

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

21 CVS _____

NORTH CAROLINA STATE CONFERENCE
OF THE NAACP, COMMON CAUSE,
MARILYN HARRIS, GARY GRANT, JOYAH
BULLUCK, and THOMASINA WILLIAMS,

Plaintiffs,

v.

PHILLIP 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**

Pursuant to N.C.G.S. § 1-253 et seq., and Rules 3, 8, and 57 of the North Carolina Rules of Civil Procedure, Plaintiffs the North Carolina State Conference of the NAACP, Common Cause, and four individual voters, through counsel, hereby file 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,¹ the North Carolina General Assembly is acting now in an unlawful and unconstitutional manner by brazenly ignoring clear direction from the North Carolina Supreme Court on how to draw constitutional maps. The Defendants' violations of the North Carolina Constitution necessitate Court intervention *now*. This Court must protect Plaintiffs' constitutional rights before the legislature almost certainly argues, as it has before, that judicial review of redistricting is precluded by the opening of candidate filing. December 6, 2021 marks the beginning of the 2022 election cycle. Absent immediate intervention by this Court, the legislature will once again consign North Carolina voters to yet another decade of district uncertainty.

¹ See *Covington v. North Carolina*, 316 F.R.D. 117, 124 (M.D.N.C. 2016), *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 (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 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. 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 consider neither racial data nor perform any kind of racially polarized voting analysis to understand how district lines would affect minority voting strength and representation. The Redistricting Committees have approved redistricting criteria prohibiting any use of racial data, and the Redistricting Chairs have stated that, despite their legal obligations to do so, they refuse to consider any maps drawn that lawfully and properly utilize racial data. This refusal directly contravenes: (1) 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 v. Bartlett*, 355 N.C. 354 (2002) and *Stephenson v. Bartlett*, 357 N.C. 301 (2003).

3. The intentional refusal by the Redistricting Chairs to act lawfully, by considering racial data or to conduct any racially polarized voting analysis, already has borne fruit. The county clusters designated by the Redistricting Chairs prescribe districts that will dilute the voting power of Black North Carolinians, including the Individual Plaintiffs, and the draft maps already proposed would diminish the ability of voters of color to elect their candidates of choice.

4. The legislature has also unduly delayed the redistricting process and obstructed public comment in an apparent effort to capitalize on the delay in 2020 Census data and to “run out the clock” to prevent judicial review of their actions before discriminatory plans are used in the 2022 general elections. The 2021 long session of the North Carolina General Assembly convened on January 13, 2021. Presumably, in furtherance of their desire to push through these

maps without challenge, Defendant Redistricting Chairs waited until August to convene the Redistricting Committees to plan this redistricting cycle, waiting until the eve of the Census data's release to consider criteria, public hearing locations, and a hearing schedule – all of which could have been decided over the summer or earlier. Instead, the Redistricting Chairs gave North Carolinians less than 24-hours' notice to attend an in-person, 8:30am weekday hearing on August 10, 2021 for comment on unlawful redistricting criteria proposed the day before. Since then, the Chairs have presided over a redistricting process marked by uncertainty, delay, and last-minute meetings that have left those wishing for transparency and an opportunity for meaningful public input scrambling. As of noon on October 29, 2021, no deadline has been announced for the submission² much less enactment of any State Legislative districts, despite fast-approaching deadlines for the 2022 primaries, and proposed Senate maps were still being edited the afternoon of October 28. The Redistricting Chairs' strategy is clear: to 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.³ These tactics should not be tolerated again.

5. Plaintiffs bring this Declaratory Judgment action seeking a judicial determination that Plaintiffs are entitled to a redistricting process that adheres to the requirements of Article II, Sections 3 and 5 of the North Carolina Constitution and that the use of race-blind redistricting criteria violates North Carolina law and unlawfully harms voters of color. The use of race-blind redistricting criteria, and Defendants' failure to conduct any analysis that would prevent vote

² Submission includes submission to the ncleg.gov website for "Member Submitted Maps." See, e.g., <https://ncleg.gov/Committees/CommitteeInfo/SenateStanding/154#2021\Member%20Submitted%20Maps>; <https://ncleg.gov/Committees/CommitteeInfo/HouseStanding/182#2021\Member%20Submitted%20Maps>.

³ See *Covington v. North Carolina*, 316 F.R.D. 117,116 (M.D.N.C. 2018), *aff'd*, 137 S. Ct. 2211 (2017) (per curiam).

dilution for voters of color, violates the Equal Protection Clause, Article I, Section 19, of the North Carolina Constitution. Finally, unless stopped, Defendants' actions will impede Plaintiffs' ability to affiliate with and support their candidates of choice in violation of the Plaintiffs' right to assembly and association under the Freedom of Assembly Clause, Article I, Section 12 of the North Carolina Constitution.

6. Without judicial intervention, Defendants' actions will cause irreparable harm to the rights of Plaintiffs and other North Carolina voters of color. The process pursued by the Redistricting Chairs as described above cannot, as a matter of law, comply with the North Carolina Constitution. North Carolinians are entitled to have their rights enforced by the courts of this State, and they are not – and should not – be required to wait until the eve of the 2022 election cycle to assert their rights and demand constitutional districts. This Court must intervene now to vindicate these precious constitutional rights.

II. JURISDICTION AND VENUE

7. Jurisdiction is proper in this Court pursuant to N.C.G.S. § 1-253 et seq. (“Declaratory Judgment Act”) and N.C.G.S. § 7A-245(a)(4).

8. 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.

9. 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.

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

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

12. Venue is proper in this Court pursuant to N.C.G.S. § 1-82. A case may be brought in any county in which any of the plaintiffs or the defendants reside at the commencement of the action. *Caldwell v. Smith*, 203 N.C. App. 725, 727 (N.C. Ct. App. 2010). The North Carolina NAACP and Common Cause—who are Plaintiffs in this action—have as members North Carolina voters who are residents of Wake County. The North Carolina Declaratory Judgment Act contains no provisions regarding venue, so general venue principals apply. *McCrary Stone Service v. Lyalls*, 77 N.C. App. 796, 797 (N.C. Ct. App. 1985).

13. A three-judge panel is not required for this case under N.C.G.S. § 1-81.1(b). A three-judge panel is required only when plaintiffs challenge an “act” of the Legislature. N.C.G.S. § 1-81.1(b). The North Carolina Legislature has not yet passed any act regarding the 2021 redistricting cycle, and thus Plaintiffs’ suit does not and cannot trigger application of that statute.⁴

14. Removal to federal court is not proper in this matter because all causes of action are based upon North Carolina Constitutional law and the matters in dispute do not arise under or require resolution of federal law, and there is no diversity of jurisdiction.

15. An actual, justiciable controversy exists between Plaintiffs and Defendants at present.

⁴ The term “act” refers to an official action by the Legislature that changes the existing state of the law. *See, e.g.*, N.C. Const. art. II, § 21 (stating that the style of the acts shall be “The General Assembly of North Carolina enacts”); N.C. Const. art. II, § 24 (providing limitations on local acts that the legislature may enact); N.C. Const. art. V, § 5 (referring to acts that levy taxes on state objects); N.C.G.S. 160A-1(4) (defining “General law” as “an act of the General Assembly applying to all units of local government, to all cities, or to all cities within a class defined by population or other criteria”); Glossary, North Carolina General Assembly, <https://ncleg.gov/Help/Category/Glossary> (last visited Oct. 28, 2021) (defining “Act” as “Legislation enacted into law. A bill that has passed both houses of the legislature, been enrolled, ratified, signed by the governor or passed over the governor’s office, and printed. It is a permanent measure, having the force of law until repealed.”); *Estes v. Battison*, 274 N.C. App. 1, 3 (N.C. Ct. App. 2020) (interpreting a “statute” as “a legislative act”). The term “act” should be given its plain meaning, as “[i]t is a well-settled principle of statutory construction that where a statute is intelligible without any additional words, no additional words may be supplied.” *State v. Camp*, 286 N.C. 148, 151 (1974).

III. PARTIES

Plaintiffs

16. **Plaintiff North Carolina State Conference of the NAACP (“North Carolina NAACP”)** is a nonpartisan, non-profit organization composed of more than 100 branches and 20,000 individual members throughout the state of North Carolina, including every county in North Carolina. The fundamental mission of the North Carolina NAACP is the advancement and improvement of the political, civil, educational, social, and economic status of minority groups; the elimination of racial prejudice; the publicizing of adverse effects of racial discrimination; and the initiation of lawful action to secure the elimination of racial bias. In furtherance of this mission, the North Carolina NAACP advocates to ensure that the interests of the African American community and people of color are represented in local, state, and national legislative bodies by representatives who share their community’s interests, values, and beliefs, and who will be accountable to the community. The North Carolina NAACP thus encourages and facilitates nonpartisan voter registration drives by its chapters to promote civic participation. The North Carolina NAACP relies on a fair and effective electoral process to help achieve its organization’s missions of improving civic engagement, education, criminal justice, environmental justice, economic opportunity, and healthcare. The North Carolina NAACP has been forced to divert organizational resources, including staff time, travel expenses, and other costs, to address unlawful and discriminatory gerrymandering in North Carolina. Unfair and discriminatory redistricting at the local, state, and congressional levels frustrates and impedes the North Carolina NAACP’s core missions by diluting the votes of the citizens the North Carolina NAACP works to engage in civic participation and obstructing the ability of their members to elect candidates of choice, and these practices more broadly obstruct its other core advocacy missions to bring about change in North

Carolina through the democratic process. The North Carolina NAACP brings this action in its representative capacity on behalf of its members and in its organizational capacity.

17. **Plaintiff Common Cause** is a non-profit corporation organized and existing under the laws of the District of Columbia. It is a nonpartisan democracy organization with over 1.5 million members and local organizations in 30 states, including North Carolina. Common Cause has members in every current North Carolina House and Senate district. 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.”⁵ 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. 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 Cause brings this action on its own behalf and on behalf of its members and supporters who are registered voters in North Carolina, including registered voters in every county in North Carolina, who each 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.

18. Plaintiffs North Carolina NAACP and Common Cause together shall herein be referred to as the “**Organizational Plaintiffs**.”

⁵ JONATHAN WINBURN, THE REALITIES OF REDISTRICTING: FOLLOWING THE RULES AND LIMITING GERRYMANDERING IN STATE LEGISLATIVE REDISTRICTING 205 (2008).

19. **Plaintiff Marilyn Harris** resides at 4872 Highway 158, Roanoke Rapids, North Carolina in Halifax County, where she has lived for 37 years. Ms. Harris has been a registered voter since 1972, and identifies as Black. She is retired, and is actively involved with the Halifax County Black Caucus, Concerned Citizens of Tillery, and the Halifax County Democratic Women's Association, and participates in Get Out the Vote efforts in Halifax County, spearheading voter registration drives. Her current North Carolina Senate and House representatives are her candidates of choice. Ms. Harris resides in current Senate District 4, House District 27, and Congressional District 1. Under the Senate Plan "SST-4," if enacted using the "race-blind" clustering criteria, Ms. Harris will reside in Senate District 2. Under the House Plan "HBK-11", if enacted using the "race-blind" clustering criteria, Ms. Harris will reside in House District 13.

20. **Plaintiff Gary Grant** resides at 914 Roanoke Drive, Halifax, North Carolina in Halifax County, where he has lived for 74 years. He has been a registered voter for 57 years, and identifies as Black. He is active in the Halifax NAACP, leads the Concerned Citizens of Tillery, is a coordinator for the Halifax County Black Caucus, and is President of the National Black Farmers and Agricultural Association. He has participated in Get Out the Vote efforts in Halifax County. Mr. Grant resides in current NC Senate District 4, NC House District 27, and Congressional District 1. Under the Senate Plan "SST-4," if enacted using the "race-blind" clustering criteria, Mr. Grant will reside in Senate District 2. Under the House Plan "HBK-11", if enacted using the "race-blind" clustering criteria, Mr. Grant will reside in House District 13.

21. **Plaintiff Joyah Bulluck** resides at 230 Goldsboro Street SW, Wilson, North Carolina in Wilson County, where she has lived for two years. Ms. Bulluck is a community activist and advocate in Wilson. She has been a registered voter for 16 years, and she identifies as Black

and Indigenous. She is self-employed, and is a current member of the NAACP. She has participated in Get Out the Vote efforts in Halifax County. Ms. Bulluck resides in current NC Senate District 4, NC House District 24, and Congressional District 1. Under the Senate Plan “SST-4,” if enacted using the “race-blind” clustering criteria, Ms. Bulluck will reside in Senate District 9. Under the House Plan “HBK-11”, if enacted using the “race-blind” clustering criteria, Ms. Harris will reside in House District 15.

22. **Thomasina Williams** resides at 643 East North Carolina 24 Highway, Kenansville 28349, where she has lived for twelve years. Ms. Williams has been a registered voter for thirty-seven years and identifies as Black. She is self-employed and is an active member of the NAACP of Duplin County, the Duplin County Democratic Party, the Duplin County Planning Board, and she co-founded the Concerned Citizens of Duplin County. She has participated in Get Out the Vote efforts in Duplin County. Ms. Williams currently resides in current NC Senate District 10, NC House District 4, and Congressional District 3. Under the Senate Plan “SST-4,” if enacted using the “race-blind” clustering criteria, Ms. Williams will reside in Senate District 8. Under the House Plan “HBK-11”, if enacted using the “race-blind” clustering criteria, Ms. Williams will reside in House District 11.

23. Plaintiffs Harris, Grant, Bulluck and Williams together shall herein be referred to as the “**Individual Plaintiffs.**”

Defendants

24. **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.

25. **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.

26. **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.

27. **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. Warren serves as the Chairman of the Senate Redistricting and Elections Committee. Mr. Warren is sued in his official capacity.

28. **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.

29. **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.

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

31. **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.

32. **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.

33. **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.

34. **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.

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

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

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

38. **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.

39. 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.**”

IV. FACTUAL ALLEGATIONS

A. North Carolina Constitutional Requirements in Redistricting

40. 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.

41. 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.

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

43. 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 v. Bartlett*, 355 N.C. 354, 363-64 (2002). 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 v. Bartlett*, 355 N.C. 354, 364 (2002).

44. In *Stephenson v. Bartlett*, the North Carolina Supreme Court sought to harmonize the different North Carolina Constitutional requirements imposed on the redistricting process. *Stephenson v. Bartlett*, 355 N.C. 354 (2002); *Stephenson v. Bartlett*, 357 N.C. 301 (2003). 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.

45. 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 v. Bartlett*, 355 N.C. 354, 383 (2002). 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. Only after an analysis is performed to ascertain what districts are compelled by the VRA, 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.

46. 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 v. Bartlett*, 357 N.C. 301, 307 (2003). Accordingly, to comply with *Stephenson*, the Legislature must evaluate demographic changes to determine whether there exists 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).

B. The Legislative Defendants Refuse to Follow Applicable Law, Causing an Inevitable Deprivation of Plaintiffs’ Rights.

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

47. 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.⁶ 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*,

⁶ *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>.

No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56 (N.C. Super. Ct. Sept. 3, 2019) (the “2019 Criteria”).⁷

48. 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 required within 14 days of the order for 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.

49. On Monday, August 9, 2021 the Redistricting Chairs released the “2021 Joint Redistricting Committee Proposed Criteria.”⁸ 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 use of racial data in redistricting:

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.⁹

50. The Redistricting Committees received public comment on the proposed criteria on August 10, 2021. Among those providing public comment were Plaintiffs’ 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

⁷ E-mail from Erika Churchill, Staff Attorney, Legislative Analysis Division, N.C. General Assembly, to Joint Committee Members (Aug. 5, 2021).

⁸ *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>.

⁹ *Id.*

packed or cracked. Additionally, in *Covington v. North Carolina*, this legislative body tried the same thing with respect to race-blind redistricting. A three-judge panel, including republican and democratic appointees, and a unanimous supreme court, rejected your race-blind remedial drawing of two senate districts and two house districts. In fact there is apparently not a federal judge out there who agrees with this approach and we urge you to abandon that criteria.¹⁰

51. On 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.

52. Senator 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.¹¹

53. Senator Warren Daniel then proposed an amendment providing that “[t]he Committee will draw districts that comply with the Voting Rights Act,”¹² 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.

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

¹⁰ NCGA Redistricting, 2021-08-10 Committee (Joint), YOUTUBE, <https://youtu.be/QFA6QNpqWVv?t=2084>, (Aug. 10, 2021).

¹¹ NCGA Redistricting, 2021-08-12 Committee (Joint), YOUTUBE, <https://youtu.be/gSm2OhE7Slk?t=10321>, (Aug. 12, 2021).

¹² *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.¹³

55. 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, Senator Daniel erroneously advised that prior case law, including a 2019 decision, in North Carolina did not require the use of racial data.¹⁴ The amendment offered by Senator Blue failed.

56. Upon information and belief, Senator Daniel was referencing 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 (N.C. Super. Ct. Sept. 3, 2019), 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 *332. In its analysis, the court explicitly held that “Any 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 *407-09. In

¹³ *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>

¹⁴ NCGA Redistricting, *2021-08-12 Committee (Joint)*, YOUTUBE, <https://youtu.be/gSm2OhE7Slk?t=13039>, (Aug. 12, 2021).

other words, the court in *Common Cause v. Lewis* explicitly required the same analysis that Legislative Defendants are unlawfully refusing to undertake this cycle.

57. 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 p. 4, *Common Cause v. Lewis*, Case No. 18 CVS 014001, slip op. 4 (N.C. Super. Ct. Jan. 22, 2020). 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.

58. The final criteria adopted by the Redistricting Committees prohibited the use of any racial data in the 2021 redistricting process.¹⁵

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

59. 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 to 10,439,388 residents in 2020.¹⁶ This 9.5 percent increase gave North Carolina an additional Congressional

¹⁵ *Adopted Redistricting Criteria*, 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>.

¹⁶ America Counts Staff, *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>.

seat, raising its delegation from 13 members of the House of Representatives to 14 members, and thereby requiring the addition of one Congressional district.¹⁷

60. 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 and suburban areas.¹⁸ 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.¹⁹

61. On October 5, 2021, the House Committee on Redistricting and the Senate Committee on Redistricting and Elections convened separately. In both meetings, the Redistricting Chairs announced that in both chambers 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."²⁰

62. The Duke Academic Paper states that: "The one part of *Stephenson v. Bartlett* which this analysis does not reflect is compliance with the Voting Rights Act."²¹

¹⁷ 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>.

¹⁸ 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>.

¹⁹ 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/>.

²⁰ 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>.

²¹ *Id.* at 1.

63. In the meeting of the Senate Committee on Redistricting and Elections, Chair 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.”²²

64. 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. Chair Hise confirmed the Chairs’ views that no demographic data was legally required, and that there was no directive to staff to order any RPV analysis or provide racial data to members drawing maps.²³

65. In the meeting of the House Committee on Redistricting, Chair 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.”²⁴ The Chair stated that no maps would be considered that used cluster options other than the Duke House Clusters.

66. 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

²² *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>.

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

²⁴ *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>.

how to comply with them. Chair Hall stated the committees made a decision not to use racial data, contrary to redistricting criteria used in the previous two sessions, which Chair Hall alleged to be “the best way” to ensure compliance with the VRA as well as other state and federal law.²⁵

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

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

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

68. Legislative Defendants failed to take any remedial action in response to this letter, and have not performed any RPV or other analysis of racial data to ensure VRA compliance.

²⁵ NCGA Redistricting, *2021-10-05 Committee (House)*, YOUTUBE, https://youtu.be/9UsiS_6rlUA?t=7961, (Oct. 6, 2021).

²⁶ 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.

69. After draft Senate map, “SST-4”, was made publicly available on the ncleg.gov website, counsel for Plaintiffs sent a second letter to Legislative Defendants on October 25, 2021,²⁷ 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 October 26, 2021, Plaintiff Common Cause sent a letter to Legislative Defendants on October 26, 2021 providing RPV analysis for Senate Districts 1 and 9 in map SST-4 that showed legally significant racially polarized voting in these proposed districts.

70. As of the filing of this Complaint, Legislative Defendants have failed to conduct any RPV analysis of these or any other geographic areas of North Carolina, and have failed to allow consideration of maps that do not adhere to the county clusters in the Duke Academic Paper.

71. Legislative Defendants’ failure to adhere to the requirements of the North Carolina Constitution have created uncertainty and insecurity with respect to Plaintiffs’ rights to fair representation. These violations are not merely abstract, but will in fact cause vote dilution and violations of their rights to free association for Individual Plaintiffs and the members of Plaintiffs North Carolina NAACP and Common Cause, and will frustrate the core mission of Plaintiffs North Carolina NAACP and Common Cause to ensure fair elections and make government at all levels more representative, open, and responsive to the interests of ordinary people. Plaintiffs will specifically be harmed in *at least* the following areas:

- a. “Q1” Senate cluster: Under the North Carolina Senate District Plan enacted in 2019 for the 2020 election cycle, S.L. 2019-219 (the “Senate Benchmark

²⁷ 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>.

Plan”),²⁸ Senate District 4 comprised of Halifax, Edgecombe, and Wilson counties has a Black voting age population (“BVAP”) of 47.46% according to 2020 Census data. Black voters have the ability to elect their candidate of choice in Senate District 4. However, a district drawn pursuant to the mandated county cluster “Q1” and comprised of Green, Wayne, and Wilson Counties would be only 35.02% BVAP. Furthermore, voting is racially polarized in these three counties such that the Black candidate of choice will likely be defeated.

- b. 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” has been drafted using the Duke Senate Cluster “Duke_Senate 02,” which will dilute the voting power of Black voters in this area of North Carolina. The other option, a cluster comprised of Warren, Halifax, Martin, Bertie, Northampton, Hertford, Gates, Camden, Currituck, and Tyrell counties, has a BVAP of 42.33%. 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 selected for inclusion in SST-4 is comprised of Northampton, Hertford, Bertie, Gates, Perquimans, Pasquotank, Camden, Currituck, Tyrell, and Dare Counties, and dilutes the

²⁸ See An Act to Comply with Order of the Court in 18 CVS 014001, Wake County, S.L. 2019-219, <https://ncleg.gov/Sessions/2019/Bills/Senate/PDF/S692v4.pdf>.

ability of Black voters to elect their candidates of choice. The BVAP in District 1 of SST-4 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 the choice of this “Z1” cluster in SST-4 would undermine Black voters’ ability to continue electing their candidate of choice.

- c. Choice of House Cluster “LL2”. Proposed House map “HBK-11” uses the Duke House Cluster “LL2” which pairs Wayne and Sampson counties to draw two districts within these counties. Current House District 21 is composed of portions of both Wayne and Sampson Counties, is 39% BVAP, and has afforded Black voters the opportunity to elect a candidate of their choice. Voting is racially polarized in these counties such that Black candidates in statewide elections would not have won had the elections been determined in those counties alone. The proposed House Districts 16 and 17 in proposed House map “HBK-11,” as drawn, would fail to provide Black voters with the opportunity to elect their candidate of choice in either district.
- d. Choice of House Cluster “NN1”. Proposed House map “HBK-11” uses the Duke House Cluster “NN1” composed of Camden, Gates, Hertford, and Pasquotank counties. The current district for this area, House District 5, is

44.32% BVAP, and has provided Black voters the opportunity to elect a candidate of their choice. The proposed House District 2 in “HBK-11” composed of Camden, Gates, Hertford, and Pasquotank Counties would only be 38.59% BVAP. Voting is likely racially polarized in the counties in this “NN1” cluster such that white voters may vote in a bloc that would prevent a Black-preferred candidate from winning.

72. As illustrated in each of these examples of Senate and House clusters required by the Committee Chairs, the clusters would result in a significant decrease in the percent of Black Voting Age Population in each new district. These decreases would prevent Black voters the opportunity to elect candidates of their choice. Under the allegedly “race-blind” criteria adopted by the Legislative Defendants, however, the deleterious consequences on BVAP has not, and in fact cannot, be directly considered by the Redistricting Committees.

C. DEFENDANTS’ DELAY IN REDISTRICTING REQUIRES POSTPONING THE MARCH 2022 PRIMARIES AND RELATED DEADLINES

73. Plaintiffs repeat and re-allege the allegations contained in the preceding paragraphs.

74. 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 2021.²⁹ 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

²⁹ 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>.

Committee to move the 2022 primary to a May 3 primary, July 12 second primary, and November 8 general election.³⁰

75. 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).

76. As of the filing of this Complaint, the General Assembly has failed to reschedule the March 2022 primaries and related deadlines as recommended by Director Brinson Bell and as necessary to account for the Census delay. As a result, the deadlines associated with the March 2022 primaries are fast approaching, including:

- a. *Candidate filing deadline.* Pursuant to N.C.G.S. § 163-106.2, candidates seeking party primary nominations for federal Congressional, statewide offices, and State Legislative must file a notice of their candidacy in the period between December 6 through 17, 2021.
- b. *Absentee Ballots Deadlines for Civilians.* Pursuant to N.C.G.S. §163-22(k) and §163-277.10(a), the State Board of Elections has 50 days before the primary election to print and distribute absentee ballots. Prior to the printing of primary ballots, the State Board of Elections may adopt a resolution to shorten this period to 45 days. N.C.G.S. §163-22(k). The county board of elections must print a sufficient number of envelopes and instruction sheets

³⁰ *A Look Back at North Carolina's Historic 2020 Election & Looking Ahead at 2021, Presentation to House Election Law & Campaign Finance Reform Committee*, Feb. 24, 2021, 2021–2022 Session (N.C. 2021), <https://www.ncleg.gov/documents/sites/committees/House2021-21/02-24-21/House%20Elections%20Committee%20Presentation%202-24-2021%20FINALv2.pdf> at 14.

for voters using absentee ballots by mail no later than 50 days before a statewide primary election. N.C.G.S. § 163-229(b), (c). Director Brinson Bell in her February 2021 presentation stated her position that there is a two-month process for geocode changes required for filing and ballot styles.³¹

- c. *Absentee ballots deadline for military and overseas.* Pursuant to N.C.G.S. § 163-258.9(a), the county board of elections has 50 days before the primary election to send ballots and balloting materials as requested by military-overseas voters.

77. The North Carolina General Assembly has unnecessarily delayed the redistricting process. This delay has caused avoidable confusion, has obstructed the opportunity for meaningful public comment, and will hinder the ability for voters of color to have their candidates of choice qualify and run for State Legislative office.

78. 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 propose or consider redistricting criteria, until 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.

³¹ *A Look Back at North Carolina's Historic 2020 Election & Looking Ahead at 2021*, *supra* note 26, at 14.

79. 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.³² The Redistricting Committees then voted and accepted 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. 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.

³² *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.

- 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 are still drawing proposed maps and no deadline or schedule for the submission or vote on proposed maps has 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. The only action taken to date was noticing a House committee meeting for Monday, November 1, but it is still unclear what the map to be considered looks like.
- 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.

80. 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.

81. 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 will have insufficient time to change their residency if required due to 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 Individual Plaintiffs and the members and voters served by the Organizational Plaintiffs to elect candidates of their choice.

82. Overall, the actions of Legislative Defendants, or lack thereof, have caused significant uncertainty for potential candidates running for legislative office. Upon information and belief, Legislative Defendants’ unnecessarily delay and chaotic process will prevent voters of color, like Individual Plaintiffs, 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 Organizational Plaintiffs from educating their members and voters on who is running for Legislative office in a timely manner.

V. CONFLICTING PRONOUNCEMENTS OF LEGAL RIGHTS

83. Plaintiffs repeat and re-allege the allegations contained in the preceding paragraphs.

84. 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 action 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, 616 (2004).

85. 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 v. Bartlett*, 355 N.C. 354, 370 (2002). 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.*

86. 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.

87. Legislative Defendants have further mandated the use of designated county clusters for state Senate and House maps that cause impermissible vote dilution, without ensuring compliance with North Carolina Constitutional requirements and following the unequivocal instructions for the redistricting process articulated in *Stephenson v. Bartlett*.

88. The intentional action, and inaction, by Legislative Defendants have created insecurity and uncertainty as to Plaintiffs' rights that will result in violations of their fundamental right to fair representation, freedom from intentional discrimination, and free association.

CLAIM I

DECLARATORY JUDGMENT ACT

89. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

90. Plaintiffs seek a declaratory ruling that Plaintiffs are entitled a redistricting process that adheres the requirements of Article II, Sections 3 and 5 of the North Carolina Constitution.

91. Plaintiffs seek 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 Voting Rights Act, which, at a minimum, requires the consideration of racial data to understand changing demographics and to perform a Racially Polarized Voting Analysis where the racial demographics indicate potential VRA problems before designating county clusters required in Senate and House legislative maps.

92. Plaintiffs further seek injunctive relief enjoining the SBE Defendants from administering the March 8, 2022 Statewide Primary elections no earlier than May 3, 2022, and from administering the candidate filing period no earlier than February 1 through 11, 2022. Such injunctive relief is necessary for the North Carolina General Assembly to undertake a redistricting

process that adheres to the requirements of the North Carolina Constitution, to afford candidates adequate time to prepare for filing, and to provide the North Carolina State Board of Elections and county boards of elections adequate time to prepare for the primary elections.

CLAIM II

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

93. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

94. 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.

95. North Carolina’s Equal Protection Clause affords broader protections to its citizens in the voting rights context than the U.S. Constitution’s equal protection provisions. *See Stephenson v. Bartlett*, 355 N.C. 354, 376–80, 381 n.6. (2002); *Blankenship v. Bartlett*, 363 N.C. 518, 523 (2009).

96. 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 v. Bartlett*, 355 N.C. 354, 378 (2002) (internal quotation marks omitted).

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

98. Legislative Defendants’ intentional discrimination against Plaintiffs is plain: Legislative Defendants’ prohibition on the use of racial data necessary to protect against vote dilution, and failure to conduct a Racially Polarized Voting Analysis when designating Senate and

House county clusters, deprives Plaintiffs of equal protection under the law. Defendants' refusal to consider race, in contravention of the North Carolina Constitution as described in *Stephenson v. Bartlett*, constitutes intentional and purposeful discrimination against Plaintiffs and other Black voters.

99. A motivating purpose behind Legislative Defendants' failure to consider any racial data is to draw districts that will not provide Plaintiffs and other Black voters an equal opportunity to elect their preferred candidates, will dilute the voting power of Black voters, and will make it more difficult for the candidates of choice for the Individual Plaintiffs, the members and voters served by the Organizational Plaintiffs, and of Black voters in North Carolina to be elected across the state.

100. Legislative Defendants' refusal to consider racial data when designating county clusters is certain to produce discriminatory effects, including by undermining and/or preventing the ability of Black voters, including Individual Plaintiffs and the members and voters served by the Organizational Plaintiffs, to elect their candidates of choice as they are able to under current benchmark state Legislative districts, as specified in the above paragraphs.

101. Legislative Defendants' designated county clusters intentionally and impermissibly discriminate against Plaintiffs, and Legislative Defendants advance no compelling government interest to justify this discrimination.

CLAIM III

VIOLATION OF FREE ASSOCIATION CLAUSE OF THE NORTH CAROLINA CONSTITUTION

102. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

103. The Freedom of Assembly Clause, Article I, Section 12 of the North Carolina Constitution, protects the right of the people "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 to assembly encompasses the right of association. *Feltman v. City of Wilson*, 238 N.C. App. 246, 253 (N.C. Ct. App. 2014).

104. Article I, Section 12 protects the right of voters to participate in the political process and to affiliate with or support a voter’s candidate of choice. Supporting and affiliating with a candidate of one’s choice to pursue certain policy objectives is a core association protected by the North Carolina Constitution.

105. Plaintiffs exercised their constitutional right to assemble and associate when they consulted with other Black voters and candidates for their common good. Specifically, through the Individual Plaintiffs’ efforts to register Black voters so that they may elect a candidate of choice that is accountable and responsive to their needs. However, the proposed maps will severely hinder the efficacy of the Individual Plaintiffs’ efforts.

106. Plaintiffs are unable to exercise their right to associate when they cannot support a candidate of their choice as a result of redistricting undertaken by Legislative Defendants that willfully disregards and violates the process required under the North Carolina Constitution, as set forth in *Stephenson v. Bartlett*.

107. Defendants’ failure to comply with North Carolina Constitutional requirements for redistricting, as described in *Stephenson v. Bartlett*, when designating the county clusters, violates Article I Section 12 of the North Carolina Constitution by intentionally burdening the associational rights of Plaintiffs.

108. Defendants’ designated county clusters burden the ability of Plaintiffs and other Black voters to affiliate and join together to support their candidate of choice. Specifically, the Individual Plaintiffs who are all involved in registering Black voters and work to ensure that their

candidates of choice are elected. in previous redistricting cycles, changes in Plaintiffs Harris and Grant's, electoral districts have thwarted their efforts. The delayed process to adopt maps by Legislative Defendants, as well as the unlawful process employed to prepare the proposed maps made public so far, threaten to thwart these efforts again.

109. The designated county clusters will impose difficulty and impediments for Plaintiffs to register voters, attract volunteers, raise money, campaign, and turn out the vote for their candidate of choice, thereby creating greater obstacles for Plaintiffs to advance their interests via their right to vote.

110. As a result of the county clusters designated by Defendants, Plaintiffs' associative conduct—i.e., their shared support for the candidate of their choice—is less effective. Defendants' designated county clusters raise barriers—if not making it impossible—for the candidates of choice of Individual Plaintiffs and the members and voters served by the Organizational Plaintiffs to be elected, as specified in the above paragraphs. When Black voters are unable to influence the legislative process, their political views are unconstitutionally suppressed.

111. Defendants' intentional conduct in developing criteria for designating country clusters created these burdens by rejecting all consideration of race or conducting a Racially Polarized Voting Analysis. Defendants' designated county clusters artificially dilute the weight and impact of their associative conduct for Individual Plaintiffs and the members and voters served by the Organizational Plaintiffs.

112. Defendants have failed to provide an adequate explanation or justification for a redistricting criteria that eliminates all consideration of race and refuses to conduct a Racially Polarized Voting Analysis. Moreover, there is no compelling government interest in eliminating such consideration and thereby discriminating against Plaintiffs because of their associations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

- a. Declare Plaintiffs' legal rights to be free from redistricting that violates the North Carolina Constitution, as set forth in the paragraphs above;
- b. 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;
- c. Declare Legislative Defendants' criteria for redistricting unlawful, including the requirement to utilize the Duke Senate Clusters and Duke House Clusters, due to a violation of Plaintiffs' Rights under Article I, Section 19 of the North Carolina Constitution, and order Legislative Defendants to adopt a redistricting criteria that complies with the North Carolina Constitution and applicable law;
- d. Declare Legislative Defendants' criteria for redistricting unlawful, including the requirement to utilize the Duke Senate Clusters and Duke House Clusters, due to a violation of Plaintiffs' Rights to Associate under Article I, Section 12 of the North Carolina Constitution, and order Legislative Defendants to adopt a redistricting criteria that complies with the North Carolina Constitution and applicable law;
- e. A prompt hearing and/or expedited pleading schedule;
- f. An injunction prohibiting the North Carolina General Assembly from undertaking a redistricting process that fails to adhere to the requirements of the North Carolina Constitution, as set forth in *Stephenson v. Bartlett*;

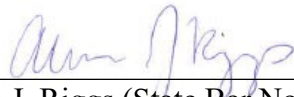
- g. An injunction prohibiting the SBE Defendants from administering the March 8, 2022 Statewide Primary elections before May 3, 2022 and from administering the candidate filing period before February 1 through 11, 2022;
- h. Award Plaintiffs' reasonable attorneys' fees, if just and proper;
- i. Make all further orders as are just, necessary, and proper; and
- j. Grant Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 29th day of October, 2021.

/s/
 Janette Louard*
 (OH Bar No. 66257)
 Anthony P. Ashton*
 (MD Bar No. 9712160021)
 Anna Kathryn Barnes*
 (D.C. Bar No. 1719493)
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Counsel for Plaintiffs

VERIFICATION

I, Deborah Dicks Maxwell, serve as President of the North Carolina State Conference of the NAACP Branches ("NC NAACP"), and hereby state that my organization, NC NAACP, is a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to NC NAACP, except to those matters stated on information and belief, which I believe to be true.

Deborah Dicks Maxwell
Deborah Dicks Maxwell

Sworn and subscribed before me this the 28th day of October, 2021.

Evelyn A Bryant
Notary Public

Name: Evelyn A Bryant

My commission expires: 3/22/2022



VERIFICATION

I, Bob Phillips, serve as Executive Director of Common Cause North Carolina, and hereby state that my organization, Common Cause, is a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to 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 28 day of October, 2021.

Erin Miller
Notary Public

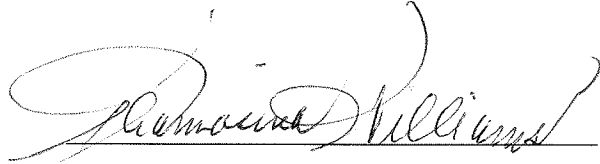
Erin Miller
NOTARY PUBLIC
Johnston County, NC
My Commission Expires February 22, 2024

Name: Erin Miller

My commission expires: 2/22/2024

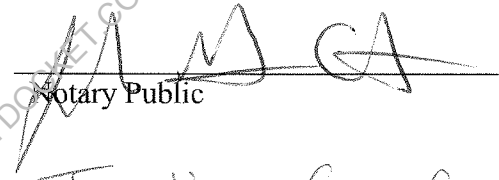
VERIFICATION

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



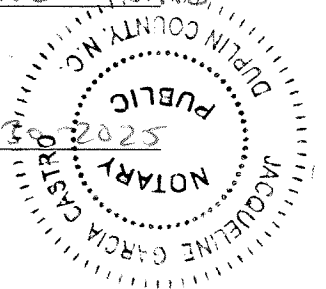
Thomasina Williams

Sworn and subscribed before me this the 28th day of October, 2021.


Notary Public

Name: Jacqueline Garcia Castro

My commission expires: 04-30-2025



VERIFICATION

I, Marilyn Harris, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein—in paragraphs 11, 76, 79—are true and accurate as they pertain to me

Marilyn H. Harris

Marilyn Harris

Sworn and subscribed before me this the 28 day of October, 2021.



Talia Ray
Notary Public

Name: Talia Ray

My commission expires: 11-6-2024

VERIFICATION

I, Gary Grant, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein—in paragraphs 12, 76, 79—are true and accurate as they pertain to me

Gary Grant

Gary Grant

Sworn and subscribed before me this the 28th day of October, 2021.



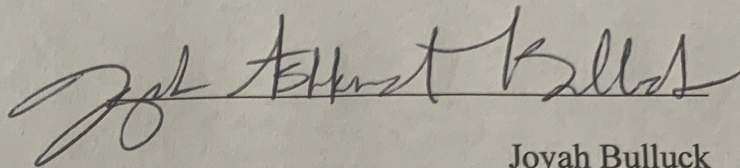
Talia Ray
Notary Public

Name: Talia Ray

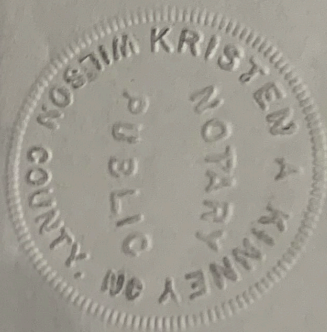
My commission expires: 11-6-2024

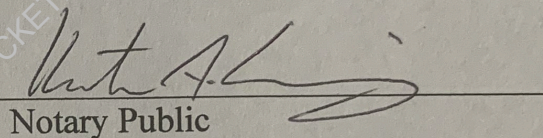
VERIFICATION

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


Joyah Bulluck

Sworn and subscribed before me this the 28 day of October, 2021.




Notary Public

Name: Kristen A. Kinney

My commission expires: 12-19-2023

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