination in violation Article I, Section 19.<sup>36</sup>

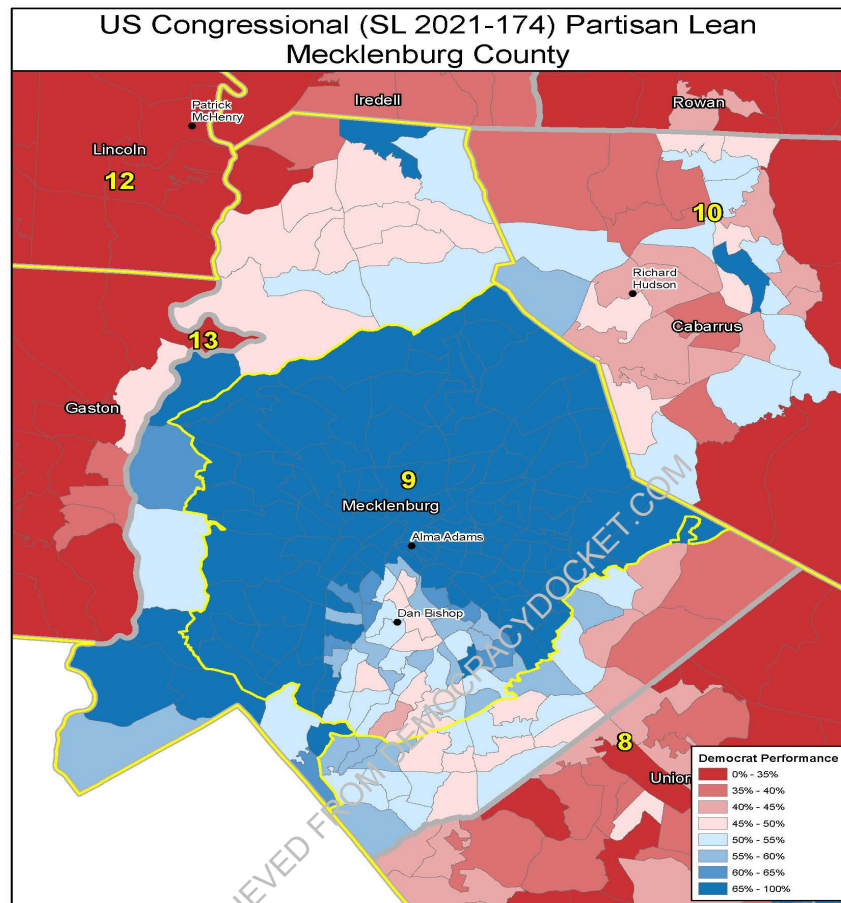


104. Black and Democratic voters are stranded in Republican districts reaching, to the west, out to Watauga County and, to the east, into Wake County – regions that have nothing in common with Guilford County. This cracking also belies the expected defense that maps that favor Republicans are caused by the fact that Democrats choose to congregate in urban areas. If those areas are egregiously cracked, as seen above, that plainly cannot be a plausible, non-discriminatory reason for the extreme partisan outcomes produced by the enacted Congressional maps.

105. In Mecklenburg County, a pattern of cracking and packing emerges as Democratic voters were packed into Congressional District 9 and cracked between the remaining two Republican leaning Congressional Districts 8 and 13. Such surgical packing and cracking would

<sup>36</sup> Plaintiff does not allege that the VRA compelled the drawing of any district in Guilford County, but that does not give the Legislature free reign to crack Black voting populations in order to frustrate their political voice.

not be possible without partisan data and an intense familiarity with the political characteristics of the precincts in Mecklenburg County – familiarity that Legislative Defendants had.



106. Plaintiff Common Cause has members who are voters who identify as Black in each of the above districts.

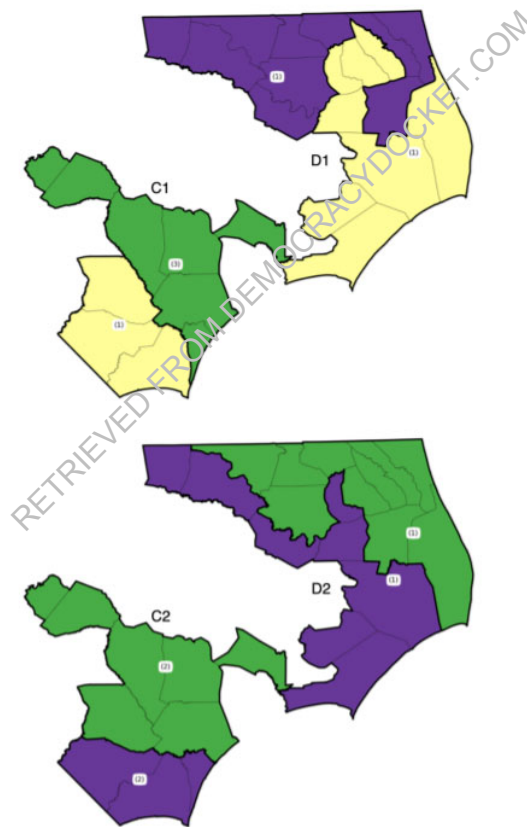
107. Plaintiff Common Cause has members who are voters who prefer Democratic Congressional candidates in each of the above districts.

#### *Senate Districts at Issue*

108. The Senate Map demonstrates cracking and packing of Democratic-performing areas that would not be possible without political data (or a deep familiarity with the politics of certain areas, which belies the claims of not using any partisan data).

109. While the entire design of the Senate map is necessary to effectuating the unconstitutional and discriminatory effect orchestrated by Legislative Defendants, the following districts exemplify the packing and strategies used – strategies that highlight the intentional manipulation of district lines in order to achieve the unconstitutional goals. They likewise demonstrate the racially discriminatory efforts at play.

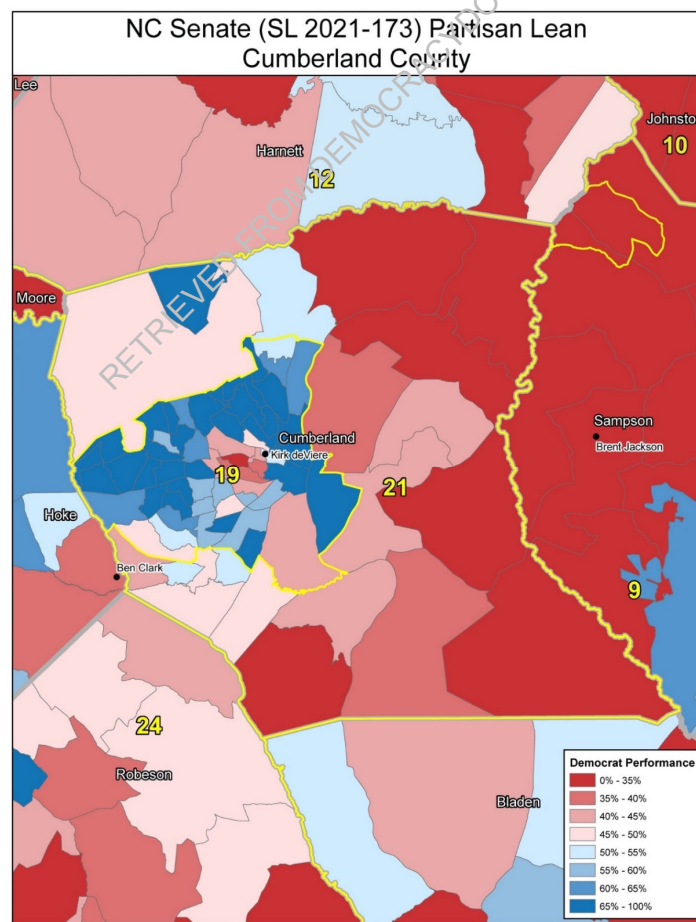
110. The Legislature was presented with two possible clusters for a district in Northeast North Carolina (for a seat currently held by Sen. Ernestine Bazemore). The two cluster options are represented below:



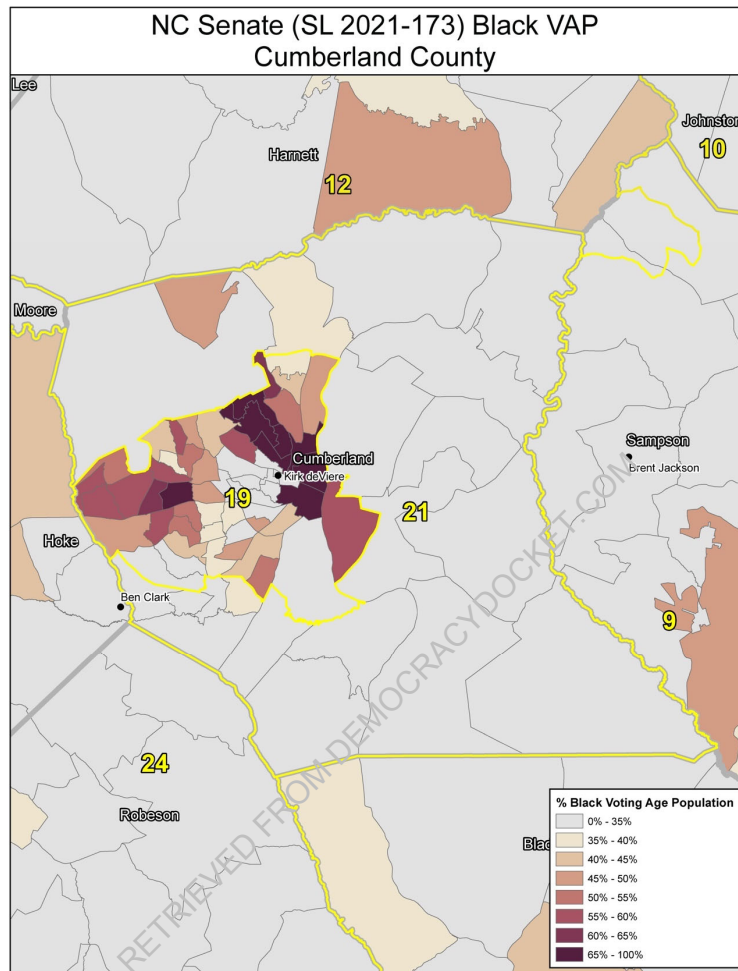
111. Legislative Defendants asserted that both cluster options were legal. The cluster at the top (D1, which includes Carteret, Pamlico, Washington, Chowan, Hyde, Dare, Perquimans, and Pasquotank counties) would have maintained a performing crossover district that allowed

Black voters to elect their candidate of choice in eastern North Carolina. The cluster below (D2, which includes Carteret, Pamlico, Washington, Chowan, Hyde, Martin, Halifax, and Warren counties) would destroy the ability of Black voters to elect their candidate of choice and ensure the defeat of their current preferred representative, Senator Bazemore. Legislative Defendants were warned that the selecting the second cluster would dramatically reduce the BVAP in the district and would destroy an effective crossover district. They destroyed it anyway, and offered no other justification.

112. Cumberland County presents another example where heavily Black and heavily Democratic areas were packed and cracked with near-surgical precision to create Senate Districts 19 and 21.

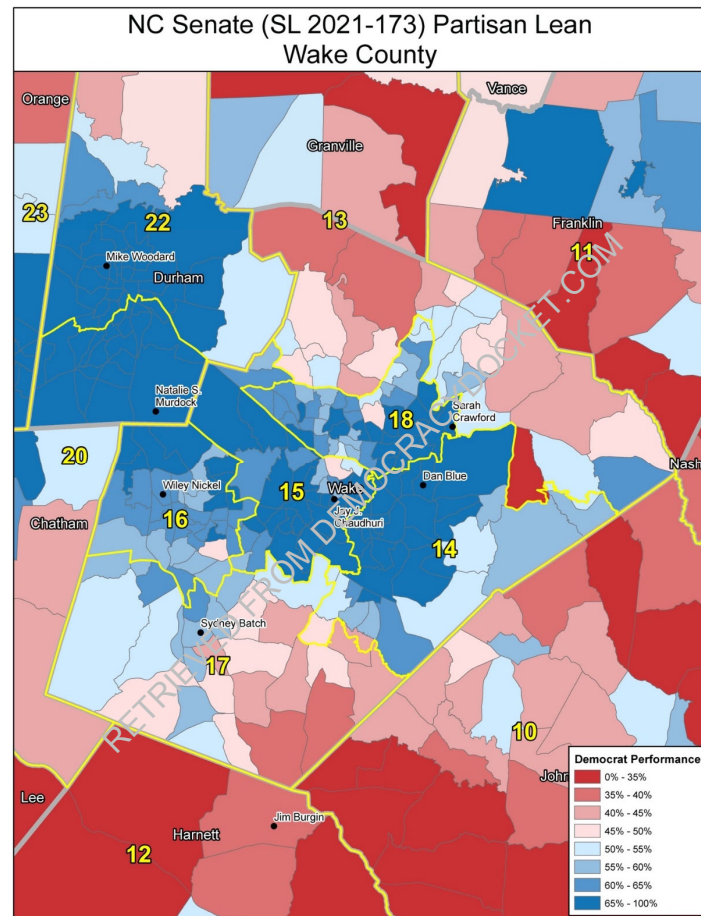


113. The correlation of these lines to the make-up of BVAP also presents strong evidence of intentional racial discrimination in violation of Article I, Section 19.



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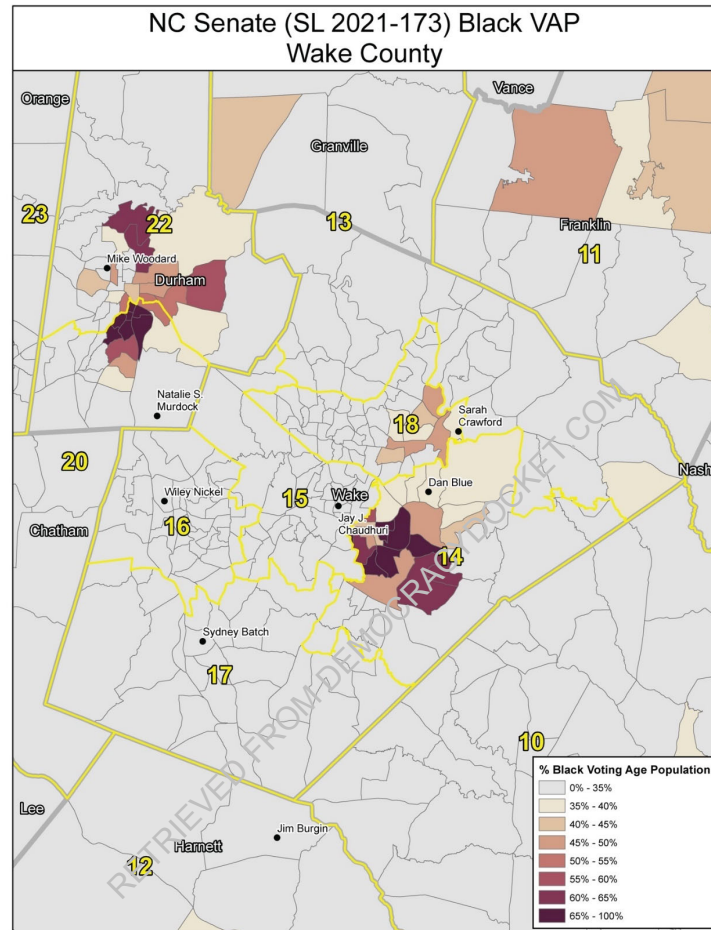
114. In Wake County, the Legislature drew Senate districts that cracked Democratic voters into various senate districts (SD 15, 16, 17) within the county, while packing them into others (SD 14). This would only be possible with the utilization of political data or a deep familiarity with the political makeup of Wake County, either of which belies the Legislative Defendants' claims that partisan data was not used to draw districts.



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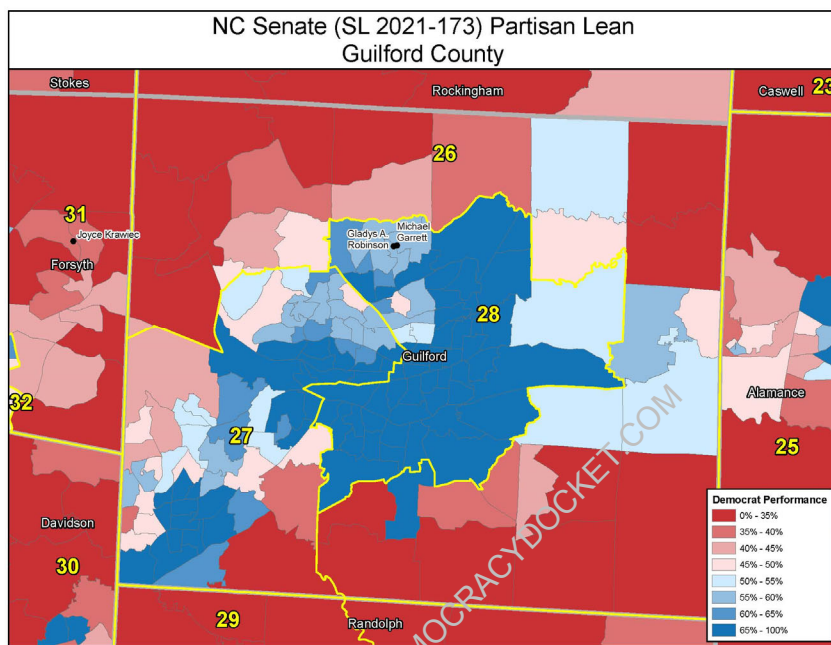


115. The Legislature also drew maps that explicitly followed the contours of the Black electorate in Wake County, especially in Senate District 14 and Senate District 18. The precise way that these districts were drawn is only possible by looking at racial data.



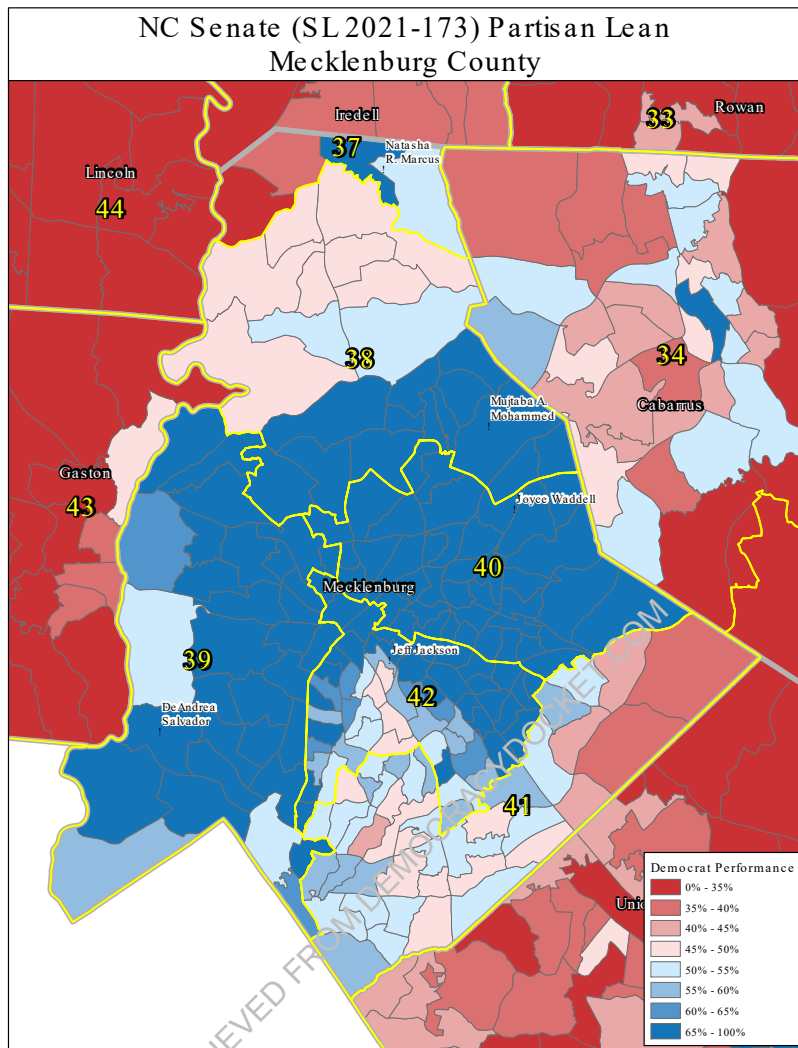
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116. In Guilford County, the Legislature also surgically cracked Democratic voters into various Senate districts (SD 27 and 28) in a manner that is not possible without looking at political data.



117. In Mecklenburg/Iredell Counties, map drawers intentionally double-bunked Senator Marcus in Senate District 37, which leadership later unsuccessfully attempted to use as a bargaining chip to garner Democratic support for their gerrymanders. Map drawers also purposefully drew two Republican-influence districts in the north and south of Mecklenburg County first, and then proceeded to pack all remaining Democratic areas together, in order to increase the influence of Republican voters overall.



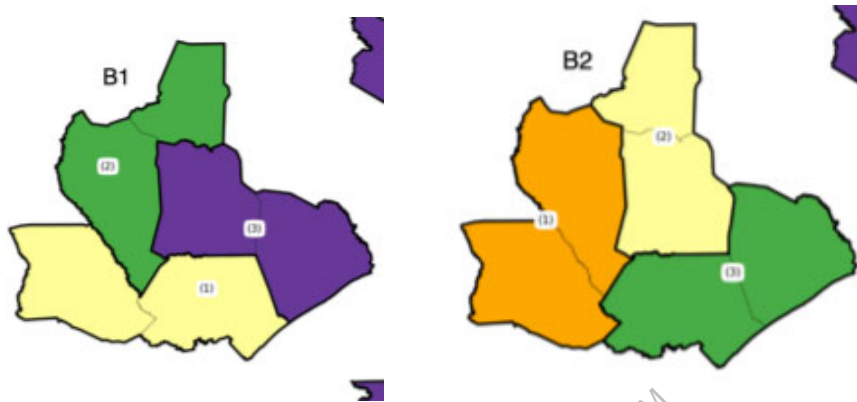


## State House Districts at Issue

118. The State House Map demonstrates cracking and packing of Democratic-performing areas that would not be possible without political data (or a deep familiarity with the politics of certain areas, which belies the claims of not using any partisan data).

119. While the entire design of the State House map is necessary to effectuating the unconstitutional and discriminatory effect orchestrated by Legislative Defendants, the following districts exemplify the packing and strategies used – strategies that highlight the intentional manipulation of district lines in order to achieve the unconstitutional goals. They likewise demonstrate the racially discriminatory efforts at play.

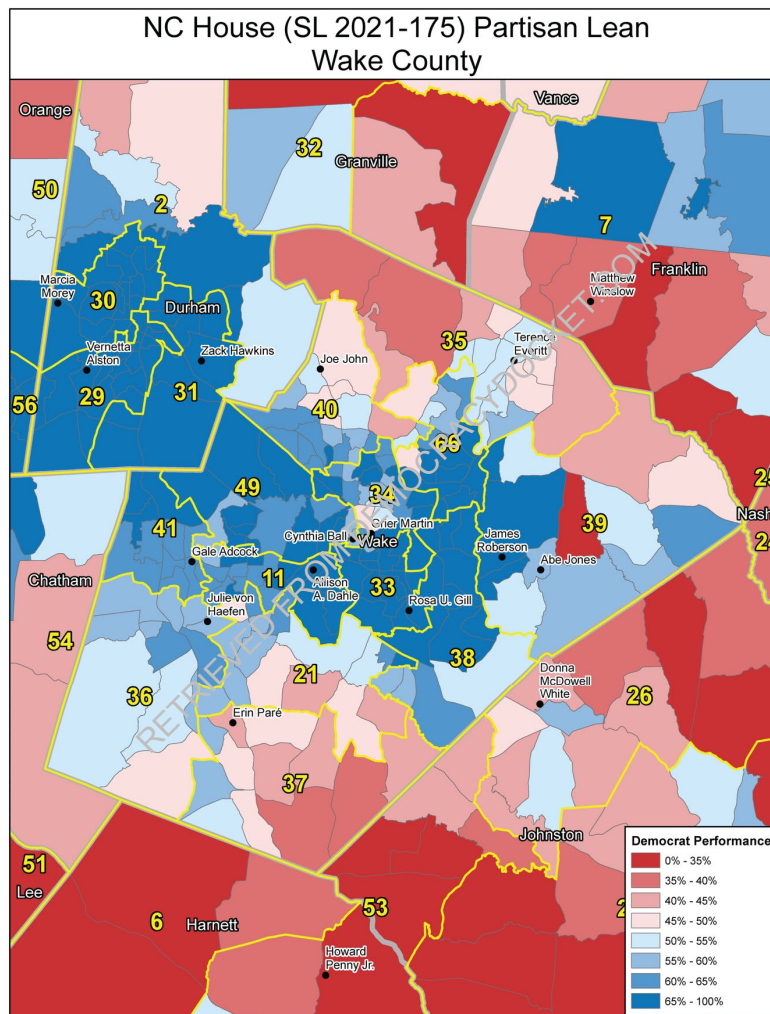
120. The Legislature was presented with two possible clusters for a House district based in Wayne County (for a seat currently held by Rep. Raymond Smith). The two cluster options are represented below:



121. Legislative Defendants asserted that both cluster options were legal. The cluster to the right (B2) would have had a better chance of maintaining a performing crossover district that allowed Black voters to elect their candidate of choice and would have better respected communities of interest. The cluster to the left (B1) would destroy the ability of Black voters to elect their candidate of choice and ensure the defeat of their current preferred representative, Representative Smith. Legislative Defendants were warned that the selecting the cluster on the left would reduce the BVAP in the district and would destroy an effective crossover district. They destroyed it anyway.

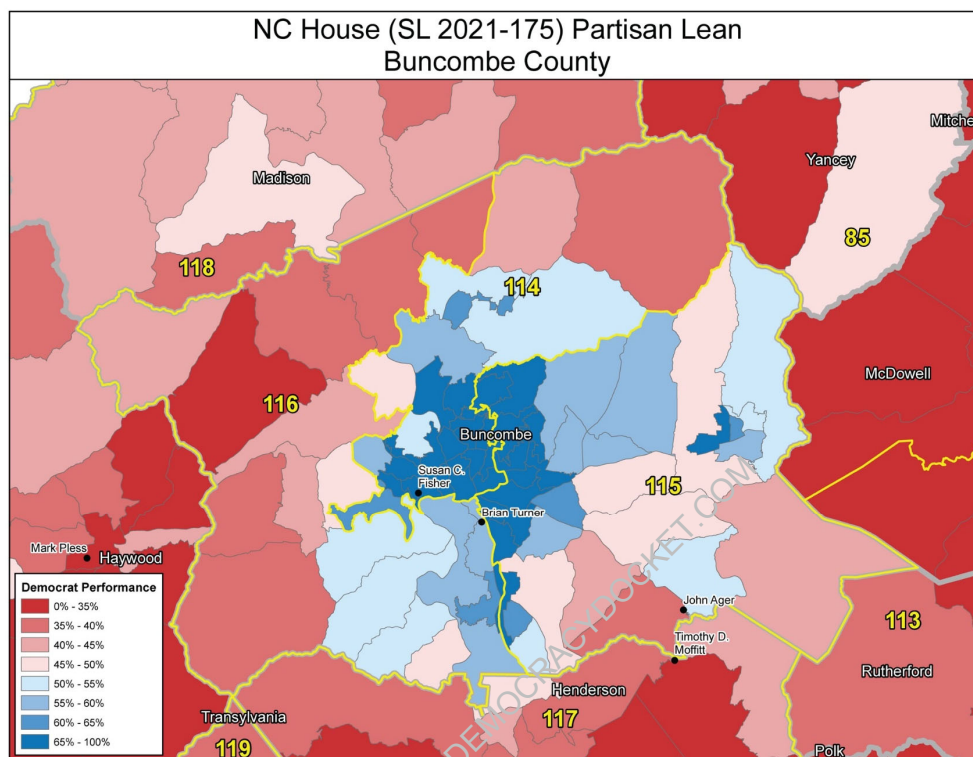
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122. In Wake County, House District 35 also demonstrates all the hallmarks of a partisan gerrymander. While the district is still anchored in Wake Forest, the district shifted substantially to capture the most conservative VTDs in this part of Wake County. It is simply not plausible that such a district, presenting one of the few configurations of VTDs that would enable a Republican to win in north Wake County, was created without relying on partisan data.

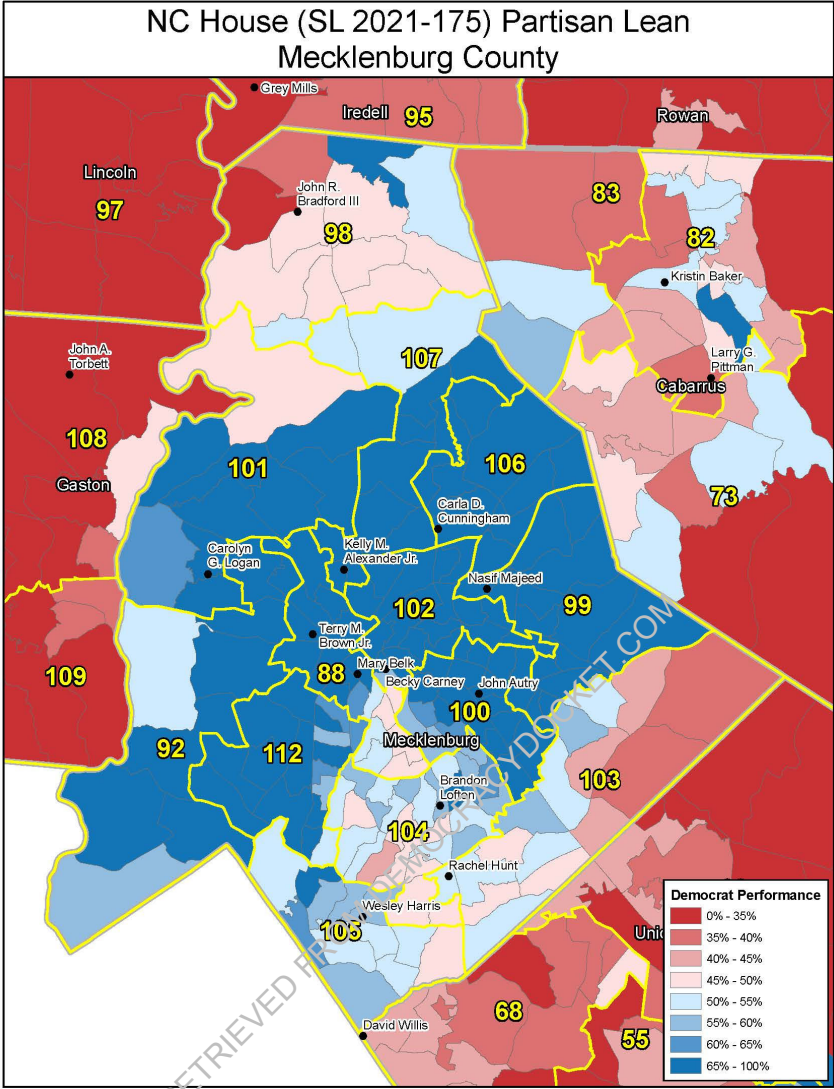


123. In Buncombe County, Legislative Defendants drew House Districts 114, 115, and 116 along precise partisan lines to give Republicans an opportunity to win one of the county's three districts. In order to achieve this, House District 116 loops around the perimeter of the county, staying out of Asheville in order to sweep up the most Republican-leaning areas. The degree to

which House District 116 steers clear of predominantly Democratic VTDs would not be possible without considering partisan data.

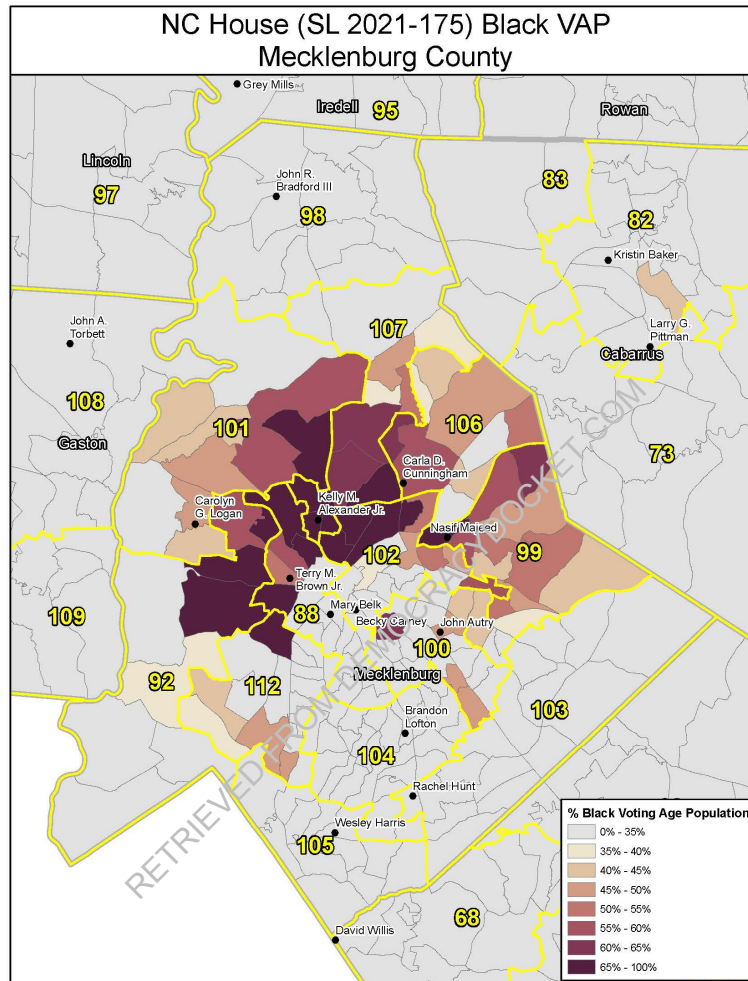


124. In Mecklenburg County, the House district lines closely mirror the partisan breakdowns of the county, particularly at the northern and southern ends of the county. House District 98 in the northern part of the county skirts around Democratic VTDs to keep the district as Republican as possible; House District 103 does the same along the southern border of the county. House District 104 also weaves through southern Mecklenburg County, picking up as many Republican-leaning VTDs as possible to give Republicans a chance to win the district. None of these configurations would be possible without considering partisan data.



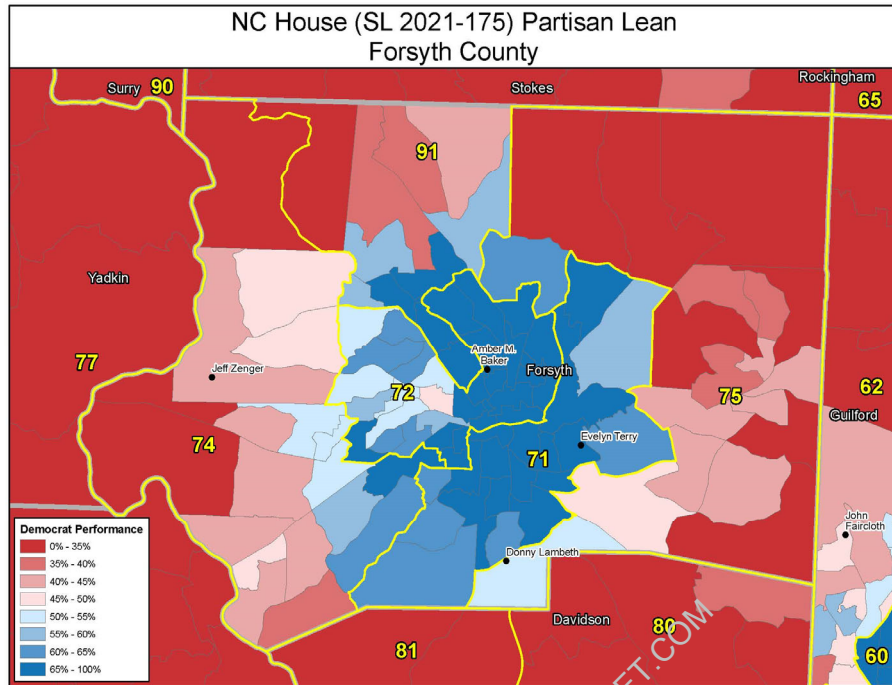
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125. In a similar vein, the Legislature drew House districts within Mecklenburg County that cracked Black voters into a myriad of different districts, breaking apart communities of interest.

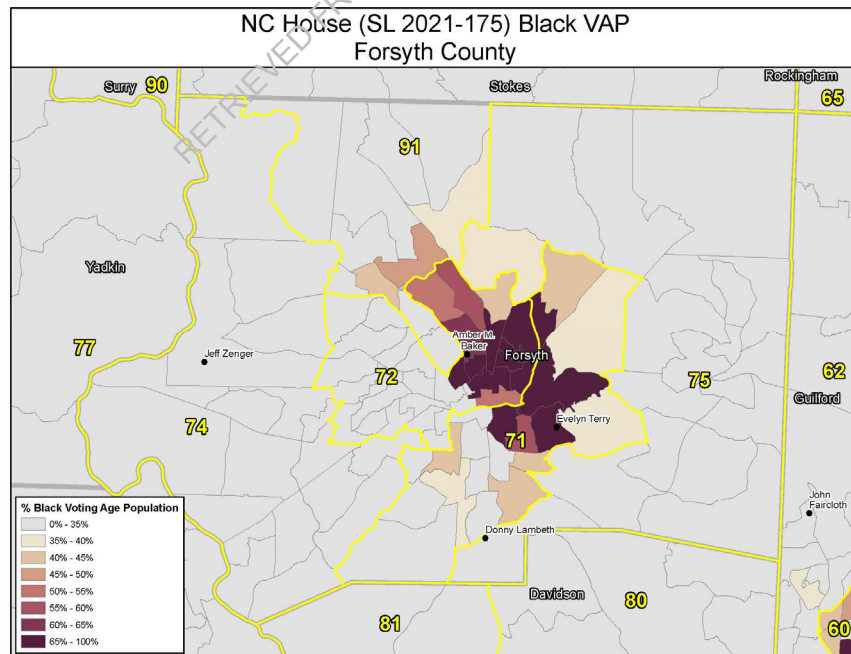


126. In Forsyth County, the Legislature drew maps that cracked Democratic voters into various House districts, some that break apart communities of interest, specifically House Districts 72 and 91. This cracking is only possible if political data was utilized in drawing these districts.

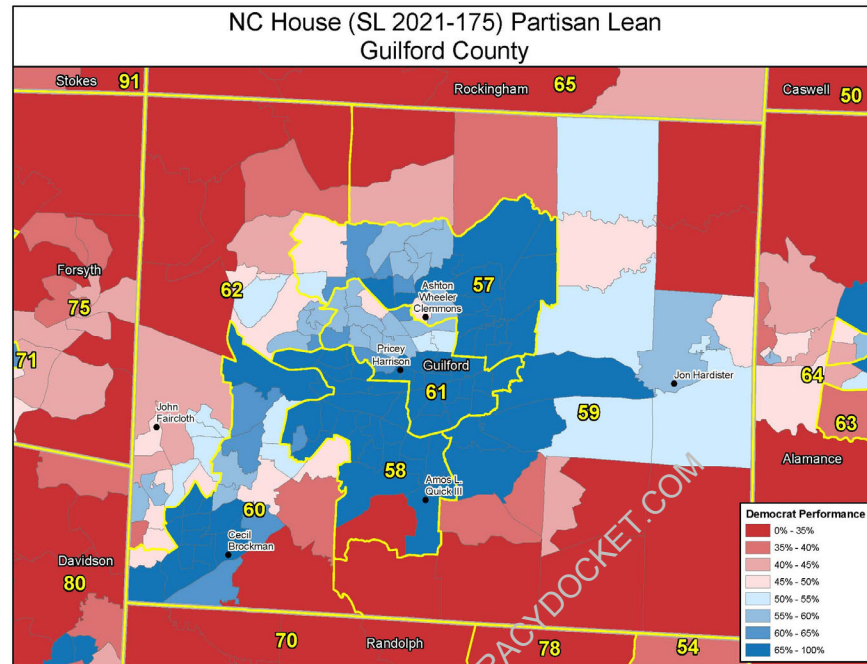




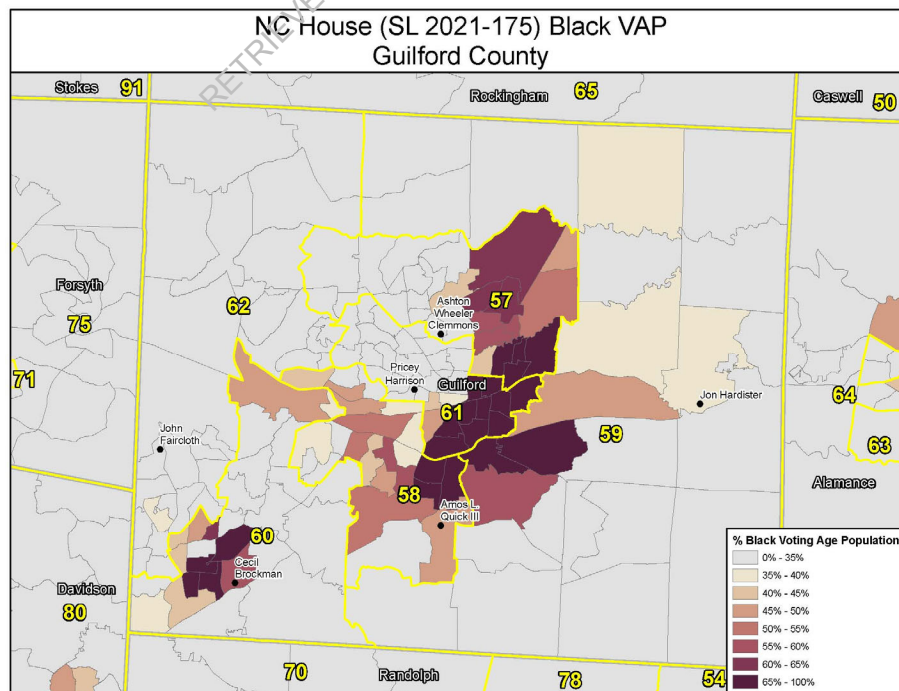
127. Similar to the partisan cracking described above, the Legislature also cracked Black voters in Forsyth County between Districts 71 and 72, drawing district lines in a manner that followed the contours of the Black electorate in northwest Forsyth.



128. Similar to Forsyth County, the Legislature also cracked Guilford County Democratic voters, specifically in the western part of the county.

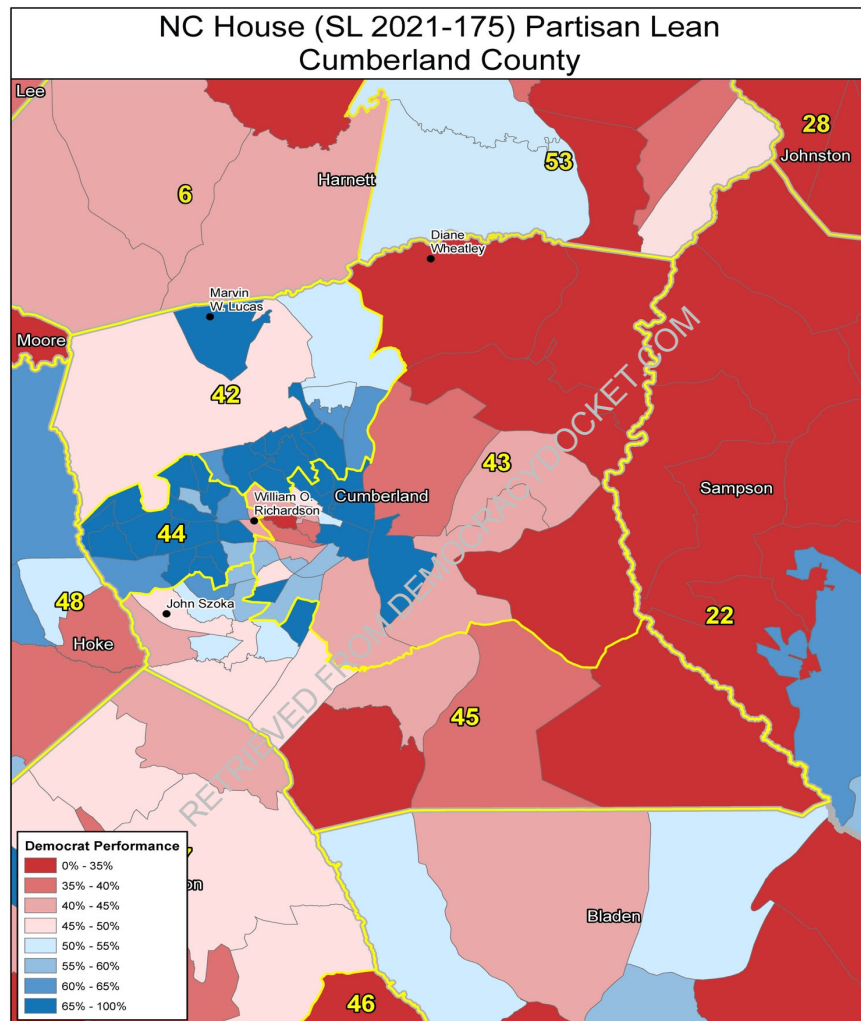


129. In a similar vein, the Legislature also cracked the Black electorate in Guilford County splitting communities of interest in the eastern part of the county.

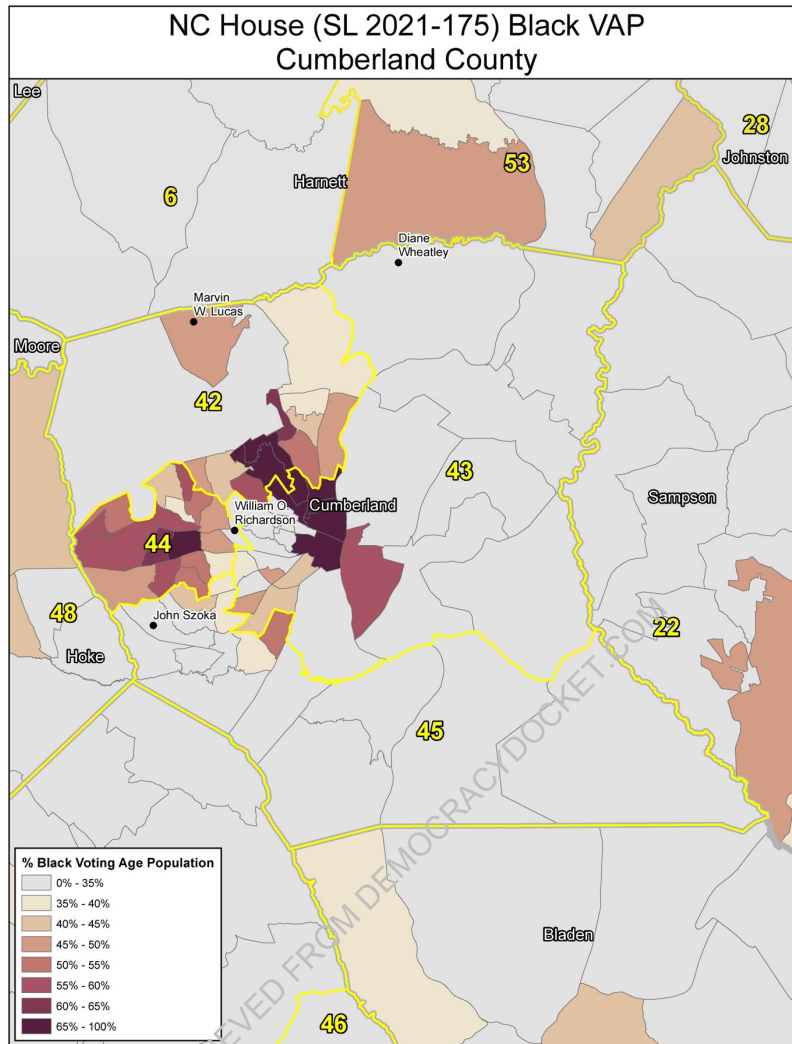




130. In Cumberland County, the Legislature also cracked Democratic voters in a similar manner to Forsyth and Guilford Counties. Democratic voters on the eastern side of the county are split into four different districts in order to dilute the power of Democratic voters in the eastern part of the county overall.



131. The Legislature also cracked the Black electorate between House Districts 42 and 43, but packed Black voters into District 44. The only way that these lines could be drawn was by looking at racial data.



**E. The Challenged Maps Will Have a Durable and Extreme Discriminatory Effect.**

132. The enacted maps produce political outcomes that are extreme statistical outliers and political outcomes of the elections are unlikely to change even in swing election years – that is, they are very effective partisan gerrymanders.

133. The Congressional Map is likely to elect 10 Republicans and 4 Democrats, although Congressional District 2 has now been rated a Toss Up district, so it is entirely possible that the map will elect 11 Republicans and 3 Democrats. This is a 71.4%-78.6% Republican control of the Congressional delegation in a state where most statewide elections are very close to 50-50.

134. Likewise, in the Senate, the districts are drawn to ensure that Republicans cannot lose a majority in the Senate, and should they pick up just a few seats (in the small number of competitive seats to begin with), they could likely restore their supermajority. That is, again, in a 50-50 state, Republicans would be poised to control at least three-fifths or more of the Senate.

135. Similarly, in the State House, the district lines are drawn so that it is essentially impossible for Democrats to obtain a majority in that chamber, despite the fact that North Carolina is an evenly divided state. The number of Republicans elected to the State House would, through the entire decade of use of this map, be expected to greatly exceed and outperform their statewide vote share.

**F. No Other Neutral Reason Explains the Extreme Partisan Discrimination.**

136. No purported reason that might be offered to explain the extreme partisan gerrymander is plausible or factual.

137. To the extent that Democratic voters are concentrated in urban areas, that did not require Legislative Defendants to crack Democratic and Black voters in Guilford County or to crack Democratic voters in Wake County congressional districts, as an example.

138. The Whole County Provision likewise does not require or produce the extreme partisan outcomes observed in the three challenged maps. Repeatedly, when Legislative Defendants chose between county clusters that they said were legal, they consistently chose the clusters that would perform better for Republicans and worse for Democrats (and often the clusters that would perform worse for Black voters). Moreover, within the clusters, the line-drawing was designed to maximize Republican advantage.

139. And even if, hypothetically, the leadership of the North Carolina General Assembly had not chosen to intentionally destroy a number of performing crossover districts in violation of Art. 1, Section 19 as they did, these maps would still be extreme partisan gerrymanders.

**G. Legislative Defendants Timed their Redistricting Process to Evade Judicial Review and Stifle Public Input.**

140. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs.

141. On February 12, 2021, the U.S. Census Bureau announced that its release of P.L. 94-171 redistricting data would be delayed by the COVID-19 pandemic, and would not be released until the fall of 2021.<sup>37</sup> On February 24, 2021, the North Carolina State Board of Elections Executive Director Karen Brinson Bell advised the House Elections Law and Campaign Finance Reform Committee that this delay would require an election schedule change in light of the time required to prepare for candidate filing and ballot styles. Director Brinson Bell advised the Committee to move the 2022 primary to a May 3 primary, July 12 second primary, and November 8 general election.<sup>38</sup>

142. The North Carolina General Assembly did not respond to Director Brinson Bell's recommendation to postpone the March 2022 primaries to May 3. The General Assembly did, however, extend the schedule for municipal elections for those municipalities similarly impacted by the Census delay. *See* S.B. 722, S.L. 2021-56 (2021).

143. The Legislative Defendants thereafter unnecessarily and intentionally narrowed the window for public engagement in redistricting by waiting until the last moment to plan and begin the redistricting process. This delay caused avoidable confusion and obstructed the opportunity for meaningful public comment.

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<sup>37</sup> Press Release, U.S. Census Bureau, Census Bureau Statement on Redistricting Data Timeline (Feb. 12, 2021), <https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html>.

<sup>38</sup> North Carolina State Board of Elections, *A Look Back at North Carolina's Historic 2020 Election & Looking Ahead at 2021, Presentation to House Election Law & Campaign Finance Reform Committee* at p. 14, Feb. 24, 2021, 2021–2022 Session (N.C. 2021), <https://www.ncleg.gov/documentsites/committees/House2021-21/02-24-21/House%20Elections%20Committee%20Presentation%202-24-2021%20FINALv2.pdf>.

144. Despite having received notice in February 2021 from the U.S. Census Bureau about the delays in releasing Census data, and the resulting impact on election schedules, the Redistricting Chairs failed to convene any meetings of the Redistricting Committees to plan for the 2021 redistricting until the eve of Census data's release in August of 2021. The Redistricting Chairs and Redistricting Committees failed to propose any schedule for the redistricting process or notice of public comment related to the redistricting process, and failed to publicly propose or consider redistricting criteria, until the first meeting on August 5, 2021. Any and all of these steps could have been taken at any point after the Long Session was convened in January 2021.

145. When the Redistricting Committees finally met on August 5, 2021, the Redistricting Chairs initiated an unnecessarily rushed and disorganized redistricting process that has stifled public comment and lent uncertainty to what could have been an organized and predictable process. For example:

- a. The Redistricting Chairs released proposed redistricting criteria on August 9, 2021, and provided the public less than 24-hours-notice to attend an 8:30am, in-person only hearing on a weekday (August 10, 2021) for public comment on the proposed redistricting criteria.<sup>39</sup> The Redistricting Committees then voted to accept that criteria barely three days (August 12) after it was first proposed.
- b. The Redistricting Chairs waited until September 1 to announce a schedule for public hearings, held from September 8 through September 30, 2021.

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<sup>39</sup> *Joint Meeting of the Senate Redistricting and Elections Committee and the House Redistricting Committee for Discussion of Schedule for Public Hearings*, Aug. 18, 2021, 2021–2022 Session (N.C. 2021), [https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/08-18-2021/Senate%20Committee%20on%20Redistricting%20and%20Elections%20Agenda%20for%208-18-21%209\\_00%20AM.pdf](https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/08-18-2021/Senate%20Committee%20on%20Redistricting%20and%20Elections%20Agenda%20for%208-18-21%209_00%20AM.pdf).

These hearings were ineffectively noticed, including errors in location that caused confusion and obstructed public comment. For example, the Redistricting Chairs provided the wrong location information in the notice for the September 8, 2021 hearing in Caldwell County, telling the public it was to be held at Caldwell County Community College when it was actually being held miles away at the JE Broyhill Civic Center. There was low turnout at this hearing, and several individuals who had signed up to speak at this hearing did not appear when called.

- c. As compared to prior redistricting cycles, the Redistricting Committees provided materially less opportunities for public comment and involvement by holding only 13 public hearings as compared to over 60 hearings held in the 2011 cycle.
- d. The Redistricting Chairs announced the aforementioned required county groupings from the Duke Academic Paper on October 5, 2021, without any prior discussion or opportunity for public input.
- e. The Redistricting Chairs failed to provide the public or Legislatures with any schedule for drawing maps, or even a deadline by which maps would need to be proposed, lending uncertainty and unnecessary delay in the map-drawing process. As of noon on October 29, 2021, Legislators were still drawing proposed maps and no deadline or schedule for the submission or vote on proposed maps had been announced by the Redistricting Chairs. Upon information and belief, Defendant Hise was revising a proposed

Senate map on October 28 in a meeting for which there was no prior public notice.

- f. The Redistricting Chairs provided less than three business days' notice of two public hearings on proposed maps on October 25 and 26, 2021, failing to make all the maps that would be considered available for public view when available. For example, Senate map "SST-4" was, upon information and belief, drafted by October 14, but was not publicly available until October 19 and was published without any public announcement. House map "HBK-1" was not public until the afternoon of Friday, October 22, with no public announcement. Overall, Legislative Defendants provided the public with just three days to review and analyze a total of ten maps.
- g. The House Redistricting Committee continued to schedule map drawing sessions up until November 3, 2021, even though on October 28, notice was provided – and later rescinded by – the House Committee on Rules, Calendar, and Operations for House Bill 976 ("HB976") titled House Redistricting Plan 2021 without a corresponding map. Later that day, the House Redistricting committee gave notice that HB976 would be heard on November 1 still with no corresponding map. In the afternoon of October 29, the Senate Committee on Redistricting and Elections provided notice to hear three proposed redistricting bills: Senate Bill 737 ("SB737") titled Congressional Redistricting Plan 2021-CCH-6, Senate Bill 738 ("SB737") titled Congressional Redistricting Plan 2021-CST-8, and Senate Bill 740 ("SB740") titled Congressional Redistricting Plan 2021/CST-13, for

November 1 at 9:00am. On October 29, the Senate Committee on Redistricting and Elections sent notice to hear Senate Bill (“SB739”) titled Senate Redistricting 2021-SST-13 for November 2.

- h. On November 1, the Redistricting Chairs asked committee members to vote no on SB738 and SB740, the two Congressional maps drawn by Democrat members, the two Congressional maps drawn by Democrat members.
- i. The Redistricting Chairs continued the pattern of providing the public or Legislatures with confusing and inadequate notice on November 1 when the House Redistricting committee postponed hearing HB976 three times in less than three hours.

146. By designing a process that stifled public comment and caused uncertainty and unnecessary chaos to the redistricting process, the delay caused by Legislative Defendants will have severe consequences for voters’ ability to elect candidates of their choice.

147. Pursuant to Sections 6 and 7 of Article II of the North Carolina Constitution, candidates for North Carolina House and Senate must have resided in the district for one year immediately prior to the General Election. The General Election occurs on November 8, 2022, and thus candidates must reside in their district starting on November 8, 2021. Due to Legislative Defendants’ unjustified delay in convening the Redistricting Committees until August, the implementation of a confusing and uncertain public comment process, and the late adoption of final redistricting maps, potential candidates had insufficient time to change their residency if required by changes in the final maps. The inability of potential candidates to meet residency requirements due to late-adopted maps will impede the ability for voters of color, including the voters served by Plaintiff Common Cause, to elect candidates of their choice.



148. Upon information and belief, Legislative Defendants acted to ensure that members of their political party would not be mal-impacted by the one-year residency requirement, and gave forewarning to Legislators of their political party who they anticipated would be impacted by district lines long before the Redistricting Committees were convened in August 2021. Upon information and belief, Senator McInnis moved residences in mid-2021, before the Redistricting Committees were convened, in order to avoid double bunking when a new Senate map would be enacted.<sup>40</sup>

149. Legislative Defendants also deliberately misrepresented public testimony offered during the public hearings held in September 2021, before draft maps had been released, in an attempt to justify their maps when they were voted on in November. Member of the public that provided comment consistently asked for an end to gerrymandering, and further requested that lawmakers adhere to state and federal law, including those such as the VRA meant to protect voters of color. However, Legislative Defendants cherry picked and misrepresented testimony, and specifically testimony of Black residents, in order to justify their unlawful districts. For example, in a November 1, 2021 Senate Redistricting Committee meeting, Defendant Daniel asserted that public input from Moore County resident Maurice Holland Jr. informed the formation of a “Sandhills” district in the Congressional map. However, Mr. Holland spoke specifically in favor of proposed Congressional map CBK-4 which grouped Moore, Hoke, Cumberland, Scotland, Robeson, and parts of Harnett and Richmond counties together,<sup>41</sup> while SB740 trisects this county

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<sup>40</sup> See Dallas Woodhouse, “Veteran GOP State Senators Headed for High Profile Primary,” CAROLINA JOURNAL (Nov. 11, 2021) (“McInnis finalized his move late this summer when it became clear that he would be double bunked with another GOP senator from a considerably larger county.”), <https://www.carolinajournal.com/news-article/veteran-gop-state-senators-headed-for-high-profile-primary/>.

<sup>41</sup> See *2021-10-25 Redistricting Public Hearing – Wake, Caldwell, New Hanover* at 2:17:02, YOUTUBE (Nov. 1, 2021) <https://www.youtube.com/watch?v=njisLoqWuT0>.

grouping through the middle between Congressional Districts 3, 4 and 8.<sup>42</sup> Mr. Holland also spoke against proposed Senate Map SST-4,<sup>43</sup> calling districts 21 and 22 in Moore and Cumberland county “extreme,” and against proposed House Map HBK-11 (dividing Moore County into 3 districts).<sup>44</sup> But the Enacted maps drawn and proposed by Legislative Defendants directly contradict Mr. Holland’s expressed wishes; the Senate Map largely retains the “extreme” districts in SD 21 and SD19, and the House map still trisects Moore County between HD 51, HD 78, and HD 52. This misrepresentation of public testimony gives rise to an inference of bad faith.

150. Overall, the actions of Legislative Defendants, or lack thereof, have caused significant uncertainty for potential candidates running for legislative office to the detriment of the candidates of choice for voters of color, and while acting to insulate members of their own party. Upon information and belief, Legislative Defendants’ unnecessarily delay and chaotic process will prevent voters of color from electing candidates of their choice due to the burden and uncertainty currently facing new candidates. Upon information and belief, Legislative Defendants’ delay will also restrain Plaintiff from educating their members and voters on who is running for legislative office in a timely manner.

## CLAIM I

### DECLARATORY JUDGMENT ACT

151. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs.

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<sup>42</sup> See [https://www.ncleg.gov/Files/GIS/Plans\\_Main/Congress\\_2021/SL%202021-174%20Congress%20-%2011%20x%2017%20Map.pdf](https://www.ncleg.gov/Files/GIS/Plans_Main/Congress_2021/SL%202021-174%20Congress%20-%2011%20x%2017%20Map.pdf).

<sup>43</sup> Available at [https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/Member%20Submitted%20Maps/SST-4/SST-4\\_11x17.pdf](https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/Member%20Submitted%20Maps/SST-4/SST-4_11x17.pdf)

<sup>44</sup> *Id.*

152. The North Carolina Declaratory Judgment statutes, N.C.G.S. Chapter 1, Article 26, expressly allows for the determination of legal rights, and must be liberally construed and administered to afford “relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” N.C.G.S. §§ 1-254, 1-264. Where a declaratory judgment claim is premised on “issues of great public interest,” the court should “adopt and apply the broadened parameters of a declaratory judgment action.” *Hoke Cty Bd. of Educ. v. State*, 358 N.C. 605, 615-16 (2004).

153. Article I, Section 3 of the North Carolina Constitution provides that the rights of the people of North Carolina “shall be exercised in pursuance of law and consistently with the Constitution of the United States.” Article I, Section 5 of the North Carolina Constitution prohibits a law or ordinance in North Carolina from contravening the federal Constitution. Together, these provisions “delineate[] the interplay between federal and state law.” *Stephenson I*, 355 N.C. at 370. As applied to redistricting, “the State retains significant discretion when formulating legislative districts so long as the ‘effect’ of districts created pursuant to the ‘whole county’ criterion or other constitutional requirement does not dilute minority voting strength in violation of federal law.” *Id.*

154. Legislative Defendants have adopted redistricting criteria that prohibit the use of racial data, and have repeatedly asserted – incorrectly – that applicable law does not require the consideration of racial data to ensure compliance with the North Carolina Constitution or other applicable law.

155. Legislative Defendants have further mandated the use of designated county clusters for state Senate and House maps that destroyed effective crossover districts, in violation of Article I, Section 19, without ensuring compliance with North Carolina Constitutional requirements and following the unequivocal instructions for the redistricting process articulated in *Stephenson v. Bartlett*. Legislative Defendants have asserted themselves, and through counsel, that state law does

not require them to undertake the first step in *Stephenson* by making the analysis of racial data necessary to ascertain what districts are required by the VRA (including prohibiting intentional racial discrimination, also required by Article I, Section 19) before drawing all others.

156. The intentional action, and inaction, by Legislative Defendants has created insecurity and uncertainty as to the rights of the members and voters served by Plaintiff Common Cause that will result in, and which indicate an intent to cause, violations of their fundamental right to fair representation and freedom from intentional discrimination.

157. Accordingly, Plaintiff seeks a declaratory ruling that Plaintiff and its members and the voters it serves are entitled to, and Legislative Defendants have a duty to undertake, a redistricting process that adheres the requirements of Article II, Sections 3 and 5 of the North Carolina Constitution as set forth in *Stephenson v. Bartlett*, including a requirement to undertake the analysis of racial data necessary to ascertain what districts are required by the VRA.

158. The Declaratory Judgment Act provides for further relief “whenever necessary or proper.” N.C.G.S. § 1-259.

159. Moreover, Plaintiff seeks injunctive relief requiring the North Carolina General Assembly to adhere to the requirements of Article II, Sections 3 and 5, as set forth in *Stephenson v. Bartlett*, and specifically to perform a meaningful attempt to determine whether there are any districts compelled by the VRA, which, at a minimum, requires the consideration of racial data to understand changing demographics and performing a racially polarized voting analysis where the racial demographics indicate potential VRA problems before designating county clusters required in Senate and House legislative maps.

160. Plaintiff further seeks injunctive relief enjoining SBE Defendants from administering any election utilizing the districts set forth in SB739 and HB976 and/or enjoining

the SBE Defendants from administering the Statewide Primary elections until Legislative Defendants or the General Assembly have fulfilled their duty under *Stephenson*.

## CLAIM II

### INTENTIONAL RACIAL DISCRIMINATION IN VIOLATION OF ARTICLE I, SECTION 19 OF THE NORTH CAROLINA CONSTITUTION

161. Plaintiff relies herein upon all of the paragraphs of this Complaint.

162. The Equal Protection Clause, Article I, Section 19 of the North Carolina Constitution, states that “[n]o person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.” This provision prevents a state and its officials from discriminatorily or arbitrarily treating qualified voters differently on account of their race or skin color.

163. North Carolina’s Equal Protection Clause affords broader protections to its citizens in the voting rights context than the U.S. Constitution’s equal protection provisions. *See Stephenson v. I*, 355 N.C. at 376–80, 381 n.6; *Blankenship v. Bartlett*, 363 N.C. 518, 523 (2009).

164. The Supreme Court of North Carolina has held that “[i]t is well settled in [North Carolina] that the right to vote on equal terms is a fundamental right.” *Stephenson I*, 355 N.C. at 378 (internal quotation marks omitted).

165. To that end, North Carolina’s Equal Protection Clause protects the right to “substantially equal voting power.” *Id.* at 379.

166. Legislative Defendants’ intentional discrimination against Plaintiff’s members of color and the voters of color that Plaintiff serves in devising state Legislative maps is plain: Legislative Defendants’ deliberately and intentionally orchestrated a redistricting process that unlawfully and blatantly disregarded express direction from the North Carolina Supreme Court in

*Stephenson v. Bartlett*, with the intent and effect of preventing lawmakers from protecting voters of color from harm in the redistricting process.

167. Any reasonable legislature, including the Legislative Defendants, could have surmised that prohibiting any formal use of racial data in the drawing or consideration of maps and that failing to undertake the analysis of racial data set forth under *Stephenson* would lead to – and have the clear and unavoidable effect of – the intentional destruction of functioning crossover districts for voters of color and reduce their ability to elect candidates of their choice, thus disproportionately limiting their ability to elect candidates of choice as compared to White voters. *See McCrory*, 831 F.3d at 227-28 (“[T]he removal of public assistance IDs in particular was suspect, because a reasonable legislator would be aware of the socioeconomic disparities endured by African Americans and could have surmised that African Americans would be more likely to possess this form of ID” (internal quotations and citations omitted)). Upon information and belief, Legislative Defendants intentionally orchestrated an unlawful redistricting process that prohibited any other member from formally considering or using the data needed to prevent the destruction of effective districts for voters of color or the drawing of district lines that would disproportionately reduce the ability of voters of color to elect their candidates of choice.

168. Furthermore, by enacting and implementing SB740, SB739, and HB976, Defendants have purposefully discriminated against Black voters as alleged in the above paragraphs. A motivating purpose behind SB740, SB739, and HB976 was to undermine the voting power of Black voters and reduce Black representation in the Legislature. At the time these laws were enacted, the General Assembly had before it evidence that Black voters would be harmed by these laws due to packing and cracking in certain areas within these maps. The Legislature enacted SB740, SB739, and HB976 with minimal public debate and on an extremely and unnecessarily

compressed legislative schedule, with the bills passing both houses of the Legislature only days after their submission.

169. Racially polarized voting exists in North Carolina, both historically and today, such that the race of voters correlates with the selection of certain candidate or candidates. *McCrory*, 831 F.3d at 225-26 (noting African American voters overwhelmingly support Democratic candidates). Any reasonable legislator, including Legislative Defendants, would understand this correlation. Upon information and believe, Legislative Defendants sought to target and discriminate against voters of color in order to receive the “political payoff” that would result from the racially polarized voting. *McCrory*, 831 F.3d at 222.

170. Both the discriminatory effect of these statutes and their legislative history are relevant factors in analyzing them for discriminatory intent. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977).

171. A motivating purpose behind Legislative Defendants’ intent to orchestrate their unlawful redistricting process, and in the Legislature’s drawing and enactment of SB740, SB739, and HB976, was to draw districts that will not provide Black voters, including the members and voters served by Plaintiff Common Cause, an equal opportunity to elect their preferred candidates, will dilute the voting power of Black voters, and will make it more difficult for these voters to elect their candidates of choice across the state.

172. Legislative Defendants’ unlawful redistricting process and the enacted maps SB740, SB730, and HB976 will undermine and/or prevent the ability of Black voters, including the members and voters served by Plaintiff Common Cause, to elect their candidates of choice as they are able to under current benchmark state Legislative districts, as specified in the above paragraphs.

173. Legislative Defendants' designated county clusters for state Legislative maps, and the enacted maps in SB740, SB739, and HB976 intentionally and impermissibly discriminate against the members and voters of color served by Plaintiff, and Defendants advance no legitimate or compelling government interest to justify this discrimination.

### CLAIM III

#### **PARTISAN GERRYMANDERING VIOLATION OF FREE ELECTIONS CLAUSE OF THE NORTH CAROLINA CONSTITUTION**

174. Plaintiff relies herein upon all of the paragraphs of this Complaint.

175. The Free Elections Clause in Article I, Section 10 of the North Carolina Constitution provides that "All elections shall be free."

176. The will of the people plays a fundamental role in North Carolina's democratic government. *See People ex re. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875) ("Our government is founded on the will of the people. Their will is expressed by the ballot."). North Carolina's "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 (1897) (citing N.C. Const. art. I, § 2). Furthermore, there is a "compelling interest" of the state "in having fair, honest elections." *State v. Petersilie*, 334 N.C. 169, 184 (1993).

177. Accordingly, the Free Elections Clause requires that elections be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. This is a fundamental right of the citizens enshrined in the North Carolina Declaration of Rights, a compelling governmental interest, and a cornerstone of North Carolina's democratic form of government. *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, at \*337-38.

178. Partisan gerrymandering is the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power. *Ariz. State Legislature v. Indep.*



*Redistricting Comm’n*, 135 S. Ct. 2652, 2658 (2015). It operates through vote dilution, i.e., the devaluation of one citizen’s vote as compared to others, because they are likely to vote for the other party.

179. Partisan gerrymandering claims are justiciable under the North Carolina Constitution because such claims fall within the broad, default category of constitutional cases the North Carolina 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. Furthermore, partisan gerrymandering does not involve a textually demonstrable constitutional commitment of the issue to a coordinate political department. *Bacon v. Lee*, 353 N.C. 696, 717 (2001). Furthermore, there are satisfactory and manageable criteria and standards for adjudicating partisan gerrymandering claims under the North Carolina Constitution. *Hoke Cty Bd. of Educ. v. State*, 358 N.C. 605, 639 (2004).

180. Extreme partisan gerrymandering that entrenches politicians in power 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. “Elections are not free when partisan actors have tainted future elections by specifically and systematically designing the contours of the election districts for partisan purposes and a desire to preserve power.” *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, at \*344 (N.C. Super. Ct. Sept. 3, 2019).

181. SB740, SB739, and HB976 were designed, specifically and systematically, to maintain at least Republican majorities in the state House and Senate and to provide at least a majority of Congressional seats to Republicans. This was achieved by drawing maps in which it was nearly impossible for Democrats to win majorities in either state Legislative chamber or a majority of Congressional seats in any reasonably foreseeable electoral environment.

182. In drawing and enacting SB740, SB739, and HB976, Defendants ensured that it is nearly impossible for the will of the people to be expressed through their votes for State legislators and sought instead to predetermine election outcomes in specific districts and county groupings, as set forth above. Defendants, with the intent to control and predetermine the outcome of state Legislative and Congressional elections for the purpose of retaining partisan power in the General Assembly and to send a majority of Republicans to Congress in North Carolina's Congressional Delegation, manipulated district boundaries resulting in extreme gerrymandering, subordinating traditional redistricting criteria, so that the resulting maps cracked and packed voters to achieve these partisan objectives.

183. Defendants' actions do not serve any legitimate government interest, and are not narrowly tailored to achieve a compelling government interest.

184. Accordingly, in drawing and enacting SB740, SB739, and HB976, individually and collectively, Defendants have violated the Free Elections Clause by depriving North Carolina citizens the right to the vote for General Assembly members and Congresspersons in elections that are conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.

185. Defendants' actions have also harmed Plaintiff, its members and the voters it serves and other voters in North Carolina, by subverting their right, as guaranteed by the Free Elections Clause and provided for in Article I, § 9 of the North Carolina Constitution, to seek a "redress of grievances and for amending and strengthening the law," as Democratic voters in North Carolina cannot meaningfully seek to redress their grievances or amend the laws consistent with their policy preferences when they cannot obtain a majority of the General Assembly.

## CLAIM IV

### PARTISAN GERRYMANDERING IN VIOLATION OF ARTICLE I, SECTION 19 OF THE NORTH CAROLINA CONSTITUTION

186. Plaintiff relies herein upon all of the paragraphs of this Complaint.

187. 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.

188. The Equal Protection Clause protects the right to “substantially equal voting power.” *Stephenson I*, 355 N.C. at 379. The right to vote on equal terms is a “fundamental right.” *Id.* at 379.

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

190. In drawing and enacting SB740, SB739, and HB976, Defendants intended to deprive citizens of the right to vote on equal terms based on partisan classification in an invidious manner and/or in a way unrelated to any legitimate legislative objective. Defendants intended to hamper, rather than to achieve, fair and effective representation for all citizens in drawing and enacting SB740, SB739, and HB976. Defendants subordinated Democratic voters by devaluing their vote as compared to the votes of Republican voters with at least the partial purpose, and in the alternative the predominant purpose, of entrenching the Republican Party by drawing district lines in individual districts and statewide.

191. Defendants' actions have the effect of silencing the political voice of voters who support Democratic candidates, including members and voters served by Plaintiff Common Cause, by virtue of district lines that crack or pack those voters, as set forth in the paragraphs above, thereby depriving them of substantially equal voting power in an effort to entrench the Republican party in power, in violation of Article I, Section 19 of the North Carolina Constitution.

192. As a result, voters who prefer Democratic candidates, including the members and voters served by Plaintiff Common Cause, are significantly hindered from meaningfully participating in the decision-making process of government because SB740, SB739, and HB976 were drawn to systematically prevent Democrats from obtaining a majority in either chamber of the General Assembly or sending a majority of Democrats to Congress as part of North Carolina Congressional Delegation.

193. SB740, SB739, and HB976 also deprive Democratic voters in their districts, as alleged above, such that their votes, when compared to the votes of Republican voters, are substantially less likely to ultimately matter in deciding election results. Defendants' partisan gerrymandering further harms voters, including the Common Cause members and voters who support Democratic candidates, by insulating legislators from popular will and rendering them unresponsive to portions of their constituencies.

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

above. Defendants' actions have the effect of depriving disfavored voters in North Carolina of substantially equal voting power and the right to vote on equal terms, as well as substantially equal legislative representation.

## **CLAIM V**

### **PARTISAN GERRYMANDERING IN VIOLATION OF ARTICLE I, SECTIONS 12, 14 OF THE NORTH CAROLINA CONSTITUTION**

195. Plaintiff relies herein upon all of the paragraphs of this Complaint.

196. The Freedom of Speech Clause in Article I, Section 14 of the North Carolina Constitution provides that "[f]reedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained." The Freedom of Assembly Clause in Article I, Section 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." In North Carolina, the right of assembly encompasses the right of association. *Feltman v. City of Wilson*, 238 N.C. App. 246, 253 (2014).

197. Voting for the candidate of one's choice and associating with the political party of one's choice are core means of political expression protected by the North Carolina Constitution's Freedom of Speech and Freedom of Assembly Clauses. Voting provides citizens a direct means of expressing support for a candidate and his views. *See Common Cause v. Lewis*, 2019 N.C. Super. LEXIS 56, at \*365; *Buckley v. Valeo*, 42 U.S. 1 (1976).

198. The Freedom of Assembly Clause independently protects Common Cause members and voters who support Democratic candidates, and their association with the Democratic Party.

199. By partisan gerrymandering, Defendants identified Republican voters as preferred speakers and targeted Democratic voters, including members and voters served by Plaintiff

Common Cause, as disfavored speakers for disfavored treatment because of disagreement with the views they express when they vote. In doing so, they have rendered disfavored speech less effective, and have intentionally engaged in viewpoint discrimination against Democratic voters, including members and voters served by Plaintiff Common Cause.

200. SB740, SB739, and HB976 also burden the ability of Plaintiff's members and the voters it serves who are Democratic voters to associate effectively, as guaranteed under Article I, § 12, by precluding them from instructing their representatives, and reducing their ability to apply to the General Assembly for redress of grievances. As a result of the partisan gerrymanders, Democratic voters across the states will be unlikely to obtain redress from the General Assembly on important policy issues because they will unlikely be able to obtain Democratic majorities in the General Assembly. Plaintiff Common Cause likewise cannot instruct representatives or obtain redress on the issues central to its mission due to the gerrymanders.

201. Defendants' actions do not serve any legitimate government interest, and are not narrowly tailored to achieve a compelling government interest.

202. SB740, SB739, and HB976 also impermissibly retaliate against Plaintiff's members and the voters it serves who are Democratic voters by (1) taking adverse action against them by diluting their votes and the votes of the Common Cause members and voters who support Democratic candidates, and (2) being created by Defendants with an intent to retaliate against their protected speech or conduct based on their voting history. Furthermore, Defendants would not have taken this adverse action, specifically cracking and packing Democratic voters to dilute their votes, but for that retaliatory intent.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the following relief:

- a. Convene a court of three judges pursuant to N.C.G.S. § 1-267.1;

- b. Declare Plaintiff's and its members and the voters it serves legal right to be free from redistricting that violates the North Carolina Constitution, as set forth in the paragraphs above;
- c. Declare Legislative Defendants' duty to undertake a redistricting process that complies with the requirements of Article II, Sections 3 and 5 of the North Carolina Constitution, as described in *Stephenson v. Bartlett* and as set forth in the paragraphs above;
- d. Declare that the process orchestrated by Legislative Defendants in 2021, including the use of redistricting criteria that prohibited the formal use of racial data in the construction or consideration of state Legislative districts, requirement to utilize the Duke Senate Clusters and Duke House Clusters, and/or failure to ascertain and draw districts required by the VRA prior to all others violate Article II, Sections 3 and 5 of the North Carolina Constitution;
- e. Declare that the process orchestrated by Legislative Defendants in 2021, including the use of redistricting criteria that prohibited the formal use of racial data in the construction or consideration of state Legislative districts, requirement to utilize the Duke Senate Clusters and Duke House Clusters, and/or failure to ascertain and draw districts required by the VRA prior to all others violate Article I, Section 19 of the North Carolina Constitution;
- f. Declare that the harms to Black voters from the intentional destruction of effective crossover districts within SB739 and HB976 resulted from an unconstitutional redistricting process and violate the Equal Protection Clause of the North Carolina Constitution;

- g. Issue a permanent injunction enjoining Defendants from enforcing or giving any effect to the boundaries of districts that harm Black voters by intentionally destroying effective crossover districts within SB739 and HB976, including an injunction barring Defendants from conducting any further elections for the North Carolina General Assembly under these racially discriminatory districts.
- h. Issue a permanent injunction enjoining Defendants from enforcing or giving any effect to the boundaries of districts that reflect partisan gerrymanders in violation of the North Carolina Constitution in SB739, SB740, and HB976.
- i. Issue a permanent injunction enjoining Defendants from creating any future Legislative districts with the purpose or effect of burdening or penalizing an identifiable group, a political party, or individual voters based on their political beliefs, political party membership, registration, affiliations or political activities, or voting histories;
- j. Issue a permanent injunction enjoining Defendants from using “political data” in any future redistricting process to burden or penalize an identifiable group, a political party, or individual voters based on their political beliefs, political-party membership, registration, affiliations or political activities, or voting histories;
- k. Establish new state House, Senate, and federal Congressional districts that comply with the North Carolina Constitution if the North Carolina General Assembly fails to timely enact new plans comporting with the North Carolina Constitution;
- l. Issue any further injunctive relief necessary to delay the state Legislative and Congressional primary elections to allow for fulsome judicial review of the allegations herein and prevent irreparable harm to voters, as alleged herein;



- m. A prompt hearing and/or expedited pleading schedule;
- n. Award Plaintiff reasonable attorneys' fees, if just and proper;
- o. Make all further orders as are just, necessary, and proper; and
- p. Grant Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 13th day of December, 2021.

  
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## VERIFICATION

I, Bob Phillips, serve as Executive Director of Common Cause North Carolina, and hereby state that my organization, Common Cause, is the Proposed Plaintiff Intervenor in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to Common Cause, except to those matters stated on information and belief, which I believe to be true.

Bob Phillips

Bob Phillips

Sworn and subscribed before me this the 12 day of December, 2021.

Talia Ray  
Notary Public

Name: Talia Ray

My commission expires: 11/6/2024



## CERTIFICATE OF SERVICE

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

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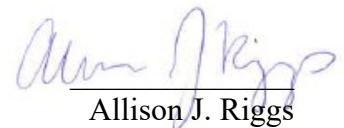
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