

NORTH CAROLINA

WAKE COUNTY

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24-CVS-_____

BEVERLY BARD, RICHARD LEVY, SUSAN KING COPE, ALLEN WELLONS, LINDA MINOR, THOMAS W. ROSS, SR., MARIE GORDON, SARAH KATHERINE SCHULTZ, JOSEPH J. COCCIA, TIMOTHY S. EMRY, and JAMES G. ROWE,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS, ALAN HIRSCH, in his official capacity as Chair of the North Carolina State Board of Elections, JEFF CARMON III in his official capacity as Secretary of the North Carolina State Board of Elections, STACY "FOUR" EGGERS in his official capacity as a member of the North Carolina State Board of Elections, SIOBHAN O'DUFFY MILLEN in her official capacity as a member of the North Carolina State Board of Elections, KEVIN N. LEWIS in his official capacity as a Member of the North Carolina State Board of Elections, PHILLIP E. BERGER in his official capacity as President Pro Tem of the North Carolina Senate, and TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives.

Defendants.

COMPLAINT
(Three-Judge Panel
pursuant to G.S. 1-267.1)

Plaintiffs, complaining of Defendants, allege the following:

INTRODUCTION

This case presents a major question of first impression for the courts of this State impacting the very foundation of our constitutional Republic's underlying principles of democracy. The issues presented deal with elections, the vehicle by which the citizens of the State, authorized to vote in those discrete elections, choose their officials to administer the government created by the people through their state constitution and the U.S. Constitution. As our Supreme Court has made clear, "[t]he people are entitled to have their elections conducted honestly and in accordance with the requirements of the law. To require less would result in a mockery of the democratic processes for nominating and electing public officials." *Ponder v. Joslin*, 262 N.C. 496, 500, 138 S.E.2d 143, 147 (1964).

In Article I of the North Carolina Constitution, the "Declaration of Rights," elections are specifically recognized as bestowing upon the citizens of the state certain enumerated rights: the right to "frequent" elections is protected in Section 9 and the right to "free" elections is protected in Section 10. If the citizens of North Carolina are guaranteed by their State Constitution the right to "frequent" and "free" elections, then surely the Constitution guarantees them the right to "fair" elections. After all, what good are "frequent" elections if those elections are not "fair?" Likewise, what good are "free" elections if those elections are not "fair?"

Plaintiffs, individually, and on behalf of all the citizens of North Carolina contend that they are guaranteed "fair" elections or else the other constitutional

guarantees are of little or no value and that the elections in specific districts as set forth below violate their constitutional right to fair elections.

Article I, Section 36 of the North Carolina Constitution provides “*Other rights of the people,*” stating that “[t]he enumeration of rights in this Article shall not be construed to impair or deny others retained by the people.” This guarantee first adopted by North Carolina’s 1868 Constitution is modeled on the Ninth Amendment in the U.S. Bill of Rights.

Therefore, Plaintiffs contend that the right to “fair” elections is an unenumerated right reserved by the people and fundamental to the very concept of elections and the underpinnings of democracy. Without “fair” elections, the framework of our government would rest not on principle and the will of the people, but instead, on partisan politics, exercised not by political parties or particular entities, but by the heavy hand of government itself, in this case the General Assembly. By intentionally manipulating the electoral odds and stacking the electorate to give an unfair electoral advantage to a particular political party and its candidates in selected districts, the General Assembly has attempted to preordain the outcome of elections in certain districts as set out below.

The Plaintiffs seek a declaration of their constitutional right to “fair” elections in North Carolina and a determination that the legislative apportionment of citizens into districts for the election of Congress, the North Carolina Senate, and the North Carolina House as alleged below violate the citizens’ right to “fair” elections.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to Articles 26 and 26A of Chapter 1 of the North Carolina General Statutes.

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

3. A three-judge court must convene in this matter pursuant to N.C. Gen. Stat. § 1-267.1 because this action challenges the validity of the reapportionment acts in SB 757, SB758 and HB898 as enacted by General Assembly.

PARTIES

4. Beverly Bard is a citizen and resident of Guilford County, North Carolina. In 2022, she was a resident of Congressional District 6. She is registered to vote as a member of the Democratic Party. She voted in the 2022 elections, including the congressional race in NC 6. With the reapportionment done by the General Assembly in SB 757, she remains a registered voter in NC 6 although the District has been significantly altered.

5. Richard Levy is a citizen and resident of Guilford County, North Carolina. In 2022, he was a resident of Congressional District 6 (NC 6). He is registered to vote as Unaffiliated. He voted in the 2022 elections, including the congressional race in NC 6. With the reapportionment enacted by the General Assembly in SB 757, he is now removed from NC 6 and apportioned to vote in Congressional District 5 (NC 5) although he has not changed his residency.

6. Susan King Cope is a citizen and resident of Wake County, North Carolina. In 2022, she was a resident of Congressional District 13 (NC 13). Ms. King Cope is registered to vote as a member of the Democratic Party. She voted in the 2022 elections, including the congressional race in NC 13. With the reapportionment enacted by the General Assembly in SB 757, Ms. King Cope is now removed from NC 13 and apportioned to vote in Congressional District 4 (NC 4) although she has not changed her residency.

7. Allen H. Wellons is a citizen and resident of Johnston County, North Carolina. In 2022, he was a resident of Congressional District 13. Mr. Wellons is registered to vote as a member of the Democratic Party. He voted in the 2022 elections, including the congressional race in NC 13. With the reapportionment enacted by the General Assembly in SB 757, Mr. Wellons remains a registered voter in NC 13 although the District has been significantly altered.

8. Linda Minor is a citizen and resident of Mecklenburg County, North Carolina. In 2022, she was a resident of Congressional District 14 (NC 14). She is registered to vote as a member of the Democratic Party. She voted in the 2022 elections, including the congressional race in NC 14. With the reapportionment enacted by the General Assembly in SB 757, she is now removed from NC 14 and apportioned to vote in Congressional District 12 (NC 12) although she has not changed her residency.

9. Thomas W. Ross, Sr. is a citizen and resident of Mecklenburg County, North Carolina. In 2022, he was a resident of Congressional District 12. Mr. Ross is

registered to vote as a member of the Democratic Party. He voted in the 2022 elections, including the congressional race in NC 12. With the reapportionment enacted by the General Assembly in SB 757, Mr. Ross is now a voter in NC 14 although he still resides in the same precinct as in 2022.

10. Marie L. Gordon, is a citizen and resident of New Hanover County, North Carolina. In 2022, she was a resident of State Senate District 7 (SD 7). She is registered to vote as a member of the Democratic Party. She voted in the 2022 elections, including the state senatorial race in SD 7. With the reapportionment done by the General Assembly in SB 758, she is now removed from SD 7 and apportioned to vote in State Senate District 8 (SD 8) although she has not changed her residency.

11. Sarah Katherine Schultz is a citizen and resident of New Hanover County, North Carolina. In 2022, she was a resident of State Senate District 7 (SD 7). She is registered to vote as a member of the Democratic Party. She voted in the 2022 elections, including the state senatorial race in SD 7. With the reapportionment enacted by the General Assembly in SB 758, she remains apportioned to vote in SD 7 although the District has been significantly altered.

12. Joseph J. Coccia is a citizen and resident of Mecklenburg County, North Carolina. In 2022, he was a resident of State House District 105 (HD105). He is registered to vote as a member of the Democratic Party. He voted in the 2022 elections, including the State House race in HD 105. With the reapportionment

enacted by the General Assembly in SB 898, he remains apportioned to vote in HD 105 although the District has been significantly altered.

13. Timothy S. Emry is a citizen and resident of Mecklenburg County, North Carolina. In 2022, he was a resident of State House District 105 (HD 105). He is registered to vote as a member of the Democratic Party. He voted in the 2022 elections, including the state House race in HD 105. With the reapportionment enacted by the General Assembly in HB 898, he is now removed from HD 105 and apportioned to vote in State House District 103 (HD 103) although he has not changed his residency.

14. James G. Rowe, is a citizen and resident of Buncombe County, N.C. and is a registered voter in Congressional District 11 (NC 11) for the 2024 election and has been registered to vote in North Carolina since 1972. Mr. Rowe is registered to vote as an Unaffiliated voter and has over the years voted for both Republican and Democratic candidates for office. Candidates elected in districts where he is not eligible to vote still vote on issues of concern to him and issues that affect him. He believes that a fair election is a fundamental right of the citizens of North Carolina.

15. Defendant North Carolina State Board of Elections (NCSBE) is an agency of the State of North Carolina statutorily charged with administering the election laws of the State.

16. Defendant Allen Hirsch is the Chair of the NCSBE and is named in his official capacity only.

17. Defendant Jeff Carmon is the Secretary of the NCSBE and is named in his official capacity only.

18. Defendant Stacy “Four” Eggers IV is a Board member of the NCSBE and is named in his official capacity only.

19. Defendant Siobhan O’Duffy Millen is a Board member of the NCSBE and is named in her official capacity only.

20. Defendant Kevin N. Lewis is a Board member of the NCSBE and is named in his official capacity only.

21. Defendant Philip E. Berger is the President Pro Tem of the North Carolina Senate and is named in his official capacity only.

22. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives and is named in his official capacity only.

FACTUAL ALLEGATIONS

23. In apportioning citizens in congressional and legislative districts, the General Assembly has previously set forth criteria that will be applied in the process.

24. In October 2023, the General Assembly of North Carolina submitted a “2023 Congressional Plan Criteria” (see Exhibit A) and a “2023 Senate Plan Criteria” (see Exhibit B). In those plans, the General Assembly included criteria for apportioning voters that states in part: “Political Considerations. Politics and political considerations are inseparable from districting and apportionment. (Citation omitted). The General Assembly may consider partisan advantage and

incumbency protection in the application of its discretionary redistricting decisions . . . *but it must do so in conformity with the State Constitution.*” Defendants did, in fact, consider partisan advantage and incumbency protection in the apportioning of NC 6, NC 13, NC 14, SD 7 and HD 105, as well as other districts, but in violation of the North Carolina Constitution as alleged herein. Upon information and belief, the House Redistricting Committee never adopted criteria in 2023, unlike in past redistricting efforts. Instead, in August of 2023, the Redistricting Chair instructed their taxpayer-funded expert to draw lines in secret using “guidelines.” See Exhibit C. No one saw these guidelines or the resulting map until it was introduced and passed in October of 2023.

25. In complying with the required apportionment of citizens to various districts, the governmental entities performing this function in the 21st century have extraordinary technological and data resources to rely on in apportioning those citizens into discrete districts for discrete elections.

26. This technology and data provide those governmental entities with the ability to pick and choose which pools of voters, usually defined by precincts or by census blocks, are apportioned into each distinct district.

27. Each pool of voters has substantial information associated with it including party registration, race, ethnicity, and the voting tendencies for that precinct. This information fully provides those governmental entities in control of the apportionment, the capacity to determine to a reasonable degree of certainty,

the ultimate voting tendency of each voting block in the form of precincts in the newly apportioned district.

28. By using this information, the governmental entities in control of the apportionment can effectively predict to a substantial degree the election results for future elections within each newly apportioned district and can predict to a degree certain the election results in the most immediate election.

29. In the adoption of SB 757 “Congressional Districts 2023,” the members of the General Assembly controlling the apportionment process used technology and data in such a way as to reapportion voters so as to create an unfair advantage for their political party in the ensuing elections in those districts.

30. While the previous redistricting process was noted for its transparency in the apportionment and the creation of congressional districts, State Senate districts, and State House districts, the process utilized by the Defendants to apportion citizens into electoral districts in 2023 was largely void of transparency.

31. Upon information and belief, the apportionment conducted in 2023 for the 2024 congressional and legislative elections was conducted in secrecy by representatives of Defendants Berger and Moore in consultation with a redistricting consultant from Ohio. Neither the public nor representatives of the minority party leadership were allowed to participate in the apportionment process or observe the process determining which citizens in which precincts or census blocks would be aggregated together to form electoral districts.

32. The 2023 information on apportionment showing the congressional and legislative districts and the underlying population data was released to the public by Defendants Berger and Moore or their agents on October 18, 2023. There were three limited public hearings over the course of the next few weeks and several technical amendments to the map were adopted shortly thereafter by the General Assembly. However, 95 percent of the census blocks utilized in the preparation of the map remained as originally created by the secret process with only minor technical changes taking place prior to passage.

33. Upon information and belief, for at least some of the congressional districts created, in particular NC 6, NC 13 and NC 14, it was the intent of Defendants Berger and Moore and their allies and agents to take a substantial numbers of voters likely to support their party's candidates and move them into the above referenced districts; take certain voters likely to not support their party's candidates out of their district and move them into districts where their votes would be negated or minimized so as to not be determinative in deciding the outcome of the election; and to generally reapportion the voters in NC 6, NC 13, NC 14, SD 7 and HD 105 in such a way as to turn the districts from competitive to favoring one political party's candidates, in this case the Republican Party.

North Carolina Congressional District 6

34. In the apportionment of congressional districts to be used in the 2022 elections as ordered by a three-judge panel of the Wake County Superior Court, Congressional District 6 (NC 6) consisted of all of Guilford County, Rockingham

County, most of Caswell County other than a small part in the northeast portion of that county, and a portion of Forsyth County. *See* Exhibit D1-D2.¹

35. As such, NC 6 in the 2022 congressional map met the federal constitutional mandate for equal population, was contiguous, and was compact.

36. In the 2022 congressional election in NC 6, Kathy Manning, a resident of Guilford County and the Democratic nominee for the office won with a total vote of 139,553. The Republican nominee Christian Castelli received 116,635 votes and the Libertarian candidate, Thomas Watercott, received 2,810 votes.

37. In the county breakdown of the votes, Manning received the vast majority of her margin of victory in Guilford County: Manning 110,418; Castelli 74,501; and Watercott 1986.

38. In the other counties within NC 6, the results were as follows: In Rockingham County: Castelli 21,654; Manning 10,482; and Watercott 391. In Caswell County: Castelli 4724; Manning 3,075; and Watercott 74. In the portion of Forsyth County included in NC 6: Castelli 15,756; Manning 15,578 and Watercott 359.

39. In the North Carolina Supreme Court's April 28, 2023 decision in *Harper v. Hall*, 384 N.C. 292, 886 S.E.2d 393 (2023), the North Carolina General Assembly was authorized to reapportion the voters to form congressional election

¹ The maps exhibited herein were generated using the [NCGA Redistricting website](#) (see "2023 Redistricting" resources for current maps and "District Plans Enacted or Ordered by the Court" for the 2022 maps). Each district map from 2022 and 2024 includes the clear outline of the district ([Exhibit]-1) and a highlighted version of the same district ([Exhibit]-2).

districts for subsequent elections. The Court did not mandate different districts but simply authorized the General Assembly to do so if it chose to do so.

40. In October 2023, the General Assembly enacted a new reapportionment plan, SB 757.

41. In the new reapportionment plan, voters in substantial portions of NC 6 as constituted in the 2022 districts were intentionally removed from NC 6 including all of Rockingham County and all of the portion previously included from Caswell County. In addition, the General Assembly removed substantial portions of Guilford County from NC 6, moving them to newly reapportioned congressional districts 5 and 9.

42. In order to comply with the federal constitutional requirement of “one person, one vote” after having removed voters from NC 6, the General Assembly added voters to NC 6 in such a way as to increase the vote totals for the Republican nominee for Congress by: adding all of Davie County; all of Davidson County; all of Rowan County; part of Cabarrus County; and changing the portion of Forsyth County that was a part of NC 6. *See* Exhibit E1-E2.

43. Both the registration figures in these additions to NC 6 and voting patterns in those additions demonstrate the intentional stacking of Republican leaning voters in the newly reapportioned NC 6 so as to unfairly skew the election results for Congress to favor the Republican nominee. By way of example and using vote totals for the presidential election in 2020, the voting pattern of voters in NC 6

in 2022 versus the voting pattern of voters in the newly apportioned NC 6 show as follows:

- (a) In the 2020 election for President, voters in the 2022 NC 6 voted for Biden: 217,981 to Trump: 169,348.
- (b) In the 2024 version of NC 6, voters in the 2020 election for President voted Biden: 157,275 to Trump: 219,142.

44. As a result of the addition and removal of precincts and census blocks of voters apportioning NC 6, the Defendants intentionally changed the voter composition of NC 6 for the purpose of unfairly giving the Republican candidate for Congress in the 2024 election a significant advantage in winning the election over the Democratic nominee.

45. As the result of the apportionment of voters in NC 6, upon the close of filing for congressional office, the Democratic incumbent for Congress Kathy Manning declined to file for the office and, in fact, no Democratic candidate filed for the office, nor were candidates offered by the Libertarian Party or the Green Party. On the other hand, six Republicans filed in the primary for NC 6, thus guaranteeing no choice for voters regardless of their political party in the general election and guaranteeing that a Republican will win the congressional seat in 2024.

46. As the direct result of the apportionment of NC 6, that Congressional District went from a competitive election district to a non-competitive district, guaranteeing a general election win for the nominee of the Republican Party and

thus depriving the voters of NC 6 of a fair election in violation of their constitutional right to fair elections.

North Carolina Congressional District 13

47. In the apportionment of congressional districts to be used in the 2022 elections as ordered by a three-judge panel of the Wake County Superior Court, Congressional District 13 (NC 13) was comprised of voters in all of Johnston County; the southern portion of Wake County; the eastern portion of Harnett County; and the western portion of Wayne County. *See Exhibit F1-F2.*

48. As such, NC 13 in the 2022 congressional map met the federal constitutional mandate for equal population, was contiguous, and was compact.

49. In the 2022 congressional election in NC 13, Wiley Nickel, a resident of Wake County and the Democratic nominee for the office won the general election with a total vote of 143,090. The Republican nominee, Bo Hines, received 134,256 votes.

50. In the counties in NC 13, the results were as follows: In Johnston County: Hines 46,215; Nickel 29,170; in Wayne County: Hines 12,378; Nickel 8,736; in Harnett County: Hines 16,389; Nickel 8,522; and in Wake County: Nickel 96,662; Hines 59,274.

51. In the North Carolina Supreme Court's April 28, 2023 decision in *Harper v. Hall*, 384 N.C. 292, 886 S.E.2d 393, the North Carolina General Assembly was authorized to reapportion the voters to form congressional election districts for

subsequent elections. The Court did not mandate different districts but simply authorized the General Assembly to do so if it chose to do so.

52. In October 2023, the General Assembly enacted a new reapportionment plan SB 757.

53. In the new reapportionment plan, voters in substantial portions of NC 13 as constituted in the 2022 district were intentionally removed from NC 13, including approximately half of the portion in Wake County, and added to a newly apportioned Congressional District 4 (NC 4), which included Durham and Orange Counties. In addition, voters in part of Wayne County were removed from NC 13.

54. In order to comply with the federal constitutional requirement of “one person, one vote” after removing voters from NC 13, the General Assembly added voters to NC 13 by including all of Harnett County; all of Lee County to the south; created a crescent shaped pool of voters running from southeast Wake County with a long, narrow sliver on the eastern county line of Wake County connecting it with pockets of voters in the northern portions of Wake County; added Caswell County; added Person County; added Franklin County; and added most of Granville County. See Exhibit G1-G2.

55. Both the registration figures in these additions and removals from the 2022 NC 13 District and the voting patterns of those voters demonstrate the intentional apportionment of Republican leaning voters into the new NC 13 so as to unfairly skew future election results for Congress to favor the Republican nominee. By way of example and using vote totals for the presidential election in 2020, the

voting pattern of voters in NC 13 in 2022 versus the voting pattern of voters in the newly apportioned NC 13 show as follows:

- (a) In the 2020 election for President, voters in the 2022 NC 13 voted for Biden: 198,202 to Trump: 191,529.
- (b) In the 2024 version of NC 13, voters in the 2020 election for President voted Biden: 156,867 to Trump: 224,486.

56. As a result of the addition and removal of precincts and census blocks of voters apportioning NC 13, the Defendants intentionally changed the voter composition of NC 13 for the purpose of unfairly giving the Republican candidate for Congress in the 2024 election a significant advantage in winning the election over the Democratic nominee.

57. As the result of the apportionment of voters in NC 13, upon the close of filing for congressional office, the Democratic incumbent for Congress Wiley Nickel declined to file for the office. One Democratic candidate filed for this seat, Jeremiah Frank Lee Pierce, a teacher and landscaper. No Libertarian or Green Party candidates filed. On the other hand, 14 Republicans filed for the primary election in NC 13.

58. As the direct result of the apportionment of NC 13, that Congressional District went from a competitive election district to a non-competitive district, reliably guaranteeing a general election win for the nominee of the Republican Party and depriving the voters of NC 13 of a fair election in violation of their constitutional right to fair elections.

North Carolina Congressional District 14

59. In the apportionment of congressional districts to be used in the 2022 elections as ordered by a three-judge panel of the Wake County Superior Court, Congressional District 14 (NC 14) consisted of the southern portion of Mecklenburg County and approximately two-thirds of the eastern portion of Gaston County. See Exhibit H1-H2.

60. As such, NC 14 in the 2022 congressional map met the federal constitutional mandate for equal population, was contiguous, and was compact.

61. In the 2022 congressional election in NC 14, Jeff Jackson, a resident of Mecklenburg County and the Democratic nominee for the office, won with a total vote of 148,738. The Republican nominee Pat Harrigan received 109,014 votes.

62. In the county breakdown of the votes, Jackson received the majority of his votes in Mecklenburg County: Jackson 124,710; Harrigan 69,363. In Gaston County the results were: Harrigan 39,651; Jackson 24,028.

63. In the North Carolina Supreme Court's April 28, 2023 decision in *Harper v. Hall*, 384 N.C. 292, 886 S.E.2d 393, the North Carolina General Assembly was authorized to reapportion the voters to form congressional election districts for subsequent elections. The Court did not mandate different districts but simply authorized the General Assembly to do so if it chose to do so.

64. In October 2023, the General Assembly enacted a new reapportionment plan SB 757.

65. In the new reapportionment plan, voters in substantial portions of NC 14 as constituted in the 2022 district were intentionally removed from NC 14, including substantial portions of Mecklenburg County, and added into Congressional District 12 and Congressional District 8.

66. In order to comply with the federal constitutional requirement for “one person, one vote” after having removed voters from NC 14, the General Assembly added voters in the northwest quadrant of Mecklenburg County; added Cleveland County; added Rutherford County; added Burke County; and added the eastern half of Polk County. *See Exhibit I1-I2.*

67. Both the registration figures in these additions and deletions to NC 14 and the voting patterns of those voters demonstrate the intentional apportionment of Republican leaning voters in the newly apportioned NC 14 so as to unfairly skew the election results for Congress in the 2024 election to favor the Republican nominee. By way of example and using vote totals for the presidential election in 2020, the voting pattern of voters in NC 14 in 2022 versus the voting pattern of voters in the newly apportioned NC 14 show as follows:

- (a) In the 2020 election for President, voters in the 2022 NC 14 voted for Biden: 224,502 to Trump: 160,413.
- (b) In the 2024 version of NC 14, voters in the 2020 election for President voted Biden: 157,275 to Trump: 227,359.

68. As a result of these removals and additions of precincts and census blocks of voters in NC 14, the Defendants intentionally changed the voter

composition of NC 14 for the purpose of unfairly giving the Republican candidate for Congress in the 2024 election a significant advantage in winning the election over the Democratic nominee.

69. As the result of the apportionment of voters in NC 14, upon the close of filing for congressional office, the Democratic incumbent for Congress Jeff Jackson declined to file for the office. Two Democrats filed for NC 14, Pam Genant and B.K. Maginnis. No Libertarian or Green Party candidates filed. Three Republicans filed for the office including the current Speaker of the N.C. House.

70. As the direct result of the apportionment of NC 14, that Congressional District went from a competitive election district to a non-competitive district virtually guaranteeing a general election win for the nominee of the Republican Party and depriving the voters of NC 14 of a fair election in violation of their constitutional right to fair elections.

State Senate District 7

71. In the apportionment of state senate districts to be used in the 2022 elections as ordered by a three-judge panel of the Wake County Superior Court, State Senatorial District 7 (SD 7) consisted of virtually the entire county of New Hanover excepting a small portion on the western boundary of the County. See Exhibit J1-J2.

72. As such, SD 7 in the 2022 State Senatorial Map met the federal and state constitutional mandates for equal population, was contiguous, was compact,

and complied with the North Carolina Constitution's "Whole County" requirement to the extent necessary.

73. In the 2022 State Senate election in SD 7, Michael Lee, a resident of New Hanover County and the Republican nominee for the office, won with a total vote of 44,908. The Democratic nominee Marcia Morgan received 43,198 votes.

74. In the North Carolina Supreme Court's April 28, 2023 decision in *Harper v. Hall*, 384 N.C. 292, 886 S.E.2d 393, the North Carolina General Assembly was authorized to reapportion the voters to form state senatorial election districts for subsequent elections. The Court did not mandate different districts but simply authorized the General Assembly to do so if it chose to do so.

75. In October 2023, the General Assembly enacted a new reapportionment plan SB 758.

76. In the new reapportionment plan, voters in portions of SD 7 as constituted in the 2022 district were intentionally removed from SD 7, including substantial portions of SD 7 that were comprised of Democratic leaning voters. Those voters, many of whom were minority voters, were move into Senatorial District 8 (SD 8) comprised of Columbus County, Brunswick County, and a small portion of New Hanover County. See Exhibit K1-K2.

77. As the result of the apportionment of voters in SD 7, upon the close of filing for office for 2024, one Democrat, David L. Hill, and one Libertarian, John Evans, filed for SD 7. One Republican filed for the office, incumbent State Senator Mike Lee.

78. As the direct result of the apportionment of SD 7, that State Senatorial District went from a competitive, toss-up election district to a district leaning Republican for the general election, depriving the voters of SD 7 of a “fair” election in violation of their constitutional right to “fair elections.”

State House District 105

79. In the apportionment of State House districts to be used in the 2022 elections as ordered by a three-judge panel of the Wake County Superior Court, State House District 105 (HD 105) consisted of a district in the southeastern corner of Mecklenburg County. *See Exhibit L1-L2.*

80. As such, HD 105 in the 2022 State House Map met the federal and state constitutional mandates for equal population, was contiguous, was compact, and complied with the North Carolina Constitution’s “Whole County” requirement to the extent necessary.

81. In the 2022 State House election in HD 105, Democrat Wesley Harris won the election with 17,545 votes to his Republican opponent Joshua Niday’s 13,307.

82. In the North Carolina Supreme Court’s April 28, 2023 decision in *Harper v. Hall*, 384 N.C. 292, 886 S.E.2d 393, the North Carolina General Assembly was authorized to reapportion the voters to form State House election districts for subsequent elections. The Court did not mandate different districts but simply authorized the General Assembly to do so if it chose to do so.

83. In October 2023, the General Assembly enacted a new reapportionment plan HB 898.

84. In the new reapportionment plan, voters in portions of House District 105 (HD 105) as constituted in the 2022 district, were intentionally removed from HD 105 including substantial portions of HD 105 that were comprised of Democratic leaning voters and added voters to HD 105 who were Republican leaning voters. *See Exhibit M1-M2.*

85. As the result of the apportionment of voters in HD 105, upon the close of filing for office for 2024, three Democrats filed for HD 105, Yolando Holmes, Terry Lansdell and Nicole Sidman. One Republican filed for the office, incumbent House member Tricia Cotham who currently represents House District 112.

86. As the direct result of the apportionment of HD 105, that State House District went from a competitive, Democratic leaning district to a district leaning Republican for the general election and by doing so deprived the voters of HD 105 of a “fair” election in violation of their constitutional right to “fair elections”.

87. The allegations pertaining to SD 7 and HD 105 are representative of the manipulation of the voter pool in apportioning both the State Senate and the State House of Representatives.

88. The John Locke Foundation is a conservative leaning, non-profit think tank in North Carolina. The John Locke Foundation’s Civitas Center for Public Integrity focuses in part on elections in North Carolina, including publishing the

Civitas Partisan Index, which measures the partisan leaning of state legislative districts.

89. The Civitas Partisan Index for 2022 showed that SD 7 had a partisan lean of “Democratic +8, lean Democratic.” After the reapportionment for 2024, the Civitas Partisan Index has SD 7 with a partisan lean of “Republican +2, lean Republican.”

90. The Civitas Partisan Index for 2022 showed that HD 105 had a partisan lean of “Democratic +7, likely Democratic.” After the reapportionment for 2024, the Civitas Partisan Index has HD 105 with a partisan lean of “Republican +2, lean Republican.”

91. SD 7 and HD 105 are not the only districts reapportioned to provide an unfair advantage in the 2024 elections. They are indeed representative of other districts reapportioned to provide an unfair election advantage in violation of the constitutional right of voters in North Carolina to fair elections.

CLAIM FOR RELIEF

**N.C. Const. art. I, § 36
Violation of the Right to Fair Elections**

92. Plaintiffs re-allege and incorporate by reference the above paragraphs of this complaint.

93. Article I, Section 36 of the North Carolina Constitution secures unenumerated rights to the people of North Carolina, which shall not be impaired or denied.

94. The people of North Carolina have a constitutional right to “frequent” elections and to “free” elections which includes a “*fair* count” (emphasis added) of the ballots. *Harper v. Hall*, 384 N.C. at 363, 886 S.E.2d at 439 (quoting *Swaringen v. Poplin*, 211 N.C. 700, 702, 191 S.E. 746, 747 (1937)). To have any value, those “frequent” and “free” elections must also be “fair.” Thus, there is a right to “fair” elections secured as an unenumerated right in the North Carolina Constitution.

95. “Fair” elections have a judicially discernible and manageable standard. This standard consists of factual determinations that: (1) the governmental action complained of was intentionally taken; (2) evidence is produced that factually shows the specific upcoming election was affected by government action, in this case the North Carolina General Assembly’s apportionment legislation; and (3) the governmental action at issue gives a specific political party or candidate a determinative advantage in the election by intentionally “apportioning” voters favorable to that specific political party into the specific district or “apportioning” voters unfavorable to that specific political party out of the specific district.

96. In the case at hand, the first concrete step in an election for a congressional seat or for legislative seats in the State Senate and State House is a determination of which voters will be eligible to vote for that office. As described above with respect to NC 6, NC 13, NC 14, SD 7, and HD 105, when there is an intentional aggregation and apportionment of voters in a district that tilts the election towards one political party or candidate and, therefore, potentially

preordains the outcome of the election, then a “fair” election cannot take place and the constitutional rights of the voters have been violated.

97. As described above, the enactment of SB 757 in establishing a newly constituted NC 6, NC 13, and NC 14 violates the constitutional rights of the plaintiffs to a “fair” election in that the voters newly aggregated in those districts and removed from those districts were apportioned intentionally to assure, to the extent possible, a political victory in the 2024 election for candidates of one political party, in this case the Republican Party.

98. As described above, the enactment of SB 753 and HB 898 in establishing SD 7 and HD 105 and other districts violates the constitutional right of the plaintiffs to a “fair” election in that the voters newly aggregated in those districts and removed from those districts were apportioned intentionally to assure, to the extent possible, a political victory in the 2024 election for candidates of one political party, in this case the Republican Party.

REQUEST FOR RELIEF

Plaintiffs respectfully request that the Court:

- (1) declare that the citizens of North Carolina have an unenumerated constitutional right to fair elections under Article I, Section 36 of the North Carolina Constitution;
- (2) declare that SB 757 violates the Plaintiffs’ right to a fair election in North Carolina Congressional Districts, 6, 13, and 14.

- (3) declare that SB 758 and HB 858 violate the Plaintiffs' right to a fair election in SD 7, HD 105, and such other legislative districts as the Court may find violative of the North Carolina Constitution;
- (4) grant preliminary and permanent injunctive relief barring Defendants, as well as their agents and successors in office, from enforcing or giving effect to the newly apportioned congressional districts in NC 6, NC 13, NC 14 and the newly apportioned legislative districts in SD 7 and HD 105, including ordering Defendants to not conduct any elections in those districts as constituted by SB 757, SB 758 and HB 858 until constitutionally compliant districts are apportioned;
- (5) take such actions necessary to order the adoption of a constitutionally fair and valid reapportionment of NC 6, NC 13, NC 14, SD 7, HD 105, and any other districts so found to be unconstitutional for the 2024 election and subsequent elections;
- (6) take such actions as necessary to reapportion the remaining eleven North Carolina congressional districts so as to comply with federal constitutional requirements including "one person, one vote" and the Voting Rights Act; and
- (7) take such actions as necessary to reapportion the remaining State Senate and State House districts so as to comply with federal and state constitutional requirements; and

- (8) grant such other or further relief as the Court deems appropriate, including but not limited to an award of Plaintiffs' attorneys' fees and costs as allowed by law.

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Respectfully submitted the 31th day of January, 2024.

/s/ Robert F. Orr

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Counsel for Plaintiffs

EXHIBIT INDEX

Exhibit A: Congressional Plan Criteria (§ 24)

Exhibit B: Senate Plan Criteria (§ 24)

Exhibit C: House Guidelines (§ 24)

Exhibit D1-D2: NC Congressional D6 for 2022 (§ 34)

Exhibit E1-E2: NC Congressional D6 for 2024 (§ 42)

Exhibit F1-F2: NC Congressional D13 for 2022 (§ 47)

Exhibit G1-G2: NC Congressional D13 for 24 (§ 54)

Exhibit H1-H2: NC Congressional D14 for 2022 (§ 59)

Exhibit I1-I2: NC Congressional D14 for 2024 (§ 66)

Exhibit J1-J2: Senate District 7 for 2022 (§ 71)

Exhibit K1-K2: Senate District 7 for 2024 (§ 76)

Exhibit L1-L2: House District 105 for 2022 (§ 79)

Exhibit M1-M2: House District 105 for 2024 (§ 84)



2023 CONGRESSIONAL PLAN CRITERIA

October 2023

- Equal Population. The Committee chairs will use the 2020 federal decennial census data as the sole basis of population for the establishment of districts in the 2023 Congressional Plan. The number of persons in each congressional district shall equal be as nearly as is practicable, as determined under the most recent federal decennial census. *Wesberry v. Sanders*, 376 U.S. 1 (1964).
- Traditional Districting Principles. We observe that the State Constitution's limitations upon redistricting and apportionment uphold what the United States Supreme Court has termed "traditional districting principles." These principles include factors such as "compactness, contiguity, and respect for political subdivisions." *Stephenson v. Bartlett*, 357 N.C. 301 (2003) (*Stephenson II*) (quoting *Shaw v. Reno*, 509 U.S. 630 (1993)).
- Compactness. The Committee chairs shall make reasonable efforts to draw districts in the 2023 Congressional Plan that are compact.
- Contiguity. Congressional districts shall be comprised of contiguous territory. Contiguity by water is sufficient.
- Respect for Existing Political Subdivisions. County lines, VTDs and municipal boundaries may be considered when possible in forming districts that do not split these existing political subdivisions.
- Racial Data. Data identifying the race of individuals or voters shall *not* be used in the drafting of districts in the 2023 Congressional Plan.
- Political Considerations. Politics and political considerations are inseparable from districting and apportionment. *Gaffney v. Cummings*, 412 U.S. 735 (1973). The General Assembly may consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions...but it must do so in conformity with the State Constitution. *Stephenson II*. To hold that legislators cannot take partisan interests into account when drawing district lines would essentially countermand the Framers' decision to entrust districting to political entities. *Rucho v. Common Cause*, 588 U.S. ____ (2019).
- Incumbent Residence. Candidates for Congress are not required by law to reside in a district they seek to represent. However, incumbent residence may be considered in the formation of Congressional districts.



2023 SENATE PLAN CRITERIA
October 2023

- Equal Population. The Committee chairs will use the 2020 federal decennial census data as the sole basis of population for the establishment of districts in the 2023 Senate Plan. In forming new legislative districts, any deviation from the ideal population for a legislative district shall be at or within plus or minus five percent for purposes of compliance with federal “one-person, one-vote” requirements. *Stephenson v. Bartlett*, 357 N.C. 301 (2003) (*Stephenson II*).
- County Groupings and Traversals. The Committee chairs shall draw legislative districts within county groupings as required by *Stephenson v. Bartlett*, 355 N.C. 354 (2002) (*Stephenson I*), *Stephenson II*, *Dickson v. Rucho*, 367 N.C. 542 (2014) (*Dickson I*) and *Dickson v. Rucho*, 368 N.C. 481 (2015) (*Dickson II*). Within county groupings, county lines shall not be traversed except as authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*.
- Traditional Districting Principles. We observe that the State Constitution’s limitations upon redistricting and apportionment uphold what the United States Supreme Court has termed “traditional districting principles.” These principles include factors such as “compactness, contiguity, and respect for political subdivisions.” *Stephenson II* (quoting *Shaw v. Reno*, 509 U.S. 630 (1993)).
- Compactness. Communities of interest should be considered in the formation of compact and contiguous electoral districts. *Stephenson II*.
- Contiguity. Each Senate district shall at all times consist of contiguous territory. N.C. CONST. art. II, § 3. Contiguity by water is sufficient.
- Respect for Existing Political Subdivisions. County lines, VTDs and municipal boundaries may be considered when possible in forming districts that do not split these existing political subdivisions.
- Racial Data. Data identifying the race of individuals or voters shall *not* be used in the drafting of districts in the 2023 Senate Plan.
- Political Considerations. Politics and political considerations are inseparable from districting and apportionment. *Gaffney v. Cummings*, 412 U.S. 735 (1973). The General Assembly may consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions...but it must do so in conformity with the State Constitution. *Stephenson II*. To hold that legislators cannot take partisan interests into account when drawing district lines would essentially countermand the Framers’ decision to entrust districting to political entities. *Rucho v. Common Cause*, 588 U.S. ____ (2019).
- Incumbent Residence. Incumbent residence may be considered in the formation of Senate districts.



GUIDANCE FOR DRAWING STATE HOUSE AND CONGRESSIONAL DISTRICTS

Draw House districts to be within plus or minus 5% of the ideal district population.

Draw Congressional districts to comply with federal standards for equal population.

Draw House and Congressional districts that are contiguous. Contiguity by a point is not permitted but contiguity by water is permissible.

Draw House districts within county groupings as described by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) and subsequent decisions by the NC Supreme Court. The county groupings used in the 2022 House Plan are sufficient.

Within county groupings, only draw House districts that traverse county lines one time at most.

New districts will be drawn and the map drawer will not be bound by the location of prior district lines.

Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts in the 2023 Congressional and House plans.

To the extent feasible, draw districts that are visually reasonably compact. No mathematical tests are required.

Take reasonable measures to draw districts that respect and follow contiguous municipal boundaries.

Take reasonable measures to draw districts that do not split VTDs.

Election results from the following elections may be considered:

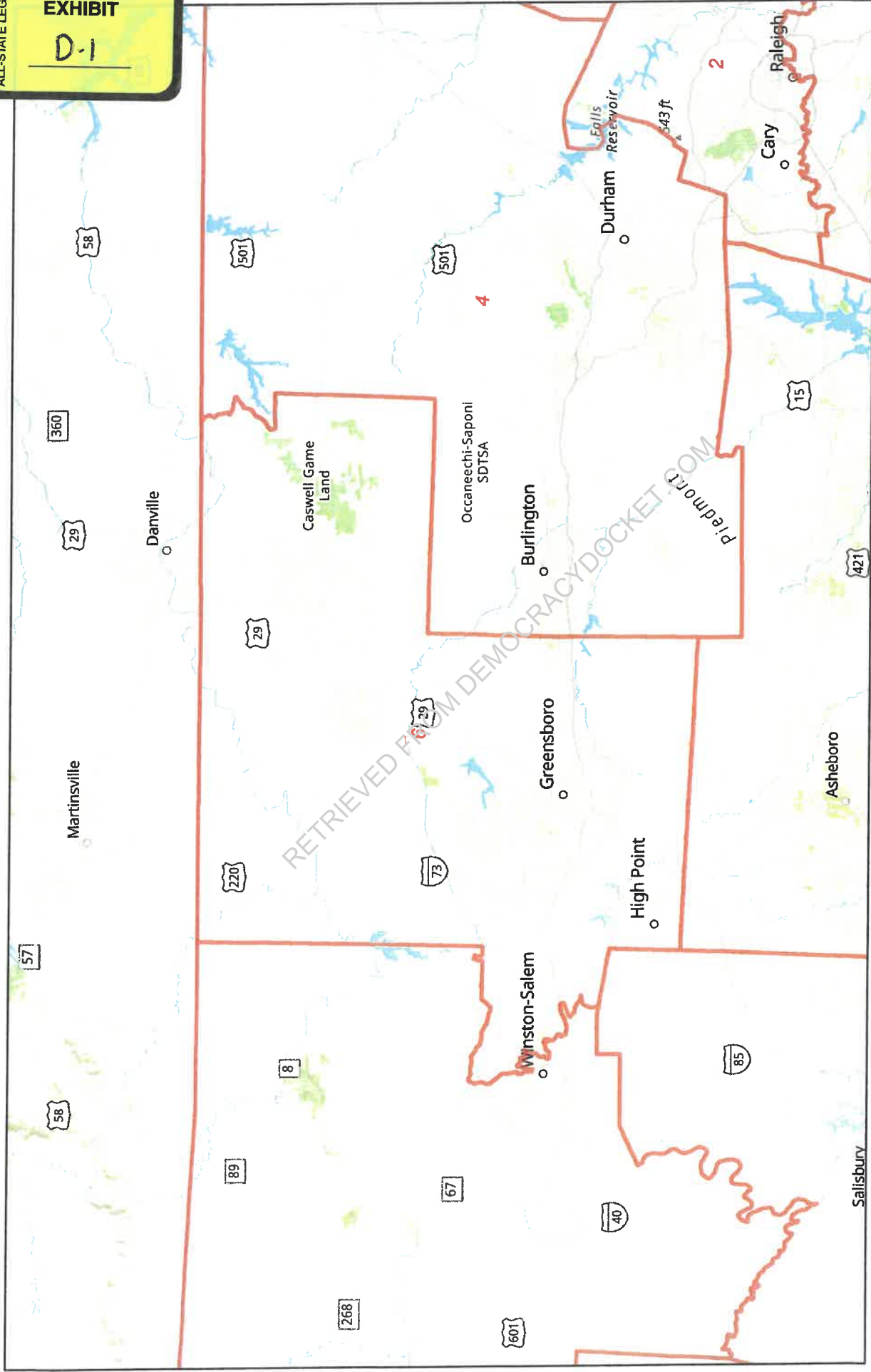
- 2020 Presidential; 2020 Governor of North Carolina; 2020 Lieutenant Governor of North Carolina; 2020 U.S. Senator from North Carolina; 2020 Attorney General of North Carolina.
- 2022 U.S. Senator from North Carolina; both 2022 elections for Supreme Court of North Carolina.

To the extent feasible, do not doublebunk incumbents of any party into the same district.


An incumbent House member's local knowledge of communities of interest may be considered.

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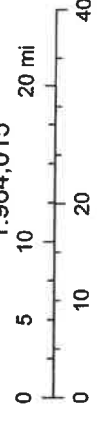
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January 28, 2024

 District Boundaries

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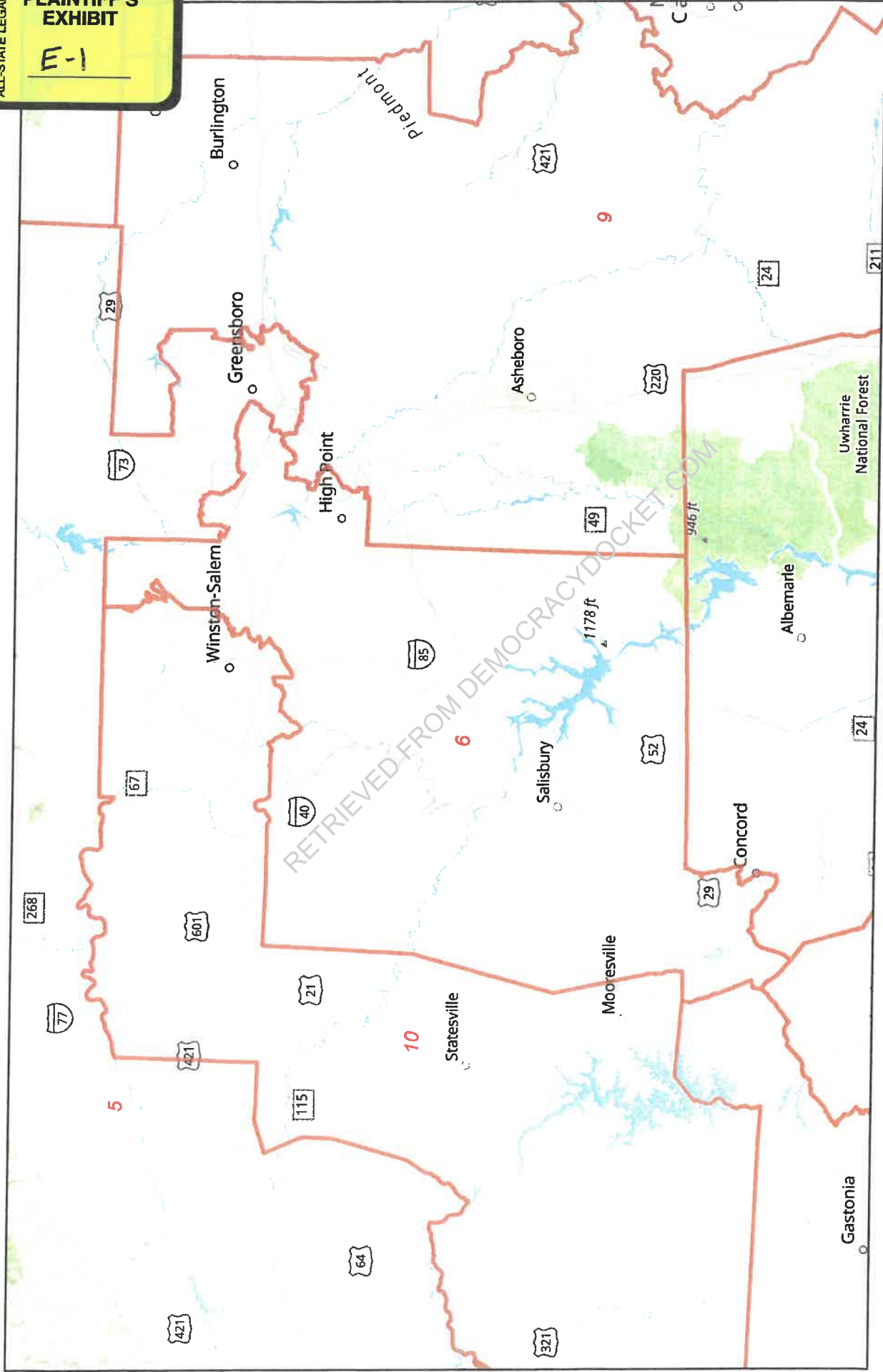
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I-40 I-77 I-85

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NC Congressional Map - Enacted 2023

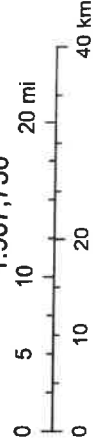
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January 28, 2024

 District Boundaries

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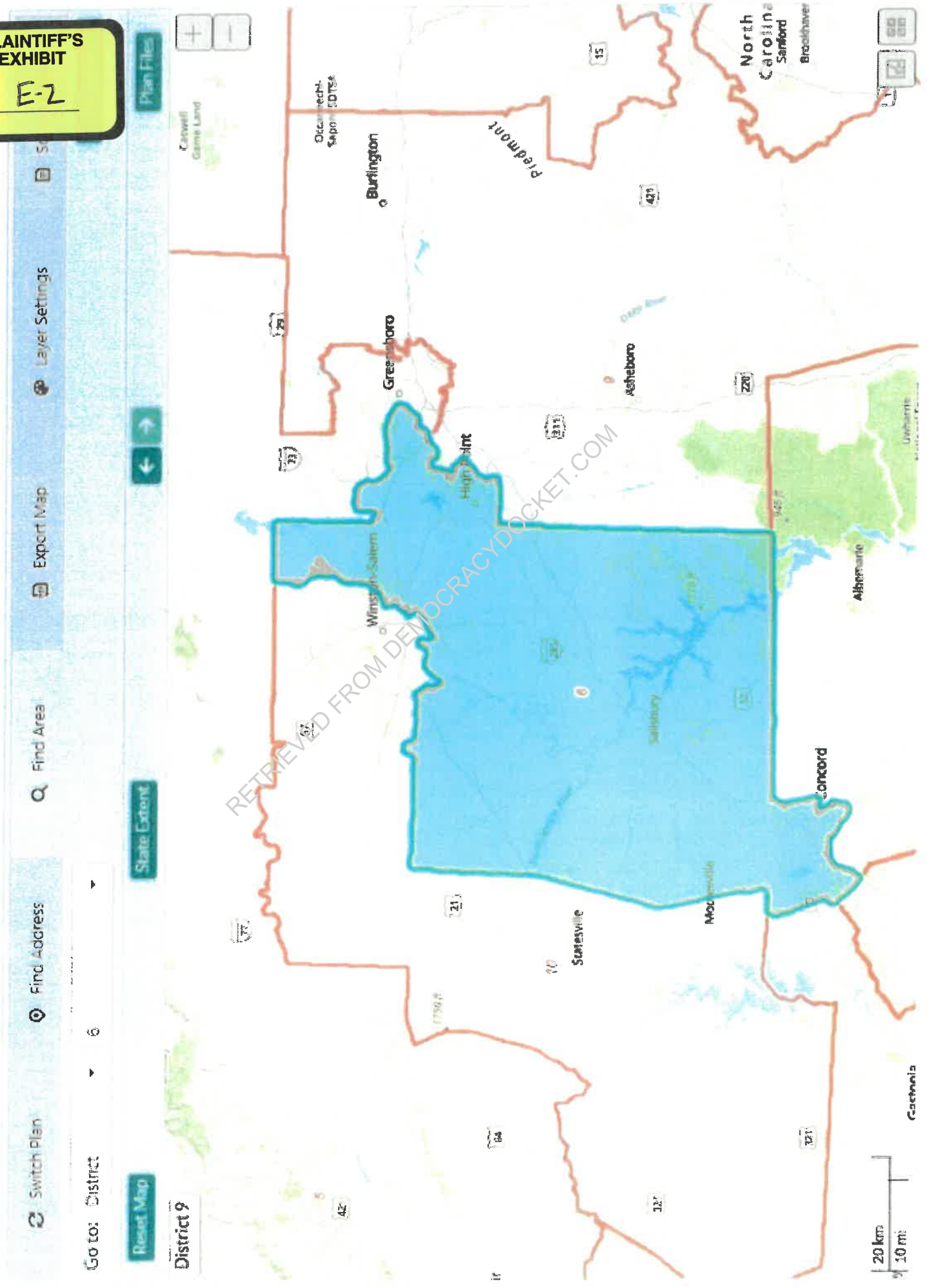


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NORTH CAROLINA CONGRESSIONAL DISTRICT PLAN

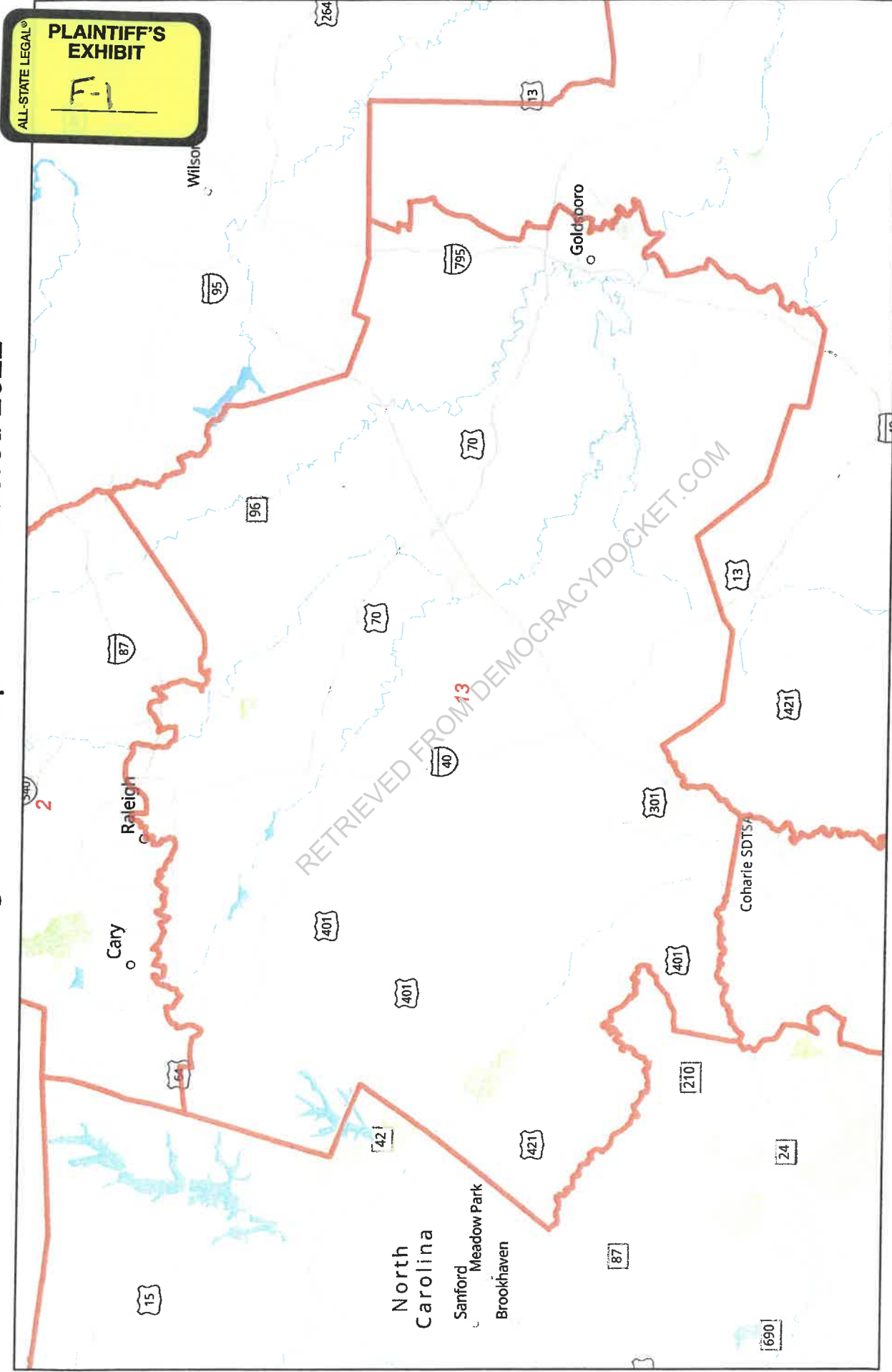
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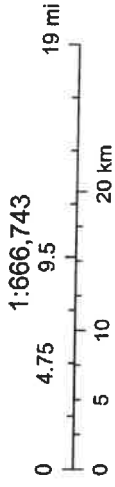
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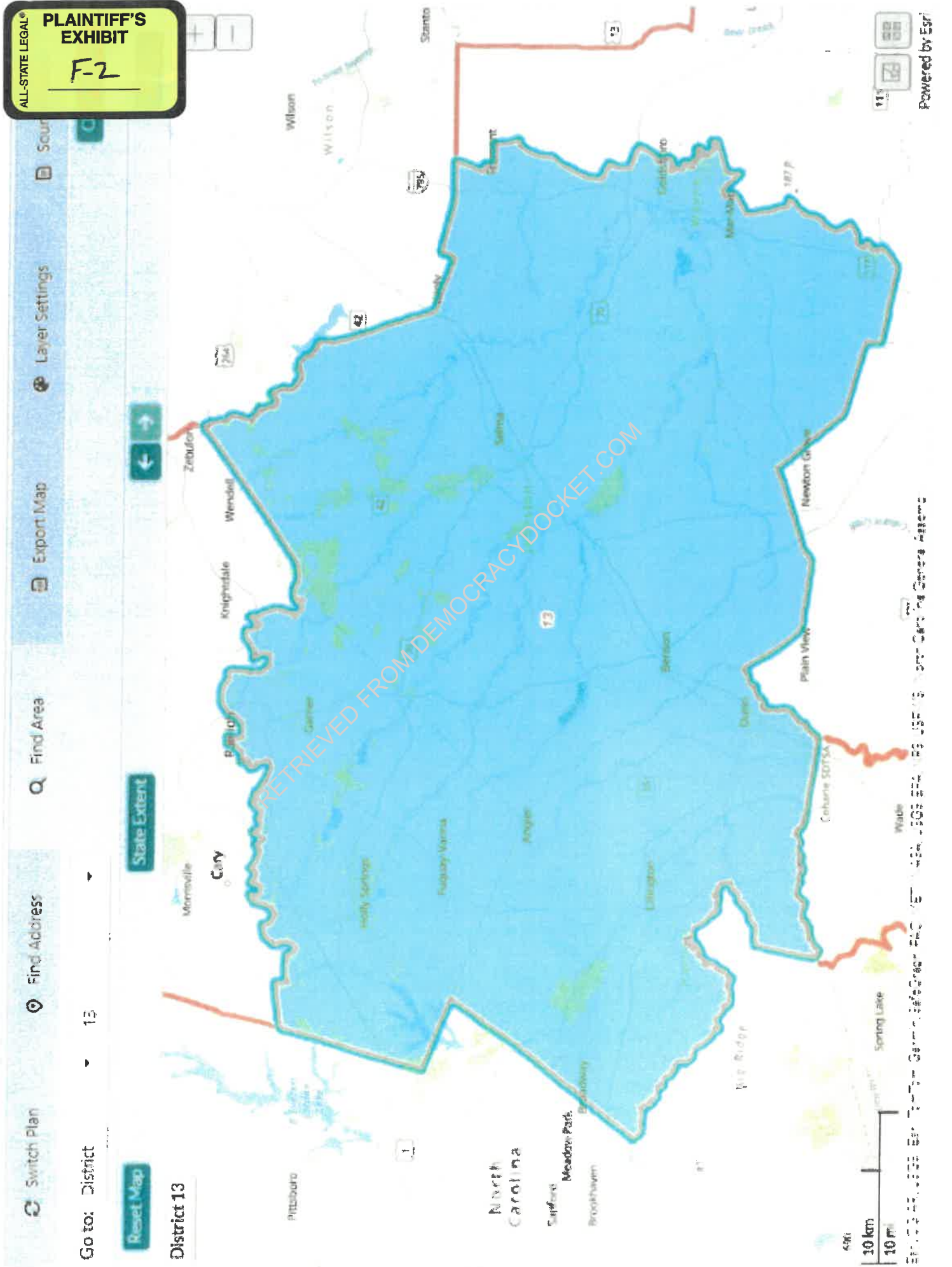
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 District Boundaries



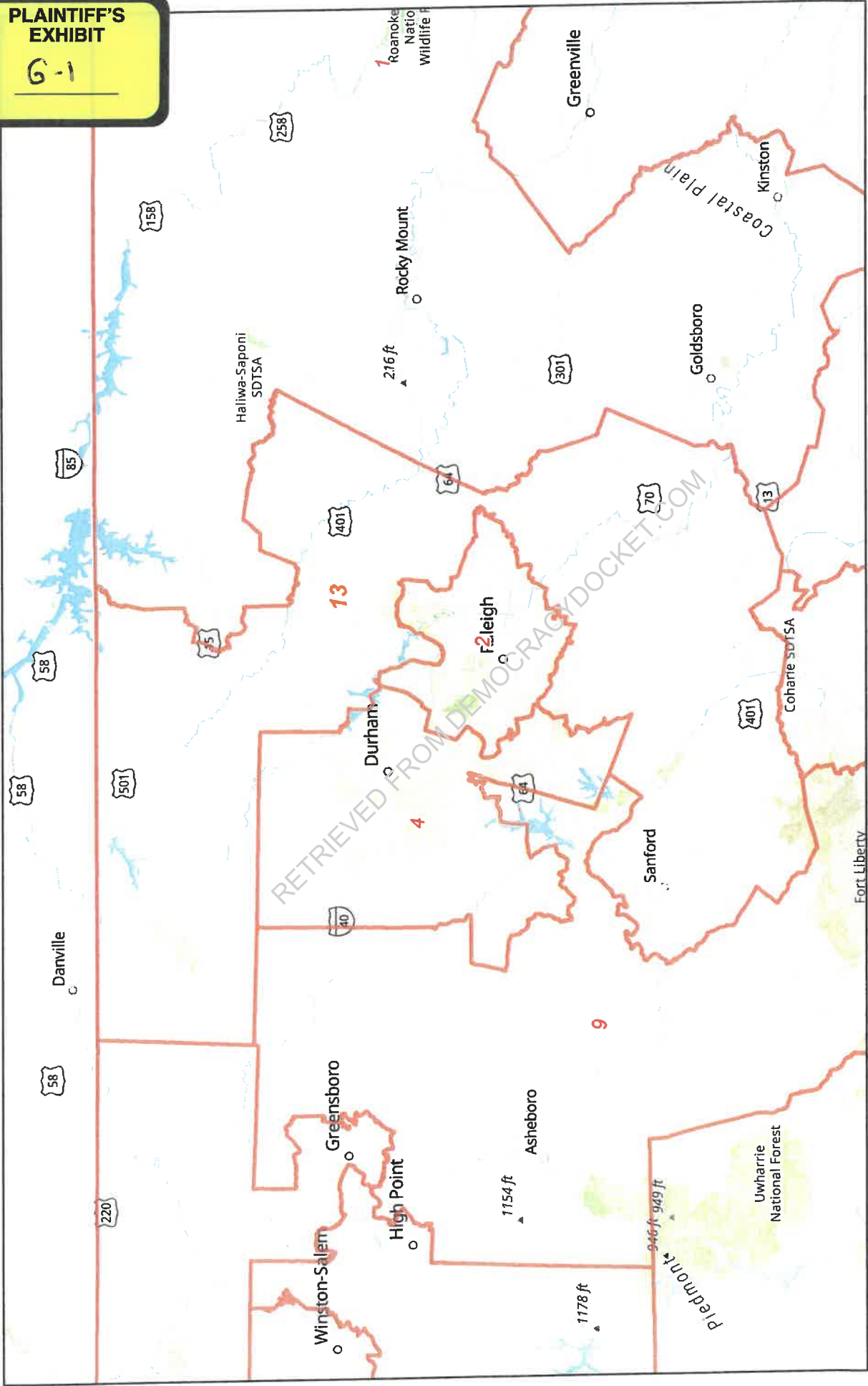
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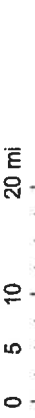
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January 28, 2024

 District Boundaries

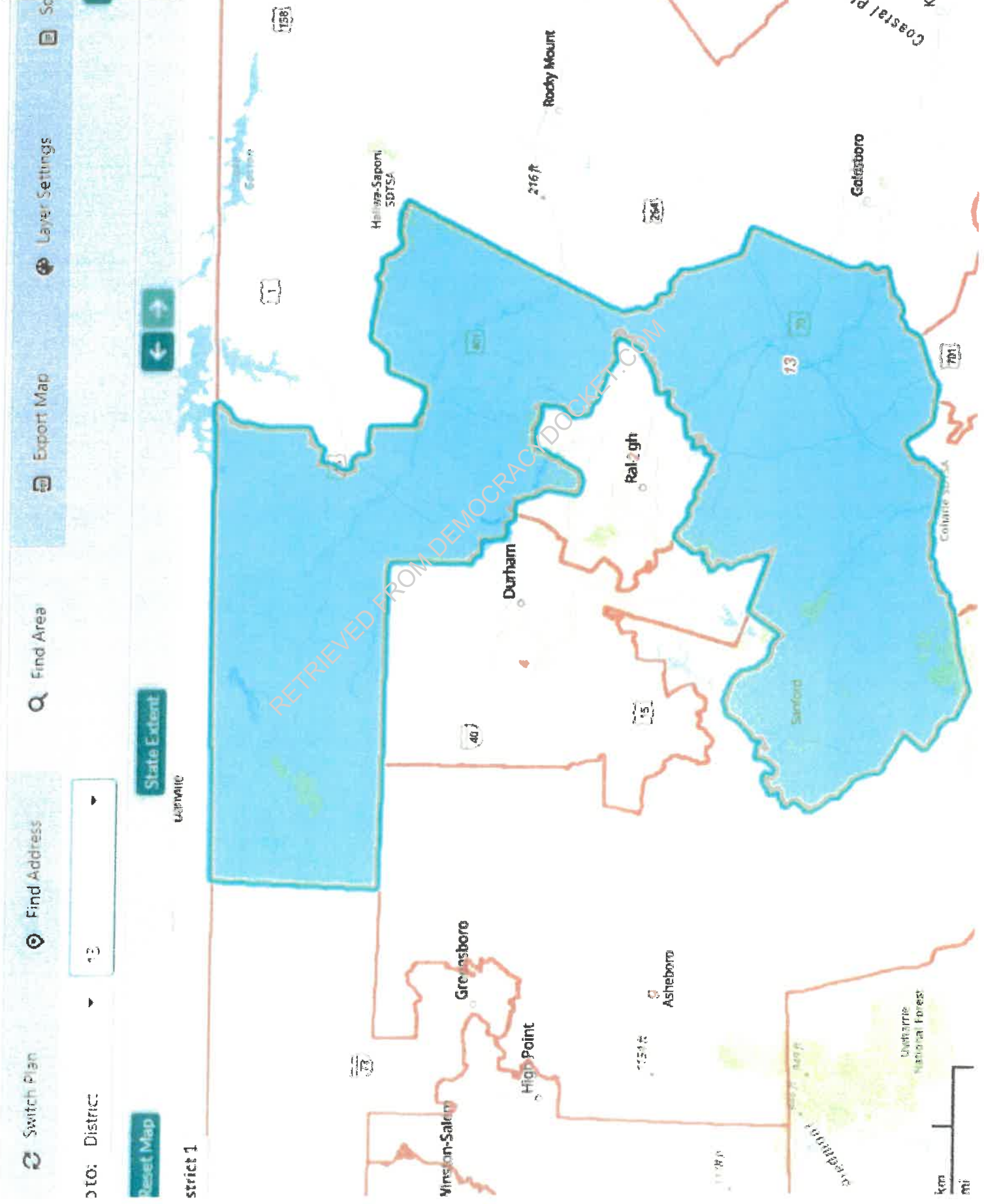
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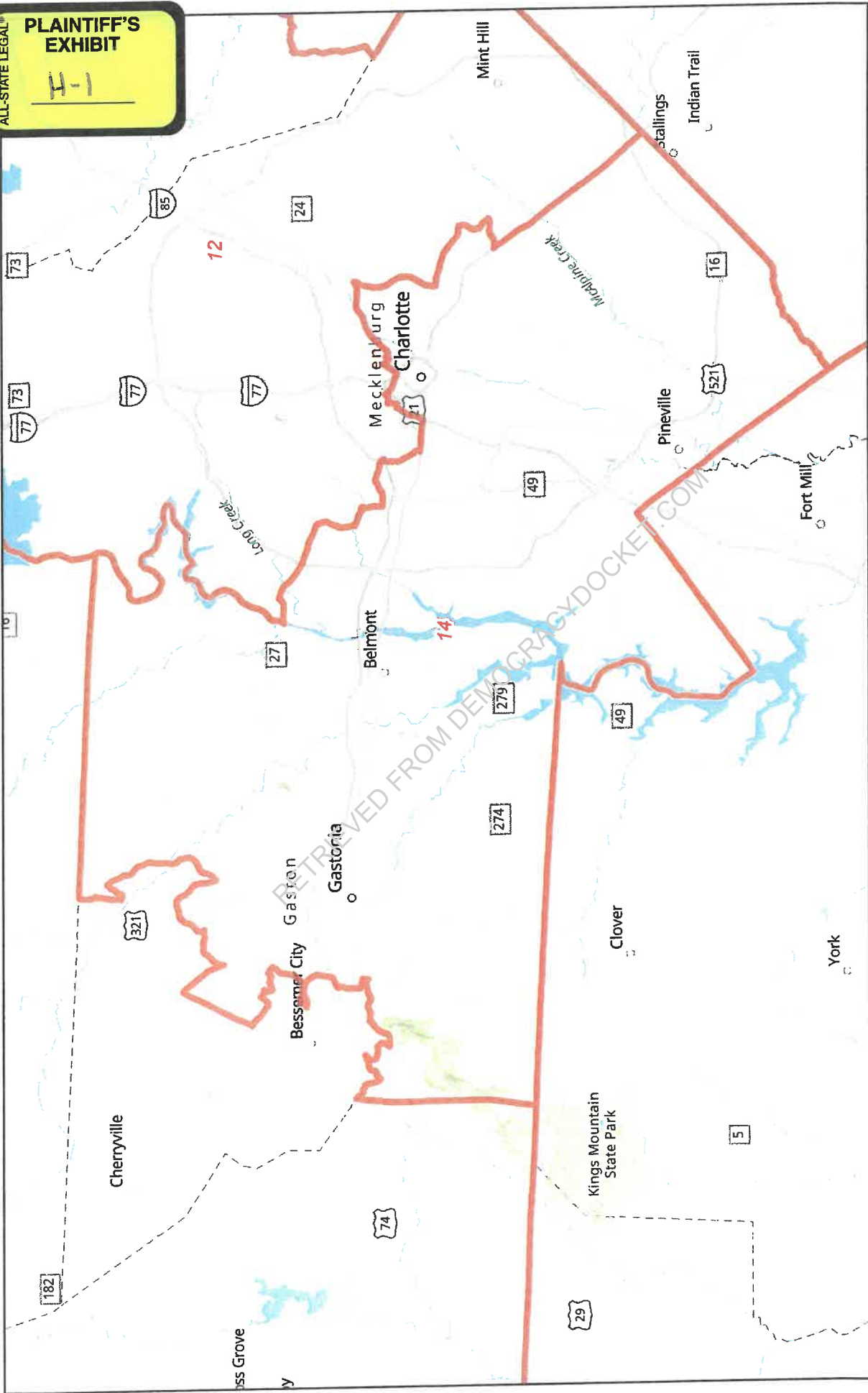
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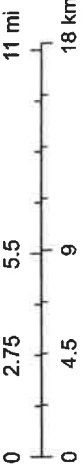
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January 28, 2024

 District Boundaries

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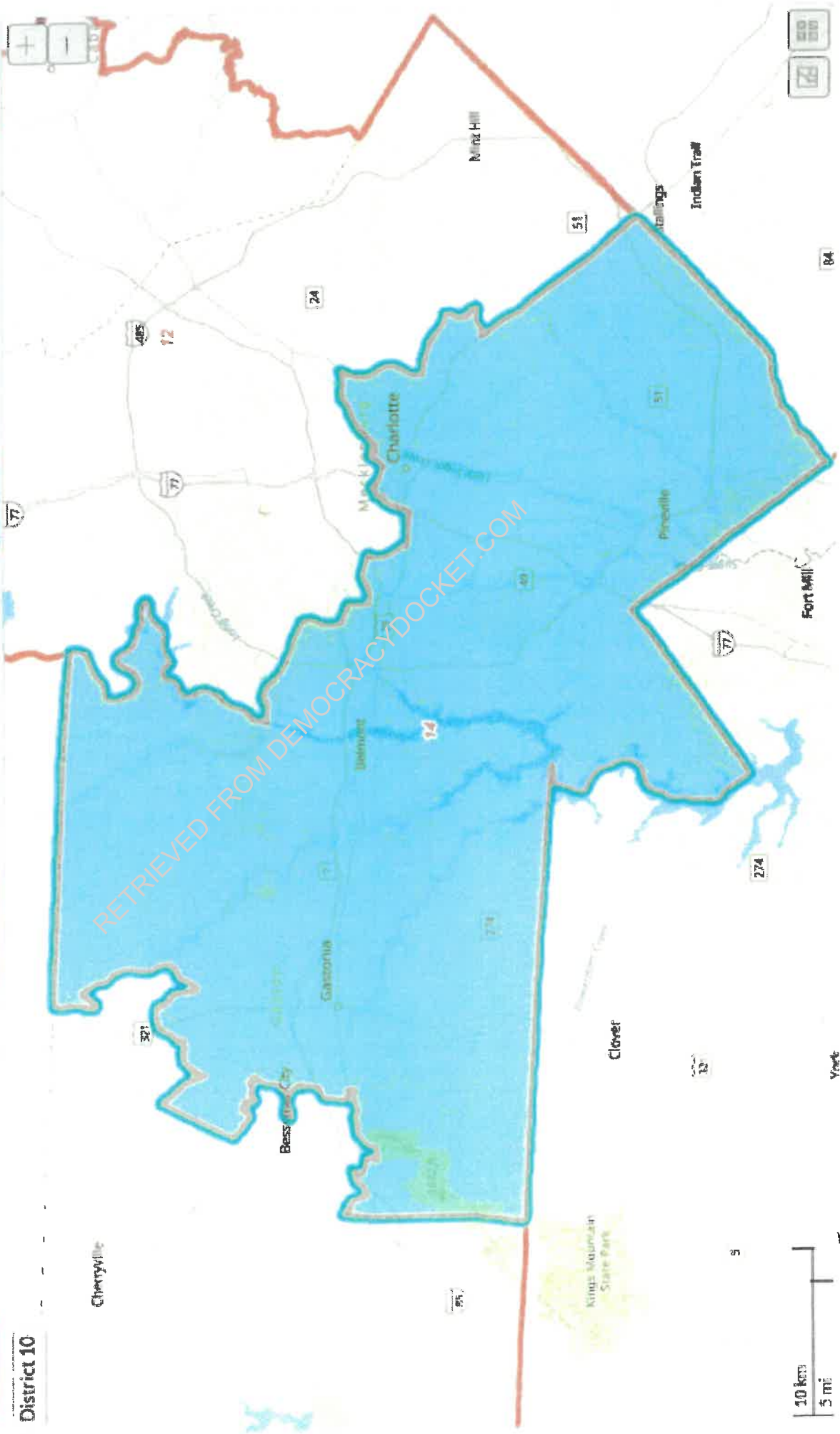
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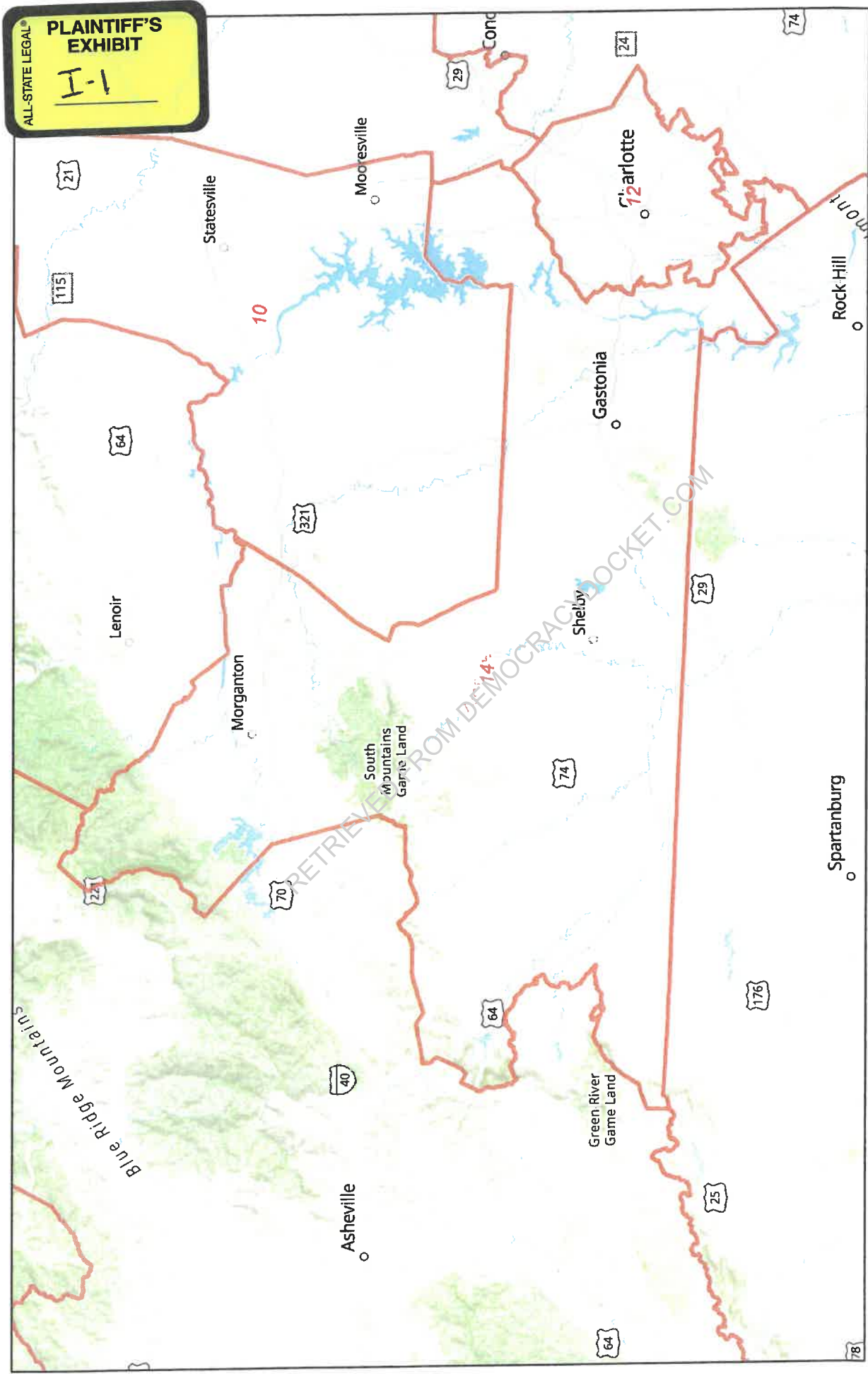
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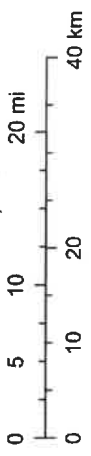
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January 28, 2024

District Boundaries

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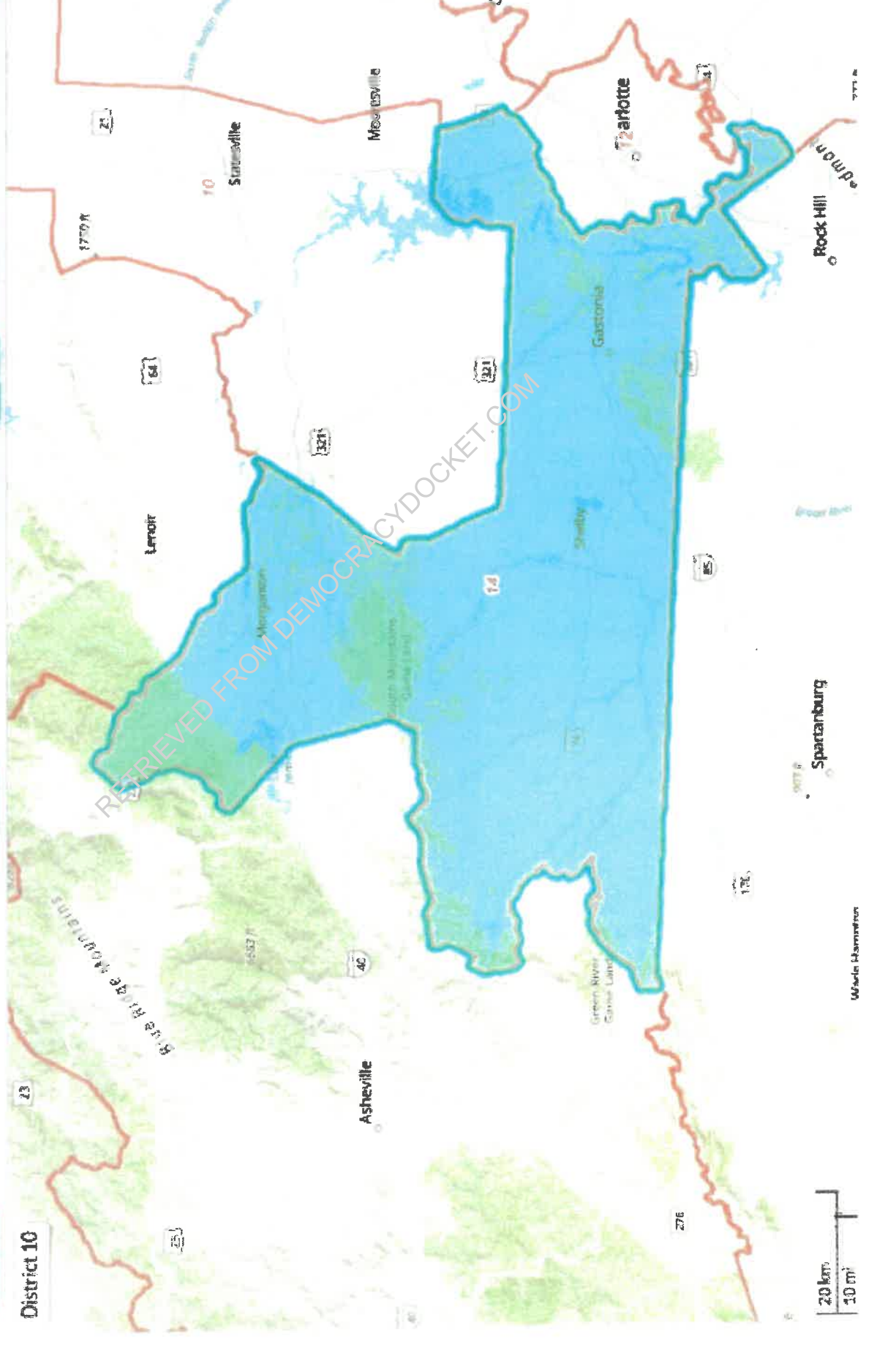
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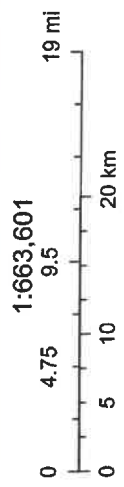
NC Senate Map - Enacted 2022



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January 28, 2024

 District Boundaries



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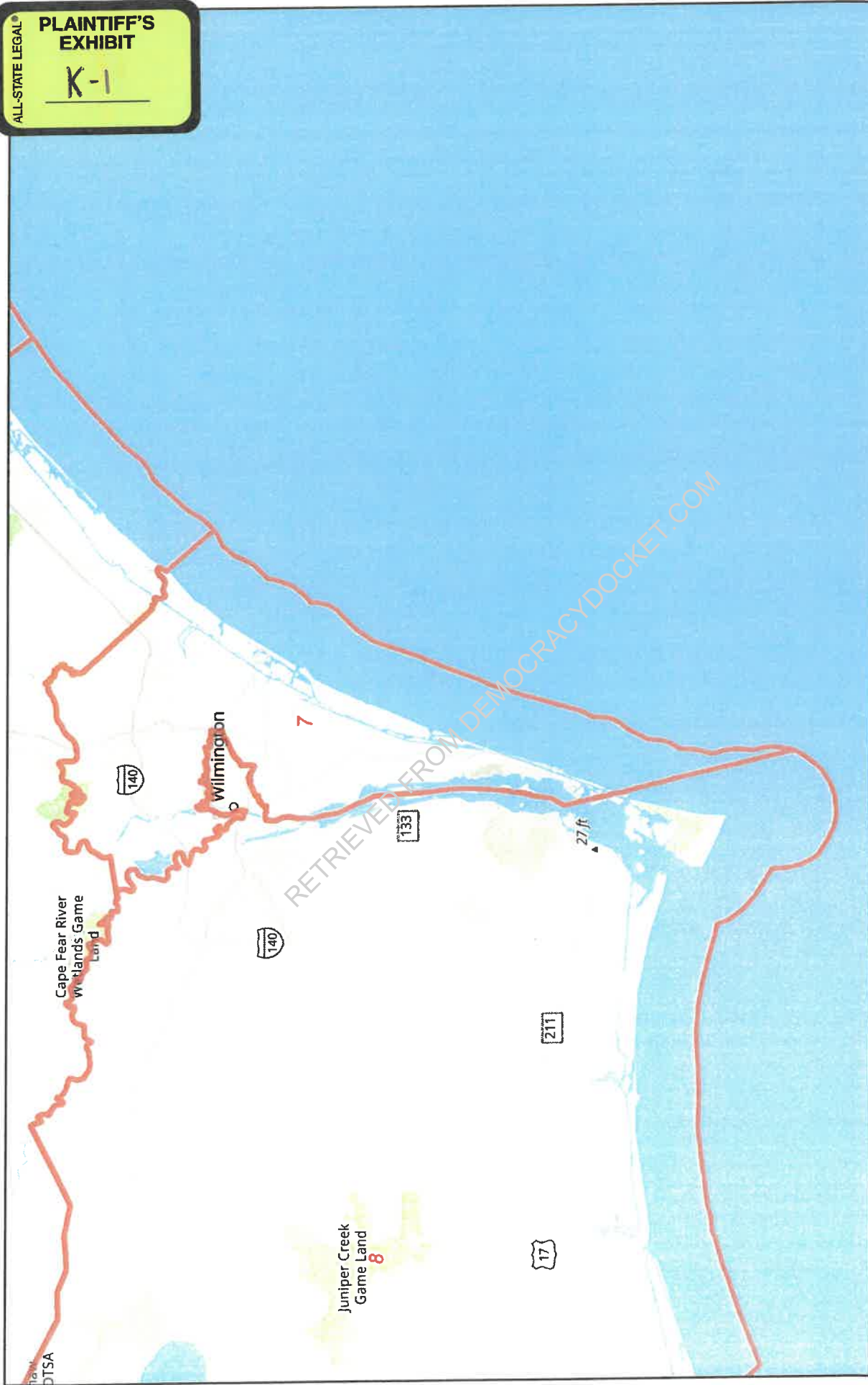
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NC Senate Map - Enacted 2023

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January 28, 2024

 District Boundaries

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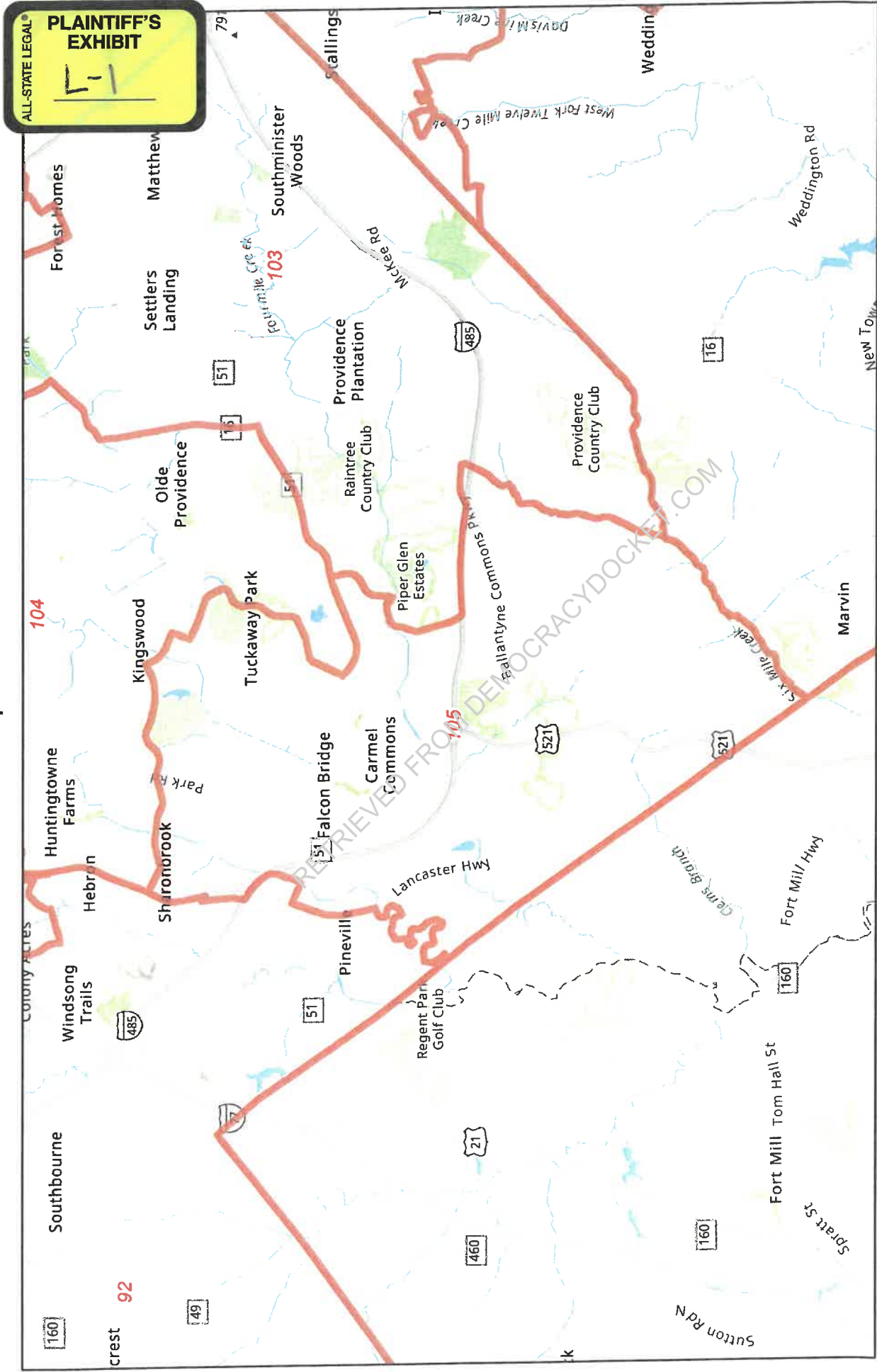
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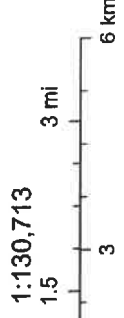


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January 28, 2024

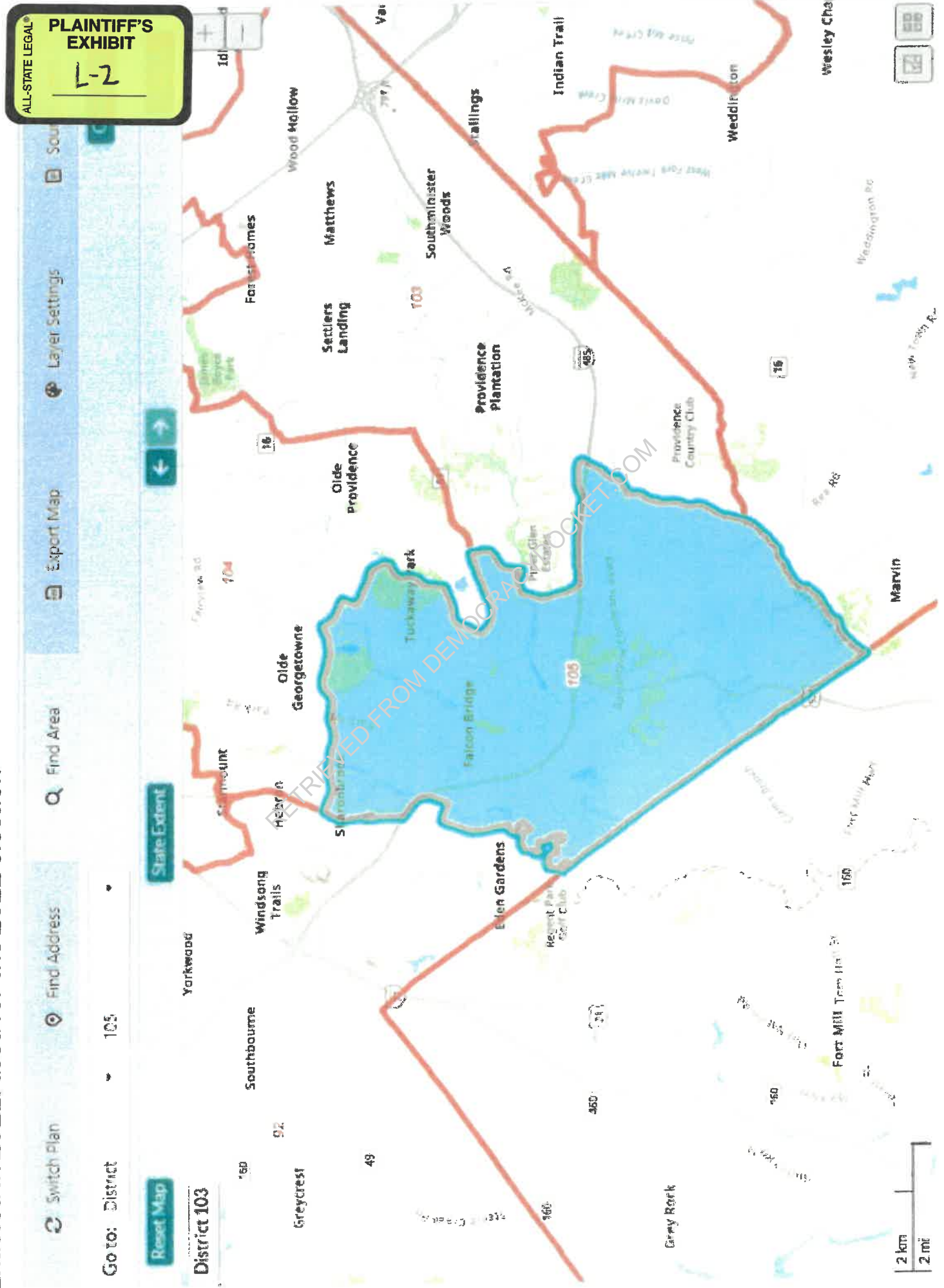
District Boundaries



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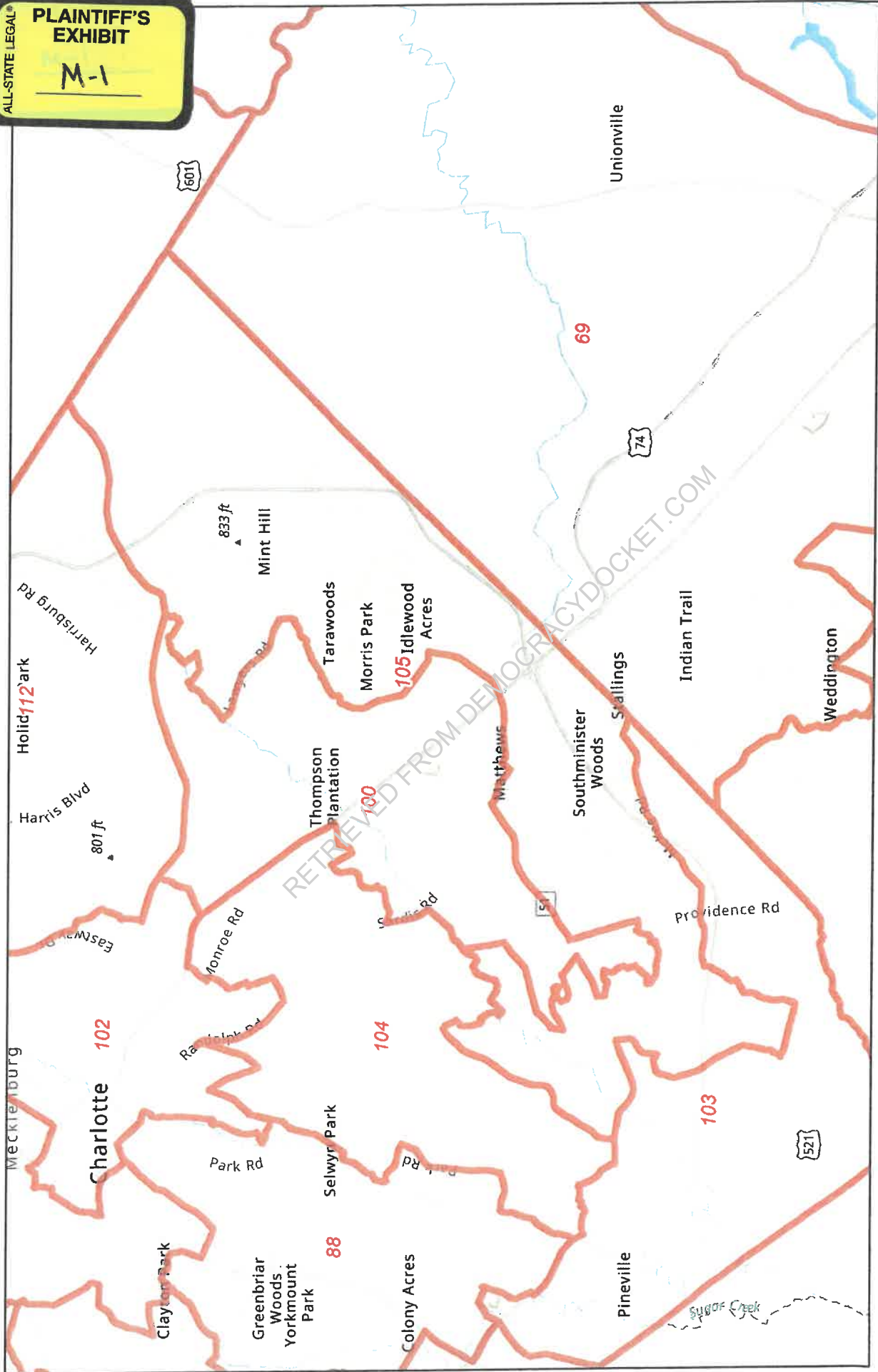
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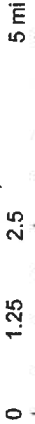
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January 28, 2024

 District Boundaries

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