From: Spencer Brandt
To: CEO Redistricting RES
Subject: Public Comment
Date: Monday, January 25, 2021 10:11:49 AM
Attachments: Information on NDC for CIRC_compressed_final.pdf

Hello, please include this comment in the record. Thank you,

Spencer Brandt

Dear Commissioners,

Attached you will find court opinions and other supportive material demonstrating numerous errors made by Mr. Johnson and the National Demographics Corporation. In some cases, this has resulted in courts overturning redistricting work. In addition, it appears that there is a pattern in which Mr. Johnson testifies on behalf of incumbent lawmakers facing charges that the districts they have drawn constitute racial and political gerrymandering.

Documents and relevant portions include:

- *Luna v. County of Kern*, pp. 1-2, 36, 42.
- *Common Cause v. Lewis*, pp. 113, 269-272, 289-290.
- *Garrett v. City of Highland*, p 3.
- *Jauregui v. City of Palmdale*, p. 2.
- Settlement Agreement between Southwest Voter Registration Education Project and the City of Alhambra, p. 3.
- Boughton, Melissa, "Did Hofeller draw NC maps before redistricting process? Judges throw out expert testimony showing he didn't," *NC Policy Watch*, July 25, 2019: http://pulse.ncpolicywatch.org/2019/07/25/did-hofeller-draw-nc-maps-before-redistricting-process-judges-throw-out-expert-testimony-claiming-he-didnt/#sthash.J1dgAu9H.7dK5x1NV.dpbs
- Greenwald, David, "City Changes Course on Demographer Following Report," *Davis Vanguard,* Aug. 10, 2019: https://www.davisvanguard.org/2019/08/city-changes-course-on-demographer-following-report/

I suggest that the Commission make a serious effort to look for alternative demographic and administrative staff support. Our Commission should not have to fear legal challenges down the road due to poor advice and inaccurate staff work.

I have also included a copy of the California Citizens Redistricting Commission's Request for Proposals for line drawing services. I would encourage you to use it as a model for crafting an RFP for alternative demography support for our Commission.

Sincerely,

Spencer Brandt

No. 1:16-cv-00568-DAD-JLT
United States District Court, E.D. California.

Luna v. Cnty. of Kern

291 F. Supp. 3d 1088 (E.D. Cal. 2018)
Decided Feb 23, 2018

No. 1:16–cv–00568–DAD–JLT

02-23-2018

Oscar LUNA, Alicia Puentes, Dorothy Velasquez, and Gary Rodriguez, Plaintiffs, v. COUNTY OF KERN, Kern County Board of Supervisors, Mick Gleason, Zack Scrivner, Mike Maggard, David Couch, and Leticia Perez, in their official capacities as members of the Kern County Board of Supervisors, John Nilon, in his official capacity as Kern County Administrative Officer, and Mary B. Bedard, in her official capacity as Kern County Registrar of Voters, Defendants.

Denise Hulett, Mexican American Legal Defense and Educational Fund, San Francisco, CA, Tanya Gabrielle Pellegrini, Mexican American Legal Defense and Educational Fund, Sacramento, CA, Thomas Andrew Saenz, Julia A. Gomez, Mexican American Legal Defense and Education Fund, Matthew Jimenez Barragan, Los Angeles, CA, Joaquin G. Avila, Law Office of Joaquin G. Avila, Shoreline, WA, for Plaintiffs. James Edward Barolo, Christopher Elliott Skinnell, Hilary Jones Gibson, Marguerite Mary Leoni, Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, San Rafael, CA, for Defendants.

Dale A. Drozd, UNITED STATES DISTRICT JUDGE

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Denise Hulett, Mexican American Legal Defense and Educational Fund, San Francisco, CA, Tanya Gabrielle Pellegrini, Mexican American Legal Defense and Educational Fund, Sacramento, CA, Thomas Andrew Saenz, Julia A. Gomez, Mexican American Legal Defense and Education Fund, Matthew Jimenez Barragan, Los Angeles, CA, Joaquin G. Avila, Law Office of Joaquin G. Avila, Shoreline, WA, for Plaintiffs.

James Edward Barolo, Christopher Elliott Skinnell, Hilary Jones Gibson, Marguerite Mary Leoni, Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, San Rafael, CA, for Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Dale A. Drozd, UNITED STATES DISTRICT JUDGE

On April 22, 2016, plaintiffs, who are Latino[1] citizens and registered voters in Kern County, commenced this action against the County of Kern, its Board of Supervisors, and other County officials (collectively, "defendants"), challenging Kern County's 2011 redistricting plan under § 2 of the Voting Rights Act, 42 U.S.C. § 1973. Plaintiffs allege that the County's 2011 redistricting plan impermissibly dilutes the Latino vote in Kern

County and thereby denies Latinos the opportunity to elect representatives of their choice. After the court denied plaintiffs' motion for partial summary judgment (Doc. No. 79), the action proceeded to an eleven-day bench trial, which concluded on December 19, 2017.

[1] The parties and the witnesses they called to testify at trial have used the terms Latino/Hispanic, white/Anglo, and black/African–American interchangeably, and the court follows suit herein.

1098 At trial, plaintiffs offered the testimony of three experts.[2] David Ely, plaintiffs' demography *1098 expert, testified that a second majority-Latino supervisorial district in Kern County could have been created in 2011. Dr. Morgan Kousser, plaintiffs' statistical expert, testified regarding the presence of racially polarized voting in Kern County. Finally, Dr. Albert Camarillo, plaintiffs' expert historian, testified about the history of discrimination against Latinos in Kern County and throughout the state of California. In addition, plaintiffs offered the testimony of Dorothy Velazquez, Gary Rodriguez, Dolores Huerta, Sam Ramirez, Leticia Perez, and Allan Krauter. Ms. Velazquez and Mr. Rodriguez are plaintiffs in this action and Latino registered voters of Kern County. Ms. Huerta is a renowned civil rights and labor activist, and a long-time Kern County resident. Mr. Ramirez is a former candidate for Kern County Board of Supervisors representing District 2, and Supervisor Perez is currently on the Board of Supervisors representing District 5, the sole majority-Latino district in Kern County. Mr. Krauter, who was called by plaintiffs as an adverse witness, was a legislative analyst in the Kern County Administrative Office ("CAO") at the time of the 2011 redistricting and was primarily responsible for assimilating input, creating the redistricting map options for the Board's consideration, and making recommendations concerning which map should be adopted.

[2] The court will not dwell on the qualifications of the experts who testified at trial. In keeping with the skilled counsel appearing for both parties, the expert witnesses were among the finest in their fields of expertise with extensive experience testifying in Voting Rights Act cases such as this one.

At trial, defendants also offered the testimony of three experts. In their testimony, demographer Dr. Douglas Johnson and the County's Planning & Natural Resources Department director Lorelei Oviatt rebutted the feasibility of creating a second majority-Latino supervisorial district in Kern County that would also maintain communities of interest. Defendants' statistical expert Dr. Jonathan Katz testified in rebuttal to plaintiffs' evidence of racially polarized voting in Kern County. Defendants also offered the testimony of Allan Krauter, John Nilon, Michael Gleason, Zack Scrivner, William Maggard, Jonathan McQuiston, Raymond Watson, Alan Christensen, Kimberly Salas, Teresa Hitchcock, and Karen Rhea. Mr. Nilon was the head of the CAO at the time of the 2011 redistricting, overseeing the work of Mr. Krauter. Mr. Gleason, Mr. Scrivner, and Mr. Maggard are all current members of the Kern County Board of Supervisors, representing Districts 1, 2, and 3, respectively. Mr. McQuiston is a former District 1 Supervisor, and Mr. Watson is a former District 4 Supervisor. Mr. Christensen, Ms. Salas, Ms. Hitchcock, and Ms. Rhea are all Kern County employees. Mr. Christensen is currently the Chief Deputy County Administrative Officer, while Ms. Salas works for the Migrant Education Program with the Kern County Superintendent of Schools. Ms. Hitchcock is employed with the Employers' Training Resource Department, and Ms. Rhea works with the Elections Division.

Over the course of the eleven-day trial, the court heard from the roughly two dozen witnesses listed above and admitted over 150 exhibits. The parties submitted post-trial briefs on January 8, 2018. (Doc. Nos. 185, 186.) The court has given full consideration to all the evidence before it. However, the court will not address every witness or every piece of evidence below because resolution of the issues presented in this case simply does not require it. Having considered the testimonial evidence and exhibits, the briefs of the parties, and the applicable law, the court sets forth the following findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a).

LEGAL FRAMEWORK

1099 Congress enacted the Voting Rights Act of 1965 for the broad remedial *1099 purpose of eliminating racial discrimination in voting. *Chisom v. Roemer* , 501 U.S. 380, 403, 111 S.Ct. 2354, 115 L.Ed.2d 348 (1991) (citing *South Carolina v. Katzenbach* , 383 U.S. 301, 315, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966)); *Farrakhan v. Gregoire* , 623 F.3d 990, 995 (9th Cir. 2010) (Thomas, J., concurring). Section 2 of the Voting Rights Act of 1965 was enacted "to help effectuate the Fifteenth Amendment's guarantee that no citizen's right to vote shall 'be denied or abridged...on account of race, color, or previous condition of servitude.' " *Voinovich v. Quilter* , 507 U.S. 146, 152, 113 S.Ct. 1149, 122 L.Ed.2d 500 (1993) ; *see also Chisom* , 501 U.S. at 404, 111 S.Ct. 2354 (recognizing that Congress's express objective in amending § 2 was to "broaden the protection afforded by the Voting Rights Act"). Section 2 prohibits states or their political subdivisions from enacting voting standards, practices, and procedures "which result[ ] in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a). A violation of § 2 is established if, "based on the totality of circumstances," the challenged electoral process is "not equally open to participation by members of a [racial minority group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b).[3] "The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [minority] and [majority] voters to elect their preferred representatives." *Thornburg v. Gingles* , 478 U.S. 30, 47, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986) ; *see also Allen v. State Bd. of Elections* , 393 U.S. 544, 566–67, 89 S.Ct. 817, 22 L.Ed.2d 1 (holding the language "voting qualifications or prerequisite to voting, or standard, practice, or procedure" was employed in § 2 in order to be "all-inclusive of any kind of practice" that might be used to deny citizens the right to vote).

[3] Suits brought under this provision are frequently referred to as "vote dilution" claims.

Following Congressional enactment of § 2, the Supreme Court articulated a two-step inquiry for analyzing vote dilution claims. First, a minority group of voters challenging a particular election system must demonstrate three prerequisites: (1) the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the minority group is politically cohesive; and (3) the majority group votes sufficiently as a bloc to enable it, in the absence of special circumstances, "usually to defeat the minority's preferred candidate." *Gingles* , 478 U.S. at 50–51, 106 S.Ct. 2752 ; *accord Cooper v. Harris* , —— U.S. ——, 137 S.Ct. 1455, 1470, 197 L.Ed.2d 837 (2017).

Where these threshold conditions are met, the court must then determine whether, "based on the totality of circumstances," the challenged electoral process impermissibly impairs the minority group's ability to elect representatives of its choice. *Gingles* , 478 U.S. at 44–45, 106 S.Ct. 2752 ; *see also Old Person v. Cooney* , 230 F.3d 1113, 1120 (9th Cir. 2000) [hereinafter *Old Person I*]; *Ruiz v. City of Santa Maria* , 160 F.3d 543, 550 (9th Cir. 1998). In assessing the totality of circumstances, the Supreme Court in *Gingles* identified several factors relevant to determining whether a § 2 violation has been established. These so-called "Senate factors," developed by the Senate Judiciary Committee, are as follows:

> (1) the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register,

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to vote, or otherwise participate in the democratic process;

(2) the extent to which voting in the elections of the state or political subdivision is racially polarized;

(3) the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

(4) if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

(5) the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

(6) whether political campaigns have been characterized by overt or subtle racial appeals;

(7) the extent to which members of the minority group have been elected to public office in the jurisdiction.

Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.

whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

Gingles , 478 U.S. at 36–37, 106 S.Ct. 2752 (citing S. REP. NO. 97–417, 2d Sess., at 28–29 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 177, 206–07 [hereinafter " S. REP. NO. 97–417"]).

Although *Gingles* involved multimember districts, the Supreme Court has held that the *Gingles* test applies in cases, such as this one, involving single-member districts, where the challenged practice is the manipulation of district lines. *See Voinovich* , 507 U.S. at 157–58, 113 S.Ct. 1149 (citing *Growe v. Emison* , 507 U.S. 25, 40–41, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1993)); *see also Bartlett v. Strickland* , 556 U.S. 1, 11, 129 S.Ct. 1231, 173 L.Ed.2d 173 (2009) ; *Old Person v. Brown* , 312 F.3d 1036, 1040–42 (9th Cir. 2002) [hereinafter *Old Person II*].

FACTUAL BACKGROUND

Every ten years, following each decennial census conducted by the U.S. Census Bureau and in accordance with state and federal law, Kern County (the "County") must redraw single-member electoral districts for its five-member Board of Supervisors. This case arises from the 2011 redrawing of those district boundaries. Pertinent to the analysis that follows is the manner in which the 2011 redistricting plan was adopted. Much of the evidence comes from the testimony of Allan Krauter, who at the time was a legislative analyst in the CAO. (*See* Trial Tr., Vol. 3, 391:19–392:11.) The County designated Mr. Krauter as the person most knowledgeable about

the 2011 redistricting process, as well as the person most knowledgeable regarding use of the County's redistricting software.[4] (*Id.* at 392:12–393:19.)*1101 At trial, Mr. Krauter testified at length regarding the factors the County took into account in redrawing the supervisorial map.[5] First, since 1991, in order to comply with the Voting Rights Act, the County has maintained one majority-Latino district. (*Id.* at 501:18–19.) One of Mr. Krauter's goals in redrawing the County's districts in 2011 was to maintain one majority-Latino district, referred to by some County employees as the County's "Voting Rights Act district," which was and remains District 5. (*Id.* ; *id.* at 427:19–24.) Second, Mr. Krauter considered "compactness, contiguity[,] preservation of geographic boundaries, and other communities of interest." (*Id.* at 398:20–25.) Third, Mr. Krauter attempted to maintain roughly equivalent populations across all five districts. (*Id.* at 398:12–16.) Fourth, Mr. Krauter and the County considered input from the community, which was expressed at workshops held across the County. (*Id.* at 398:8–11.)

4 Mr. Krauter was also designated by the County as the person most knowledgeable about the County's process for receiving and soliciting public comment, public participation, and how that information was communicated to the Board of Supervisors regarding the 2011 redistricting process. (*Id.* at 393:2–7.)

5 Unlike some counties and other political units, Kern County did not hire outside consultants to assist it with the 2011 redistricting process. (*Compare* Trial Tr., Vol. 7, 1073:3–18 (testimony of John Nilon), *with* Trial Tr., Vol. 9, 1437:6–9 (testimony of Douglas Johnson).) Kern County Administrative Officer John Nilon, Mr. Krauter's supervisor at the time of the 2011 process, explained that the County conducts its redistricting in-house because "it's been a long tradition for the County Administrative Office to do that and we have capable staff." (Trial Tr., Vol. 7, 1073:10–11.)

The 2011 redistricting process was based on the 2010 Census, which was released on March 8, 2010. (*Id.* at 399:20–400:5; JX 6 at 1.) Those census numbers indicated that the County had experienced a population increase of roughly 178,000 residents from 2000 to 2010. (JX 6 at 1.) Moreover, because this population increase did not occur evenly across all five districts, district boundaries needed to be altered somewhat "to achieve relatively equal representation within the legally acceptable range." (*Id.*) The 2010 Census population number included prisoners, non-citizens, and children, and also included a breakdown of the percentage of the Kern County population that was Hispanic. (Trial Tr., Vol. 3, 401:12–24, 402:9–403:5; JX 6 at 3.)

In attempting to draw the 2011 district boundaries in accordance with the factors already discussed, Mr. Krauter employed map-drawing software known as Maptitude. (*Id.* at 405:2–7.) Maptitude contained the 2010 Census data, as well as the County district boundaries that had been in place since 2001. (*Id.* at 405:8–19.) The Maptitude program was able to distinguish between Latino and non-Latino residents, as well as between residents who were of voting age and those who were not. Notably, however, according to Mr. Krauter, the data contained in Maptitude was unable to load citizenship data available through the American Community Survey ("ACS"), an annual survey administered by the Census Bureau that collects demographic information, including age, income, education, and citizenship, from a sample of the population. (*Id.* at 405:20–406:21; Trial Tr., Vol. 1, 61:17–62:17.) Mr. Krauter attempted to add ACS citizenship data to Maptitude, but was ultimately unsuccessful. (*Id.* at 482:3–17.) For this reason, Maptitude as employed by Mr. Krauter was unable to calculate the citizen voting age population ("CVAP") of the County or any of the supervisorial districts therein.[6] (*Id.* at 440:10–16.) Instead, Mr. Krauter merely estimated that across the County, the Latino *1102 CVAP was roughly 20 percent lower than the Latino voting age population. (*Id.* at 440:20–441:8.) Thus, Mr. Krauter was forced to rely on these rough estimates of the Latino CVAP in each district, conceding at trial that he was unable to determine the number with precision. (*Id.* at 441:9–12.)

6 As will be discussed in more detail below, CVAP is the applicable measurement of a minority population for purposes of assessing a claimed violation of § 2 of the Voting Rights Act. *Romero v. City of Pomona* , 883 F.2d 1418, 1425 (9th Cir. 1989), *abrogated on other grounds by Townsend v. Holman Consulting Corp.* , 914 F.2d 1136 (9th Cir. 1990).

Using Maptitude, as well as a presentation he prepared, Mr. Krauter conducted a series of public workshops in various locations across the County to solicit public input in generating various redistricting maps. (*Id.* at 394:25–395:6, 408:5–414:11; JX 4 at 4–5.) Use of Maptitude at these workshops allowed Mr. Krauter to instantly generate multiple permutations of potential district maps (referred to as "Options") based upon feedback he received from those in attendance at these workshops. (Trial Tr., Vol. 3, 490:21–491:4.) In preparation for the workshops, Mr. Krauter began by creating Option 1 as a "rough draft exercise," which made the absolute minimum changes necessary to bring the existing supervisorial map into compliance with equal population requirements. (*Id.* at 444:14–18, 466:18–24; DX 504 at 3.)

Several of these workshops were held in the eastern part of the County, and included workshops in Boron, Ridgecrest, and Inyokern. (JX 4 at 4.) At the meetings held in eastern Kern County, Mr. Krauter observed that the majority of attendees expressed support for maintaining two separate supervisorial districts in the eastern part of the County, one covering the northeastern portion and another covering the southeastern portion. (*Id.* ; Trial Tr., Vol. 3, 409:22–410:6.) Mr. Krauter explained that Naval Air Weapons Station China Lake is located in northeastern Kern County, while Edwards Air Force Base is located in southeastern Kern County. (Trial Tr., Vol. 3, 410:2–13.) Although both are active military bases, the comments from attendees at the public workshops in eastern Kern County suggested that these bases "have different missions," and that the residents of the area were "fiercely devoted to their corner of Kern County." (*Id.*) It was therefore generally the preference of those attending workshops in eastern Kern County to maintain two districts in the east. (*Id.* at 444:8–21.) Accordingly, most of the attendees at the workshops in eastern Kern County expressed support for Option 1, which maintained such a configuration with little change. (*Id.* ; *see also* JX 4 at 4.)

Mr. Krauter also conducted a public workshop in Oildale, near Bakersfield. (Trial Tr., Vol. 3, 410:14–16.) The consensus expressed at this workshop, according to Mr. Krauter, was that the Oildale residents did not want Oildale divided up between multiple districts. (*Id.* at 410:17–21.) They also no longer wanted to be represented by someone from Ridgecrest, located in northeast Kern, because of a belief that they received lower quality county services as a result. (*Id.* at 410:22–411:3.) Options 2, 3, and 4 were, therefore, all drawn by Mr. Krauter in a way that unified Oildale. (*Id.* at 411:4–7.)

Mr. Krauter also conducted a workshop in Shafter, in northwestern Kern County. (JX 4 at 5.) Mr. Krauter testified that the opinions expressed there were strongly in favor of creating a "westside district" that did not include any portions of eastern Kern County. (Trial Tr., Vol. 3, 411:22–23.) This new district would, according to its proponents, include Shafter, Delano, McFarland, and Wasco. (*Id.* at 411:23–25.) Such a map was reflected in Option 5 created by Mr. Krauter in response to this input. (*See* JX 4 at 12.)

Mr. Krauter's final public workshop was held in Bakersfield. (*Id.* at 5.) Opinions at this meeting were apparently more divided because some attendees supported Option 5, while others opposed it because it separated Oildale into multiple districts. (Trial *1103 Tr., Vol. 3, 412:7–25.) In response to these concerns, Mr. Krauter created Option 6, with the goal of unifying the towns of Delano, Shafter, Wasco, McFarland, Lost Hills, and Buttonwillow, while also preserving two separate districts in eastern Kern County. (*Id.* at 413:9–414:11; 479:1–480:2.)

Kern County advertised the public workshops through radio, print, and television news media, including Spanish language media outlets, and also reached out to "service clubs" in outlying towns, requesting that they circulate the news release about the workshops to their members. (*Id.* at 463:15–464:4, 465:13–466:7.) The evidence at trial established that the public attendance at the workshops put on by County staff with respect to the 2011 redistricting process varied widely. At some workshops—such as in Inyokern, Tehachapi, East Bakersfield, Taft, and South Bakersfield—no more than two people attended. (JX 4 at 4–5.) At the workshops offered in California City, Arvin, Delano, and McFarland, no residents attended. (Trial Tr., Vol. 3, 512:24–513:25.) Other workshops saw more robust attendance, with 40 individuals attending the workshop in Mojave, located in southeastern Kern County. (JX 4 at 4–5.) Of the sixteen workshops conducted by Mr. Krauter, only 126 individuals attended in total, out of a total county population of more than 839,000. (*Id.* at 4–5; JX 6 at 1.)

Following these public workshops, Mr. Krauter participated in hearings before the Board of Supervisors, at which members of the public were permitted to discuss the Options he had developed. Initially, Mr. Krauter presented the Board with Options 1 through 5. (Trial Tr., Vol. 3, 484:22–485:2.) However, in response to "overwhelming" testimony against Option 5 at a public hearing before the Board on July 5, 2011, Option 5 was withdrawn from consideration and replaced with Option 6. (*Id.* at 485:3–7.) Option 6 united Delano, Shafter, Wasco, McFarland, Lost Hills, and Buttonwillow into a westside district, while still preserving two eastside districts. (*Id.* at 412:11–414:11.) Following the July 5, 2011 public hearing, it became clear to County Administrative Officer John Nilon that none of these options had the support of a majority of the Kern County Board of Supervisors. (Trial Tr., Vol. 7, 1078:4–24.) Accordingly, sometime following that meeting, Mr. Nilon instructed Mr. Krauter to draft an Option 7 that would be acceptable to the Board. (*Id.* ; Trial Tr., Vol. 3, 425:22–426:2.) Pursuant to this direction, Mr. Krauter created Option 7, which was intended to modify the existing districts as little as possible, while depopulating District 4 to the extent necessary in light of anticipated population growth. (Trial Tr., Vol. 3, 437:13–22.)

At a hearing before the Board on August 2, 2011, Steven Ochoa, the National Redistricting Coordinator for the Mexican American Legal Defense and Education Fund ("MALDEF"), proposed redistricting that would include a second majority-Latino district. (Trial Tr., Vol. 3, 485:23–486:3; JX 27 at 16–18.) Mr. Ochoa presented the Board a new map (the "MALDEF Map") that could serve as the basis for drawing the district boundaries so as to create a second majority-Latino district. (Trial Tr., Vol. 3, 487:5–18; PX 204.) Because of these new proposals (i.e., Option 7 and the MALDEF Map), multiple attendees at the August 2, 2011 Board hearing spoke and requested that the Board delay voting on the redistricting options in order to further study the issue. (*See, e.g.* , JX 27 at 16, 26, 27.) Nonetheless, the Board rejected the requests for further study of the newly presented options, instead voted to adopt the new Option 7 as an introduced ordinance, and slated it for formal adoption at a public hearing one week later. (JX 27 at 58–60; Trial Tr., Vol. 3, 453:19–454:9.)*1104
1104 Following the August 2, 2011 hearing, and using the MALDEF proposed map as a starting point, Mr. Krauter attempted to draw a map containing a second majority-Latino district, but, after devoting five hours to the project, was ultimately unable to do so. (Trial Tr., Vol. 3, 440:3–9, 487:19–24, 489:1–7.) Mr. Krauter explained that much of his difficulty at the time was due to the fact that the MALDEF Map had included roughly 18,000 prisoners in its calculation of equal population distribution among the five districts, while Kern County does not include prisoners in its calculations.[7] (*Id.* at 488:1–4.)

[7] Based upon guidance from a legal opinion authored by the California Attorney General's Office, counties are not required to count prisoners when drawing county supervisorial boundaries. (JX 6 at 2, 4–8.)

After Option 7 was created by Mr. Krauter at Mr. Nilon's direction, but prior to the final vote by the Board, Kern County Counsel determined that Options 3 and 6 were not viable because those maps dropped the Latino CVAP in District 5 below 50 percent. (*Id.* at 428:24–429:10.) Mr. Krauter was unaware of the methodology employed by County Counsel in reaching this conclusion. (*Id.* at 510:25–512:1.) As described above, because Mr. Krauter could not load citizenship data into Maptitude, he was unable to confirm County Counsel's conclusions. Invoking attorney-client privilege, defendants presented no evidence at trial regarding the methodology employed by County Counsel in determining the CVAP district by district with respect to any of the options or redistricting proposals, nor any explanation as to why CVAP percentages were never provided to Mr. Krauter despite their apparent relevance to his assignment of fashioning new district boundaries.[8]

[8] The court does not wish to suggest any criticism whatsoever of Mr. Krauter's performance in connection with the 2011 redistricting. Based upon the testimony presented at trial, the court is convinced that he did his level best under very difficult circumstances, including both time pressures and the lack of all available information. Moreover, the court also notes that plaintiffs in this action did not appear to suggest otherwise.

At a public Board hearing the following week, on August 9, 2011, members of the public in attendance again urged the Board to delay its final vote on the district boundaries. (*See, e.g.* , JX 30 at 24, 29–31, 34, 38.) Instead, the Board voted to formally adopt Option 7 (*see* "Adopted Map" below), which had not been created until after the public workshops had all been held, maintained two eastern districts, and preserved the one majority-Latino district. (PX 201 at 5; JX 1.)*1105 Plaintiffs initiated this action on April 22, 2016, alleging that the redistricting plan adopted by Kern County in 2011 unlawfully fractured a second Latino voting community between two supervisorial districts. Plaintiffs argue that the 2011 redistricting plan dilutes the strength of Latino voters by depriving them of a second district in which they would constitute a majority of eligible voters and from which they could elect a candidate of their choice.

Defendants contend that, based on population data and public testimony, Kern County was under no legal obligation in 2011 to create a second majority-Latino district. Defendants deny that a supervisorial district map could have been drawn in 2011 that created two majority-minority districts, each with a compact and politically cohesive Latino population, and which did not violate traditional redistricting criteria. Defendants further argue that this court should deny relief under well-known principles of equity, including the doctrine of laches, given that the County must redraw its districting lines in 2021 in any event in accordance with the 2020 Census. Against this background, the court will address the legal standards applicable to plaintiffs' claim as well as the court's findings based upon the evidence presented at trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. *Gingles* I—Latino Numerosity and Compactness

The first *Gingles* precondition requires a showing that the Latino voting population in Kern County is both sufficiently large and geographically compact so as to constitute a numerical majority in a second single-member supervisorial district. *See Gingles* , 478 U.S. at 50, 106 S.Ct. 2752 ; *Johnson v. De Grandy* , 512 U.S. 997, 1011, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994).

To satisfy this first *Gingles* precondition, a § 2 plaintiff must make a preliminary showing that it is *possible* to create "more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *De Grandy* , 512 U.S. at 1008, 114 S.Ct. 2647 ; *see also Reno v. Bossier Par. Sch. Bd.* , 520 U.S. 471, 480, 117 S.Ct. 1491, 137 L.Ed.2d 730 (1997) ("Because the very concept of vote dilution implies—and, indeed, necessitates—the existence of an 'undiluted' practice against *1106 which the fact of dilution may be measured, a § 2 plaintiff must also postulate a reasonable alternative voting practice

to serve as the benchmark 'undiluted' voting practice." (citing *Holder v. Hall* , 512 U.S. 874, 881, 950–51, 114 S.Ct. 2581, 129 L.Ed.2d 687 (1994))); *Gingles* , 478 U.S. at 50 n.17, 106 S.Ct. 2752 ("Unless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice."). To do so, a plaintiff typically presents illustrative redistricting plans as evidence of vote dilution. *See Fairley v. Hattiesburg* , 584 F.3d 660, 669 (5th Cir. 2009) ; *Magnolia Bar Ass'n v. Lee* , 994 F.2d 1143, 1151 n.6 (5th Cir. 1993) (noting the first *Gingles* precondition "specifically contemplates the creation of hypothetical districts"). However, neither the plaintiff nor the court is bound by the precise lines drawn in these illustrative redistricting maps; at this stage, a plaintiff need only show that a remedy may be feasibly developed. *See Fairley* , 584 F.3d at 671 n.14 (citing *Gingles* , 478 U.S. at 50 n.17, 106 S.Ct. 2752 and *Houston v. Lafayette County* , 56 F.3d 606, 611 (5th Cir. 1995) ("[I]t is sufficient that a plaintiff show that a workable plan for another minority-controlled voting district is possible; the plaintiff's plan need not be an ultimate solution.")); *Montes v. City of Yakima* , 40 F.Supp.3d 1377, 1399 (E.D. Wash. 2014) (citation omitted) ("What the first *Gingles* precondition does not require is proof that a perfectly harmonized districting plan can be created. Indeed, conditioning a § 2 plaintiff's right to relief upon his or her ability to create a letter-perfect districting plan would put the cart before the horse.").

At trial, plaintiffs presented two illustrative redistricting plans developed by their demography expert, David R. Ely, and which they contend establish that a second majority-Latino supervisorial district in Kern County was clearly possible in 2011. (*See* "Illustrative Map 1" and "Illustrative Map 2" below; PX 103 at 2–3.) In drawing the Illustrative Maps, Mr. Ely used data from the 2010 decennial census for total population and voting age population by race and ethnicity, and data from the 2005–2009 and 2011–2014 ACS Special Tabulations for citizen voting age population. (Trial Tr., Vol. 1, 57:3–21.) Mr. Ely drew the Illustrative Maps in accordance with the traditional redistricting criteria of equal population and contiguity, with reference to underlying topography as well as state legislative and congressional districts. (*Id.* at 67:18–23, Trial Tr., Vol. 2, 102:5–103:21.) Although Mr. Ely did not rely upon socioeconomic data to draw the two Illustrative Maps initially, he did consult socioeconomic data after the fact to confirm that the illustrative districts reflected similar socioeconomic characteristics, including educational attainment, income, homeownership, immigration status, and Spanish language ability. (Trial Tr., Vol. 2, 132:22–133:5; PX 110.) Below, the court will address the specific characteristics of plaintiffs' two illustrative maps individually.

A. Illustrative Map 1

Illustrative Map 1 modifies the County's 2011 Adopted Map in three notable ways. First, it adjusts the boundaries of District 5, while still maintaining it as a majority-Latino district. Second, it combines cities in northwestern Kern County with the City of Arvin and areas immediately south of Bakersfield to create a second majority-Latino district ("Illustrative District 1"). Third, it creates a single supervisorial district combining the eastern half of Kern County with the cities of Taft and Maricopa in the southwest part of Kern
1107 County. (*See* PX 103 at 2; Trial Tr., Vol. 1, 81:21–84:3.)*1107 i. *Numerosity*

In order to satisfy the numerosity requirement under *Gingles* , a plaintiff must first demonstrate "that the minority population in the potential election district is greater than 50 percent." *Bartlett* , 556 U.S. at 19–20, 129 S.Ct. 1231. The Ninth Circuit has held that the appropriate metric by which to measure the size of the minority population is its CVAP, rather than its total population. *Romero* , 883 F.2d at 1425 ; *see also Montes* , 40 F.Supp.3d at 1391 ; *Cano v. Davis* , 211 F.Supp.2d 1208, 1233 (C.D. Cal. 2002) ("The Ninth Circuit, along with every other circuit to consider the issue, has held that CVAP is the appropriate measure to use in determining whether an additional effective majority-minority district can be created.") (citing *Romero* with approval), *aff'd* , 537 U.S. 1100, 123 S.Ct. 851, 154 L.Ed.2d 768 (2003).

Under plaintiffs' Illustrative Map 1, and using data from the 2009 Special Tabulation—which would have been available to the County at the time of the 2011 redistricting process—Mr. Ely testified that the Latino CVAP would constitute a numerical majority in two districts, Districts 1 and 5. (Trial Tr., Vol. 1, 79:12–25; PX 106 at 2.) Specifically, Latinos would comprise 53.2 percent of the CVAP in District 1, and 54.5 percent of the CVAP in District 5. (*See* "Illustrative Districts" Table below.) Although defendants' demography expert Dr. Douglas Johnson produced slightly different CVAP estimates, even Dr. Johnson's estimates similarly show that Latino voting age citizens would constitute a numerical majority in Districts 1 and 5 of Illustrative Map 1. (Trial Tr., Vol. 9, 1499:24–1500:6; DX 565 at 26.) In fact, Dr. Johnson's estimates of Latino CVAP in Districts 1 and 5, using the 2009 Special Tabulation data, were marginally higher than those of Mr. Ely. (*See* DX 565 at 26 (estimating 57 percent Latino CVAP in District 1 and 54 percent Latino CVAP in District 5 under Illustrative Map 1).) Accordingly, the court finds that plaintiffs have satisfied the numerosity requirement with respect to Illustrative Map 1.

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Illustrative Districts District 1 2 3 4 5 Census Population 182092 160764 161755 171974 163046 Non-Prison Pop. 163917 160764 161755 160625 163046 Deviation 1896 -1257 -266 -1396 1025 % Deviation 1.2% -0.8% -0.2% -0.9% 0.6% % Latino 74.3% 30.4% 38.0% 24.0% 77.3% % White 14.0% 58.7% 44.3% 64.9% 12.8% % African American 4.9% 4.1% 7.8% 5.1% 7.3% % Asian 5.8% 4.3% 7.8% 2.9% 1.2% Voting Age Population % Latino 69.2% 26.3% 33.2% 21.4% 73.1% % White 17.2% 63.3% 49.6% 68.2% 16.5% % African American 6.2% 3.6% 7.1% 4.7% 7.4% % Asian 6.3% 4.3% 8.0% 2.8% 1.4% Citizen Voting Age Population 2009 Special Tabulation % Latino 53.2% 21.2% 25.2% 12.9% 54.5% % White 29.9% 70.6% 60.2% 76.0% 29.3% % African American 8.1% 3.6% 7.6% 5.7% 12.8% % Asian 7.1% 2.5% 5.0% 2.3% 1.4% 2015 Special Tabulation % Latino 65.9% 27.0% 31.8% 15.7% 62.1% % White 21.2% 63.4% 51.8% 73.2% 23.9% % African American 4.2% 4.0% 8.0% 5.2% 10.1% % Asian 7.7% 3.3% 6.7% 3.3% 1.7%

ii. *Compactness*

Plaintiffs must separately demonstrate that the relevant minority population is sufficiently "geographically compact" to constitute a voting majority in a second single-member district. *See Gingles* , 478 U.S. at 50, 106 S.Ct. 2752 ; *see also Old Person II* , 312 F.3d at 1040. In this context, "compactness" refers not to the shape of the district, but whether the minority community is sufficiently concentrated to constitute a majority of the CVAP in a single-member district. *League of United Latin Am. Citizens v. Perry* , 548 U.S. 399, 433, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006) [hereinafter *LULAC*]. "While no precise rule has emerged governing § 2 compactness, the inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries." *Id.* (citations and internal quotations omitted); *see also Ruiz* , 160 F.3d at 558. Other "traditional districting principles" typically include population equality, contiguity, respect for political subdivisions, protection of incumbents, and preservation of preexisting majority-minority districts. *See, e.g.* , *Easley v. Cromartie* , 532 U.S. 234, 239–40, 121 S.Ct. 1452, 149 L.Ed.2d 430 (2001) ; *Abrams v. Johnson* , 521 U.S. 74, 94, 117 S.Ct. 1925, 138 L.Ed.2d 285 (1997) ; *Shaw v. Reno* , 509 U.S. 630, 647, 651, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993).

a. Preservation of Communities of Interest

At trial, Mr. Ely presented maps tending to show that Illustrative Map 1 is more effective than the County's 2011 Adopted Map in grouping into districts populations with similar socioeconomic characteristics, including educational attainment, income, homeownership, immigration status, and Spanish language ability. (Trial Tr., Vol. 2, 132:22–133:5; PX 110.)

Plaintiffs also presented testimony at trial from various lay witnesses that Latinos in Illustrative District 1 share
1109 a historical and present-day connection to *1109 farmworker and immigrant communities. Consequently, Latinos across Illustrative District 1 face similar issues with respect to immigration (Trial Tr., Vol. 2, 233:19–234:6, 235:10–236:22 (testimony of Dolores Huerta regarding fear of deportation); *id.* at 261:21–263:24 (testimony of Dorothy Velazquez regarding the same)), language (*id.* at 234:7–235:9 (testimony of Dolores Huerta regarding an English-only resolution proposed by the Bakersfield City Council)), and educational disparities (*id.* at 237:23–239:13 (testimony of Dolores Huerta regarding the "school-to-prison pipeline"); Trial Tr., Vol. 5, 793:7–794:2 (testimony of Supervisor Leticia Perez regarding the literacy, educational, and skills gap among Latino students in Kern County)). Ms. Huerta further testified that farmworkers travel seasonally between Arvin and the northwestern Kern communities based on the available crops and labor needs. (Trial Tr., Vol. 2, 240:7–16.) District 5 Supervisor Leticia Perez testified that Latinos in the northern Kern communities are indistinguishable from the Latinos in Arvin, and that these communities share the same history, origin, culture, and socioeconomic indices. (Trial Tr., Vol. 5, 795:2–796:12.)

Plaintiffs also presented evidence of shared concerns in Illustrative District 1 with respect to economic development, air and water pollution, and environmental concerns including those surrounding the issue of hydraulic fracturing. (Trial Tr., Vol. 2, 280:8–287:10.) Supervisor Perez testified that constituents from Delano, Shafter, Arvin, and Lamont have the most in common in terms of infrastructure issues, and that constituents from those communities appear before the Board of Supervisors every budget cycle calling on Supervisor Perez and District 1 Supervisor Mick Gleason to address flooding and other infrastructure challenges in their communities. (Trial Tr., Vol. 5, 788:1–789:10.)

Defendants' demography expert Dr. Douglas Johnson criticized the configuration of District 1 as it appears in plaintiffs' Illustrative Map 1, which "hooks" around Bakersfield to unite territory south of Bakersfield with the northern communities of Delano, Shafter, Wasco, and MacFarland. (Trial Tr., Vol. 9, 1455:1–6.) Dr. Johnson conceded on cross-examination, however, that these communities have shared the same state legislative and congressional districts since 1991, and that this is a factor that could be considered from a traditional redistricting perspective. (*Id.* at 1523:16–1528:14.) Indeed, the court notes that the maps of state legislative and congressional districts share the same "hook" configuration as Illustrative District 1 in plaintiffs' Illustrative Map 1 which Dr. Johnson criticized. (*See* PX 103 at 2; PX 116–18.) The court therefore concludes that the existence of the "hook" in District 1 of plaintiffs' Illustrative Map 1 does not, on its face, divide communities of interest, and in fact comports with the communities of interest contemplated by other district boundaries.

The court also finds that the configuration depicted in plaintiffs' Illustrative Map 1 is distinguishable from the illustrative district rejected in *LULAC* , where the Supreme Court determined that a newly-drawn majority-Latino congressional district, which included a 300–mile gap between two major Latino communities, was not compact. *LULAC* , 548 U.S. at 432–34, 126 S.Ct. 2594. In *LULAC* , the Supreme Court held that "the enormous geographical distance separating [two minority populations], coupled with the disparate needs and interests of these populations—not either factor alone," rendered that district non-compact for § 2 purposes. *Id.* at 435, 126 S.Ct. 2594. Here, Mr. Ely testified that the distance between Arvin and Delano was roughly 55
1110 miles, far less than the distance at issue in *LULAC.* (Trial Tr., *1110 Vol. 2, 164:18–165:9.) Moreover, as summarized above, several witnesses testified credibly regarding the shared communities of interest among Latinos in Arvin and northern Kern County. The court concludes that the inadequacies of the district boundaries identified in *LULAC* are simply not present here.

Defendants challenge plaintiffs' representation that Illustrative Map 1 more effectively groups communities of interest. In this regard, at trial, defendants presented various witnesses who testified to the differing communities of interest grouped in plaintiffs' illustrative districts. Most notably, defendants' expert witness Lorelei Oviatt, director of the Kern County Planning & Natural Resources Department, testified at great length about communities of interest throughout each of the current supervisorial districts, including communities of interest related to oilfields, highways, public transit, commercial developments, crops, and environmental concerns. (Trial Tr., Vol. 7, 1135:1–1147:10, 1190:20–1226:7.) The court will not recount each of these communities of interest in detail. However, the overall import of Ms. Oviatt's testimony is that each Kern County supervisorial district has at least *something* in common with every other. This is hardly surprising in the context of a single county. Defendants argue that plaintiffs' assertion of the communities of interest reflected in District 1 of their Illustrative Map 1 are really concerns that are shared county-wide, and that plaintiffs therefore have not proven that they are entitled to their own separate district. (*See* Trial Tr., Vol. 11, 1795:3–8.) Yet the first *Gingles* precondition does not require plaintiffs to show that they are entitled to their own district because of unique communities of interest, but only that it is possible to draw an alternative map that maintains communities of interest. Even if plaintiffs were required to identify communities of interest unique to Latinos in Kern County, they have met that higher burden with evidence of shared concerns among Latinos in the areas of immigration, language, culture, and persistent socioeconomic disparities, which evidence was not rebutted by defendants. Plaintiffs are moreover not required to accommodate every conceivable community of interest in Kern County in order to draw a sufficient illustrative map that satisfies the first *Gingles* precondition. Certainly, the County itself did not attempt to do so in its own redistricting efforts: Mr. Krauter testified that, when drawing the map options for the 2011 redistricting process, he did not consider oilfields, commercial developments, public transit, tourism, or other local considerations aside from what residents raised at the redistricting workshops. (Trial Tr., Vol. 3, 445:7–447:23.) The court finds no logical or legal basis to impose such a requirement on plaintiffs.

Defendants further emphasize the absence during the 2011 redistricting process of any public comment by Kern County residents requesting that Arvin be joined with the communities in northern Kern County. (*See* Trial Tr., Vol. 3, 483:22–25; 485:11–14.) Defendants contend that the absence of any such suggestion indicates that Arvin does not share a community of interest with the Latino communities in northern Kern County, and that plaintiffs' arguments to the contrary are simply post hoc justifications for Illustrative Map 1. This argument is unpersuasive. First, the court notes that plaintiffs presented evidence that the unification of the Latino communities proposed in Illustrative Map 1 was not invented for the purposes of this litigation. Dolores Huerta testified that there was discussion during the 2011 Lamont redistricting workshop about including Oildale or Arvin with the northern Kern communities to create a second majority-Latino district. (Trial Tr., Vol. 2, 222:12–25.) Plaintiffs also introduced evidence that, as early as 1991, the Kern *1111 County Latino Redistricting Coalition proposed a district that "would include the Delano/McFarland area, the Shafter/Wasco Area, Lost Hills, Button Willow [sic], a minor portion of East Bakersfield, Arvin and Lamont." (JX 12 at 37–40.) In any event, the court would note that the small number of Kern County residents who attended either the public workshops or the public hearings on redistricting diminishes any significance the claimed lack of public suggestion could have.

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Second, even if there was an absence of specific public comment suggesting the precise configurations proposed in plaintiffs' Illustrative Map 1, the court rejects the notion that it is the obligation of County residents to propose where districting lines should be drawn. At the public hearings before the Board of Supervisors on August 2 and August 9, 2011, several members of the public spoke in favor of the creation of a second majority-Latino district. (*See* JX 27 at 16–18, 30–32; JX 30 at 23–31, 37–38.) Simply because these citizens

did not identify which specific communities should be included within the second majority-Latino district does not negate a showing of a community of interest among Latinos in Kern County, especially in light of the evidence presented by plaintiffs at trial. The court therefore finds that plaintiffs' Illustrative Map 1 preserves communities of interest.

b. Connectedness

One factor that Mr. Ely considered in constructing Illustrative Map 1 is what he referred to as "connectedness," or residents' ability to easily interact with one another. (Trial Tr., Vol. 2, 174:19–25.) Mr. Ely testified that all communities in Kern County have connections to Bakersfield, but two communities—one in northern Kern County and another in eastern Kern County—are internally connected by highways and public transit without the need to pass through Bakersfield. (Trial Tr., Vol. 1, 82:7–21.) Mr. Ely observed that the County's 2011 Adopted Map splits each of these two communities into different districts and combines each with dissimilar communities apparently in order to meet the population requirements. (PX 112 at ¶¶ 9–12.) In contrast, plaintiffs' Illustrative Map 1 keeps the northern and eastern Kern County communities intact in their own respective districts, combining each with small communities with similar shared interests. (*Id.* at ¶ 13.)

As defendants' expert Dr. Johnson points out, plaintiffs' Illustrative Map 1 does separate Arvin from the nearby communities of Lamont and Weedpatch. (Trial Tr., Vol. 9, 1549:6–12; DX 558 at ¶ 52.) Mr. Ely acknowledged that Arvin is well connected to both Lamont and Weedpatch, but opined that there is, nonetheless, a sufficiently large community of interest among Latinos in Kern County to comprise the majority in two supervisorial districts. (Trial Tr., Vol. 2, 179:1–16.) Therefore, according to Mr. Ely, the boundary line separating Arvin from Lamont could be drawn in many different ways and still maintain majority-Latino CVAP in two districts.[9] (*Id.*) The court concludes that plaintiffs' Illustrative Map 1 respects the principle of connectedness as defined by Mr. Ely.

[9] As noted above, plaintiffs are not bound at this stage of the litigation by the precise lines drawn in the illustrative redistricting maps they present. *See Fairley* , 584 F.3d at 671 n.14 ; *Houston* , 56 F.3d at 611 ; *Montes* , 40 F.Supp.3d at 1399.

c. Preservation of Kern County's Preexisting Majority–Latino District

The parties' experts present slightly different Latino CVAP estimates for each of the supervisorial districts as
1112 they appear under plaintiffs' Illustrative Map 1. There is no dispute, however, that District 5, *1112 Kern County's preexisting majority-Latino district, remains a majority-Latino district under Illustrative Map 1, with a 54.5 percent Latino CVAP according to Mr. Ely's estimates. (*See* "Illustrative Districts" Table above.)

d. Preservation of Two Eastern Districts and Minimizing Change

Lastly, in assessing plaintiffs' showing of compactness, the court considers two additional districting principles specific to Kern County: the desire to retain two supervisorial districts in eastern Kern County and to avoid dramatic change in drawing new boundaries. Since at least 1981, the eastern half of Kern County has been represented by two supervisors. (*See* PX 210; PX 236; Trial Tr., Vol. 7, 1071:4–23.) Mr. Krauter testified at trial that during the 2011 redistricting process, a number of eastern Kern County residents expressed concerns that it would be extremely difficult for one supervisor to adequately represent the entirety of eastern Kern County. (Trial Tr., Vol. 3, 409:22–410:13.) Plaintiffs' Illustrative Map 1, however, creates one eastern district.

Defendants also argue that Kern County has for decades adhered to a broader principle that new district maps should maintain the core of existing districts and minimize changes. (DX 565 at ¶ 19; Trial Tr., Vol. 9, 1466:6–1467:15.) These principles, defendants contend, help preserve relationships between elected officials and their constituents over time. (Trial Tr., Vol. 9, 1466:6–1467:15.) According to defendants' expert Dr. Johnson, plaintiffs' Illustrative Map 1 would move 42 percent of Kern residents into new supervisorial districts. (*Id.* at 1462:11–1463:3; DX 565 at ¶ 20.)

These points, raised by defendants, are valid and worthy of consideration. On the one hand, it has been long recognized that local legislative bodies—rather than federal courts—play the primary role in fashioning reapportionment plans. *See, e.g.* , *Bush v. Vera* , 517 U.S. 952, 954, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996) ("States attempting to comply with § 2 retain discretion to apply traditional districting principles and are entitled to a limited degree of leeway."); *Upham v. Seamon* , 456 U.S. 37, 40–41, 102 S.Ct. 1518, 71 L.Ed.2d 725 (1982) (concluding that federal courts must defer to the legislative preferences absent a finding of a constitutional or statutory violation); *see also White v. Weiser* , 412 U.S. 783, 794–95, 93 S.Ct. 2348, 37 L.Ed.2d 335 (1973) ("From the beginning, we have recognized that 'reapportionment is primarily a matter for legislative consideration and determination....' ") (quoting *Reynolds v. Sims* , 377 U.S. 533, 586, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964)). In that regard, a determination of whether such an adopted plan violates § 2 must, at minimum, give *some* consideration to the principles that traditionally guide the redistricting process. *See, e.g.* , *LULAC* , 548 U.S. at 433, 126 S.Ct. 2594 (noting "the inquiry *should take into account* traditional districting principles..." (emphasis added) (citations and internal quotations omitted)); *Bush* , 517 U.S. at 979, 116 S.Ct. 1941 ("[A] district drawn in order to satisfy § 2 must not subordinate traditional districting principles to race *substantially more than is reasonably necessary.* ") (emphasis added).

On the other hand, "it would be unfair to require Plaintiffs to draw maps in strict accordance with the County's priorities." *Rodriguez v. Harris County* , 964 F.Supp.2d 686, 745 (S.D. Tex. 2013), *aff'd sub nom. Gonzalez v. Harris County* , 601 Fed.Appx. 255, 260–261 (5th Cir. 2015). A § 2 claim challenges the propriety of the very process by which a legislative body fashioned a particular reapportionment plan—including its choice and
1113 application of certain districting principles. *See id.* (citing *1113 *De Grandy* , 512 U.S. at 1007, 114 S.Ct. 2647). If courts were required to rigidly adhere to the political jurisdiction's redistricting principles,

> [V]oting rights cases could be defeated at the outset by the very barriers to political participation that Congress sought to remove: legislative bodies could evade compliance with the Voting Rights Act by carefully selecting an array of redistricting principles such that it would be difficult for a plaintiff to draw a demonstration map that would both differ from the defendant's map and yet still comply with each of the defendant's redistricting principles. Surely, Congress did not intend for the broad remedial scope of Section 2 to be so easily evaded by a defendants' selection of redistricting principles. The scope of the statute must be construed to avoid this anomalous result.

Id.

Accordingly, this court concludes that while plaintiffs' Illustrative Map 1 should reasonably comport with the jurisdiction's traditional districting principles, plaintiffs need not prioritize those principles in the same manner as the County did when it created the 2011 Adopted Map. *See id.* at 746 ; *see also, e.g.* , *Perez v. Abbott* , 250 F.Supp.3d 123, 142 (W.D. Tex.) (holding that states cannot "claim that a single traditional districting principle...allows them to avoid drawing districts required by § 2 under the totality of circumstances"), *appeal docketed* , —— U.S. ——, 138 S.Ct. 49, 198 L.Ed.2d 776 (2017). The County's local districting preferences are certainly relevant. However, to the extent the County desires to leave existing district boundaries as unchanged

as possible, this principle cannot effectively override any finding of § 2 liability, especially where such a principle is inescapably linked to the fragmentation of the Latino population. The court finds that Kern County's preferences in these regards are, therefore, better and more properly addressed at the remedial stage of this litigation, if plaintiffs establish a violation of § 2. *See Rodriguez* , 964 F.Supp.2d at 745 ("Under this scheme, the ultimate viability and effectiveness of a remedy is considered at the remedial stage of litigation and not during analysis of the *Gingles* preconditions."); *see also Montes* , 40 F.Supp.3d at 1400–01.

For all of the reasons set forth above, the court concludes that plaintiffs have satisfied their burden of showing that, under their Illustrative Map 1, the Latino population in Kern County is sufficiently numerous and geographically compact for Latinos to form an effective voting majority in a second supervisorial district.

B. Illustrative Map 2

The court now turns to plaintiffs' Illustrative Map 2. In developing Illustrative Map 2, Mr. Ely sought to maintain the existing districting scheme as much as possible. (Trial Tr., Vol. 1, 86:21–87:11.) Illustrative Map 2 shifts existing District 1 to the western side of the County, excluding the eastern communities of Ridgecrest and Lake Isabella, while extending the northern boundary of District 2 to capture these communities. (*Id.* ; PX 103 at 3.) Illustrative District 1 in this map constitutes a second majority-Latino district by combining cities in northwestern Kern County with unincorporated areas of East Bakersfield (hereinafter "East Bakersfield").
1114 (Trial Tr., Vol. 2, 147:25–149:13 (describing the boundaries of East Bakersfield).)*1114 i. *Numerosity*

Under Illustrative Map 2, and using data from the 2009 Special Tabulation, the Latino CVAP would constitute a numerical majority in Districts 1 and 5. (Trial Tr., Vol. 1, 84:5–85:3; PX 106 at 3.) Latinos would comprise 51.6 percent and 52 percent of the CVAP in District 1 and District 5, respectively. (*See* "Option 2 Districts" Table below.) Defendants' expert Dr. Johnson again generated slightly different CVAP estimates, but did not dispute that Latino voting age citizens would constitute a numerical majority in Districts 1 and 5 of Illustrative Map 2. (DX 565 at 27.) Dr. Johnson's estimates of Latino CVAP in Districts 1 and 5, using the 2009 Special Tabulation data, were again marginally higher than those of plaintiffs' expert, Mr. Ely. (*See id.* (estimating 53 percent Latino CVAP in District 1 and 52 percent Latino CVAP in District 5 under Illustrative Map 2).) Plaintiffs have thus satisfied the numerosity requirement with respect to their Illustrative Map 2.

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Option 2 Districts District 1 2 3 4 5 Census Population 183533 166050 159234 164510 166304 Non-Prison Pop. 165358 157533 159234 161678 166304 Deviation 3337 -4488 -2787 -343 4283 % Deviation 2.1% -2.8% -1.7% -0.2% 2.6% % Latino 71.1% 30.1% 27.4% 38.5% 75.6% % White 18.1% 56.1% 61.9% 45.7% 14.2% % African American 4.8% 6.6% 3.5% 7.0% 7.1% % Asian 4.7% 4.2% 4.6% 6.6% 1.7% Voting Age Population % Latino 65.3% 26.2% 23.6% 33.8% 71.0% % White 22.3% 60.7% 66.2% 50.8% 18.2% % African American 6.0% 5.9% 3.1% 6.4% 7.1% % Asian 5.1% 4.3% 4.6% 6.8% 2.0% Citizen Voting Age Population 2009 Special Tabulation % Latino 51.6% 17.9% 18.7% 23.2% 52.0% % White 33.4% 69.1% 73.5% 62.6% 32.1% % African American 7.7% 7.1% 3.0% 7.3% 12.2% % Asian 5.4% 3.1% 2.8% 4.6% 2.0% 2015 Special Tabulation % Latino 60.6% 21.9% 24.4% 29.6% 60.1% % White 28.5% 64.1% 66.7% 55.0% 25.7% % African American 3.8% 7.3% 3.1% 7.4% 9.9% % Asian 5.9% 4.2% 3.5% 6.3% 2.2%

ii. *Compactness*

a. Preservation of Communities of Interest

As with Illustrative Map 1, Mr. Ely presented maps at trial tending to show that, in comparison to the County's 2011 Adopted Map, plaintiffs' Illustrative Map 2 more effectively grouped into districts populations with similar socioeconomic characteristics, including educational attainment, income, homeownership, immigrant population, and Spanish speaking population. (Trial Tr., Vol. 2, 132:22–133:5; PX 110.) Plaintiffs also introduced evidence of the major employment sectors shared among East Bakersfield, Delano, McFarland, Shafter and Wasco: the largest industries in each of these communities are agriculture and education, health, and social services. (PX 123 at 1.) In addition, plaintiffs presented testimony from Ms. Huerta, who opined that the northwestern communities of Kern County shared a community of interest with East Bakersfield because of the large number of farmworkers residing in East Bakersfield, who travel seasonally between the two areas for work. (Trial Tr., Vol. 2, 242:4–16.) Ms. Huerta further testified that residents of the northwestern Kern communities interact with the residents in East Bakersfield through various cultural festivals celebrating Latino food and music. (*Id.* at 242:23–243:8.) Moreover, Supervisor Perez reiterated in her testimony that the Latino populations in northern Kern and East Bakersfield are "completely indistinguishable," and that "every issue imaginable" is shared equally between these populations. (Trial Tr., Vol. 5, 796:13–797:15.)

Defendants offered little compelling evidence at trial suggesting that East Bakersfield would be an inappropriate fit with the northern Kern communities under plaintiffs' Illustrative Map 2. Ms. Oviatt, the
1116 director of the Kern County Planning and Natural Resources Department, testified *1116 that although 16 percent, a "healthy portion," of East Bakersfield's population works in agriculture, this percentage is not comparable to that of other northern cities, where the portion is 34 percent or more. (*See* Trial Tr., Vol. 7, 1204:5–1205:7.) District 3 Supervisor Mike Maggard, who currently represents East Bakersfield, expressed the opinion that East Bakersfield and Delano are significantly different communities because they are roughly 30 miles apart, and Delano is the second largest incorporated city in Kern County while only parts of East Bakersfield are incorporated. (Trial Tr., Vol. 8, 1306:12–1307:8.) Kim Salas, an employee with the Kern County Superintendent of Schools, similarly disapproved of linking East Bakersfield with Delano on the basis that East Bakersfield is an urban area while the outlying areas are more rural. (Trial Tr., Vol. 8, 1406:3–14.)

The evidence presented by defendants would seem to suggest that any identifiable difference, no matter how small, between the communities grouped in plaintiffs' Illustrative Map 2 negates a showing of a community of interest. This court concludes that plaintiffs' burden under *Gingles* prong one is not and cannot be one that requires plaintiffs to establish there are no identifiable differences between the communities joined in their illustrative map. It is simply too easy to identify at least some differences between any two communities, because no one community is exactly the same as another. The testimony offered by Ms. Oviatt and Supervisor Maggard does not disprove the notion that the communities appearing in District 1 of plaintiffs' Illustrative Map 2 undoubtedly have significant shared interests. Moreover, the supposed urban/rural incompatibility identified by Ms. Salas in her trial testimony is directly at odds with the County's own purported preference to combine both urban and rural areas into a single district. (*See, e.g.* , Trial Tr., Vol. 7, 1169:1–1170:12 (testimony of Zack Scrivner regarding the County's practice of having each supervisorial district take a portion of urban Bakersfield to avoid concentration of power in Bakersfield); Trial Tr., Vol. 10, 1600:3–1601:1 (testimony of Mick Gleason regarding the same).)

Defendants once again note the alleged absence during the 2011 redistricting process of any public comment by Kern County residents suggesting that East Bakersfield be joined with the communities in northern Kern. (*See* Trial Tr., Vol. 3, 483:18–484:5.) Defendants contend that the absence of such a suggestion by members of the public indicates that East Bakersfield does not share a community of interest with the Latino communities in northern Kern, and that any proposal to the contrary is plaintiffs' post-hoc justification for their Illustrative Map

2. This argument is unavailing for the reasons already articulated by the court above. Moreover, the possibility of a community of interest between East Bakersfield and the northern Kern County communities was in fact suggested in 2011: Mr. Krauter testified at trial that the redistricting map put forth by MALDEF at the August 2, 2011 hearing before the Board of Supervisors created a northern district that dipped into East Bakersfield. (*See* Trial Tr., Vol. 3, 486:4–25.) Even if such evidence had not been introduced at trial, public comment can hardly be considered an exhaustive accounting of what communities of interest exist, particularly where, as here, public comment from certain Kern County communities was clearly scant. (*See* JX 4 at 4–5 (summary of redistricting workshops, indicating that one person attended the East Bakersfield workshop).) Accordingly, the court concludes that plaintiffs' Illustrative Map 2 preserves communities of interest.

b. Connectedness

1117 The analysis of Mr. Ely's "connectedness" principle applies with equal force to *1117 plaintiffs' Illustrative Map 2 as with Illustrative Map 1. Illustrative Map 2 similarly maintains in separate districts the communities in northern Kern County and eastern Kern County, which are internally connected by highways and public transit that need not pass through Bakersfield. The County's 2011 Adopted Map, as Mr. Ely noted, splits each of these two communities into different districts, and combines each with dissimilar communities to meet population requirements. Accordingly, Mr. Ely credibly opined that plaintiffs' Illustrative Map 2 better complies with the principle of connectedness than the Adopted Map. The court finds that Illustrative Map 2 respects the principle of connectedness as defined by Mr. Ely.

c. Preservation of Kern County's Preexisting Majority–Latino District

Again, the parties' experts present slightly different Latino CVAP estimates for each of the districts under Illustrative Map 2, but there is no dispute that District 5 remains a majority-Latino district under plaintiffs' Illustrative Map 2, with a 52 percent Latino CVAP according to Mr. Ely's estimates. (*See* "Option 2 Districts" Table above.)

d. Preservation of Two Eastern Districts and Minimizing Change

As with Illustrative Map 1, defendants criticize plaintiffs' Illustrative Map 2 for dispensing with the County's current configuration of two eastern districts. Defendants also argue that, though slightly less disruptive than Illustrative Map 1, Illustrative Map 2 would nonetheless move 30 percent of Kern residents into new supervisorial districts. (Trial Tr., Vol. 9, 1462:11–19; DX 565 at ¶ 19.)

For the reasons stated above, the court concludes that the law requires the objectives of the Voting Rights Act not to be subordinated solely in order to accommodate local districting preferences. *See Rodriguez* , 964 F.Supp.2d at 745–46 ; *see also Montes* , 40 F.Supp.3d at 1400–01 ; *Perez* , 250 F.Supp.3d at 142. Given Kern County's size and geographical makeup, the court believes that it would be impossible to create a map that perfectly reflected distinct communities of interest, and yet still satisfied equal population requirements and all other traditional redistricting principles. Therefore, to the extent that other local considerations factor into the districting of Kern County, those considerations are better accommodated at the remedial stage if a § 2 violation is established.

The court thus concludes that, under Illustrative Map 2, plaintiffs have again satisfied their burden of showing that the Latino population in Kern County is sufficiently numerous and geographically compact for Latinos to form an effective voting majority in a second supervisorial district. Having come forward with two separate examples of maps that include a second majority-Latino supervisorial district, the court concludes that plaintiffs have satisfied the first *Gingles* precondition, and now turns to the second.

II. *Gingles* II—Latino Political Cohesiveness

The second *Gingles* precondition is satisfied where the minority group is politically cohesive—that is, where "a significant number of minority group members usually vote for the same candidates." *Gingles* , 478 U.S. at 56, 106 S.Ct. 2752. If the minority group does not have a preferred candidate, it cannot be said that the jurisdiction's electoral scheme thwarts the minority group's interests. *Id.* at 51, 106 S.Ct. 2752. Political cohesiveness is frequently demonstrated through statistical evidence of racially polarized voting, though other non-statistical evidence may establish this factor as well. *Monroe v. City of Woodville* , 897 F.2d 763, 764 (5th Cir. 1990) ("Statistical proof of political *1118 cohesion is likely to be the most persuasive form of evidence, although other evidence may also establish this phenomenon."). Courts have relied on three statistical methodologies to determine whether minority voters vote cohesively: homogeneous precinct analysis, ecological regression, and ecological inference. *See United States v. City of Euclid* , 580 F.Supp.2d 584, 596 (N.D. Ohio 2008) (approving the use of these methods); *Bone Shirt v. Hazeltine* , 336 F.Supp.2d 976, 995, 1001–04 (D.S.D. 2004) (collecting cases).

Homogeneous precinct analysis ("HPA"), also known as extreme case analysis, examines voting behavior in precincts where the population is close to being racially or ethnically homogeneous, typically where upwards of 90 percent of the population is of the same race or ethnicity. (Trial Tr., Vol. 8, 1334:16–1335:5.) HPA requires no statistical inferences: in homogeneous Latino precincts, whatever percentage of the vote a candidate receives represents the percentage of Latinos who voted for that candidate. (*See* Trial Tr. Vol. 4, 544:11–545:14.) Likewise, in homogeneous white precincts, the percentage of the vote a candidate receives represents the percentage of whites who voted for that candidate. (*Id.*)

Because precincts, of course, are usually not perfectly segregated by race, statisticians have employed other methodologies to estimate individual voting behavior in precincts with heterogeneous racial populations. In 1959, statistician Leo Goodman introduced ecological regression ("ER"), which remains widely used by social scientists and political scientists to estimate group-wide voting behavior. (*Id.* at 564:8–16.) ER takes precinct-level election results and correlates those figures with the racial or ethnic composition of the electorate. ER plots the vote percentage in each precinct for a Latino candidate against the percentage of Latino voters, and calculates the line of best fit through all those points—that is, the line that minimizes the distance between the line and each of the plot points. (*Id.* at 554:7–17.) The line can be extrapolated in each direction to estimate how precincts that are 100 percent Latino or 100 percent non-Latino would have voted. (*Id.* at 555:2–15). ER has two major deficiencies, however. First, it sometimes produces estimates that are less than 0 percent or greater than 100 percent. (PX 136 at ¶ 20.) Second, it does not take advantage of "bounds" information, which puts some limits on possible voting behavior based on the minimum and maximum percentage of votes a candidate could have received. (*Id.* at ¶¶ 22–27.)

Ecological inference ("EI"), developed by political scientist Gary King in 1997, seeks to overcome some of the shortcomings of ER, and is "similar to, but largely regarded as an improvement upon" the ER methodology endorsed in *Gingles*. *Hall v. Louisiana* , 108 F.Supp.3d 419, 433 n.15 (M.D. La. 2015). Unlike ER, EI only produces estimates between 0–100 percent, and incorporates bounds data to narrow the range of probabilities based on the actual votes cast in an election. (PX 136 at ¶ 27.)

A. Dr. Kousser's Analysis

Plaintiffs' expert, Dr. J. Morgan Kousser, employed ER (unweighted and weighted)[10] and EI to evaluate racial polarization *1119 in Kern County. To do so, he examined 22 non-partisan[11] elections involving Latinos candidates in Kern County from 2004 to 2014. (*Id.* at ¶ 2.) Latinos were identified by their Spanish surnames,

based on a list originally compiled by the U.S. Census Bureau and used in California for several decades to match lists of registered voters and those who turned out at the polls. (*Id.* at ¶ 15 & n.8.) Dr. Kousser concluded that of the 22 elections he analyzed in Kern County, 19 were racially polarized to a statistically significant degree. (*Id.* at ¶ 2.)

[10] Unweighted regression treats each precinct exactly the same, regardless of the number of voters within each precinct. This is depicted graphically using points of equal size to represent each precinct. Weighted regression, on the other hand, counts larger precincts more heavily than smaller precincts, representing each precinct with a circle proportional in size to the number of voters in the precinct. (Trial Tr., Vol. 4, 563:6–19; PX 136 at ¶ 19.)

[11] Because supervisorial elections in Kern County are non-partisan, Dr. Kousser excluded "partisan" elections in which the candidates were nominated by political parties, in order to mitigate the possibility that party identification, rather than race, would drive his voting estimates. (PX 137 at ¶ 28.)

i. *Endogenous Elections*

Included in the total of 22 elections he examined, Dr. Kousser analyzed five "endogenous" elections involving the office at issue in this case, i.e. elections for the Kern County Board of Supervisors. (*Id.* at ¶ 29; Trial Tr. Vol. 4, 587:7–10.)

The 2004 District 4 election in Kern County involved a Latino candidate, Joel Moreno, and a non-Latino candidate, Raymond Watson. Under all three methodologies employed by Dr. Kousser—unweighted ER, weighted ER, and EI—Moreno received over 80 percent of the Latino vote, but only about 13 percent of the non-Hispanic white and black vote.[12] (PX 137 at Table V–1.) Dr. Kousser concluded that the 2004 District 4 election was racially polarized.

[12] Dr. Kousser combined non-Hispanic whites and blacks into a single voting bloc, because black voters cannot be systematically identified by surname. (Trial Tr., Vol. 4, 590:24–591:8.) Dr. Kousser testified that isolating black voters from non-Hispanic white voters in his analyses would not disturb his conclusions regarding racial polarization in Kern County. Because of the small black population in Kern County (5.6 percent in 2014, for example), Dr. Kousser explained that combining non-Hispanic whites and blacks nonetheless measures primarily non-Hispanic white voting behavior. (PX 136 at ¶ 30.) If anything, Dr. Kousser opined, combining black and non-Hispanic white voters underestimates the degree of polarization between Latinos and non-Hispanic whites: in analyses he conducted using black citizen voting age population to estimate black voter turnout, Dr. Kousser found that black voters tended to vote with Latinos. (Trial Tr., Vol. 4, 615:15–619:22.)

Dr. Kousser next analyzed the 2010 primary and runoff elections for District 2 Supervisor. Zack Scrivner was the Latino-preferred candidate, garnering 43 percent, the plurality, of the Latino vote using EI, while garnering over 70 percent of the Latino vote using weighted ER. (*Id.* at Table V–2.) In what Dr. Kousser described as an anomaly in Kern County, the Latino candidate Steve Perez polled better with non-Latino voters in the primary election, receiving nearly 30 percent of the non-Hispanic white and black vote under all three methodologies. (PX 136 at ¶ 32; PX 137 at Table V–2.) Dr. Kousser concluded that the 2010 primary election for District 2 Supervisor was polarized, but in the opposite direction as would be expected, that is, with Latino voters favoring the non-Latino candidate, and non-Hispanic white and black voters favoring the Latino candidate. (PX 136 at ¶ 32.) In the 2010 runoff election between Zack Scrivner and Steve Perez, the two candidates split the Latino vote and non-Hispanic white and black vote fairly evenly. (*Id.* ; PX 137 at Table V–3.) Dr. Kousser therefore concluded that the runoff election was not racially polarized.

In the 2012 primary election for District 1 Supervisor, with eight candidates in the race, Latino candidate Sam
1120 Ramirez received approximately two-thirds of the Latino *1120 vote, but only 1–2 percent of the non-Hispanic white and black vote. (PX 136 at ¶ 33; PX 137 at Table V–4.) Finally, in the 2012 election for District 5 Supervisor, Latino candidate Leticia Perez approximately 80 percent of the Latino vote under all three methods of estimation, but only about one-third of the non-Hispanic white and black vote. (PX 136 at ¶ 34; PX 137 at Table V–5.) Dr. Kousser concluded that the 2012 elections for District 1 and District 5 supervisor were both racially polarized.

In sum, Dr. Kousser concluded that Latino voters cohered around a particular candidate in four of the five endogenous Kern County elections that he analyzed.

ii. *Exogenous Elections*

Exogenous elections—contests for any other office aside from the Kern County Board of Supervisors—may also be considered in assessing racial polarization, though they are not as probative as endogenous elections as to whether the minority group is politically cohesive. *Montes* , 40 F.Supp.3d at 1401–02 (citing *United States v. Blaine County* , 363 F.3d 897, 912 (9th Cir. 2004) ; *see also Citizens for a Better Gretna v. City of Gretna* , 834 F.2d 496, 502 (5th Cir. 1987) ; *Terrebonne Par. Branch NAACP v. Jindal* , 274 F.Supp.3d 395, 432 (M.D. La. 2017) ("Although exogenous elections tend to be less probative of [racially polarized voting] than endogenous elections, they may not be excluded from the analysis completely, especially where there are very few relevant endogenous elections."). Evidence from exogenous elections "should not be deemed irrelevant *per se* to plaintiffs' claims, but must be evaluated according to its particular probative value." *Westwego Citizens for Better Gov't v. City of Westwego* , 872 F.2d 1201, 1208, n.8 (5th Cir. 1989).

Dr. Kousser analyzed seventeen exogenous elections that he deemed sufficiently similar to the elections for Kern County Board of Supervisors, in that they were non-partisan contests involving a Latino candidate and a non-Latino candidate. Of these seventeen, four were local elections, while the remaining thirteen were statewide elections in which Dr. Kousser analyzed only the Kern County voting results. (PX 136 at ¶¶ 35, 39.)

The four local elections Dr. Kousser examined were a 2006 Sheriff's race, a 2010 runoff for the Board of Education, a 2012 election for Kern County Community College Board, and a 2014 election for Assessor. (*Id.* at ¶ 35.) In the 2006 Sheriff's race, Latino candidate Chevy Garza received about half of the Latino vote, even in a seven-person contest, but only about 10 percent of the non-Hispanic white and black vote. (PX 137 at Table VI–1.) In the 2010 Board of Education runoff, Latino candidate Marco Flores garnered roughly 80 percent of the Latino vote, but less than 20 percent of the non-Hispanic white and black vote. (*Id.* at Table VI–2.) The 2014 election for Assessor had a clear Latino-preferred candidate, with Lupe Esquivias receiving approximately two-thirds of the Latino vote, but only 6 percent of the non-Hispanic white and black vote. (*Id.* at Table VI–4.) By contrast, the 2012 race for Kern County Community College Board did not appear to have a Latino-preferred candidate, as Latinos cast votes in roughly equal percentages for candidates Marco Flores and Ruben Hill. (*Id.* at Table VI–3.) Dr. Kousser concluded that all but the 2012 race for Kern County Community College Board were racially polarized. (PX 137 at Table R–1.)

Dr. Kousser next analyzed thirteen statewide contests that took place between 2004 and 2014. (PX 136 at ¶ 39.) Generally, he found that in races involving two or three candidates, Latino candidates received approximately 60–90 percent of the Latino vote. (*See* PX 137 at Tables VII–1; VII–2; VII–3; VII–4; VII–8; VII–11; VII–13.)
1121 *1121 Only the 2010 contest for Superintendent of Public Instruction defied this pattern, with Larry Aceves receiving a statistically significantly level of higher support from non-Hispanic whites and blacks than he did from Latinos. (PX 136 at ¶ 39; PX 137 at Table VII–6.)

Even in races with more than three candidates, Latino candidates consistently earned a broad share of the Latino vote. For instance, in the 2010 primary for Superintendent of Public Instruction, a twelve-person race, Latino candidates Gloria Romero and Lydia Gutierrez together garnered about 65 percent of the Latino vote. (PX 137 at Table VII–5.) In the six-candidate Republican primary for Lieutenant Governor in 2010, the top vote-getter, Abel Maldonado, received approximately 60 percent of the Latino vote, and a statistically significantly different level of support from Latinos and non-Latinos. (PX 136 at ¶ 42; PX 137 at Table VII–7.) The 2010 Democratic primary for Attorney General, a seven-person contest, had three Latino candidates who drew disproportionate support from Latino voters, collecting about 85 percent of the Latino votes altogether, compared to roughly 20 percent of non-Hispanic white and black votes. (PX 136 at ¶ 42; PX 137 at Table VII–9.) The 2014 primary for Secretary of State, an eight-person contest, saw Alex Padilla garner approximately 68 percent of the Latino vote, but only 8 percent of the non-Hispanic white and black vote. (PX 137 at Table VII–10.) In the six-person primary for state Controller in 2014, John Perez garnered about 68 percent of the Latino vote, and only 8 percent of the non-Hispanic white and black vote. (*Id.* at Table VII–12.)

Defendants argue that any evidence from Dr. Kousser's analysis of exogenous elections is legally irrelevant under *Gingles* , which held that the inquiry into vote dilution is "district specific," and that "[w]hen considering several separate vote dilution claims in a single case, courts must not *rely* on data aggregated from all the challenged districts in concluding that racially polarized voting exists in each district." 478 U.S. at 59 n.28, 106 S.Ct. 2752 ; *see also Old Person I* , 230 F.3d at 1119 n.3 ("The district court was careful to ensure that statistical data relating to racially polarized voting was not aggregated across districts, as the Supreme Court has noted must not be done in a § 2 case."). Dr. Kousser did not analyze the results of the exogenous elections within the boundaries of each supervisorial district in Kern County, but rather did so for the County as a whole.

The court concludes that defendants read the precedents upon which they rely too literally, overlooking the context in which *Gingles* and *Old Person I* were decided. Both of those cases involved challenges to legislative districts dispersed throughout a state. *See Gingles* , 478 U.S. at 101, 106 S.Ct. 2752 (noting that the challenged districts were "distributed throughout the State of North Carolina") (O'Connor, J., concurring); *Old Person I* , 230 F.3d at 1119 (plaintiffs alleged vote dilution "in two separate geographic areas of the state [of Montana]"). The Seventh Circuit recognized this distinction in *Baird v. Consolidated City of Indianapolis* , 976 F.2d 357 (7th Cir. 1992), finding that "[r]eferences in *Gingles* to district-specific inquiries assume that each multi-member district spans a different part of the state, with different minority populations and, perhaps, different
1122 cohesiveness of majority and minority voters."[13] *Id.* at 360.*1122 *Gingles* and *Old Person I* involved "separate vote dilution claims in a single case." *Gingles* , 478 U.S. at 59 n.28, 106 S.Ct. 2752. Plaintiffs' challenge here, however, is to Kern County's Board of Supervisors redistricting plan—a single vote dilution claim in a single
1123 case.[14] To *1123 require a mechanistic application of *Gingles* ' "district-by-district" requirement would be nonsensical in this context, where the challenge is to the drawing of the County's supervisorial boundaries as a whole. Statistical evidence of voting behavior in each supervisorial district would provide no greater insight into how the supervisorial district boundaries should be drawn. The court therefore rejects the notion that county-wide exogenous election data is irrelevant in the context of § 2 cases such as this one.

13 Plaintiffs petitioned to the Supreme Court for a writ of certiorari, specifically identifying as a question for review whether "the Seventh Circuit's decision [is] in conflict with *Gingles* and 42 U.S.C. 1973 by failing to engage in a 'district specific' analysis of the challenged election practice?" Petition for Writ of Certiorari, at *i, *Baird v. Consol. City of Indianapolis* , 1993 WL 13075666 (1993) (No. 92–1415). The Supreme Court denied certiorari. *Baird v. City of Indianapolis* , 508 U.S. 907, 113 S.Ct. 2334, 124 L.Ed.2d 246 (1993). Although *Baird* involved overlapping single- and multi-member districts, its rationale nonetheless applies here.

14 In a footnote in a reply brief to a motion *in limine* , defendants state that plaintiffs lack standing to challenge the entire Kern County redistricting map. (Doc. No. 153 at 5 n.4.) Defendants contend in that footnote that, to have standing to challenge the entire redistricting map, there must be plaintiffs from all five supervisorial districts. (*Id.*) Plaintiffs here reside either in District 1 or District 4. Out of an abundance of caution, and because "[t]he question of standing is not subject to waiver," *United States v. Hays* , 515 U.S. 737, 742, 115 S.Ct. 2431, 132 L.Ed.2d 635 (1995), the court briefly addresses the issue here.

The Supreme Court has held that plaintiffs alleging racial gerrymandering in violation of the Fourteenth Amendment must live in the challenged district in order to have standing, absent specific evidence that "the plaintiff has personally been subjected to a racial classification." *Id.* at 745, 115 S.Ct. 2431 ; *see also Ala. Legislative Black Caucus v. Alabama* , —— U.S. ——, 135 S.Ct. 1257, 1265, 191 L.Ed.2d 314 (2015) ("A racial gerrymandering claim ... applies to the boundaries of individual districts. It applies district-by-district."); *Bush* , 517 U.S. at 965, 116 S.Ct. 1941. However, plaintiffs do not allege a Fourteenth Amendment racial gerrymandering claim here, but rather a vote dilution claim under § 2 of the Voting Rights Act. These theories of liability are "analytically distinct" from one another. *Shaw* , 509 U.S. at 652, 113 S.Ct. 2816 ; *see also Perez* , 250 F.Supp.3d at 217 ; *Cano* , 211 F.Supp.2d at 1220. "Whereas a vote dilution claim alleges that the State has enacted a particular voting scheme as a purposeful device to minimize or cancel out the voting potential of racial or ethnic minorities, an action disadvantaging voters of a particular race, the essence of the equal protection claim recognized in *Shaw* is that the State has used race as a basis for separating voters into districts." *Miller v. Johnson* , 515 U.S. 900, 911, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995) (citations and internal quotation marks omitted). This distinction applies similarly to the issue of standing. Multiple courts have, therefore, concluded that the rule announced in *Hays* requiring a plaintiff to live in the challenged district is inapplicable to vote dilution cases such as this one. *See Whitford v. Gill* , 218 F.Supp.3d 837, 929 (W.D. Wis. 2016) ("The rationale and holding of *Hays* have no application" in vote dilution cases), *appeal docketed* , —— U.S. ——, 137 S.Ct. 2268, 198 L.Ed.2d 698 (2017) ; *Cannon v. Durham Cty. Bd. of Elections* , 959 F.Supp. 289, 297 n.5 (E.D.N.C.) ("[T]his court will not import the standing rules created for a *Shaw* claim to a traditional vote dilution claim."), *aff'd* , 129 F.3d 116 (4th Cir. 1997) ; *Perez v. Texas* , No. CIV.A. 11-CA-360-OLG, 2011 WL 9160142, at *9 (W.D. Tex. Sept. 2, 2011). While there are courts that have reached the opposite conclusion, *see Hall v. Virginia* , 276 F.Supp.2d 528, 531 (E.D. Va. 2003) ("Though not precisely on point, the Court is persuaded by the principle established in *Hays* "), *aff'd* , 385 F.3d 421 (4th Cir. 2004) ; *Old Person v. Brown* , 182 F.Supp.2d 1002, 1006 (D. Mont.) (citing *Hays* , 515 U.S. at 745, 115 S.Ct. 2431), *aff'd* , 312 F.3d 1036 (9th Cir. 2002) ; *Comm. for a Fair & Balanced Map v. Ill. Bd. of Elections* , No. 1:11-CV-5065, 2011 WL 5185567, at *1 (N.D. Ill. Nov. 1, 2011), no opinion of binding authority has so held and the court does not find the decisions cited immediately above to be persuasive on this point. Notably, in affirming *Hall* and *Old Person* , the Fourth and Ninth Circuits explicitly declined to endorse the district courts' standing analyses. *See Hall* , 385 F.3d at 427 n.10 ("We decline to address ... whether the district court erred in dismissing seven of the nine plaintiffs for lack of standing."); *Old Person II* , 312 F.3d at 1039–40 ("The district court concluded that the plaintiffs lacked standing to allege dilution beyond the [ ]Districts where they reside. We need not reach that issue.").

This court concludes that the standing rule announced in *Hays* is inapplicable to plaintiffs' vote dilution claim here. Plaintiffs challenge Kern County's entire redistricting scheme, alleging Kern County should have two majority-Latino supervisorial districts, not one. *See Miller* , 515 U.S. at 911, 115 S.Ct. 2475 (noting a vote dilution claim challenges a "particular voting scheme," and the resulting harm is therefore not confined to specific segments of that scheme); *see also Perez* , 2011 WL 9160142, at *9 ("[Plaintiff] contends that *he* has suffered an injury because *his* vote for *his* preferred candidate in *his* district has been diluted ... the fact that his own vote has been allegedly diluted because some voters in his district have been moved to other districts is not an assertion of other voter's rights"); *Whitford* , 218 F.Supp.3d at 929 ("The harm is the result of the entire map, not simply the configuration of a particular district."). Therefore, the court is persuaded that plaintiffs have standing to bring the vote dilution claim alleged in this action.

B. Dr. Katz's Critique

Defendants do not dispute the results that Dr. Kousser generated through the application of ER and EI. In fact, defendants' expert Dr. Jonathan Katz testified that he achieved similar estimates of racial polarization when he conducted his own analyses of Kern County supervisorial elections. (Trial Tr., Vol. 8, 1380:7–14.) Defendants do dispute, however, what conclusions may be drawn from those estimates. Dr. Katz critiques Dr. Kousser's conclusions primarily on the ground that, due to the lack of homogeneous precincts in Kern County, ER and EI produce potentially inaccurate results. (DX 622 at 7.) According to Dr. Katz, the method of bounds—one of EI's chief advantages over ER—is only effective when there are "sufficient" homogeneous precincts such that the bounds are informative. (*Id.* at 4.) However, Dr. Katz also testified that Kern County lacks a sufficient number of homogeneous Latino precincts, resulting in estimates that "may be wildly off." (Trial Tr., Vol. 8, 1378:4–10.) Defendants rely on this testimony of Dr. Katz in arguing that because Dr. Kousser's analyses are insufficiently reliable, the court cannot draw any statistically valid conclusions from them. (DX 622 at 7.)

To illustrate the potential inaccuracy of ER and EI as applied to Kern County, Dr. Katz performed ER and EI analyses of Latino Democratic registration in Kern County and compared those estimates to the true values. (*Id.* at 7–9.) Dr. Katz's ER and EI analyses, which Dr. Kousser does not dispute, estimated Democratic registration among Latinos in Kern County to be over 70 percent, whereas the true values hover over 50 percent. (*Id.*) According to Dr. Katz, this disparity casts serious doubt on the accuracy of Dr. Kousser's findings of racially polarized voting in Kern County elections.

Although "absolute perfection on the base statistical data is not to be expected, a trial court should not ignore the imperfections of the data used nor the limitations of statistical analysis." *Overton v. City of Austin* , 871 F.2d 529, 539 (5th Cir. 1989). Though Dr. Katz's critiques are worthy of consideration, the court is unpersuaded that these criticisms preclude plaintiffs from demonstrating Latino political cohesiveness by a preponderance of the evidence. The court certainly recognizes the obvious—that larger numbers of homogeneous precincts produce more accurate EI estimates. But the court finds no basis to conclude that there is some minimum number of homogeneous precincts required before ER and EI analysis have any probative value in a § 2 case. Dr. Katz
1124 admitted that Gary King, the political scientist who developed EI, indicated no *1124 bright line percentage of homogeneous precincts is necessary in order for ecological inference estimates to be reliable. (Trial Tr., Vol. 8, 1374:1–12.) Plaintiff's expert Dr. Kousser also could not identify any scholarly articles on ecological inference that set a threshold of homogeneity, below which the methodology should be rejected as unreliable. (PX 137 at ¶ 50.) Dr. Kousser acknowledged that tomography plots, as discussed in Gary King's seminal book introducing ecological inference, provided one means of assessing the reliability of ecological inference. (*Id.*) Defendants' expert, Dr. Katz, also acknowledged that tomography plots could have been used to assess whether there were sufficient homogeneous precincts here, but he did not produce any such plots at trial or otherwise. (*See* Trial Tr., Vol. 8, 1345:6–17.) Dr. Katz himself did not opine on what the threshold of homogeneity would need to be here in order to produce reliable statistical results. Indeed, at trial, he went so far as declining to concede that even a hypothetical county with 990 homogeneous precincts out of 1,000 precincts total would have sufficient homogeneity to render ER and EI analyses reliable. (Trial Tr., Vol. 8, 1372:12–1373:1.) Yet, if courts required this high degree of homogeneity as a prerequisite for considering ER and EI evidence, that evidence would be unnecessary, as an HPA analysis could simply be conducted instead and would provide superior estimates.

In addition to this position lacking support in the field of statistics, numerous cases finding racial polarization have relied on statistical analyses that did not include HPA and made no mention of homogeneous precincts whatsoever. *See, e.g.* , *Patino v. City of Pasadena* , 230 F.Supp.3d 667, 691 (S.D. Tex. 2017) (experts used only EI to analyze racially polarized voting with no mention of homogeneous precincts); *Montes* , 40 F.Supp.3d at 1377 (same); *Hall* , 108 F.Supp.3d at 433 (same); *Cisneros v. Pasadena Indep. Sch. Dist.* , No. 4:12-cv-2579,

2014 WL 1668500 (S.D. Tex. Apr. 25, 2014) (experts used ER and EI with no mention of homogeneous precincts); *Rodriguez* , 964 F.Supp.2d at 686 (same). This persuasively demonstrates that an HPA analysis, while perhaps more reliable than ER or EI, is not required as a matter of law in order for a plaintiff to prove their § 2 case.

Notably, in *Benavidez v. City of Irving* , the court explicitly acknowledged that "[t]here are no homogeneous Hispanic precincts in any of these elections in Irving, so this methodology cannot be applied to derive estimates of Hispanic voter's candidate preferences." 638 F.Supp.2d at 723 (N.D. Tex. 2009). Despite the lack of homogeneous Hispanic precincts, the court went on to credit the ER and EI analyses conducted by plaintiff's expert. *Id.* Similarly, in *Teague v. Attala County* , the Fifth Circuit held that the district court erred when it concluded that plaintiffs had failed to demonstrate racial polarization in Attala County. 92 F.3d 283, 291–92 (5th Cir. 1996). In that case, the district court had criticized the methodology employed by the plaintiffs' experts because there were no homogeneously black precincts with a 90 percent black voting age population. As the Fifth Circuit noted, however, "such a district does not exist in Attala County." *Id.* at 288. Despite the lack of any 90 percent homogeneous black precincts, the Fifth Circuit reviewed the statistical evidence from the regression analysis and found "overwhelming evidence of racial polarization. The results of the statistical analyses in this case create a strong presumption in favor of a finding of black political cohesion and racial bloc voting." *Id.* at 291.

As the field of statistics evolves, formerly reliable methodology may be undermined by subsequent refinements. However, *1125 the court is not persuaded that the methodologies employed by Dr. Kousser here 1125
have been undermined in any way. The court finds that Dr. Katz's insistence on "sufficient" homogeneous precincts is undercut by his own work in previous cases, where he performed ER and EI analyses without any reference to the number of homogeneous precincts in the relevant jurisdiction. (*See* Trial Tr., Vol. 8, 1356:1–1359:5.) Moreover, in the present case, Dr. Katz failed to provide the court with any method for determining how many homogeneous precincts would be sufficient in order to obtain reliable results by way of ER and EI. Defendants have provided the court with no basis upon which to depart from those cases which have relied upon ER and EI analyses even in the absence of HPA. The court acknowledges the disparity between the estimates produced by ER and EI in Dr. Katz's analysis of Latino Democratic registration compared to the known values, but is not persuaded as to the implications that defendants would have the court draw therefrom. Notably, Dr. Katz was unable to explain the relationship between registration and voting—only to say that they are "related"—while also acknowledging that they are different and may have different geographical distributions. (Trial Tr., Vol. 8, 1379:4–16.) The court has no reason to believe that the cause of the inflated estimates of Latino Democratic registration is due to insufficient homogeneous precincts as suggested by Dr. Katz, rather than to accept Dr. Kousser's rational explanation—that in heavily Latino precincts, non-Latinos tend to register as Democrats at a higher rate than non-Latinos in other precincts. (PX 137 at ¶¶ 53–57; Trial Tr., Vol. 4, 648:11–651:16.)

The court recognizes that ER and EI are, ultimately, only estimates, which may not perfectly reflect true values. Even recognizing the limitations of these methodologies, however, the court need not insist on mathematical exactitude in assessing racial polarization. As one district court has explained:

> [A]n approach might yield an inexact result for purposes of a hypothetical mathematical challenge, but could still be correlative, probative, and sufficiently accurate to bear on the ultimate issue of racial bloc voting. The standard of proof here is preponderance, not mathematical certainty.

City of Euclid , 580 F.Supp.2d at 602. Here, Dr. Katz's critique does not raise a doubt sufficient to refute Dr. Kousser's analyses or call them into serious question. Accordingly, the court credits Dr. Kousser's analyses of racial polarization.

C. Non–Statistical Evidence of Cohesiveness

The evidence of Latino political cohesiveness in Kern County provided by Dr. Kousser is corroborated by other non-statistical evidence. Courts may look to such evidence to demonstrate political cohesiveness, since "[t]he experiences and observations of individuals involved in the political process are clearly relevant to the question of whether the minority group is politically cohesive." *Sanchez v. Bond* , 875 F.2d 1488, 1494 (10th Cir. 1989) ; *see also Pope v. County of Albany,* 94 F.Supp.3d 302, 321 (N.D.N.Y. 2015) ; *Large v. Fremont County* , 709 F.Supp.2d 1176, 1196, 1199–1202 (D. Wyo. 2010) ; *Bone Shirt* , 336 F.Supp.2d at 1004 ; *Cuthair v. Montezuma–Cortez, Colo. Sch. Dist.* , 7 F.Supp.2d 1152, 1168 (D. Colo. 1998) (finding testimony of experienced local politicians "strongly persuasive and highly probative of minority vote dilution").

Plaintiffs presented lay testimony at trial evidencing cohesion among Latinos in Kern County. Several lay witnesses involved in canvassing for Latino candidates for the Board of Supervisors testified that *1126 Latino voters supported Latino candidates. (*See* Trial Tr., Vol. 2, 246:17–25; 293:17–294:3.) Other lay witnesses testified about the very different receptions they received canvassing in Latino communities versus Anglo communities. For example, plaintiff Gary Rodriguez observed that unlike in Anglo communities, Latino communities were excited about having "a like person" run for office, not simply by virtue of being Latino, but because a Latino candidate was "somebody that lives on your side of town that understands the issues that are facing your side of town." (*See* Trial Tr., Vol. 2, 291:5–292:5.) Plaintiff Dorothy Velazquez testified that when she canvassed in 2016 for Emilio Huerta for the 21st congressional district, Latino communities in Wasco, Delano, and McFarland were excited and receptive about Huerta's candidacy, whereas in Anglo communities in Bakersfield, some residents would shut the door and refuse to speak to her. (*See* Trial Tr., Vol. 2, 264:1–266:16.) Support by Latino voters for Latino candidates was also expressed at the August 9, 2011 public hearing on redistricting before the Board of Supervisors, where one Latino resident took to the microphone and stated, "I would love the opportunity of being able to see people up there on the Board of Supervisors to look more like me than not like me." (JX 30 at 39.)

Plaintiffs also presented testimony from two individuals who ran for the Kern County Board of Supervisors, Sam Ramirez and Leticia Perez, both of whom echoed the differences in campaigning in Latino versus Anglo communities. Mr. Ramirez, who ran for District 1 Supervisor in 2012, testified that the communities emphasized different concerns: in Bakersfield and Ridgecrest, which had more Anglo voters, constituents were most interested in parks, water rates, and base realignment and closure, respectively. (*See* Trial Tr., Vol. 3, 370:4–16.) By contrast, in Delano, McFarland, and Shafter—communities with heavy Latino populations—constituents primarily expressed concerns about the need for jobs, ways to address crime, and water quality. (*Id.*) Ramirez also described differences in his experiences while campaigning, observing that he had a "better connection" with Latino constituents in Delano, McFarland, and Shafter in part because he, like the majority of those constituents, is of Mexican descent, and could communicate with them in Spanish if needed. (*Id.* at 370:17–371:13.) Mr. Ramirez also noted that those communities were largely agriculture-focused and the residents were familiar with the history of the United Farm Workers and Cesar Chavez. (*Id.*) Ramirez testified that in Ridgecrest, a predominantly Anglo community, he felt more disconnected from those constituents because he did not grow up near there and did not work or know anyone who worked at the Naval Air Weapons Station. (*Id.* at 371:14–18.) Ramirez was ultimately unsuccessful in his campaign for District 1 Supervisor,

coming in fourth in the June 2012 primary. (*Id.* at 372:2–7.) Analyzing precinct results post-election, Ramirez learned that he received the most votes of any primary candidate in both Delano and McFarland, and the second-most votes in Shafter. (*Id.* at 372:8–18.)

Supervisor Leticia Perez testified that during her campaign for District 5 Supervisor in 2012, she received a very warm and positive reception while campaigning in Latino neighborhoods in East Bakersfield, Arvin, and Lamont. (*See* Trial Tr., Vol. 5, 808:8–16.) In Oleander, however, an Anglo neighborhood that had been moved into District 5 in 2011, Supervisor Perez described her reception as "the exact opposite." (*Id.* at 808:19–20.) Supervisor Perez testified that in her experience campaigning throughout the state of California over two
1127 decades, Oleander was the first and only place where she had registered Democrats slam the door in her *1127
face, unlike in the Latino communities of her district, where she was able to have meaningful conversations with constituents regarding the concerns of the community, including street lights and stray dogs. (*Id.* at 808:22–810:2.)

The foregoing anecdotal evidence of Latino political cohesiveness in Kern County was not rebutted by any of the witnesses presented by defendants at trial. Defendants argue in their post-trial brief that testimony from Mr. Ramirez and Supervisor Perez amounted to only "vague insinuations of racial motivation," in contrast to the explicit racial statements made in connection with campaigns presented, for instance, by the plaintiffs in *Patino* , 230 F.Supp.3d at 685–86, 714–15. (Doc. No. 186 at 5 n.10.) In advancing this argument, defendants misapprehend the scope of the second *Gingles* precondition. That second precondition examines whether Latino voters cohere around particular candidates or particular issues; it is not an inquiry into whether non-Latinos vote with racial motivation or bias. *See Blaine County* , 363 F.3d at 912 ("The County ... contends that the district court erred by failing to require proof that white bloc voting was the result of racial bias in the electorate. But as we have explained, 'proof of groupwide or individual discriminatory motives has no part in a vote dilution claim.' ") (quoting *Ruiz* , 160 F.3d at 557). Accordingly, a lack of evidence of explicit racial statements by non-Latino voters does not render the anecdotal testimony non-probative of Latino political cohesiveness.[15]

15 The court notes that the evidence introduced at trial in this case does include at least some explicit racial statements made by members of the public during the August 2, 2011 redistricting hearing before the Board of Supervisors. At that hearing, one member of the public commented as follows: "Special interest groups always want to make big changes so they can shove their views down our throat. I say to them if you do—do not like the views that's created in your district, then move.... All I've heard is Hispanics tonight. How about the rest of us?" (JX 27 at 22.) Later in the hearing, presumably in response to this comment, another individual in attendance at the public hearing replied, "I hear, like, 'special interest.' You know, we're just like Americans.... I don't understand why people feel so threat—threatened at the word 'Latino.' " (*Id.* at 39.)

In light of the statistical evidence of racial polarization, as well as the testimony regarding Latino political cohesiveness by persons familiar with Kern County, the court finds that plaintiffs' have established that Latinos in Kern County are politically cohesive.

III. *Gingles* III—Majority Bloc Voting and the Usual Defeat of Latino–Preferred Candidates

The third *Gingles* precondition is satisfied where "the white majority votes sufficiently as a bloc to enable it, in the absence of special circumstances, usually to defeat the minority's preferred candidate." *Gingles* , 478 U.S. at 50–51, 106 S.Ct. 2752. In this context, "usually" has been interpreted by the Ninth Circuit to mean more than half of the time. *Old Person I* , 230 F.3d at 1122. An analysis of prong three proceeds in three steps: first, by

identifying the minority-preferred candidates; second, by assessing whether the white majority votes as a bloc to usually defeat the minority-preferred candidate; and third, resolving whether there were special circumstances present when the minority-preferred candidates won. *Bone Shirt v. Hazeltine* , 461 F.3d 1011, 1020 (8th Cir. 2006) ; *see also Gingles* , 478 U.S. at 51, 106 S.Ct. 2752 ; *Old Person I* , 230 F.3d at 1121–22.

Having credited Dr. Kousser's estimates with respect to the second *Gingles* precondition, the court again relies on Dr. Kousser's estimates in examining whether *1128 plaintiffs have satisfied this third *Gingles* precondition.

A. Endogenous Elections

Of the five endogenous elections for Kern County Board of Supervisors, Dr. Kousser concluded that four contests exhibited racial polarization. According to Dr. Kousser's estimates, the Latino-preferred candidate in the 2004 election for District 4 Supervisor was Joel Moreno, who lost; the Latino-preferred candidate in the 2010 primary for District 2 Supervisor was Zack Scrivner, who won; the Latino-preferred candidate in the 2012 primary for District 1 Supervisor was Sam Ramirez, who lost; and the Latino-preferred candidate in the 2012 election for District 5 Supervisor was Leticia Perez, who won. (PX 137 at Tables V–1–V–5.)

In one of the two racially polarized elections where the Latino-preferred candidate won, it should be noted that the Latino-preferred candidate, Leticia Perez, won in District 5, Kern County's sole majority Latino district. This election therefore does not weigh in the court's assessment of the usual defeat of Latino-preferred candidates, because an analysis of the third *Gingles* precondition applies only to districts with a majority of white citizens. *Johnson v. De Grandy* , 512 U.S. 997, 1003–04, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994) (ratifying the district court's finding that there was a "tendency of non-Hispanic whites to vote as a bloc to bar minority groups from electing their chosen candidates *except in a district where a given minority makes up a voting majority* ") (emphasis added) (citation omitted). The Ninth Circuit followed this same reasoning in *Old Person I* , 230 F.3d at 1122, where it recognized that Indian electoral success in majority-Indian districts was relevant only to the totality of the circumstances inquiry, and not as to the third *Gingles* precondition. As the Ninth Circuit explained, "[t]o do otherwise would permit white bloc voting in a majority-white district to be washed clean by electoral success in neighboring majority-Indian districts." *Id.* at 1122 ; *see also Bone Shirt* , 336 F.Supp.2d at 1011.

Defendants urge this court to discount the defeats of Latino-preferred candidates Joel Moreno and Sam Ramirez, contending that neither candidate presented a viable or serious candidacy, and that this, rather than Anglo bloc voting, resulted in their respective defeats. *See Campos v. City of Baytown* , 840 F.2d 1240, 1245 n.7 (5th Cir. 1988) ("If the minority candidate is not serious and gains little support from any segment of the community, it cannot be said that the minority community 'sponsored' the candidate and that election need not be examined."). In distinguishing between serious and non-serious candidates, a court may consider, among other factors, the number of votes received by a candidate, the percentage of support received from a segment of the population, and the amount of work done and money spent by the candidate. *See Perez v. Pasadena Indep. Sch. Dist.* , 958 F.Supp. 1196, 1222 (S.D. Tex. 1997).

In his 2004 run for District 4 Supervisor, Moreno raised less than $2,000. (DX 586 at 33–40.) In his 2012 campaign for District 1 Supervisor, Ramirez raised approximately $4,000. (DX 586 at 695–704.) Defendants argue that in light of these figures, Moreno and Ramirez cannot be considered to have been serious candidates. But campaign financing is only one possible metric by which to judge the seriousness of a campaign. *See Rollins v. Fort Bend Indep. Sch. Dist.* , 89 F.3d 1205, 1215 n.20 (5th Cir. 1996) (rejecting the defendant's emphasis on fundraising metrics and stating "the emphasis on the money raised and spent ignores other serious campaign efforts that involve little or no money"). Despite limited financial resources, Moreno managed to

1129 *1129 win over 80 percent of the Latino vote, while Ramirez managed to garner approximately 66 percent of the Latino vote in an eight-person contest. (PX 137 at Tables V–1, V–4.) Thus, it cannot be said that these candidates gained "little support from any segment of the community." *Campos* , 840 F.2d at 1245 n.7.

It would be inappropriate for the court to conduct any further post-mortem examination of these Board of Supervisor elections. *See Ruiz* , 160 F.3d at 558 ("It would be a disservice to both the individual candidates and the goals of the Voting Rights Act for federal courts, years after an election, to scrutinize the qualifications of minority candidates who run for public office in jurisdictions with historically white-only officeholders."); *see also City of Euclid* , 580 F.Supp.2d at 604 ("The issue before the Court is not who ran a better campaign, or who this Court objectively believes deserved to win a particular race, but who voters would have elected if given a fair and equal opportunity to participate in the political process."). Crediting speculation as to whether Latino candidates have lost elections due to their qualifications or the quality of their campaigns perpetuates a vicious cycle, where "the quality of any given campaign turns on many of the same factors that would justify a conclusion that vote dilution exists—... access to campaign funds (which could be impacted by socioeconomic factors, cross-pollinization of fundraising by candidates, perceptions of likely ability to win, etc.) and access to experienced campaign personnel." *City of Euclid* , 580 F.Supp.2d at 604.

In sum, plaintiffs demonstrated at trial that two out of five endogenous elections featured not simply racial polarization, but *legally significant* racial polarization, in that the Latino-preferred candidate lost. Although the results in two out of five elections would not normally suffice to demonstrate the usual defeat of Latino-preferred candidates, the characteristics of those other three elections must be taken into account here. Specifically, the three remaining elections in this sample were atypical: the Latino-preferred candidate won the 2012 election for District 5 Supervisor, but this election took place in a majority-Latino district and should therefore be disregarded in examining usual defeat. *See De Grandy* , 512 U.S. at 1003–04, 114 S.Ct. 2647 ; *Old Person I* , 230 F.3d at 1122. Moreover, both the 2010 primary and runoff for District 2 Supervisor included candidate Steve Perez, whom Dr. Kousser characterized as an anomaly because he was the only Latino candidate in the elections analyzed who consistently fared better with non-Hispanic white and black voters than Latino voters, or whose support evidenced no racial polarization. (*See* Trial Tr., Vol. 4, 601:12–602:2.) Steve Perez made it to the top two in the 2010 District 2 primary with significant support from non-Hispanic white and black voters, and though he lost the District 2 runoff, he received roughly equal support from Latino and non-Latino voters. (PX 137 at Tables V–2, V–3.) Because the two 2010 elections feature the same apparently anomalous candidate, the court will not afford them each the same weight as the other endogenous elections.

Despite this, it is difficult to discern typical voting results from these elections alone. The court is left with, in sum, two elections that support a finding in plaintiffs' favor, one election that weighs neither for nor against plaintiffs, and two elections—albeit elections the court is persuaded were anomalous—that support a finding in defendants' favor. Defendants would have this court disregard any further evidence outside of these five
1130 endogenous elections. (Doc. No. 137 at 14 (citing *1130 *Mo. State Conf. of NAACP v. Ferguson–Florissant Sch. Dist.* , 201 F.Supp.3d 1006, 1059 (E.D. Mo. 2016) (explaining the court "need not supplement endogenous election data" from five elections where the evidence was sufficient "to discern typical voting behavior and usual results"))).[16] That is not what the law requires. Rather, it has been recognized that "[h]ow many elections must be studied to make [a vote dilution] determination depends on the particular circumstances of the locale." *Teague* , 92 F.3d at 289 (citing *Gingles* , 478 U.S. at 57 n.25, 106 S.Ct. 2752). The court cannot determine whether the five endogenous elections illustrate "typical voting behavior and usual results," because no clear

pattern emerges from them. *Mo. State Conf. of NAACP* , 201 F.Supp.3d at 1059. For this reason, it is appropriate for the court to turn to consideration of the evidence presented at trial regarding exogenous elections.

16 It bears observing that the court in *Missouri State Conference of NAACP* did, in fact, consider evidence from exogenous elections. Particularly, the court looked at all of the evidence presented and determined that results from the exogenous elections did not cast doubt on the evidence of racial polarization appearing in the endogenous elections. 201 F.Supp.3d at 1059–60. The court admittedly found that the evidence available from the exogenous elections was not as probative for various reasons, notably because the defendant's expert did not conduct a racial polarization analysis at all. *Id.* Nevertheless, this decision does not stand for the proposition that courts should not consider evidence of exogenous elections in analyzing the third *Gingles* precondition.

B. Exogenous Elections

In the 2006 election for Sheriff, the Latino-preferred candidate was Chevy Garza, who lost; in the 2010 Board of Education runoff, the Latino-preferred candidate was Marco Flores, who lost; in the 2012 election for Kern County Community College Board, there was no racial polarization; and in the 2014 election for Assessor, the Latino-preferred candidate was Lupe Esquivias, who lost. (PX 137 at Tables VI–1, VI–2, VI–3, VI–4.) Therefore, Latino-preferred candidates lost three out of the four local exogenous elections analyzed by Dr. Kousser. (*Id.* at Table R–1.) Of the remaining exogenous statewide elections, Dr. Kousser found that the Latino-preferred candidate lost nine times out of thirteen elections. (*Id.*)

Defendants argue that the exogenous elections analyzed by Dr. Kousser are not sufficiently similar to the endogenous elections to be probative of typical voting outcomes in Kern County. Defendants' witness Karen Jeanne Rhea, Assistant Registrar of Voters for Kern County, testified that for state elections, candidates may have their party labels printed on the ballot, as well as any party endorsements. (Trial Tr., Vol. 10, 1640:6–22). Defendants argue that the state exogenous elections therefore contain partisan cues that make them sufficiently dissimilar from local, non-partisan elections. Defendants' expert Dr. Katz testified that voting behavior varies in high profile versus low profile elections, as well as in partisan versus non-partisan elections. (Trial Tr., Vol. 8, 1338:25–1339:13.) He also criticized Dr. Kousser's examination of Democratic primary elections, because primaries "are restricted to a subset of eligible voters unlike the supervisor races." (*Id.*)

However, defendants proffered no evidence or satisfactory explanation at trial as to why a primary election, even if limited to a particular subset of voters, is sufficiently dissimilar to an election for Board of Supervisors to have no probative value with respect to the relevant inquiry in this case. Moreover, defendants presented no evidence at trial suggesting that partisanship, rather than race, drives the results in the exogenous elections and
1131 better explains *1131 the usual defeat of Latino candidates in those elections in Kern County.[17] *Cf. Cisneros* , 2014 WL 1668500, at *19, *22 (finding partisan, exogenous elections to be of limited probative value because results from exogenous elections ran counter to the results from endogenous elections, and the defense expert presented evidence that polarization in exogenous elections was driven by the party, rather than the race or ethnicity, of the candidate). Finally, defendants only presented evidence of partisan cues on the ballots for certain statewide contests. Thus, even if the court were to limit its consideration of exogenous elections only to local contests without such partisan cues, plaintiffs have shown that three out of four of the local exogenous elections analyzed by Dr. Kousser featured legally significant racial polarization where the Latino-preferred candidate lost. (PX 137 at Tables R–1, VI–1, VI–2, VI–3, VI–4.)

17 Defendants argued in closing that partisanship was driving polarization in the exogenous state elections. (Trial Tr., Vol. 11, 1830:24–1831:9.) No evidence introduced at trial supports this hypothesis.

Accordingly, the court concludes that the statistical evidence presented by plaintiffs at trial, considering both endogenous and exogenous elections together, is sufficient to satisfy the third *Gingles* precondition that the majority votes sufficiently as a bloc to usually defeat minority-preferred candidates.

IV. Totality of the Circumstances

Satisfaction of the three *Gingles* preconditions is not the end of the inquiry. To prevail, plaintiffs must also show that, under the "totality of [the] circumstances," members of a minority group "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b). It will only be, however, "the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of the circumstances." *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.* , 4 F.3d 1103, 1135 (3d Cir. 1993) ; *see also Teague* , 92 F.3d at 293 ; *Clark v. Calhoun County* , 88 F.3d 1393, 1396 (5th Cir. 1996) ; *NAACP v. City of Niagara Falls* , 65 F.3d 1002, 1019 n.21 (2d Cir. 1995).

Having found that plaintiffs have established all three *Gingles* preconditions by a preponderance of the evidence, the court proceeds to an analysis of the totality of the circumstances. In conducting this analysis, courts look to the following non-exhaustive Senate Factors: (1) history of official discrimination; (2) racially polarized voting; (3) the presence of voting practices or procedures that tend to subjugate the minority group's voting preferences; (4) the exclusion of minority group members from the candidate slating process; (5) the extent to which the minority group bears the effects of past discrimination in areas that tend to hinder its members' ability to participate effectively in the political process; (6) the use of subtle or overt racial campaign appeals; (7) the extent to which members of the minority group have succeeded in being elected to public office; (8) the extent to which elected officials are responsive to the needs of the minority group; and (9) the tenuousness of the policy underlying the challenged voting practice or procedures. *Gingles* , 478 U.S. at 44–45, 106 S.Ct. 2752. The court must also examine whether the number of districts in which the minority constitutes an effective majority is roughly proportional to the minority group's share of the CVAP in the relevant area. *See* 1132*1132 *LULAC* , 548 U.S. at 436, 126 S.Ct. 2594 ; *Old Person I* , 230 F.3d at 1129.

There is no requirement that any particular number of the Senate Factors be proved; rather, "the question whether the political processes are equally open depends upon a searching practical evaluation of the past and present reality, and on a functional view of the political process." *Gingles* , 478 U.S. at 45, 106 S.Ct. 2752 (internal quotation marks and citation omitted). However, the Supreme Court has held that the "most important" factors bearing on § 2 challenges are Senate Factors Two and Seven—the extent to which voting is racially polarized, and the extent to which minorities have been elected to public office in the jurisdiction. *Id.* at 48, 106 S.Ct. 2752 n.15 (citing S. REP. NO. 97–417 at 28–29) ; *Blaine County* , 363 F.3d at 903 ; *Old Person I* , 230 F.3d at 1128. The Ninth Circuit has also identified "proportionality"—the relation of the number of majority-minority voting districts to the minority group's share of the relevant population—as a "third important factor." *Old Person I* , 230 F.3d at 1129. If these "important" factors are present, the other factors "are supportive of, but *not essential to* , a minority voter's claim." *Gingles* , 478 U.S. at 48 n.15, 106 S.Ct. 2752.

A. Important Factors

i. *Extent of Racially Polarized Voting (Senate Factor Two)*

Through Dr. Kousser's expert testimony and the corroborating anecdotal evidence, plaintiffs have proved by a preponderance of the evidence that voting in Kern County is racially polarized. Looking just at the five endogenous elections and the four local exogenous elections, Dr. Kousser determined that seven of the nine elections were racially polarized. (PX 137 at Table R–1.) Of these racially polarized elections, the Latino-preferred candidate consistently garnered a statistically significantly greater share of the Latino vote than the non-Latino vote. For example:

- In the 2004 election for District 4 Supervisor, the Latino-preferred candidate gained 82 percent of the Latino vote, but only 12.8 percent of the non-Hispanic white and black vote. (*Id.* at Table V–1.)

- In the 2012 primary for District 1 Supervisor, the Latino-preferred candidate received nearly two-thirds of the Latino vote, even with eight candidates in the race, but only 2 percent of the non-Hispanic white and black vote. (*Id.* at Table V–4.)

- In the 2012 election for District 5 Supervisor, the Latino-preferred candidate received 76 percent of the Latino vote, and only 36 percent of the non-Hispanic white and black vote. (*Id.* at Table V–5.)

- In the 2006 election for County Sheriff, a seven-person contest, the top two Latino-preferred candidates secured approximately 64 percent of the Latino vote, but only 13 percent of the non-Hispanic white and black vote between the two of them. (*Id.* at Table VI–1.)

- In the 2010 Board of Education runoff, the Latino-preferred candidate won 80.6 percent of the Latino vote, and only 15.4 percent of the non-Hispanic white and black vote. (*Id.* at Table VI–2.)

- In the 2014 election for County Assessor, the Latino-preferred candidate earned 68 percent of the Latino vote, and only 4.8 percent of the non-Hispanic white and black vote. (*Id.* at Table VI–4.)

Overall, the court finds that the evidence before the court supports a finding that voting in Kern County is frequently racially *1133 polarized. Consideration of the second Senate Factor weighs in plaintiffs' favor.

ii. *Success Rate of Latino Candidates (Senate Factor Seven)*

The seventh Senate Factor assesses the extent to which members of the minority group have been elected to public office in the jurisdiction. *Gingles* , 478 U.S. at 37, 106 S.Ct. 2752. In Kern County, the only Latino candidate to have been elected to the Board of Supervisors outside of the majority-Latino district is Steve Perez, who was elected in 1994 and re-elected in 1998—roughly two decades ago. Notably, Dr. Kousser's analyses indicate that of the five endogenous elections and the four local exogenous elections, the Latino candidate was defeated in seven of nine elections. (PX 137 at Tables V–1–VI–4.) In the two elections that Latino candidates won, one took place in District 5, the majority-Latino district; the other was a District 2 primary where the Latino candidate garnered second place, and thus "won" advancement to a top-two runoff, where he was eventually defeated by a non-Latino candidate. (PX 137 at Tables V–5, V–2, V–3.)

These elections demonstrate a clear pattern of defeat of Latino candidates in every district outside of District 5, the preexisting majority-Latino district. Consideration of the evidence with respect to this factor therefore also weighs in plaintiffs' favor.

iii. *Lack of Proportionality (Additional Factor)*

The Ninth Circuit has deemed proportionality a "third important factor" in the totality of the circumstances analysis. *Old Person I* , 230 F.3d at 1129. The proportionality inquiry compares the percentage of total districts that are majority-Latino with the Latino share of the citizen voting age population. *LULAC* , 548 U.S. at 436, 126 S.Ct. 2594.

At the time the County adopted its 2011 redistricting map, Latinos made up 30 percent of the CVAP in Kern County. (PX 107.) Under the County's 2011 Adopted Map, one of five, that is, 20 percent, of the supervisorial districts is majority-Latino. Strictly proportional representation would require Latinos to make up the majority in 1.5 supervisorial districts, which is not possible. The court concludes that Kern County has a "rough" proportionality of majority-Latino districts compared to the Latino citizen voting age population, which weighs in defendants' favor. *See Fairley v. Hattiesburg* , 122 F.Supp.3d 553, 578–81 (S.D. Miss. 2015) (finding two majority-African–American districts out of five to be "roughly proportional" to an African–American voting age population of 47.95 percent), *aff'd* , 662 Fed.Appx. 291, 299–301 (5th Cir. 2016).

Therefore, the court finds that, on balance, consideration of the identified important factors in the totality of the circumstances analysis weigh in plaintiffs' favor. Nevertheless, the court proceeds to consider the evidence as to the remaining supportive factors before reaching its conclusion.

B. Other Supportive Factors

i. *History of Official Discrimination (Senate Factor One)*

The first Senate Factor considers the extent of any history of official discrimination that "touched" the right of the minority group members' right to register, vote, or otherwise participate in the democratic process. *Gingles* , 478 U.S. at 36–37, 106 S.Ct. 2752. This examination of past discrimination demonstrates Congress's concern "not only with present discrimination, but with the vestiges of discrimination which may interact with present political structures to perpetuate a historical lack of access to the political *1134 system." *Rodriguez* , 964 F.Supp.2d at 778–79 (citing *Gingles* , 478 U.S. at 69, 106 S.Ct. 2752). 1134

At trial, plaintiffs offered their expert historian, Dr. Albert Camarillo, to testify as to the history of discrimination against Latinos in Kern County and in the state of California generally. Dr. Camarillo's testimony was both persuasive and essentially unrebutted. The court summarizes that testimony as follows. Kern County was settled as an agricultural community in the early 1900s, which attracted Mexican immigrants who sought work in the County's growing agricultural economy. (Trial Tr., Vol. 6, 850:19–852:19.) Although people from all across the country settled in Kern County, both Kern and Fresno County were unique in attracting a substantial out-migration of southerners from former confederate states, who brought with them not only their knowledge of farming, but also their racial attitudes, including a white supremacist ideology. (*Id.* at 853:2–854:20.) This ideology manifested in the resurgence of the Ku Klux Klan in the 1920s, which had some of its largest chapters within Kern County. (*Id.* at 873:22–874:13.) Klan members were prominent members of the community, and included Stanley Abel, an outspoken Klan member who served on the Kern County Board of Supervisors for nearly three decades. (*Id.* at 874:23–875:14.) In the 1960s, the Kern County White Citizens Council emerged in Bakersfield to push back against the civil rights movement in Kern County. (*Id.* at 898:21–899:8; Trial Tr., Vol. 7, 1035:1–11; PX 168 at 3.) The Bakersfield City Council moreover refused to censure the Kern County White Citizens Council at that time, despite pleas to do so from black and Mexican–American community leaders. (PX 168 at 3; Trial Tr., Vol. 6, 899:9–900:10.)

From the beginning of Kern County's history, race relations were inseparable from labor relations: owners and operators of farms occupied the upper class of Kern County society, while the farm workers and laborers—largely Mexican–Americans—occupied the lower class. (Trial Tr., Vol. 6, 855:3–22.) This stratification by race and class was not limited to the labor sector. The "color line" extended to housing, public accommodations, law enforcement, and education. (*Id.* at 857:3–23.) This de facto system of racial exclusion of Mexican–Americans, for which Dr. Camarillo coined the term "Jaime Crow," was present throughout the state of California from the 1920s into the 1960s, in the form of racially restrictive covenants, segregation in education, and "whites only" pools, parks, restaurants, and movie theaters. (*Id.* at 858:11–24; 881:25–884:22.) Classified advertisements about real estate for sale and rental, published in the *Bakersfield Californian* newspaper throughout the 1940s and 1950s, stated explicitly whether properties were suitable "for colored," "for Spanish," or for the "white race only." (*Id.* at 864:23–867:9; PX 167 at 19–21.) A 1969 *Fresno Bee* article quoted the former Chief of Police of Bakersfield, Robert Powers, claiming Bakersfield to be "sociologically a backward, racist community," where the police can be used to harass private citizens. (Trial Tr., Vol. 6, 910:25–911:22; PX 167 at 173.) The racial divide was also apparent through explicit signs, posted at the city limits of so-called "sundown towns," which warned people of color, typically African–Americans, that they had to leave town by sundown. (*Id.* at 875:15–876:12.) One such sign was documented as being displayed in the city of Taft in Kern County in the 1930s. (*Id.*) Even in later decades, there was evidence of intense racial discord in Kern County, including an incident as late as 1975 at Taft Community College. (*Id.* at 879:16–880:11.)

1135 Dr. Camarillo also testified about lawsuits in Kern County challenging segregation *1135 in education, including a case brought by the state of California and the Department of Justice against the Delano School District for employing explicit policies to relegate Mexican–American elementary students to the west side of Delano while maintaining the elementary schools on the east side almost exclusively white. (Trial Tr., Vol. 6, 902:3–904:7.) Evidence presented at trial suggests that Latino students continue to experience present-day discrimination in education. Dolores Huerta testified that the Dolores Huerta Foundation recently reached a settlement with Kern High School District, after discovering that African–American and Latino students were being disproportionately suspended or expelled compared to white students. (Trial Tr., Vol. 2, 237:23–238:16.)

According to Dr. Camarillo, the history of discrimination in Kern County fits within a larger pattern of discrimination against Mexican–Americans across the state of California. Specifically in the context of voting and democratic participation, this pattern of discrimination was evidenced by successful efforts in the late nineteenth century by the California legislature to overturn a provision of the state constitution that had required all public legal documents to be printed in both English and Spanish, as well as the adoption of a literacy test in order to register to vote, which primarily targeted Chinese–Americans and Mexican–Americans. (Trial Tr., Vol. 6, 848:12–849:8.) In the late nineteenth century, there were explicit efforts in southern California counties to dilute the voting strength of Mexican–Americans through the gerrymandering of districts. (*Id.* at 849:17–25.) Meanwhile, in San Jose in the late 1870s, Mexican–Americans were explicitly forbidden to attend a Democratic Party convention. (*Id.* at 850:2–5.)

Defendants contend that Dr. Camarillo's testimony regarding historical evidence of discrimination statewide is irrelevant because it does not focus exclusively on discrimination occurring within Kern County. The court rejects such a myopic view. Evidence of statewide discrimination is clearly relevant and may provide context for understanding instances of discrimination within the political subdivision at issue. *See Gomez v. City of Watsonville* , 863 F.2d 1407, 1418 (9th Cir. 1988) (holding the district court erred in its apparent belief that it was required to consider only discrimination committed by the City of Watsonville and noting the court could consider "any relevant history or effects of discrimination committed by others, such as the state of

California"); *see also Blaine County* , 363 F.3d at 913 (rejecting argument that district court could only look at discrimination by Blaine County, and not the state or federal government, because such an "overly narrow interpretation of the first Senate factor would result in precisely the sort of mechanistic application of the Senate factors that the Senate report emphatically rejects") (quoting *Gomez* , 863 F.2d at 1418); *Rodriguez* , 964 F.Supp.2d at 783 (considering state practices of discrimination in a § 2 case); *Cottier v. City of Martin* , 466 F.Supp.2d 1175, 1184 (D.S.D. 2006) (taking into account the "long, elaborate history of discrimination against Indians in South Dakota in matters relating to voting in South Dakota"), *aff'd,* 551 F.3d 733 (8th Cir. 2008), *reh'g en banc granted, opinion vacated* (Feb. 9, 2009), *on reh'g en banc* , 604 F.3d 553 (8th Cir. 2010).

The court finds Dr. Camarillo's testimony to be compelling evidence of a history of discrimination against Latinos in Kern County and in the broader region. Consideration of this factor weighs heavily in plaintiffs' favor.

ii. *Enhancing Mechanisms (Senate Factor Three)*

1136 The third Senate Factor considers whether there is evidence of voting mechanisms *1136 that may enhance vote dilution. *Gingles* , 478 U.S. at 37, 106 S.Ct. 2752. Congress recognized that among the most common of these mechanisms are at-large elections, runoff requirements, anti-single-shot devices, and decreases in the size of the elected body. *See* S. REP. NO. 97–417 at 28–29 ; *Badillo v. City of Stockton* , 956 F.2d 884, 889 (9th Cir. 1992).

Pursuant to state law, elections for Kern County Board of Supervisors are subject to majority vote and runoff requirements. *See* Cal. Elec. Code §§ 1300, 8140. If no candidate receives a majority of the vote, the two candidates who garner the most votes advance to a runoff election. *See* Cal. Elec. Code § 8141. Plaintiffs' expert Dr. Kousser testified that a majority vote requirement, such as that imposed by California law, allows a majority to band together to defeat a minority candidate in a runoff election. (Trial Tr., Vol. 4, 539:2–22; PX 136 at ¶ 46.) The Ninth Circuit similarly acknowledged the dilutive effect of a majority vote requirement and has also noted that "the runoff requirement increases the expense and other burdens of minority candidates by requiring them to run a second time, at-large." *Badillo* , 956 F.2d at 890.

Defendants argue first that the majority vote requirement is imposed by state law, and is neither devised by Kern County nor within its control. (Doc. No. 137 at 19.) The court acknowledges this is the case, but also recognizes that the reason for the existence of the majority vote requirement is irrelevant to the totality of the circumstances inquiry: "[t]his Senate Factor directs the Court to inquire into the existence and effect of [an enhancing mechanism], not its purpose." *City of Euclid* , 580 F.Supp.2d at 608.

Defendants next argue that the adoption of an enhancing mechanism has no probative value on its own, and that plaintiffs must prove that the majority vote requirement "[has] actually, in real life, prevented minority voters in the jurisdiction from electing their candidates of choice." (Doc. No. 137 at 19.) The court disagrees. Defendants do not cite any controlling authority for this proposition. Moreover, defendants' interpretation of this Senate Factor is belied by the text itself, which merely inquires as to whether such mechanisms "may enhance the opportunity for discrimination," *see* S. REP. NO. 97–417 at 28–29, not whether such mechanisms are the but-for cause of a minority candidate's electoral defeat. Thus, the Ninth Circuit in *Badillo* held that " [t]he district court correctly found that [the challenged electoral system]'s runoff requirement and majority vote requirement *increased the opportunity* for discrimination against minorities in Stockton." 956 F.2d at 890 (emphasis added). The Ninth Circuit's conclusion did not rest on any evidence that the majority vote requirement and runoff requirement had in fact prevented minority candidates from being elected. Moreover,

here, this factor is not considered on its own, but rather in conjunction with the other factors discussed here, many of which support a finding that Latino voters in Kern County have been deprived of an equal opportunity to elect representatives of their choice.

The court therefore concludes that a majority vote and runoff requirement does exist in Kern County, and that these requirements enhance the likelihood that the County's adopted map has a dilutive effect on the Latino vote.

iii. *Candidate Slating (Senate Factor Four)*

The fourth Senate Factor asks whether minorities have been denied access to a candidate slating process. *Gingles* , 478 U.S. at 37, 106 S.Ct. 2752. Here, it is undisputed that Kern County does not utilize a candidate
1137 slating process.*1137 iv. *Socio–Economic Disparity (Senate Factor Five)*

The fifth Senate Factor considers whether the minority group "bears the effects of discrimination" in areas such as education, employment, and health, which hinders the minority group's ability to participate effectively in the political process. *Gingles* , 478 U.S. at 37, 106 S.Ct. 2752. Under this fifth factor, plaintiffs must demonstrate both depressed political participation and socioeconomic inequality, but need not prove any causal nexus between the two. *League of United Latin Am. Citizens, Council No. 4434 v. Clements* , 986 F.2d 728, 750 (5th Cir. 1993) (citing S. REP. NO. 97–417 at 29 n.114).

Dr. Kousser testified at trial that although Latinos constitute the majority of the population in Kern County (50.4 percent in 2014), they have been unable to influence elections commensurate with their population size because they form a much smaller percentage of the electorate and are socioeconomically disadvantaged compared to non-Hispanic whites. (Trial Tr., Vol. 4, 660:15–661:2; PX 136 at ¶¶ 47–48.) According to 2014 ACS data, the most recent data available when he prepared his analyses, Dr. Kousser found that Latinos in Kern County comprise only about 38 percent of the citizen population and 32 percent of registered voters, and cast only 22 percent of the votes in the 2014 general election. (Trial. Tr., Vol. 4, 660:15–661:2; PX 136 at ¶¶ 47–48.)

Dr. Kousser drew a direct relationship between depressed Latino political participation in Kern County and the socioeconomic disadvantages faced by Latinos in housing, income, and education. (PX 136 at ¶ 49.) For example, 2014 ACS data shows that while 65 percent of non-Hispanic whites in Kern County own the houses in which they live, only 49 percent of Latinos do. (*Id.*) With respect to income, about 15 percent of non-Hispanic whites in Kern County have incomes below the poverty level, while that figure is double for Latinos, at about 30 percent. (*Id.*) With respect to educational attainment, in 2014, 1.4 percent of non-Hispanic whites in Kern County had received a ninth grade education or less, and 22 percent of non-Hispanic whites had achieved a bachelor's degree or higher. (Trial Tr., Vol. 4, 655:2–17.) In contrast, 27.8 percent of Latinos in Kern County had received a ninth grade education or less, and only 7.1 percent had achieved a bachelor's degree or higher. (*Id.*) Plaintiffs' expert historian Dr. Camarillo echoed Dr. Kousser's findings regarding a persistent educational gap between Latinos and non-Hispanic whites, which Dr. Camarillo testified was documented in reports by the U.S. Commission on Civil Rights in the 1970s, and continues today. (Trial Tr., Vol. 6, 903:16–907:14.) Dolores Huerta also testified at trial about a recent lawsuit brought against Kern High School District, which eventually resulted in a settlement, challenging the disproportionate suspension and expulsion of African–American and Latino students. (Trial Tr., Vol. 2, 237:23–238:16.)

Defendants' expert Dr. Johnson disputed the evidence of educational disparities with data demonstrating that Latino educational attainment in Kern County had improved by several percentage points between the release of the 2005–2009 ACS five-year data and the 2011–2015 ACS five-year data. (Trial Tr., Vol. 9, 1474:9–24.) Defendants argue that this data indicates an upward trend, precluding any conclusions about Latinos' ability to participate effectively in the political process. (Doc. No. 137 at 20.) This argument lacks merit. Defendants provided no comparative evidence at trial regarding the change, if any, to educational attainment among non-Hispanic whites in Kern County. (*See* Trial Tr., Vol. 9, 1542:8–17.) If, for example, educational attainment among non-Hispanic *1138 whites improved at the same rate as that of Latinos during this period, the educational gap between those groups would still persist to the same degree. And if educational attainment among non-Hispanic whites has improved at a faster rate than that of Latinos, the educational gap would in fact be more egregious today than that reflected in Dr. Kousser's 2014 figures. More fundamentally, even if an improvement in the education gap has been made in recent years, it does not mean an education gap no longer exists. Defendants did not present evidence at trial that there currently is no education gap between Latinos and non-Hispanic whites in Kern County.

Moreover, Dr. Johnson provided no testimony rebutting the disparities in income and homeownership presented by Dr. Kousser.[18] Dr. Johnson testified that Latino businesses in Kern County are thriving, as documented by data between 2002 and 2012 indicating that Latino businesses increased their sales and their number of employees, at the same time that white businesses exhibited slower growth or even declined in these categories. (Trial Tr., Vol. 9, 1472:17–1473:7; DX 558 at ¶¶ 70–75.) Dr. Kousser's report noted, however, that despite these increases in sales by Latino businesses, sales of white businesses still dwarf those of their Latino counterparts, at almost twelve times greater in 2012. (PX 137 at ¶ 48.) Ultimately, the evidence proffered by defendants through Dr. Johnson's testimony is insufficient to negate the compelling evidence of socioeconomic disparities between Latinos and non-Hispanic whites in Kern County. Consideration of this factor, therefore, also weighs in plaintiffs' favor.

[18] In his report, Dr. Johnson provides data showing that income levels among Latinos in Kern County differ between citizens and non-citizens. (DX 558 at ¶ 77 and Table 2.) The court recognizes that this evidence suggests that the income disparity between Latino and non-Hispanic white *eligible voters* may not be as stark as Dr. Kousser's data indicates. Nonetheless, Dr. Johnson's data is insufficient to overcome plaintiffs' showing of income level disparities between Latinos and non-Hispanic whites, because defendants did not offer any evidence at trial, nor have they even alleged, that comparing only eligible voters in Kern County would extinguish this disparity.

v. *Overt or Subtle Racial Appeals (Senate Factor Six)*

The sixth Senate Factor asks whether political campaigns have been characterized by overt or subtle racial appeals. *Gingles* , 478 U.S. at 37, 106 S.Ct. 2752. Little evidence regarding this factor was adduced at trial; the court notes, however, that Dr. Camarillo related one anecdote to this effect. In the early 1970s, the Kern Council for Civic Unity sought to mobilize voters around Raymond Gonzales, the first Mexican–American to be put forward as a candidate for State Assembly in the area. (Trial Tr., Vol. 6, 915:3–12.) While successful in his 1972 campaign, Gonzales served for only one term, which, according to Dr. Camarillo, was due in part to a concerted effort by the Republican Party and other opponents to vote Gonzales out of office in 1974. (*Id.* at 915:12–22.) Notably, in 1974, Gonzales was defeated by William Thomas, who commented in a reported interview that Kern County had a "vested interest" in maintaining the racial status quo. (*Id.* at 916:4–10.) The editor of the Bakersfield Californian, a strong supporter of Thomas, also publically observed that Bakersfield was the "most harmoniously segregated community in America," that "there is absolutely no crossing of racial and cultural lines," and that prominent community members "literally deny the existence of blacks and

Mexican Americans." (*Id.* at 916:13–21.) Defendants did not refute or deny these explicit racial appeals, but offered evidence that other factors contributed *1139 to Gonzales' defeat in 1974. (*Id.* at 1003:16–1006:13; 1009:16–1010:1.)

The court finds that plaintiffs have produced some evidence that political campaigns in Kern County have been characterized by racial appeals. Given that the evidence at trial pertained to only one campaign that occurred over four decades ago, the court affords this evidence very limited weight. Moreover, because there is otherwise no evidence of racial appeals in Kern County elections, the court concludes that consideration of this factor, overall, weighs slightly in favor of defendants.

vi. *Lack of Responsiveness (Additional Factor)*

An additional factor that may be probative in establishing a § 2 violation is whether there is a lack of responsiveness on the part of elected officials to the particularized needs of the minority community. *Gingles* , 478 U.S. at 37, 106 S.Ct. 2752.

Plaintiffs presented evidence at trial that the Kern County Board of Supervisors has been, at times, unresponsive to the particularized needs of the Latino community, specifically in the area of immigration. Dorothy Velazquez noted the concern within predominantly Latino communities that undocumented individuals could be detained and deported for simple traffic violations, and the hesitation among undocumented immigrants to report anything to law enforcement for fear of being subsequently deported. (Trial Tr., Vol. 2, 262:7–15.) Several of plaintiffs' witnesses also testified about their support for Senate Bill 54 ("S.B. 54"), a state legislative proposal that would have made California a "sanctuary state" and which, among other provisions, would have repealed existing laws requiring arresting agencies to notify Immigration and Customs Enforcement when an undocumented individual is arrested. (*See* Trial Tr., Vol. 2, 235:12–24, 263:3–22.) Dolores Huerta had previously testified before the Board of Supervisors, requesting their support for S.B. 54. Ms. Huerta then testified at the trial in this case that the Latino community supported the bill, as evidenced by the many organizations working in the Latino community that demonstrated on behalf of S.B. 54, and the buses of Latino Kern County community members who went to Sacramento to lobby in favor of the bill. (*Id.* at 236:13–22.)

District 5 Supervisor Perez echoed the support of S.B. 54 within the Latino community, testifying that her vote in favor of S.B. 54 was consistent with the response she received from Latinos in Kern County. (Trial Tr., Vol. 5, 803:8–10.) Supervisor Perez noted that, in response to S.B. 54, she received feedback "from more people than [she] had ever heard from as supervisor," and that she had "never seen an outpouring like [she] did during that conversation." (*Id.* at 803:10–19.) The feedback regarding S.B. 54 was not uniform among all her constituents, however: Supervisor Perez's office also received what she described as "very ugly" mail during that time, including a postcard depicting a Latino gang member, which Supervisor Perez interpreted as a serious threat, and which caused her to fear for her safety and that of her family. (*Id.* at 800:7–801:24; *see also* Trial Tr., Vol. 7, 1174:2–1175:2.) Ultimately, despite strong support for the legislation from the Latino community, the Board of Supervisors voted to formally oppose passage of S.B. 54 by a 4 to 1 vote, with only Supervisor Perez voting in favor. (Trial Tr., Vol. 2, 236:6–12; Trial Tr., Vol. 5, 803:3–7.)

Plaintiffs presented additional evidence at trial that current and former supervisors serving District 1, as it is configured in the County's 2011 Adopted Map—which combines the predominantly white community *1140 of Ridgecrest with the predominantly Latino communities of Delano, Shafter, and McFarland—have been unresponsive to their Latino constituents. For example, although District 1 Supervisor Mick Gleason testified regarding the various projects he has worked on in Delano, Shafter, and McFarland (Trial Tr., Vol. 10,

1601:13–1604:15), he also admitted that neither his field representative nor his chief of staff covering the Central Valley towns of Delano, Shafter, and McFarland within his district speak fluent Spanish. (*Id.* at 1607:8–15.) Plaintiffs' witness Sam Ramirez, who formerly served on the Delano City Council, also testified that former District 1 Supervisor John McQuiston was unresponsive to the particularized needs of the Latino community in Delano, failing to consistently address requests to clean up a park and to renovate other County property within Delano city limits. (Trial Tr., Vol. 3, 362:15–364:8; 376:4–14.)

Plaintiffs further presented evidence about environmental concerns within the Latino community, including pollution stemming from a hazardous waste facility outside Buttonwillow (*see* Trial Tr., Vol. 3, 307:21–309:3); water contamination flowing from pesticide facilities in Arvin and Shafter (*see* Trial Tr., Vol. 2, 281:18–282:7); by right dairies[19] in Arvin, Lamont, Shafter, and Wasco (*see* Trial Tr., Vol. 3, 304:12–305:24); hydraulic fracturing in the outskirts of Shafter and Wasco (*see id.* at 303:23–304:4); and safety violations with a composting facility located between Arvin and Lamont, which ultimately resulted in the deaths of two Latino employees (*see* Trial Tr., Vol. 2, 228:1–18). That said, defendants presented significant evidence that these needs were addressed.

19 "By right dairy" is apparently somewhat of a misnomer today. According to Ms. Oviatt, up until 1994, all dairies in Kern County were required to obtain a conditional use permit to operate. (Trial Tr., Vol. 7, 1233:14–1236:8.) From 1995 to 2000, Kern County changed its zoning ordinance to only allow the construction of dairies "by right," if certain conditions were met following a less rigorous review process. (*Id.*) In 2000, the County again changed its policy to require dairies to obtain conditional use permits and prepare environmental impact reports prior to construction. (*Id.*)

Defendants, for their part, presented evidence that the County worked diligently to address the problems faced by all of its citizens. Ms. Oviatt testified that the County entered into a settlement in the early 1990s concerning the hazardous waste facility outside Buttonwillow, and that since that time, the facility has been in full compliance with the law, and the County has not received any complaints from County residents regarding that facility. (Trial Tr., Vol. 7, 1226:8–1229:2.) Ms. Oviatt further testified about the cleanup efforts regarding the pesticide facilities in Arvin and Shafter. (*Id.* at 1240:10–1242:9.) She also explained that the County has not permitted the construction of a new dairy in fifteen years, and that any new dairy would need to undergo an environmental impact review, followed by a hearing before the Planning Commission. (*Id.* at 1235:5–7, 15–23.) Ms. Oviatt testified as to an incident in 2012 involving illegal disposal of debris from a hydraulic fracturing operation near Shafter, and explained that as soon as the incident came to its attention, the County contacted the responsible state agency and the industry. (*Id.* at 1237:24–1240:9.) The state agency fined the industry and ordered a cleanup of the site, and there have not been any similar incidents in the County since that time. (*Id.*)

With respect to the composting facility between Arvin and Lamont, Ms. Oviatt testified that the County began
1141 receiving complaints about the facility in 2006, and discovered other violations regarding *1141 which the County held a series of public hearings and for which the facility was extensively fined. (*Id.* at 1229:19–1231:13.) In 2011, following the two deaths that plaintiffs' witness Ms. Huerta testified to, the County revoked the facility's permit. (*Id.* at 1231:21–1232:18.) The County was sued for that decision by the facility owner, and lost in that suit at the trial court level. (*Id.* at 1232:18–21.) While its appeal of that decision was pending, the County reached a settlement in 2013 with the owner of the facility, who agreed to turn over the project to a "more responsible" company. (*Id.* at 1232:21–1233:6.) Since that time, the County has not received any complaints about the facility. (*Id.* at 1233:7–13.)

In sum, plaintiffs presented some evidence at trial that the County has, at times, been unresponsive to the Latino community, most notably with the Board of Supervisors' vote in opposition to S.B. 54. Based on the credible trial testimony of the County's witnesses, however, the court finds that the County has made good faith efforts to respond to at least some of the particularized needs of the Latino community. The court therefore concludes that this factor weighs slightly in defendants' favor.

vii. *Tenuousness of Rationales (Additional Factor)*

A court may also examine whether the rationale underlying the jurisdiction's challenged voting scheme is tenuous. *Gingles* , 478 U.S. at 37, 106 S.Ct. 2752. Evidence of a tenuous county policy "may ... indicate that the practice or procedure produces a discriminatory result." *League of United Latin Am. Citizens, Council No. 4434* , 986 F.2d at 753. The existence of a legitimate policy rationale, however, does not preclude a finding of vote dilution: "[E]ven a consistently applied practice premised on a racially neutral policy [does] not negate a plaintiff's showing through other factors that the challenged practice denies minorities fair access to the process." *Id.* (quoting S. REP. NO. 97–417 at 29 n.117).

Here, Mr. Krauter testified that during the public redistricting workshops, some comments by eastern Kern County residents reflected "very loyal adherence" to the different branches of the armed service, and that eastern County residents are "pretty fiercely devoted to their corner of Kern County." (Trial Tr., Vol. 3, 410:2–13.) According to Mr. Krauter, public input from eastern Kern County residents supported a supervisorial district map that would maintain the existing lines as closely as possible, and that as long as two eastern districts were preserved, those residents did not care how the map was redrawn in any other respect. (*Id.* at 444:8–21.)

Plaintiffs contend that the Adopted Map is the result of the County's pandering to residents in the east, based on the tenuous rationale that the two military installations in eastern Kern County each require their own supervisor. Plaintiffs presented evidence at trial demonstrating that both military installations are located in California's 23rd Congressional District. (*See, e.g.* , Trial Tr., Vol. 7, 1180:22–1181:4.) Plaintiffs' mapping expert David Ely also testified that eastern Kern County does not have sufficient population to comprise one district by itself, much less two. (Trial Tr., Vol. 1, 83:17–19; 207:20–25.)

Defendants insist that the decision to maintain two eastern districts reflects a longstanding, substantive policy of the County. John McQuiston, former District 1 Supervisor, testified about Base Realignment and Closure ("BRAC"), and the severe economic impact that earlier rounds of BRAC had on communities in eastern Kern County in terms of loss of employment, loss of population, loss of businesses, and declining home values.
1142 (Trial Tr., Vol. *1142 9, 1555:1–20.) District 2 Supervisor Zack Scrivner further testified that the two military installations in Kern County tend to have different interests in the BRAC process, which could put a single supervisor in what he characterized as "an impossible position" if the BRAC proposal favors one base but disfavors the other. (Trial Tr., Vol. 7, 1165:5–1167:12.) District 1 Supervisor Gleason, the former commanding officer for Naval Air Weapons Station China Lake, reiterated the likely conflict in having one supervisor represent both the Navy and Air Force bases in eastern Kern County, given their differing attitudes toward BRAC. (Trial Tr., Vol. 10, 1595:6–1597:12.)

In addition, defendants presented testimony that the current configuration of the district lines, with two eastern districts, bolsters a separate traditional redistricting principle employed by the County—that is, to balance among districts the responsibility over metropolitan Bakersfield and the outlying areas. Allan Krauter testified that having several compact urban districts and very large outlying districts would result in disproportionate control over County government held by Bakersfield, with County resources unlikely to be distributed

equitably to the outlying districts. (Trial Tr., Vol. 3, 502:5–19.) District 2 Supervisor Scrivner and District 1 Supervisor Gleason similarly testified to the advantage of having each district share responsibility over a portion of Bakersfield, such that each district contains urban communities, rural communities, and unincorporated areas, to encourage each supervisor to consider the welfare of the County as a whole. (Trial Tr., Vol. 7, 1169:1–1170:12; Trial Tr., Vol. 10, 1600:3–1601:1.)

Although the court does not doubt the sincerity of the County's convictions in the purported necessity of two eastern districts, the court is unpersuaded that such a justification may override other legal requirements.[20] The court is unconvinced that a single supervisor would be placed in an impossible position concerning the two military bases, as evidenced by the fact that one congressional representative currently represents both bases. The court therefore concludes that this factor should be afforded neutral weight, at best.

[20] The court also notes that in other redistricting cases, attempts to draw district boundaries with the purpose of artificially enhancing the voting power of rural voters at the expense of urban voters—or vice versa—has been found to violate the Equal Protection Clause. *See Davis v. Mann* , 377 U.S. 678, 692, 84 S.Ct. 1441, 12 L.Ed.2d 609 (1964) ("We also reject appellants' claim that the [ ] apportionment is sustainable as involving an attempt to balance urban and rural power in the legislature"); *Reynolds v. Sims* , 377 U.S. 533, 567, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964) ("The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote"); *Larios v. Cox* , 300 F.Supp.2d 1320, 1343–44 (N.D. Ga.) (citing *Reynolds* , 377 U.S. at 579–80, 84 S.Ct. 1362) (noting that while there are "legitimate considerations incident to the effectuation of a rational state policy...geographic interests do *not* fall within this category of legitimate considerations"), *aff'd* , 542 U.S. 947, 124 S.Ct. 2806, 159 L.Ed.2d 831 (2004).

viii. *Summary*

In summary, five of the nine factors relevant to Kern County weigh in favor of plaintiffs, including the two most important factors: the extent of racial polarization and the electoral success of Latino candidates. Three factors weigh in favor of defendants, and one factor weighs in favor of neither party. On balance, the court finds based upon the evidence presented at trial that the totality of the circumstances analysis weighs in plaintiffs' favor. Thus, the court will find that plaintiffs have met their burden in establishing a § 2 violation, absent any affirmative defense.*1143 **V. Laches**

1143

In their answer, defendants raise the affirmative defense of laches. (Doc. No. 31 at 11.) Defendants argue that " [t]he facts regarding the redistricting plan challenged herein were known or should have been known to Plaintiffs in 2011, yet Plaintiffs have waited until 2016 to bring their claim." (*Id.*) Defendants claim that this delay in bringing the action threatens to prejudice the County and the public interest, since a holding for plaintiffs will cause voter confusion and administrative disruption necessitated by redrawing the district lines. (*Id.*) Defendants contend that recognition of a laches defense is particularly appropriate here because there is only one remaining election to be conducted under the current district boundaries, after which the lines will have to be redrawn in any event. (*Id.*)

Laches "is a defense developed by courts of equity," *Petrella v. Metro–Goldwyn–Mayer, Inc.* , —— U.S. ——, 134 S.Ct. 1962, 1973, 188 L.Ed.2d 979 (2014), which applies where a plaintiff "unreasonably delays in filing a suit and as a result harms the defendant." *Nat'l R.R. Passenger Corp. v. Morgan* , 536 U.S. 101, 121, 122 S.Ct. 2061, 153 L.Ed.2d 106 (2002). To assert the defense of laches, the defendant must prove: "(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense." *Kansas v. Colorado* , 514 U.S. 673, 687, 115 S.Ct. 1733, 131 L.Ed.2d 759 (1995) (quoting *Costello v. United States* , 365 U.S. 265, 282, 81 S.Ct. 534, 5 L.Ed.2d 551 (1961)); *see also Apache Survival Coal. v. United States* , 21

F.3d 895, 905 (9th Cir. 1994). "A determination of whether a party exercised unreasonable delay in filing suit consists of two steps." *Jarrow Formulas, Inc. v. Nutrition Now, Inc.* , 304 F.3d 829, 838 (9th Cir. 2002). First, a court assesses "the length of delay, which is measured from the time the plaintiff knew or should have known about its potential cause of action." *Id.* Second, the court decides "whether the plaintiff's delay was unreasonable ... in light of the time allotted by the analogous limitations period." *Id.* The court also considers "whether the plaintiff has proffered a legitimate excuse for its delay." *Id.*

In *Garza v. County of Los Angeles* , 918 F.2d 763, 772 (9th Cir. 1990), defendant asserted a defense of laches because multiple rounds of elections had already occurred since the original redistricting, and "substantial hardship [would] result from a redistricting now, when another regularly scheduled one is set to occur so closely on its heels." *Id.* Moreover, defendants in that case argued plaintiffs had not provided an adequate excuse for their delay in filing their lawsuit. *Id.* Despite these rationales being advanced, the Ninth Circuit held that where the violation is ongoing, and where "the injury [plaintiffs] suffered at the time has been getting progressively worse," plaintiffs' claims are not barred by laches. *Id.*

The arguments advanced by defendants here in support of their defense of laches are indistinguishable from those rejected by the Ninth Circuit in *Garza.* (*See* Doc. No. 31 at 11.) Defendants attempt to avoid this conclusion by arguing that in *Garza* , the Ninth Circuit "affirmed a finding of *intentional racial discrimination* ... [which] surely presents a vastly different equitable balance than the facts of this case." (Doc. No. 137 at 25 n.26.) However, the language in *Garza* regarding laches is not confined solely to voting rights cases alleging
1144 intentional discrimination.[21] Rather *1144 than distinguishing between different types of discrimination, the court in *Garza* held that the defense of laches was unavailable in cases where the discrimination was "ongoing." *Garza* , 918 F.2d at 772. The Ninth Circuit noted that the injury alleged by the plaintiffs in that case had been "getting progressively worse, because each election has deprived Hispanics of more and more of the power accumulated through increased population." *Id.* Plaintiffs here have made a similar showing, submitting evidence establishing that the Latino population has increased in every supervisorial district in Kern County between the years 2009 and 2015. (PX 106 at 1.)

21 To be sure, courts have recognized that Voting Rights Act cases in which plaintiffs allege intentional discrimination are distinct from those in which no intentional discrimination is alleged. *Garza* itself drew this distinction in other parts of the opinion. *See Garza* , 918 F.2d at 771. However, the Ninth Circuit made no such distinction in the part of its opinion discussing laches. None of the other cases cited by defendants in support of this distinction addressed laches at all. *See Bartlett* , 556 U.S. at 20, 129 S.Ct. 1231 ; *Gaona v. Anderson* , 989 F.2d 299, 301–02 (9th Cir. 1993) ; *Cano* , 211 F.Supp.2d at 1249–50. The court has simply found no support for defendants' contention that application of a laches defense in voting rights cases hinges on whether plaintiff has alleged intentional discrimination.

In arguing that plaintiffs "oversell" *Garza* (Doc. No. 186 at 9), defendants rely primarily on the decision in *Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Commission* , 366 F.Supp.2d 887, 908 (D. Ariz. 2005). The district court in that case concluded that plaintiffs who initially brought claims only under state law, and subsequently added claims under § 2 of the Voting Rights Act, were barred by laches. Although that case was decided after *Garza* , the district court made no reference to the Ninth Circuit's holding that ongoing violations of § 2 of the Voting Rights Act "ought not be barred by laches." *Garza* , 918 F.2d at 772 ; *accord Miller v. Bd. of Comm'rs of Miller Cty.* , 45 F.Supp.2d 1369, 1373 (M.D. Ga. 1998) (citing to *Garza* for the proposition that "[t]he defense of laches does not apply to voting rights actions wherein aggrieved voters seek *permanent* injunctive relief insofar as the electoral system in dispute has produced a recent injury or presents an ongoing injury to the voters"). To the extent the district court in *Arizona Minority*

Coalition reached a contrary conclusion, this court is bound by the Ninth Circuit's decision in *Garza.* Accordingly, because plaintiffs have demonstrated an ongoing violation of § 2 of the Voting Rights Act, the court rejects defendants' suggestion that they are entitled to an affirmative defense of laches.

CONCLUSION

For all of the reasons articulated above, the court finds that plaintiffs have established, by a preponderance of the evidence, that: (1) the Latino community in Kern County is sufficiently numerous and geographically compact to constitute the majority in a second supervisorial district; (2) that Latinos in Kern County are politically cohesive; and (3) that the majority in Kern County votes sufficiently as a bloc to usually defeat Latino-preferred candidates. The court further finds that, under the totality of the circumstances, the adopted districting for electing the Kern County Board of Supervisors is not equally open to participation by Latino voters. Accordingly, the court concludes that Latino voters in Kern County have been deprived of an equal opportunity to elect representatives of their choice, in violation of § 2 of the Voting Rights Act.

This action must now proceed to the remedial stage. A status conference with respect to scheduling that phase of the litigation is now set for March 6, 2018 at 3:00 p.m. in Courtroom 5 before the undersigned. Counsel may
1145 appear telephonically *1145 by contacting Courtroom Deputy Renee Gaumnitz at RGaumnitz@caed.uscourts.gov at least 24 hours prior to the status conference. Status reports addressing the parties' proposal for those further proceedings shall be filed and served by March 1, 2018.

IT IS SO ORDERED.

STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 18 CVS 014001
COMMON CAUSE, *et al.* *Plaintiffs*, v. Representative DAVID R. LEWIS, in his official capacity as Senior Chairman of the House Select Committee on Redistricting, *et al.*, *Defendants*.	JUDGMENT

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The People of North Carolina have delegated, through the State's Constitution, the drawing of the State's legislative districts to the General Assembly. The delegation of this task, however, is not so unconstrained that legislative discretion is unfettered. Rather, the power entrusted by the People to the General Assembly to draw districts is constrained by other constitutional provisions that the People have also ordained. Some of these constitutional constraints are explicit—for example, the Whole County Provision of the Constitution limits a mapmaker's discretion to traverse county boundaries. But other constitutional constraints that limit the legislative process of map drawing are not explicit or limited in applicability only to map drawing—some constraints apply to all acts of the General Assembly, and indeed all acts of government. These principles include the obligation that our government provide all people with equal protection under law, that our government not restrict all peoples' rights of association and political expression, and that our government allow for free elections. Plaintiffs in this case challenge the legislative districts enacted by the General Assembly in 2017 and assert that the General Assembly has exceeded the map drawing discretion afforded to it by the People by creating maps that impermissibly infringe upon the equal protection, speech, association, and free election rights of citizens.

The People of North Carolina have also entrusted, through the State's Constitution, the task of reviewing acts of other branches of government to the judicial branch. While it is solely the province of the General Assembly to make law reflecting the policy choices of the People, it is the province—and indeed the duty—of the courts of our State through judicial review to ensure that enacted law comports with the State's Constitution. The Court cannot indiscriminately wield this power because the Court is also appropriately constrained by long-standing principles of law. Significantly, the Court must presume the constitutionality of acts of the General Assembly and must declare acts unconstitutional

only when such a conclusion is so clear that no reasonable doubt can arise or the statute cannot be upheld on any ground.[1]

The voters of this state, since 2011, have been subjected to a dizzying succession of litigation over North Carolina's legislative and Congressional districts in state and federal courts. Today marks the third time this trial court has entered judgment. Two times, the North Carolina Supreme Court has spoken. Eight times, the United States Supreme Court has ruled. Yet, as we near the end of the decade, and with another decennial census and round of redistricting legislation ahead, the litigation rages on with little clarity or consensus. The conclusions of this Court today reflect the unanimous and best efforts of the undersigned trial judges—each hailing from different geographic regions and each with differing ideological and political outlooks—to apply core constitutional principles to this complex and divisive topic. We are aided by advances in data analytics that illuminate the evidence; we are aided by learned experts who inform our analysis; and, we are aided by skilled lawyers who have masterfully advanced the positions of their clients. But, at the end, we are guided, and must be guided, by what we conclude the North Carolina Constitution requires.

The issue before the Court is distilled to simply this: whether the constitutional rights of North Carolina citizens are infringed when the General Assembly, for the purpose of retaining power, draws district maps with a predominant intent to favor voters aligned with one political party at the expense of other voters, and in fact achieves results that manifest this intent and cannot be explained by other non-partisan considerations. In this

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

case, as is set out in detail below, the Court finds as fact that Plaintiffs have met their burden of proof on several critical points. Plaintiffs have established that:

- the General Assembly, in enacting the 2017 legislative maps, had a partisan intent to create legislative districts that perpetuated a Republican-controlled General Assembly;
- the General Assembly deployed this intent with surgical precision to carefully craft maps that grouped many voters into districts predominantly based upon partisan criteria by packing and cracking Democratic voters to dilute their collective voting strength, thereby creating partisan gerrymandered legislative maps;
- the 2017 legislative maps throughout the state and on a district-by-district level, when compared on a district-by-district level to virtually all other possible maps that could be drawn with neutral, non-partisan criteria, are, in many instances, "extreme outliers" on a partisan scale to the advantage of the Republican party;
- partisan intent predominated over all other redistricting criteria resulting in extreme partisan gerrymandered legislative maps; and,
- the effect of these carefully crafted partisan maps is that, in all but the most unusual election scenarios, the Republican party will control a majority of both chambers of the General Assembly.

In other words, the Court finds that in many election environments, it is the carefully crafted maps, and not the will of the voters, that dictate the election outcomes in a significant number of legislative districts and, ultimately, the majority control of the General Assembly. Faced with these facts, as proven by the evidence, the Court must now say whether this conduct violates the constitutional guarantees afforded to all citizens—

Democrats, Republicans, and others—of equal protection, the right to associate, to speak freely through voting, and to participate in free elections.

Recently, the United States Supreme Court, in *Rucho v. Common Cause,* 139 S. Ct. 2484 (2019), held that even where enacted maps – *i.e.*, North Carolina's 2016 Congressional Map – were "blatant examples of partisanship driving districting decisions," challenges of partisan gerrymandering were "beyond the reach of the federal courts" because the federal Constitution provides no "constitutional directive or legal standard" to guide the courts. *Id.* at 2507-08. However, the Supreme Court added that "our conclusion does not condone excessive partisan gerrymandering" and does not "condemn complaints about redistricting to echo into a void." *Id.* at 2507. Rather, the Supreme Court observed that provisions of "state constitutions can provide standards and guidance for state courts to apply." *Id.* The case before this Court asserts only North Carolina constitutional challenges to the enacted legislative maps. Hence, this Court considers whether the North Carolina Constitution provides the "standards and guidance" necessary to address extreme partisan gerrymandering.

Of particular significance to this Court is Article I, § 10 of the North Carolina Constitution. This provision, originally enacted in 1776 and contained in the "Declaration of Rights" of our Constitution, simply states that "[a]ll elections shall be free." The North Carolina Supreme Court has long and consistently held that "our government is founded on the will of the people," that "their will is expressed by the ballot," *People ex rel. Van Bokkelen v. Canady,* 73 N.C. 198, 220 (1875), and "the object of all elections is to ascertain, fairly and truthfully the will of the people," *Hill v. Skinner*, 169 N.C. 405, 415, 86 S.E. 351, 356 (1915) (quotation omitted). The Court has also held that it is a "compelling interest" of the state "in having fair, honest elections." *State v. Petersilie*, 334 N.C. 169, 184, 432 S.E.2d

832, 840 (1993). This Court concludes, for these and other reasons more fully set out below, that the Free Elections Clause of the North Carolina Constitution guarantees that all elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the People and that this is a fundamental right of North Carolina citizens, a compelling governmental interest, and a cornerstone of our democratic form of government.

Our understanding of the Free Elections Clause shapes the application of the Equal Protection Clause, N.C. Const. art. I, § 19, the Freedom of Speech Clause, *id.* at art. I, § 12, and the Freedom of Assembly Clause, *id.* at art. I, § 14, to instances of extreme partisan gerrymandering. In the context of the constitutional guarantee that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the People, these clauses provide significant constraints against governmental conduct that disfavors certain groups of voters or creates barriers to the free ascertainment and expression of the will of the People.

Six years ago, this three-judge panel observed, perhaps presciently, the competing principles that are at the heart of the case before it today: "Political losses and partisan disadvantage are not the proper subject for judicial review, and those whose power or influence is stripped away by shifting political winds cannot seek a remedy from courts of law, but they must find relief from courts of public opinion in future elections." *Dickson v. Rucho*, No. 11 CVS 16896 (N.C. Super Ct. July 8, 2013). This, the Court believes, is as true today as it was then. It is not the province of the Court to pick political winners or losers. It is, however, most certainly the province of the Court to ensure that "future elections" in the "courts of public opinion" are ones that freely and truthfully express the will of the People. All elections shall be free—without that guarantee, there is no remedy or relief at all.

This Court is acutely aware that the process employed by the General Assembly in crafting the 2017 Enacted House and Senate maps is a process that has been used for decades—albeit in less precise and granular detail—by Democrats and Republicans alike. However, long standing, and even widespread, historical practices do not immunize governmental action from constitutional scrutiny. *See, e.g., Citizens United v. FEC*, 558 U.S. 310, 365, 130 S. Ct. 876, 913 (2010); *Reynolds v. Sims*, 377 U.S. 533, 582, 84 S. Ct. 1362, 1392 (1964) (holding that malapportionment of state legislative districts violates the Equal Protection Clause, notwithstanding that malapportionment was widespread in the Nineteenth and early Twentieth Centuries).

With this as our guide, this Court, in exercising its duty of reviewing acts of other branches of government to ensure that those governmental acts comport with the rights of North Carolina citizens guaranteed by the North Carolina Constitution, concludes that the 2017 Enacted House and Senate Maps are significantly tainted in that they unconstitutionally deprive every citizen of the right to elections for members of the General Assembly conducted freely and honestly to ascertain, fairly and truthfully, the will of the People. The Court bases this on the inescapable conclusion that the 2017 Enacted Maps, as drawn, do not permit voters to freely choose their representative, but rather representatives are choosing voters based upon sophisticated partisan sorting. It is not the free will of the People that is fairly ascertained through extreme partisan gerrymandering. Rather, it is the carefully crafted will of the map drawer that predominates. This Court further concludes that the 2017 Enacted Maps are tainted by an unconstitutional deprivation of all citizens' rights to equal protection of law, freedom of speech, and freedom of assembly. These conclusions are more fully set out in the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

A. Republicans Drew the 2017 Plans to Maximize Their Political Power

1. Republican Mapmakers Drew the 2011 Plans

1. In the 2010 elections, as part of a national Republican effort to flip state legislative chambers in order to gain control of redistricting after the 2010 Census, Republicans won majorities in the North Carolina House of Representatives and the North Carolina Senate for the first time since 1870. PX587 ¶ 5; Tr. 867.

2. With their newfound control of both chambers of the General Assembly, Republican legislative leaders set out to redraw the boundaries of the State's legislative districts. In North Carolina, legislative redistricting is performed exclusively by the General Assembly. The Governor cannot veto redistricting bills. N.C. Const. art. II, § 22(5)(b),(c).

3. Legislative Defendant Representative David Lewis and Senator Robert Rucho oversaw the drawing of the 2011 state House and state Senate plans (the "2011 Plans"). PX587 ¶ 8 (Leg. Defs.' Responses to Requests for Admission); Tr. 95:17-21 (Sen. Blue). They hired Dr. Thomas Hofeller to draw the plans. *Id.* ¶ 7; Tr. 95:8-9. Dr. Hofeller and his team drew the plans at the North Carolina Republican Party's headquarters in Raleigh using mapmaking software licensed by the North Carolina Republican Party. PX587 ¶¶ 10-11.

4. Legislative Defendants did not make Dr. Hofeller available to Democratic members of the General Assembly during the 2011 redistricting process, nor did Dr. Hofeller communicate with any Democratic members in developing the 2011 Plans. PX587 ¶¶ 12-13. No Democratic member of the General Assembly saw any part of any draft of the 2011 Plans before they were publicly released. *Id.* ¶ 14.

5. Legislative Defendants have stated in court filings that the 2011 Plans were "designed to ensure Republican majorities in the House and Senate." PX575 at 55 (Defs.-Appellees' Br. on Remand, *Dickson v. Rucho*, No. 201PA12-3, 2015 WL 4456364 (N.C. July 13, 2015)); *see id.* at 16 ("Political considerations played a significant role in the enacted [2011] plans."). Legislative Defendants asserted that they were "perfectly free" to engage in constitutional partisan gerrymandering, and that they did so in constructing the 2011 Plans. PX574 at 60 (Defs.-Appellees' Br., *Dickson v. Rucho*, No. 201PA12-2, 2013 WL 6710857 (N.C. Dec. 9, 2013)).

6. To "ensure Republican majorities in the House and Senate," PX575 at 55, Legislative Defendants and Dr. Hofeller used prior election results to construct the district boundaries to advantage Republicans. PX587 ¶¶ 6, 17. "[T]he recommendation of Tom Hofeller" was to "create a master database that would contain all [statewide] NC elections from the past decade . . . , each processed into a form that matches up with the 2010 VTD geography." PX769 at 3 (Jan. 14, 2011 memorandum to Senator Rucho). Legislative Defendants obtained Census block-level election results from "all statewide election contests for each general election [from] 2004-2010." PX760.

7. When reviewing the draft plans, all members of the General Assembly had access to a "Stat Pack" containing data on how the districts would perform using the results of prior statewide elections. Tr. 98:4-99:9 (Sen. Blue). Specifically, the Stat Pack showed the partisan vote share for each drafted district for each specific prior election. *Id.* Members of the General Assembly viewed the Stat Pack as containing "pretty reliable predictors of how [draft] districts would perform in the future based on how they performed in the past." Tr. 99:6-9 (Sen. Blue).

8. In July 2011, the General Assembly enacted the 2011 Plans. N.C. Sess. Laws 2011-404 (House), 2011-402 (Senate). No Democrat voted for either plan, and only one Republican voted against them. PX587 ¶¶ 23-24.

9. In the 2012 elections, the parties' vote shares for the House were nearly evenly split across the state, with Democrats receiving 48.4% of the two-party statewide vote. Joint Stipulation of Facts ("JSF") ¶ 41. But Democrats won only 43 of 120 seats (36%). *Id.* ¶ 42. Republicans thus won a veto-proof majority in the state House—64% of the seats (77 of 120)—despite winning just a bare majority of the statewide vote. In the Senate, Democrats won nearly half of the statewide vote (48.8%) but won only 17 of 50 seats (34%). *Id.* ¶¶ 44-45.

10. In 2014, Republican candidates for the House won 54.4% of the statewide vote, and again won a super-majority of seats (74 of 120, or 61.6%). JSF ¶ 66. In the 2014 Senate elections, Republicans won 54.3% of statewide vote and 68% of the seats (34 of 50). *Id.* ¶ 66.

11. In 2016, Republicans again won 74 of 120 House seats, or 61.6%, this time with 52.6% of the statewide vote. *Id.* ¶ 66. In the 2016 Senate elections, Republicans won 55.9% of the statewide vote and 70% of the seats (35 of 50). *Id.* ¶ 66.

2. The *Covington* Court Struck Down Certain 2011 Districts as Unconstitutional Racial Gerrymanders

12. On May 19, 2015, a group of individual plaintiffs initiated a lawsuit—*Covington v. North Carolina*, No. 1:15-CV-00399 (M.D.N.C.)—against the State Board of Elections, Speaker Timothy Moore, President Pro Tempore Philip Berger, Chair of the Senate Redistricting Committee, Robert Rucho, and Chair of the House Redistricting Committee, David Lewis challenging 28 total House and Senate districts under the 2011

Plans as unconstitutional racial gerrymanders. This case was referenced at trial, the related briefs, and in these findings as the "*Covington* case" or "*Covington* litigation."

13. On August 11, 2016, the federal district court ruled for the plaintiffs as to all of the challenged districts. *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016). The *Covington* court found that racial considerations rather than political considerations "played a primary role" with respect to the specific 28 "challenged districts" in *Covington*. 316 F.R.D. at 139. The *Covington* litigation did not involve any of the districts drawn in 2011 that are at issue in the present case.

14. Following appeal, on June 5, 2017, the U.S. Supreme Court summarily affirmed the district court's decision invalidating the 28 challenged districts as racial gerrymanders. 137 S. Ct. 2211 (mem.).

15. The district court subsequently ordered briefing on whether to order enactment of remedial maps under a timeline that would enable special elections in 2017. Ultimately, the court declined to order special elections in 2017 and instead allowed a longer timeline for the General Assembly to enact remedial plans. *Covington v. North Carolina*, 267 F. Supp. 3d 664 (M.D.N.C. 2017).

3. The General Assembly Enacted the 2017 Plans

16. On June 30, 2017, Senator Berger appointed 15 senators—10 Republicans and 5 Democrats—to the Senate Committee on Redistricting. PX587 ¶ 44. Senator Hise was appointed Chair. *Id.* Also on June 30, 2017, Representative Moore appointed 41 House members—28 Republicans and 13 Democrats—to the House Select Committee on Redistricting. PX629 at 4-5. Representative Lewis was appointed Senior Chair. PX587 ¶ 45.

17. On July 26, 2017, the Senate Redistricting Committee and the House Select Committee on Redistricting met jointly ("Redistricting Committee") for organizational and

informational purposes. *Covington v. North Carolina*, 1:15-cv-00399, ECF No. 184-7 at 3-4. At the meeting, Representative Lewis and Senator Hise stated that Republican leadership would again employ Dr. Hofeller to draw the new plans. PX601 at 23:3-6; *see* PX587 ¶¶ 46-47. When Democratic Senator Van Duyn asked whether Dr. Hofeller would "be available to Democrats and maybe even the Black Caucus to consult," Representative Lewis answered "no." PX601 at 22:24-23:6. Representative Lewis explained that, "with the approval of the Speaker and the President Pro Tem of the Senate," "Dr. Hofeller is working as a consultant to the Chairs," *i.e.*, as a consultant only to Legislative Defendants. *Id.* at 23:3-6; Tr. 101:6-18 (Sen. Blue).

18. In explaining the choice of Dr. Hofeller to draw the 2017 Plans, Representative Lewis stated that Dr. Hofeller was "very fluent in being able to help legislators translate their desires" into the district lines using "the [M]aptitude program." PX590 at 36:17-19.

19. On August 4, 2017, at another joint meeting of the Redistricting Committees, Representative Lewis and Senator Hise advised Committee members that the *Covington* decision invalidating 28 districts on federal constitutional grounds had rendered a large number of additional districts invalid under the Whole County Provision of the North Carolina Constitution, and those districts would also have to be redrawn. PX602 at 2:14-11:23.

20. At the same August 4, 2017, meeting, the Redistricting Committees allowed 31 citizens to speak for two minutes each. PX602 at 28:3-68:23. All speakers urged the members to adopt fair maps free of partisan bias. *See id.*

21. At another joint meeting on August 10, 2017, the House and Senate Redistricting Committees voted on criteria to govern the creation of the new plans. PX603 at 4:23-5:5.

22. Representative Lewis proposed as one criterion, "election data[:] Political consideration[s] and election results data may be used in drawing up legislative districts in the 2017 House and Senate plans." PX603 at 132:10-13. Representative Lewis provided no further explanation or justification for this proposed criterion, stating only: "I believe this is pretty self-explanatory, and I would urge members to adopt the criteria." *Id.* at 132:13-15.

23. Democratic members pressed Representative Lewis for details on how Dr. Hofeller would use elections data and for what purpose. Democratic Senator Ben Clark asked: "You're going to collect the political data. What specifically would the Committee do with it?" PX603 at 135:11-13. Representative Lewis answered that "the Committee could look at the political data as evidence to how, perhaps, votes have been cast in the past." *Id.* at 135:15-17. When Senator Clark inquired why the Committees would consider election results if not to predict future election outcomes, Representative Lewis stated only that "the consideration of political data in terms of election results is an established districting criteria, and it's one that I propose that this committee use in drawing the map." *Id.* at 141:12-16.

24. Representative Lewis had also stated that Dr. Hofeller used ten specific prior statewide elections in drawing the 2017 Plans: the 2010 U.S. Senate election, the 2012 elections for President, Governor, and Lieutenant Governor, the 2014 U.S. Senate election, and the 2016 elections for President, U.S. Senate, Governor, Lieutenant Governor, and Attorney General. PX603 at 137:22-138:3.

25. The House and Senate Redistricting Committees adopted Representative Lewis's "election data" criterion on a straight party-line vote. PX603 at 141-48.

26. Senator Clark proposed an amendment that would prohibit the General Assembly from seeking to maintain or establish a partisan advantage for any party in redrawing the plans. PX603 at 166:9-167:3. Representative Lewis opposed the amendment,

stating he "would not advocate for [its] passage." *Id.* at 167:10-11. The Redistricting Committees rejected Senator Clark's proposal, again on a straight party-line vote. *Id.* at 168-74.

27. As explained in extensive detail below, Dr. Hofeller's own files establish that he used prior elections results and partisanship formulas to draw district boundaries to maximize the number of seats that Republicans would win in the House and the Senate, and to ensure that Republicans would retain majorities in both chambers. PX123 at 48-76 (Chen Rebuttal Report); PX329 at 3-35 (Cooper Rebuttal Report); PX153, PX166; PX167; PX168; PX170; PX171; PX172; PX241; PX244; PX246; PX248; PX330; PX332; PX333; PX334; PX335; PX336; PX337; PX340; PX342; PX344; PX345; PX346; PX347; PX350; PX352; PX353; PX354; PX724; PX730; PX731; PX732; PX733; PX734; PX735; PX736; PX738; PX739; PX742; PX744; PX746; PX748; PX753; PX754; PX755; PX756.

28. As a further criterion, Representative Lewis proposed incumbency protection—namely that "reasonable efforts and political considerations may be used to avoid pairing incumbent members of the House or Senate with another incumbent in legislative districts drawn in 2017 House and Senate plans. The Committee may make reasonable efforts to ensure voters have a reasonable opportunity to elect non-paired incumbents of either party to a district in the 2017 House and Senate plans." PX603 at 119:9-17. He clarified that the second sentence of this proposed criterion meant "simply" that "the map makers may take reasonable efforts not to pair incumbents unduly." *Id.* at 122:16-18; *see* PX606 at 9:24-10:1 (Sen. Hise: "The Committee adopted criteria pledging to make reasonable efforts not to double-bunk incumbents.").

29. The House and Senate Redistricting Committees adopted Representative Lewis's incumbency-protection criterion, once more on a straight-party line vote. PX603 at 125-32.

30. The Redistricting Committees also adopted as criteria, yet again on straight party-line votes, that they (1) would make "reasonable efforts" to "improve the compactness of the current districts," PX603 at 24:24-25:2; (2) would make "reasonable efforts" to "split fewer precincts" than under the 2011 Plans, *id.* at 79:8-12; and (3) "may consider municipal boundaries" in drawing the new districts, *id.* at 66:15-16; *see id.* at 98-104, 112-19 (adopting criteria). Representative Lewis clarified that these criteria meant "trying to keep towns, cities and precincts whole where possible." PX607 at 10:5-6; *see, e.g.,* PX603 at 66:22-23 (Rep. Lewis explaining that the Committees would "consider not dividing municipalities where possible").

31. As a final criterion, Representative Lewis proposed prohibiting the consideration of racial data in drawing the new plans. PX603 at 148:11-15.

32. The full criteria adopted by the Committees for the 2017 Plans (the "Adopted Criteria") read as follows:

> Equal Population. The Committees shall use the 2010 federal decennial census data as the sole basis of population for drawing legislative districts in the 2017 House and Senate plans. The number of persons in each legislative district shall comply with the +/- 5 percent population deviation standard established by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E. 2d 377 (2002).
>
> Contiguity. Legislative districts shall be comprised of contiguous territory. Contiguity by water is sufficient.
>
> County Groupings and Traversals. The Committees shall draw legislative districts within county groupings as required by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E. 2d 377 (2002) (*Stephenson I*), *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*), *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*) and *Dickson v. Rucho*, 368 N.C. 481, 781 S.E.2d 460 (2015) (*Dickson II*). Within county groupings, county lines shall not be traversed except as authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*.
>
> Compactness. The Committees shall make reasonable efforts to draw legislative districts in the 2017 House and Senate plans that improve the compactness of the current districts. In doing so, the Committees may use

> as a guide the minimum Reock ("dispersion") and Polsby-Popper ("perimeter") scores identified by Richard H. Pildes and Richard G. Neimi in *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483 (1993).
>
> Fewer Split Precincts. The Committees shall make reasonable efforts to draw legislative districts in the 2017 House and Senate plans that split fewer precincts than the current legislative redistricting plans.
>
> Municipal Boundaries. The Committees may consider municipal boundaries when drawing legislative districts in the 2017 House and Senate plans.
>
> Incumbency Protection. Reasonable efforts and political considerations may be used to avoid pairing incumbent members of the House or Senate with another incumbent in legislative districts drawn in the 2017 House and Senate plans. The Committees may make reasonable efforts to ensure voters have a reasonable opportunity to elect non-paired incumbents of either party to a district in the 2017 House and Senate plans.
>
> Election Data. Political considerations and election results data may be used in the drawing of legislative districts in the 2017 House and Senate plans.
>
> No Consideration of Racial Data. Data identifying the race of individuals or voters shall not be used in the drawing of legislative districts in the 2017 House and Senate plans.

PX587 ¶ 53; LDTX007.

33. On August 11, 2017, Representative Lewis and Senator Hise notified Dr. Hofeller of the criteria adopted by the redistricting committees and "directed him to utilize those criteria when drawing districts in the 2017 plans." PX629 at 7. The criteria were also placed on legislative websites for the public to view and comment. *Covington v. North Carolina*, 1:15-cv-00399, ECF No. 184-9 at 193.

34. Dr. Hofeller drew the 2017 Plans under the direction of Legislative Defendants and without consultation with any Democratic members. PX587 ¶¶ 48-51, 55-56. Representative Lewis claimed that he "primarily . . . directed how the [House] map was produced," and that he, Dr. Hofeller, and Republican Representative Nelson Dollar were

the only "three people" who had even "seen it prior to its public publication." PX590 at 40:14-21. None of Legislative Defendants' meetings with Dr. Hofeller about the 2017 redistricting were public. PX587 ¶ 51. Legislative Defendants did not make Dr. Hofeller available to Democratic members during the 2017 redistricting process, nor did Dr. Hofeller communicate with any Democratic members in developing the 2017 Plans. PX587 ¶¶ 48-49; Tr. 126:16-18 (Sen. Blue). No Democratic member of the General Assembly saw any part of any draft of the 2017 Plans before they were publicly released. PX587 ¶ 50.

35. On August 19, 2017, the proposed 2017 House plan was released on the General Assembly website. PX629 at 7. The House Redistricting Committee made only minor adjustments to Dr. Hofeller's draft, swapping precincts between a few districts. PX605 at 16:2-17:16.

36. On August 20, 2017, the proposed 2017 Senate plan was released on the General Assembly website. PX629 at 7. At a Senate Redistricting Committee hearing on August 24, 2017, Senator Van Duyn asked Senator Hise how prior elections data had been used in drawing the proposed maps. PX606 at 26:4-6. Senator Hise replied that the mapmaker, Dr. Hofeller, "did make partisan considerations when drawing particular districts." *Id.* at 26:9-10.

37. The Senate Redistricting Committee adopted only two minor amendments to the district boundaries drawn by Dr. Hofeller. One change, proposed by Senator Clark, moved a small population from Senate District 19 to District 21. PX606 at 49:20-52:9. The other change, proposed by Democratic Senator Daniel Blue, swapped a few precincts between Senate Districts 14 and 15, two heavily Democratic districts in Wake County. *Id.* at 52:19-53:19. Senator Blue's amendment passed by a unanimous vote. *Id.* at 67:13-19.

38. As in 2011, Stat Packs measuring the partisan performance of the draft districts under recent elections were made available to members of the Redistricting

Committees. Tr. 113:17-115:15 (Sen. Blue). The Stat Packs, released on August 21, 2017, *see* PX629 at 7, contained information for each proposed district based on the ten statewide elections that Representative Lewis had claimed would be used in drawing the 2017 Plans. PX591; PX597.

39. Following the public release of the draft House and Senate maps, Legislative Defendants held public meetings on August 22, 2017, in Raleigh and at six satellite locations across the state. PX607 at 7:22-8:11, 9:1-3. Many citizens spoke at the meetings and expressed grave concerns about the draft maps. As Senator Blue testified, "overwhelmingly they were saying that they wanted districts drawn that were not partisan in nature." Tr. 105:8-12.

40. On August 24, 2017, the Senate Redistricting Committee adopted the Senate plan drawn by Dr. Hofeller with the minor modifications discussed above. PX606 at 131:10-23. The next day, the House Redistricting Committee adopted Dr. Hofeller's proposed House plan, also with the minor modifications discussed above. PX605 at 120:2-125:25.

41. During a Floor Session Hearing on August 28, 2017, Representative Lewis proposed an amendment to modify several House districts in Wake County. PX590 at 30:13-32:2. The amendment passed on a straight party-line vote. *Id.* at 31:18-32:2.

42. On August 31, 2017, the General Assembly passed the House plan (designated HB 927) and the Senate plan (designated SB 691), with only a few minor modifications from the versions passed by the Committees. PX629 at 8-9; *see* PX627 (HB 927); PX628 (SB 691). No Democratic Senator voted in favor of either plan. PX587 ¶ 71. The lone Democratic member of the House who voted for the plans was Representative William Brisson, who switched to become a Republican several months later. *Id.*

43. The 2017 Plans altered 79 House districts and 35 Senate districts from the 2011 Plans. JSF ¶¶ 169-70.

4. The *Covington* Special Master Redrew Several Districts That Remained Racially Gerrymandered

44. On September 15, 2017, the *Covington* plaintiffs filed an objection to the 2017 draft plans, alleging that Senate Districts 21 and 28 and House Districts 57 and 21 were still racial gerrymanders. *Covington v. North Carolina*, 283 F. Supp. 3d 410, 429 (M.D.N.C. 2018). The *Covington* Court agreed. *Id.* at 429-42. The court further held that the General Assembly's changes to five House districts (36, 37, 40, 41, and 105) violated the North Carolina Constitution's prohibition on mid-decade redistricting. *Id.* at 443-45.

45. The court appointed Dr. Nathaniel Persily as a Special Master to assist in redrawing the districts for which the court had sustained the plaintiffs' objections. To cure the racially gerrymandered districts, the Special Master made adjustments to certain neighboring districts as well. *Covington*, ECF No. 220 at 46, 64. The court adopted the Special Master's recommended changes to all of these districts. 283 F. Supp. 3d at 458.

46. The Special Master also restored the districts that the court had found were redrawn in violation of the ban on mid-decade redistricting to the 2011 versions of those districts. *Covington*, 283 F. Supp. 3d at 456-58. The court adopted these changes as well. *Id.*

47. On June 28, 2018, the U.S. Supreme Court affirmed the district court's adoption of the Special Master's remedial plans for House Districts 21 and 57 (and the adjoining districts, 22, 59, 61, and 62) and Senate Districts 21 and 28 (and the adjoining districts, 19, 24, and 27). *North Carolina v. Covington*, 138 S. Ct. 2548, 2553-54 (2018). But the U.S. Supreme Court reversed the district court's adoption of the Special Master's plans for the districts allegedly enacted in violation of the mid-decade redistricting prohibition, holding that the court's remedial authority was limited to curing the racial gerrymanders and nothing more. *Id.* at 2554-55.

48. Ultimately, the Special Master's Final Report altered the following districts: Senate Districts 19, 21, 24, 27, 28; House Districts 21, 22, 57, 59, 61. LDTX159. The Special Master also reviewed the 2017 Enacted Plan and chose to keep the General Assembly's version of House Districts 58 and 60 in his recommended changes. *Id.*

49. Plaintiffs in this case do not challenge the following districts that were altered by the *Covington* Special Master: House Districts 21, 22, 57, 61, 62; Senate Districts 19, 21, 24, 28.

B. The 2017 Plans Were Designed Intentionally and Effectively to Maximize Republican Partisan Advantage on a Statewide Basis

1. Legislative Defendants Admitted That They Were Drawing the 2017 Plans for Partisan Gain

50. At trial, there was little meaningful dispute that Legislative Defendants drew the 2017 Plans to advantage Republicans and reduce the effectiveness of Democratic votes.

51. The 2017 Adopted Criteria expressly provided for the use of "election data" in drawing the 2017 Plans. LDTX007. The Joint Select Committee on Redistricting considered results from 10 statewide elections, captured in Stat Packs available to legislators when they considered whether to adopt Dr. Hofeller's draft House and Senate plans. Tr. 113:17-115:15. The Stat Packs demonstrated that, under those 10 statewide elections, Republicans would be expected to win between 72 and 82 seats in the House and between 31 and 35 seats in the Senate. PX591; PX597. In other words, Republicans would win a supermajority in both chambers of the General Assembly under each and every one of the 10 statewide elections used to evaluate the 2017 Plans (72 seats provides a supermajority in the House and 30 seats does in the Senate).

52. As Senator Blue testified, the election data used by Legislative Defendants—and in particular the performance of the proposed House and Senate plans under the range

of 10 prior statewide elections—revealed that the plans were "designed specifically to preserve the supermajority" that the Republican Party had gained under the 2011 Plans. Tr. 115:19-22.

53. At the Senate Redistricting Committee hearing on August 24, 2017, Senator Hise confirmed that the mapmaker, Dr. Hofeller, "did make partisan considerations when drawing particular districts" in 2017. PX606 at 26:9-10. And as discussed above, Legislative Defendants stated in prior court filings that the districts drawn in 2011 were "designed to ensure Republican majorities in the House and Senate." PX575 at 16, 55 (*Dickson v. Rucho*, No. 201PA12-3, 2015 WL 4456364 (N.C. July 13, 2015)).

2. Dr. Hofeller's Files Establish That the Predominant Goal Was to Maximize Republican Partisan Advantage

54. Files from Dr. Hofeller's storage devices provide direct evidence of Dr. Hofeller's predominant focus on maximizing Republican partisan advantage in creating the 2017 Plans. The Court specifically finds, based upon the direct and circumstantial evidence of record, that the partisan intent demonstrated in Dr. Hofeller's files, as detailed below, is attributable to Legislative Defendants inasmuch that Dr. Hofeller, at all relevant times, worked under the direction of, and in concert with, Legislative Defendants. *See, e.g.,* FOF § F.7.

55. Plaintiffs obtained this evidence through a subpoena to Dr. Hofeller's daughter. PX676; PX781 (S. Hofeller deposition). Plaintiffs issued the subpoena to Ms. Hofeller on February 13, 2019 and provided notice to all other parties the same day. PX676. After no party objected to the subpoena, on March 13, 2019, Ms. Hofeller produced 22 electronic storage devices that had belonged to her father and that her mother gave her after Dr. Hofeller's death. PX781 at 1-43. The Hofeller files admitted into evidence at trial

all came from these storage devices. PX123 at 2, 39, 48 (Chen Rebuttal Report); PX329 at 3-4 (Cooper Rebuttal Report).[2]

56. This Court granted Plaintiffs' pretrial motion *in limine* to admit the relevant files from Dr. Hofeller's storage devices, finding sufficient evidence of authenticity and chain of custody. As the Court suggested in its pretrial ruling, and now holds, these files are public records pursuant to N.C. Gen. Stat. § 120-133(a) and Dr. Hofeller's contract with the General Assembly to draw the 2017 Plans. PX641. The Court denied Legislative Defendants' motion *in limine* to exclude the Hofeller files based on purported misconduct by Plaintiffs or their counsel.

57. Dr. Hofeller maintained two folders related to the 2017 redistricting, titled "NC 2017 Redistricting" and "2017 Redistricting." Tr. 449:20-450:5. Plaintiffs' expert Dr. Chen reviewed the entire contents of these two folders and found that, other than verifying that draft districts met the equal population and county grouping requirements, the files exhibited a consistent focus on partisan considerations. PX123 at 76 (Chen Rebuttal Report); Tr. 450:6-13. Among the hundreds of files in these two folders, there were a "few files" that report on VTD and county splits, "[b]ut beyond these few files," these hundreds of files focused overwhelmingly on each party's expected vote share in the draft districts and on the identities and party affiliations of the incumbent members in each district. PX123 at 76 (Chen Rebuttal Report). The fact that these folders focused overwhelmingly on partisan considerations is persuasive evidence that partisan intent predominated in the drawing of the 2017 Plans.

[2] The Court at trial allowed the parties to admit expert reports as "corroborative evidence"—*i.e.*, as evidence that "tends to add weight or credibility" to the experts' testimony. *State v. Garcell*, 363 N.C. 10, 40, 678 S.E.2d 618, 637 (2009); *see* Tr. 537:8-538:7.

a. Dr. Hofeller's partisanship formulas

58. The specific contents of the two folders confirm Dr. Hofeller's focus on Republican partisan advantage. In the folders, Dr. Hofeller had three partisanship formulas. First, as reflected in a Microsoft Word document titled "FORMULA FOR POLITICAL ANALYSIS OF LEGISLATIVE DISTRICTS," Dr. Hofeller used a formula that measured the average Republican vote share in each VTD across nine statewide elections from 2008 to 2014. Tr. 450:24-451:15; PX123 at 49-52 (Chen Rebuttal Report). These nine elections were different from the ten elections Representative Lewis claimed would be used. Tr. 451:20-452:6. Dr. Hofeller used this partisanship formula based on 2008-2014 elections to measure the partisanship of his draft districts through at least July 2017, Tr. 452:7-10, by which point he had already substantially completed drawing preliminary drafts for most of the final districts, FOF § F.7. Plaintiffs' Exhibit 153 is a screenshot of Dr. Hofeller's Microsoft Word document containing this partisanship formula:

Dr. Hofeller's "FORMULA FOR POLITICAL ANALYSIS OF LEGISLATIVE DISTRICTS.doc"

FORMULA FOR POLITICAL ANALYSIS OF LEGISLATIVE DISTRICTS USING 2-PARTY VOTE

(G08P_RV+ G08G_RV+ G08S_RV+ G08K_RV+ G12P_RV+ G12G_RV+ G12O_RV+ G10S_RV+ G14S_RV)/(G08P_DV+ G08P_RV+ G08G_DV+ G08G_RV+ G08S_DV+ G08S_RV+ G08K_DV+ G08K_RV+ G12P_DV+ G12P_RV+ G12G_DV+ G12G_RV+ G12O_DV+ G12O_RV+ G10S_DV+ G10S_RV+ G14S_DV+ G14S_RV)

2008 President
2008 Governor
2008 U. S. Senate
2008 insurance Commissioner
2010 U. S. Senate
2012 President
2012 Governor
2012 Commissioner of Labor
2014 U. S. Senate

59. Dr. Hofeller's second partisanship formula was based on the ten statewide elections from 2010-2016 that Representative Lewis claimed would be used in 2017. Tr. 452:12-453:21. Dr. Hofeller did not employ this formula, however, in the Excel worksheets where he analyzed the partisanship of his draft districts. Tr. 453:12-17.

60. Dr. Hofeller's final partisanship formula, titled "Off Year," was based on the results of statewide elections during non-Presidential election years, namely 2010 and 2014. Tr. 453:22-454:9; PX123 at 65 (Chen Rebuttal Report). It is apparent that Dr. Hofeller used this formula to evaluate how his districts might perform in non-Presidential years. Tr. 454:10-17.

61. Dr. Hofeller's "NC 2017 Redistricting" and "2017 Redistricting" folders contain numerous Microsoft Excel spreadsheets analyzing partisan considerations, using his partisanship formulas, for the draft House and Senate plans that he was developing and modifying from November 2016 through June 2017. *See* PX123 at 53-64 (Chen Rebuttal Report).

62. First, Dr. Hofeller placed a special focus on how many of his draft House and Senate districts had an average Republican vote share of 53% or higher using his partisanship formulas. For instance, in a spreadsheet last modified on November 26, 2016, analyzing a draft Senate plan, Dr. Hofeller wrote "23 Under 53%" at the bottom to indicate the number of draft districts for which Democrats had less than a 53% vote share and Republicans had a 53% or higher vote share. Tr. 456:14-20; PX248 at 2. In other words, as shown in Plaintiffs' Exhibit 248 below, Dr. Hofeller projected that 27 of the 50 districts in this draft Senate plan would have a Republican vote share at or above 53%.

Dr. Hofeller's Draft Plan File: "Senate Minimum-Partisan-Members.xlsx" (November 26, 2016)

New 2016 Senate Plan

Group Type	Dist	Avg R	Incumbent	Pty	Note	Old Ave R
New	1	52.70%	Cook	R		
Old	2	60.16%	Sanderson	R		
New	3	35.11%	Smith-Ingram	D		
New	4	37.39%	Horner	R	##	
New	5	45.94%	Davis	D		
Old	6	59.16%	Brown	R		
New	7	50.94%	Pate	R		
Old	8	54.69%	Rabon	R		
Old	9	53.05%	Lee	R		
New	10	55.32%	Jackson	R		
New	11	54.35%	Bryant	D	##	
New	12	56.83%	Rabin	R		
Old	13	41.09%	Britt	R	##	
Wake-Franklin	14	24.66%	Blue	D		
Wake-Franklin	15	52.46%	Alexander	R		
Wake-Franklin	16	40.50%	Chaudhuri	D		
Wake-Franklin	17	54.36%	Barringer	R		
Wake-Franklin	18	52.70%	Barefoot	R		
Cumberland	19	50.64%	Meredith	R		
New	20	27.50%	McKissick	D		
Cumberland	21	29.64%	Clark	D		
New	22	33.39%	Woodard	D		
Old	23	34.84%	Foushee	D		
New	24	56.91%	Gunn	R		
New	25	51.51%	McInnis	R		
New	26	59.18%	Berger	R		
New	27	58.05%	Wade	R		
New	28	23.67%	Robinson	D		
New	29	60.90%	Tillman	R		
New	30	60.87%	Randleman,Ballard	R,R	#	
New	31	64.87%	Brock, Krawiec	R,R	#	
New	32	30.42%	Lowe	D		
Old	33	65.39%	Dunn	R		
New	34	66.29%	Vacant	R	#	
Old	35	65.63%	Tucker	R		
Old	36	61.81%	Newton	R		
Mecklenburg	37	32.84%	Vacant	D	#	
Mecklenburg	38	26.55%	Jackson	D		
Mecklenburg	39	63.97%	Bishop	R		
Mecklenburg	40	28.50%	Waddell	D		
Mecklenburg	41	49.66%	Ford, Tarte	D,R	# ##	
Old	42	65.81%	Wells	R		
New	43	62.82%	Jarromgtpm	R		
New	44	62.81%	Curtis	R		
New	45	64.46%	Vacant	R	#	
New	46	63.85%	Danniel	R		
Old	47	59.28%	Hise	R		
Old	48	58.81%	Edwards	R		
Old	49	40.90%	Van Duyn	D		
Old	50	56.29%	Davis	R		

Notes: # = Double Bunk or Vacant, ## = Partisan Mismatch
23 Under 53%

63. In subsequent June 2017 spreadsheets analyzing draft House and Senate plans, Dr. Hofeller color-coded the districts to differentiate between districts that had slightly-under and slightly-over a 53% expected Republican vote share. Dr. Hofeller shaded the "Avg R" column yellow for draft districts with an expected Republican vote share of 50-53%, and shaded cells in the column a peach color for districts with an expected Republican vote share of 53-55%. Tr. 460:6-461:8, 464:19-465:11; PX244; PX241; PX246; PX123 at 66 (Chen Rebuttal Report).

64. Dr. Hofeller stratified all of the Republican-leaning districts in his draft House and Senate plans using highly granular gradations. Tr. 461:1-8, 463:6-25, 465:16-466:20; PX241 at 3; PX244 at 2; PX246 at 3. As illustrated in Plaintiffs' Exhibits 244 below, Dr. Hofeller counted how many districts in each draft House and Senate plan had between a 50-53%, 53-55%, 55-60%, 60-65%, and 65%-100% expected Republican vote share. *Id.* In contrast, Dr. Hofeller did not analyze Democratic-leaning districts with such granularity. Whereas Dr. Hofeller analyzed the Republican-leaning districts in five different bands, he analyzed Democratic-leaning districts in just two bands of 0-45% Republican vote share and 45-50% Republican vote share. Tr. 466:1-20; PX241 at 3; PX244 at 2; PX246 at 3.

Dr. Hofeller's Draft Plan File: "NC Senate Minimum Partisan J-2" (June 13, 2017)

New 2016 Senate Plan

Group Type	Dist	Avg R	14 Sen%	Incumbent	Pty	Note	Old Ave R	11 ti 17
New	1	47.94%	52.31%	Cook	R		53.54%	-5.60%
Old	2	60.16%	63.13%	Sanderson	R		60.16%	0.00%
New	3	40.10%	43.10%	Smith-Ingram	D		34.18%	5.93%
New	4	37.39%	39.24%	Horner	R	##	31.88%	5.51%
New	5	45.94%	48.68%	Davis	D		36.80%	9.15%
Old	6	59.16%	64.83%	Brown	R		59.16%	0.00%
New	7	50.94%	53.60%	Pate	R		59.37%	-8.43%
Old	8	54.69%	56.14%	Rabon	R		54.69%	0.00%
Old	9	53.05%	51.05%	Lee	R		53.05%	0.00%
New	10	54.75%	57.91%	Jackson	R		57.13%	-2.38%
New	11	54.47%	56.42%	Bryant	D	##	57.61%	-3.13%
New	12	57.19%	58.83%	Rabin	R		57.19%	0.00%
Old	13	41.09%	47.12%	Britt	R	##	41.09%	0.00%
Wake-Franklin	14	25.37%	22.89%	Blue	D		25.54%	-0.17%
Wake-Franklin	15	53.04%	49.97%	Alexander	R		53.32%	-0.28%
Wake-Franklin	16	39.77%	35.22%	Chaudhuri	D		38.80%	0.97%
Wake-Franklin	17	54.36%	51.52%	Barringer	R		53.45%	0.91%
Wake-Franklin	18	52.57%	53.26%	Barefoot	R		52.76%	-0.19%
Cumberland	19	50.79%	53.27%	Meredith	R		49.30%	1.48%
New	20	20.93%	18.06%	McKissick	D		24.15%	-3.23%
Cumberland	21	29.52%	29.98%	Clark	D		30.53%	-1.01%
New	22	40.57%	39.77%	Woodard	D		37.71%	2.86%
Old	23	34.84%	31.50%	Foushee	D		34.84%	0.00%
New	24	56.91%	58.10%	Gunn	R		59.06%	-2.14%
New	25	51.51%	54.18%	McInnis	R		55.19%	-3.68%
New	26	59.18%	62.59%	Berger	R		57.51%	1.67%
New	27	57.95%	56.89%	Wade	R		55.06%	2.90%
New	28	22.97%	22.18%	Robinson	D		18.65%	4.32%
New	29	60.90%	64.77%	Tillman	R		67.04%	-6.14%
New	30	60.87%	63.71%	Randleman,Ballard	R,R	#	66.15%	-5.28%
New	31	64.87%	65.07%	Brock, Krawiec	R,R	#	62.71%	2.16%
New	32	30.42%	29.53%	Lowe	D		31.20%	-0.78%
Old	33	65.39%	68.87%	Dunn	R		65.39%	0.00%
New	34	66.29%	67.96%	Vacant	R	#	63.53%	2.76%
Old	35	65.63%	65.84%	Tucker	R		65.36%	0.27%
Old	36	61.81%	60.28%	Newton	R		62.18%	-0.38%
Mecklenburg	37	31.35%	29.21%	Vacant	D	#	37.87%	-6.52%
Mecklenburg	38	28.06%	23.76%	Jackson	D		23.36%	4.70%
Mecklenburg	39	63.96%	59.63%	Bishop	R		61.93%	2.03%
Mecklenburg	40	29.05%	25.80%	Waddell	D		20.96%	8.09%
Mecklenburg	41	49.59%	45.44%	Ford, Tarte	D,R	# ##	57.53%	-7.94%
Old	42	65.81%	67.05%	Wells	R		65.81%	0.00%
New	43	62.82%	63.14%	Jarromgtpm	R		62.82%	0.00%
New	44	62.81%	64.31%	Curtis	R		65.66%	-2.85%

Group Type	Dist	Avg R	14 Sen%	Incumbent	Pty	Note	Old Ave R	11 ti 17
New	45	64.46%	65.33%	Vacant	R	#	61.05%	3.41%
New	46	63.85%	65.80%	Danniel	R		58.59%	5.26%
Old	47	59.28%	61.81%	Hise	R		59.28%	0.00%
Old	48	58.81%	58.70%	Edwards	R		58.81%	0.00%
Old	49	40.90%	38.15%	Van Duyn	D		40.90%	0.00%
Old	50	56.29%	58.76%	Davis	R		56.29%	0.00%

Pressure Points for GOP Incumbents:
1. Sen. Cook in District 1 (Northeast Coast) is now in a toss-up district
2. Sentors Randleman & Ballard are double-bunked in a strong GOP District 30 (Northwest of State).
3.Senators Brock & Krawiec are double-bunked in a strong GOP District 31(Davie & Forsyth)
4. Senators Tate [R] & Ford [D] are double-bunked in a leaning-Dem. District 41 (N. Mecklenburg).
5. There are 2 strong GOP and 1 Strong Dem vacant districts (34, 37 and 45).
6. 34% (12) of Republican Incumbents do not have to run in a Special Election.
7. 12% (2) Democrats do not have to run in a Special Election.

Notes: # = Double Bunk or Vacant, ## = Partisan Mismatch

Average Republican		
65-100	4	4
60-65	10	14
55-60	8	22
53-55	6	28
50-53	4	32
45-50	3	35
0-45	15	50
	50	

2014 Republican Senate		
65-100	7	7
60-65	9	16
55-60	9	25
53-55	4	29
50-53	3	32
45-50	4	36
0-45	14	50
	50	

65. The Court finds that Dr. Hofeller's granular sorting and analysis of Republican-leaning districts—and his particular emphasis on districts with an over-53% expected Republican vote share—provide substantial evidence of the partisan intent and effects of the 2017 plans. The evidence establishes that Dr. Hofeller drew the 2017 Plans very precisely to create as many "safe" Republican districts as possible, so that Republicans would maintain their supermajorities, or at least majorities even in a strong election year for Democrats. Tr. 456:21-457:25. For instance, Dr. Hofeller's June 13, 2017, spreadsheet above estimated that 28 of 50 draft Senate districts had an expected Republican vote share above 53%, PX244 at 2, and Dr. Hofeller's June 14, 2017 spreadsheet for a draft House map estimated that 74 of 120 districts in the draft House plan had an expected Republican vote share above 53%, PX246 at 3. The Court is persuaded that Dr. Hofeller drew the maps with an intent to preserve Republicans' control of the House and Senate.

66. As further evidence of partisan intent, using his partisanship formula, Dr. Hofeller calculated the difference in the Republican vote share between the new draft version of each district and the prior 2011 version of that district, showing precisely how his draft plans would alter the partisanship of each district. Tr. 459:8-460:5; PX241; PX244; PX246; PX248.

67. Dr. Hofeller's spreadsheets also highlighted in yellow many of North Carolina's largest and most-Democratic counties, such as Wake, Mecklenburg, Cumberland, Forsyth, and Guilford Counties. Tr. 461:9-462:2, 468:9-20; PX244; PX246. As Dr. Chen explained, the spreadsheets show Dr. Hofeller's specific focus on trying to "squeeze out" as many Republican-leaning districts as he could in these counties. *Id.*

68. For both his draft House and Senate plans, Dr. Hofeller analyzed what he described as "Pressure Points for GOP Incumbents." Tr. 462:3-463:5, 467:7-468:8; PX244 at 2; PX246 at 2. He analyzed draft districts that could create concerns or vulnerabilities for Republican incumbents. *Id.* Dr. Chen did not find any comparable analysis by Dr. Hofeller of "pressure points" for Democratic incumbents. *Id.* Dr. Hofeller's spreadsheets contradict Legislative Defendants' contention at trial that the 2017 Plans sought to place *all* incumbents in politically favorable districts. It is clear from Dr. Hofeller's files that the mapmaker predominantly focused on benefitting and electorally protecting Republican incumbents and not Democratic incumbents.

69. Dr. Hofeller's spreadsheets also reveal that he evaluated the partisanship of draft maps created by Campbell University Law students at an exercise by Common Cause. In 2017, Common Cause invited two Campbell Law students to draw new legislative maps without using political data. Bob Phillips, the Executive Director of Common Cause North Carolina, testified that the purpose of the exercise was to raise awareness and show how a nonpartisan redistricting process could occur. Tr. 53:17-54:14.

70. Emails introduced at trial reveal that, in late June 2017, an aide to Legislative Defendants asked the General Assembly's legislative services office for copies of the "block assignments files" for the simulated maps created by the Campbell Law students. PX757. Common Cause had the Campbell Law students create the maps using the General Assembly's public computer because it had Maptitude installed on it. Tr. 55:18-56:17. Within roughly a week, Dr. Hofeller had created Excel spreadsheets analyzing the partisanship of the Campbell Law students' simulated districts. Tr. 471:6-472:15; PX167; PX170; PX123 at 70-75 (Chen Rebuttal Report). In spreadsheets last modified on July 5 and 8, 2017, Dr. Hofeller scored every one of the Campbell Law students' House and Senate districts using his partisanship formula derived from the 2008-2014 statewide elections. *Id.* Dr. Hofeller then evaluated, for every district, whether Republicans could obtain a "Better Possible" district than the version the Campbell Law students had drawn, with Dr. Hofeller writing "No," "Yes," or "Little" for each district. Tr. 473:8-474:6; PX168; PX123 at 70-71 (Chen Rebuttal Report).

71. The final enacted 2017 House plan contains two county groupings, with four districts in total, that match the districts in those county groupings drawn by the Campbell Law students. Tr. 474:7-475:23; PX123 at 71. Those two groupings—Nash-Franklin and Granville-Person-Vance-Warren—are two small groupings for which there are a very limited number of ways to draw the groupings, and the Campbell Law students happened to draw these groupings in the way that is most favorable to Republicans. *Id.*

72. Dr. Chen thus concluded that Dr. Hofeller evaluated the partisanship of all of the Campbell Law students' districts and then included in the 2017 maps four districts for which the students happened to draw the districts in the way maximally favorable to Republicans. *Id.* The Court agrees with Dr. Chen's assessment, which went unrebutted by Legislative Defendants at trial.

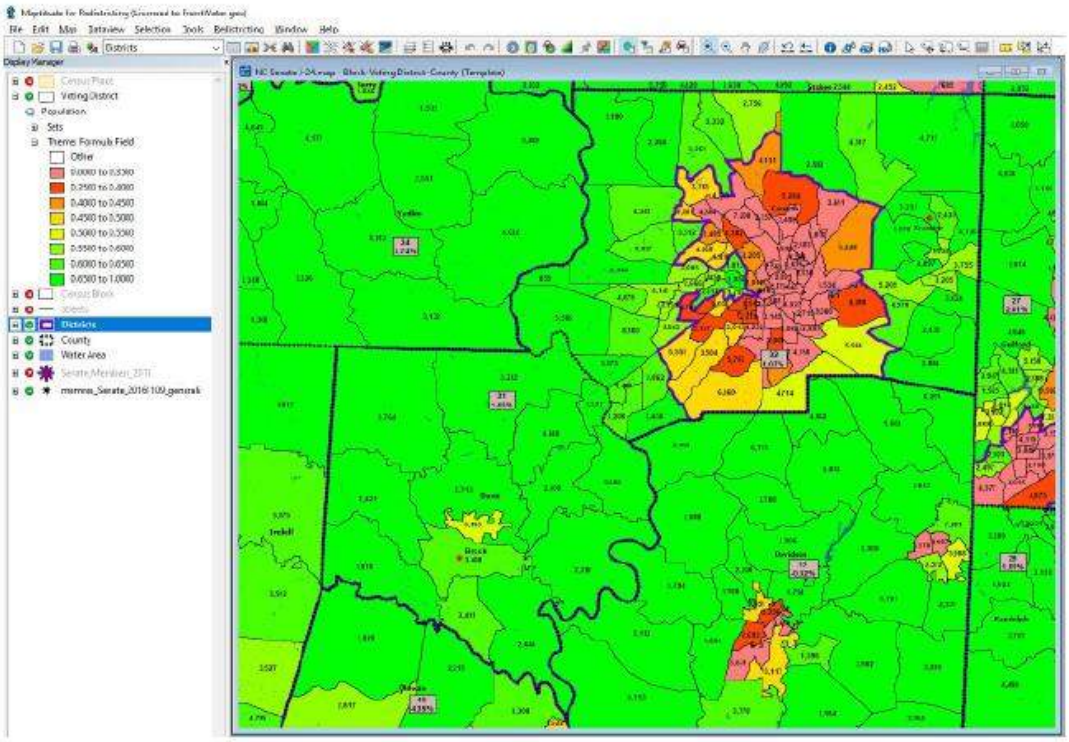
b. Dr. Hofeller's Maptitude files

73. Dr. Hofeller's Maptitude files from his storage devices further demonstrate that partisanship considerations were "front and center" in his drafting of the relevant districts in both 2011 and 2017. Tr. 944:5-15, 968:4-5 (Dr. Cooper). The Maptitude files remove any doubt that Dr. Hofeller "was clearly working with partisan data on the same maps at the same time that he [was] drawing lines for our state," all to maximize Republican partisan advantage. Tr. 945:4-11.

74. As Dr. Cooper explained, the Maptitude files indicate that Dr. Hofeller used partisanship formulas, along with multiple color-coding systems to visually depict partisanship on his draft maps, in order to deliberately pack and crack Democratic voters into particular districts with precision. Tr. 939:1-940:12, 944:9-945:8; PX329 at 3-4 (Cooper Rebuttal Report).

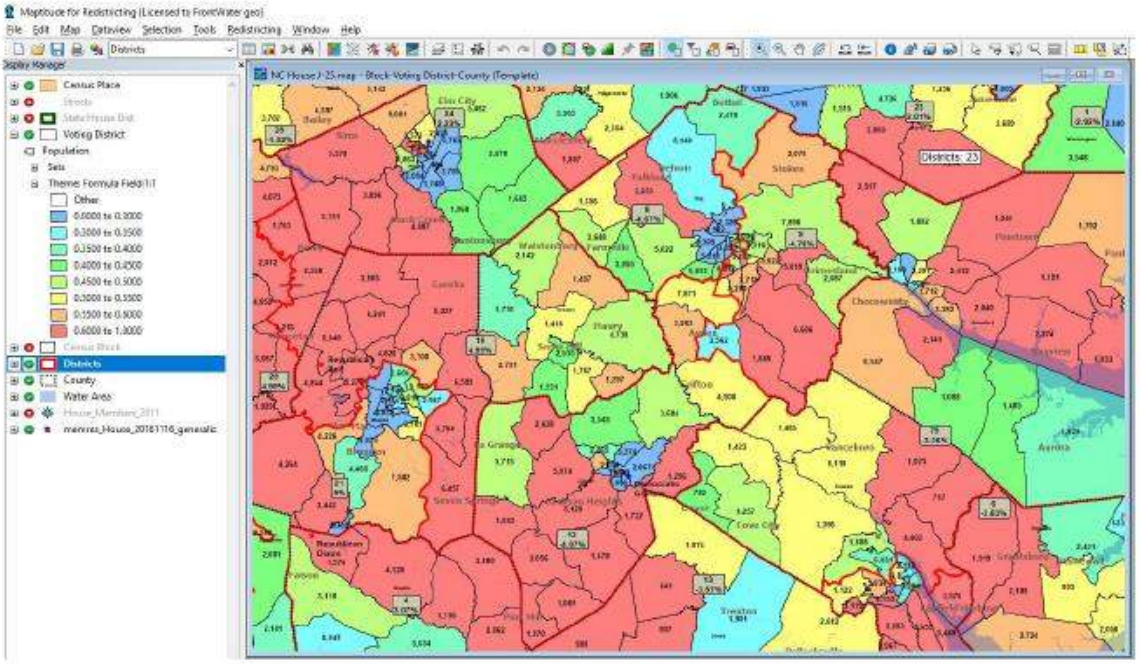
75. In the "NC Senate J-24" Maptitude file last modified in July 2017, Dr. Hofeller calculated the Republican vote share for each North Carolina VTD based on his formula using nine statewide elections from 2008-2014. PX330; Tr. 939:9-940:2, 942:22-943:2; PX565. Dr. Hofeller then color-coded the VTDs on the "Map" window based on this partisanship formula, using more granular stratifications for competitive and Republican-leaning VTDs than for Democratic-leaning VTDs, just as he had done in his Excel spreadsheets assessing district-wide partisanship. Tr. 944:16-21. Dr. Hofeller used a "traffic light" color-coding scheme, in which he shaded Democratic-leaning VTDs pink and red, Republican-leaning VTDs green, and more competitive VTDs yellow. Tr. 940:23-941:4. Plaintiffs' Exhibit 335 below is one example of Dr. Hofeller's use of this color-coding scheme. As is apparent in the example below and discussed in more detail with respect to additional county groupings discussed below, Dr. Hofeller drew district boundaries based on this color-coded partisanship data with remarkable precision.

Figure 6: Partisan Targeting in Senate Districts 31 and 32



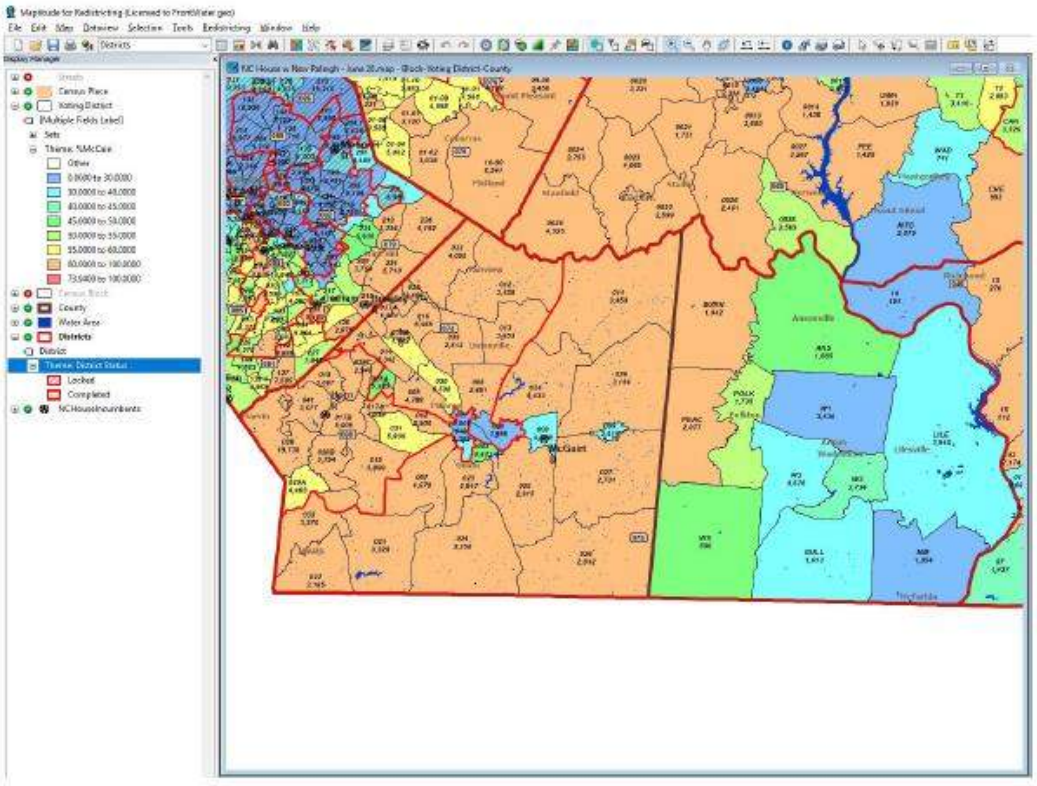
76. Dr. Hofeller used the same partisanship formula in his Maptitude files containing draft 2017 House districts. Tr. 979:6-19; PX337; PX329 at 13 (Cooper Rebuttal Report). Dr. Hofeller also employed a color-coding system to visually represent the partisanship scores for each VTD in his 2017 House plan, but with the more familiar red coloring for Republican-leaning VTDs, blue for Democratic-leaning VTDs, and yellow and green for more competitive VTDs. Tr. 979:20-980:19; PX329 at 13 (Cooper Rebuttal Report). For example, Dr. Hofeller's Maptitude file labeled "NC House J-25," which he created on June 26, 2017, and last modified on August 7, 2017, depicted boundaries (in red) of House Districts 8, 9, and 12 in the Pitt-Lenoir House county grouping. Tr. 981:2-5; PX340; PX562. Plaintiffs' Exhibit 340 below shows that Dr. Hofeller used his color-coding system to pack the bluest VTDs in Pitt County into House District 8. Tr. 982:1-7, 983:5-984:7; PX340; PX329 at 16 (Cooper Rebuttal Report).

Figure 11: Partisan Targeting in House Districts 8, 9, and 12



77. Dr. Hofeller similarly used a partisanship formula and color-coding scheme in drawing the districts at issue in this case enacted in 2011 and kept unchanged in 2017. Tr. 991:9-992:6, 994:4-996:11; PX347; PX350; PX352; PX329 at 23, 27, 30 (Cooper Rebuttal Report). For example, Dr. Hofeller's Maptitude file titled "NC House w New Raleigh - June 28," which was last modified on June 30, 2011, contained Dr. Hofeller's drafts of the 2011 House districts at issue in this case. Tr. 995:20-997:11; PX329 at 30-35; PX564. There, Dr. Hofeller scored the partisanship of each VTD using the results of the 2008 Presidential election and then colored each VTD based on those results, with Democratic-leaning VTDs shaded blue, Republican-leaning VTDs shaded red, and competitive VTDs shaded yellow and tan. *Id.* Plaintiffs' Exhibit 353 below is an example of Dr. Hofeller's use of this partisanship data to draw the 2011 House districts—in this example, to crack Democratic voters across House Districts 55, 68, and 69.

Figure 25: Partisan Targeting in House Districts 55, 68, and 69



78. Legislative Defendants offered no additional files from Dr. Hofeller's storage devices to rebut Dr. Chen's and Dr. Cooper's analyses. They offered no plausible alternative explanation of Dr. Hofeller's intent as he drew the State's House and Senate districts in 2011 and 2017.

3. Plaintiffs' Experts Established that the Plans Are Extreme Partisan Gerrymanders Designed to Ensure Republican Control

79. The analysis and conclusions of Plaintiffs' experts further establish that the 2017 Plans are extreme partisan outliers intentionally and carefully designed to maximize Republican advantage and to ensure Republican majorities in both chambers of the General Assembly. Three of Plaintiffs' experts—Drs. Chen, Mattingly, and Pegden—employed computer simulations to generate alternative House and Senate plans to serve as a baseline for comparison to each enacted plan. Even though these experts employed different

methodologies, each expert found that the enacted plans are extreme outliers that could only have resulted from an intentional effort to secure Republican advantage on a statewide basis. Plaintiffs' fourth expert, Dr. Christopher Cooper, explained how this gerrymandering was carried out across the State. The Court gives great weight to the analysis and conclusions, to the extent set forth below, of each of Plaintiffs' experts individually, and the Court finds that the consistent findings of each of these experts, using different methodologies, powerfully reinforce that the 2017 Plans are extreme, intentional, and effective partisan gerrymanders.

a. Dr. Jowei Chen

80. Plaintiffs' expert Jowei Chen, Ph.D., is an Associate Professor in the Department of Political Science at the University of Michigan, Ann Arbor. Tr. 237:6-9. Dr. Chen has extensive experience in redistricting matters. Tr. 238:2-239:3 (Dr. Chen). By the admission of Intervenor Defendants' own expert, Dr. Chen is one of the "foremost political science scholars on the question of political geography" and how it can impact the partisan composition of a legislative body. Tr. 2220:14-18 (Dr. Barber). Dr. Chen also helped pioneer the methodology of using computer simulations to evaluate the partisan bias of a redistricting plan, and he has published four peer-reviewed articles employing this approach since 2013. Tr. 240:1-241:2; PX2. The Court accepted Dr. Chen in this case as an expert in redistricting, political geography, and geographic information systems ("GIS"). Tr. 245:4-8.

81. Dr. Chen has presented expert testimony regarding his simulation methodology in numerous prior partisan gerrymandering lawsuits, and his analysis has been consistently credited and relied upon by the courts in these cases. Tr. 241:15-242:19; *see League of Women Voters v. Commonwealth*, 178 A.3d 737, 818 (Pa. 2018) (finding "Dr. Chen's expert testimony" to be "[p]erhaps the most compelling evidence" in invalidating

Pennsylvania's congressional plan as an unconstitutional partisan gerrymander); *Raleigh Wake Citizens Ass'n v. Wake Cty. Bd. of Elecs.*, 827 F.3d 333, 344 (4th Cir. 2016) ("[T]he district court clearly and reversibly erred in rejecting Dr. Chen's expert testimony."); *League of Women Voters of Mich. v. Benson*, 373 F. Supp. 3d 867, 907 (E.D. Mich. 2019) ("[T]he Court has determined that Dr. Chen's data and expert findings are reliable."); *Common Cause v. Rucho*, 279 F. Supp. 3d 587, 666 (M.D.N.C.), *vacated on other grounds*, 138 S. Ct. 2679 (2018) ("Dr. Mattingly's and Dr. Chen's simulation analyses not only evidence the General Assembly's discriminatory intent, but also provide evidence of the 2016 Plan's discriminatory effects."); *City of Greensboro v. Guilford Cty. Bd. of Elecs.*, 251 F. Supp. 3d 935, 943 (M.D.N.C. 2017) (relying upon the "computer simulations by Dr. Jowei Chen" to find impermissible partisan intent).

82. Using his simulation methodology, Dr. Chen analyzed whether partisan intent predominated in the drawing of the 2017 Plans and subordinated the traditional nonpartisan districting principles of compactness and avoiding the splitting of municipalities and VTDs. Tr. 245:13-17, 248:6-18. Dr. Chen further analyzed the effects of the 2017 Plans on the number of Democratic-leaning House and Senate districts statewide. Tr. 247:6-10.

83. Based on his analysis, Dr. Chen concluded that partisan intent predominated over the traditional districting criteria in drawing the current House and Senate districts, that the Republican advantage under the 2017 Plans cannot be explained by North Carolina's political geography, and that the effect of the 2017 Plans is to produce fewer Democratic-leaning districts than would exist if the map-drawing process had followed traditional districting principles. Tr. 246:18-22, 247:12-18, 248:20-249:1; PX1 at 3-4 (Chen Report). With respect to the effects in particular, Dr. Chen found that the gap between the enacted 2017 Plans and the nonpartisan simulated plans in terms of Democratic-leaning

districts gets wider in electoral environments more favorable to Democrats, and is widest around the point when Democrats would win majorities in the House or Senate under the simulated nonpartisan plans. Tr. 247:25-248:3, 296:7-24, 330:17-23. The Court gives great weight to Dr. Chen's findings and, to the extent set forth below, adopts his conclusions.

84. In what Dr. Chen described as his Simulation Set 1, Dr. Chen programmed his algorithm to follow the traditional districting principles embodied within the Adopted Criteria. Tr. 281:12-16. In addition to following the equal population and contiguity requirements, as well as conforming to the same county groupings and number of county traversals that exist under the 2017 Plans, Dr. Chen programmed his algorithm to prioritize the traditional districting principles set forth in the Adopted Criteria of compactness, avoiding splitting municipalities, and avoiding splitting VTDs. Tr. 251:18-259:10; PX1 at 10-18 (Chen report).

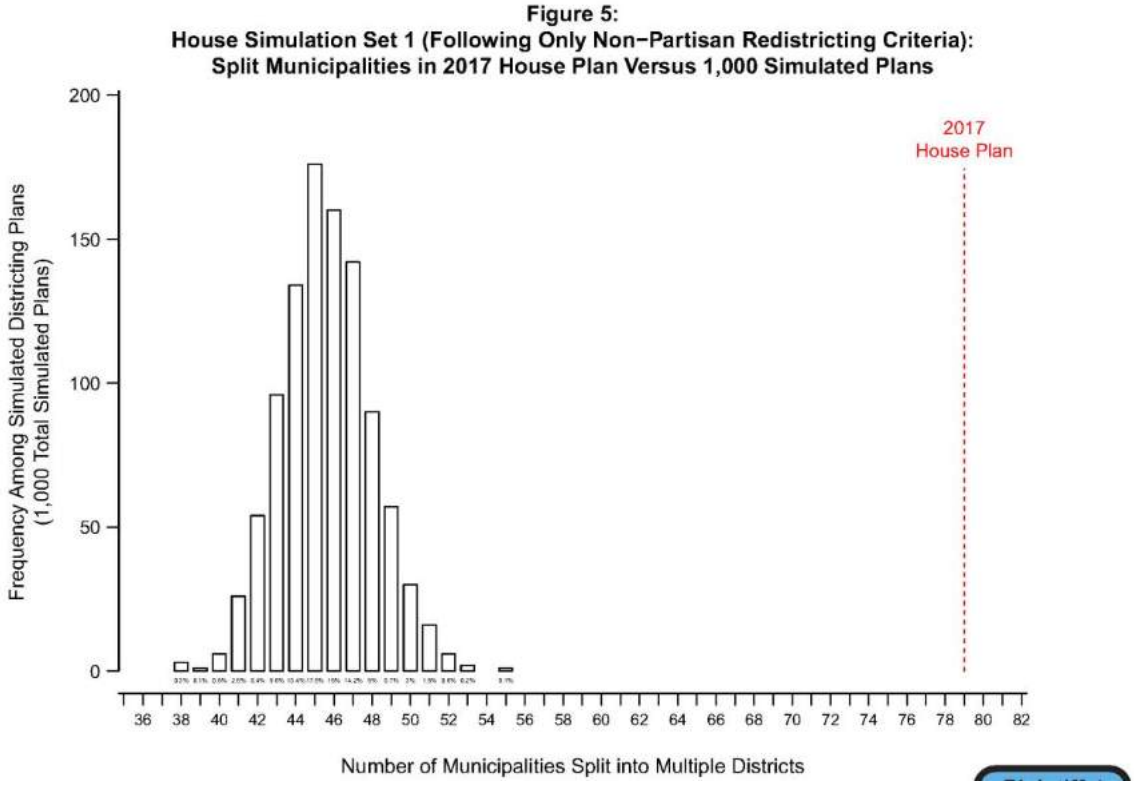
85. Dr. Chen explained that, other than the county traversals requirement, his algorithm did not attempt to "maximize or optimize" any one criterion. Tr. 262:24-263:3. Rather, the algorithm equally weighted the criteria of compactness, avoiding splitting municipalities, and avoiding splitting VTDs. Tr. 263:4-12. In creating districts within each county grouping, the algorithm considered thousands of random iterations, measuring for each proposed iteration whether the change would make the districts in the grouping better or worse on net across these three criteria. Tr. 261:18-263:19. The algorithm accepted a change only if it would improve the districts across these three criteria on net. *Id.*

86. In his Simulation Set 1, Dr. Chen ran the algorithm 1,000 times for each House county grouping and 1,000 times for each Senate county grouping, producing 1,000 unique statewide maps for both the House and the Senate. Tr. 263:23-264:16.

87. Beginning with the House, Dr. Chen compared the 1,000 simulated plans in his House Simulation Set 1 to the enacted 2017 House plan along a number of measures.

First, Dr. Chen compared the number of municipalities that the simulated and enacted plans split. The enacted House plan splits 79 municipalities. Tr. 266:22-269:15; PX1 at 38, 41 (Chen Report). The 1,000 plans in House Simulation Set 1 split a range of only 38 to 55 municipalities, with most splitting just 43 to 48 municipalities. *Id.* From this, Dr. Chen concluded with over 99.9% statistical certainty that the enacted House plan subordinates the traditional districting criterion of following municipal boundaries, and splits substantially more municipalities than would be split if the map-drawing process had prioritized, and not subordinated, this traditional districting principle. Tr. 269:21-270:4; PX1 at 38 (Chen Report).

88. Plaintiffs' Exhibit 15 depicts the number of municipalities split under the enacted plan and the 1,000 simulations in House Simulation Set 1:

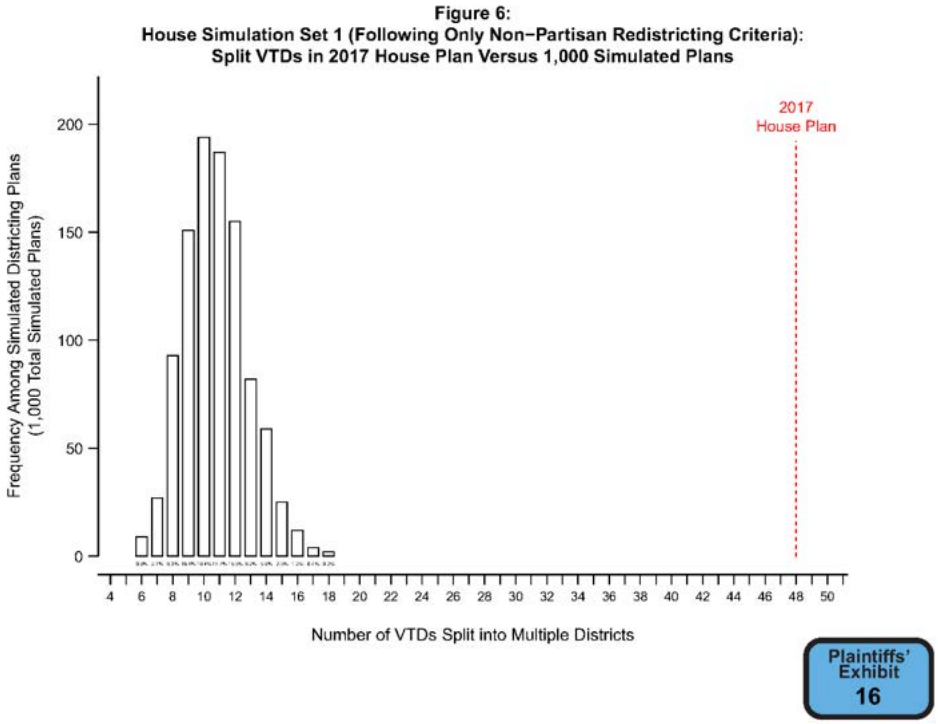


89. The Court finds that the enacted House plan subordinates to partisanship the traditional districting principle of avoiding the unnecessary splitting of municipalities.

The Court finds that the current House plan splits substantially more municipalities than would be split if the map-drawing process had not subordinated to partisanship this traditional districting principle.

90. Dr. Chen also compared the number of VTDs split in the enacted 2017 House plan and the 1,000 simulations in House Simulation Set 1. Dr. Chen found that, while the simulated House plans split between 6 and 18 VTDs, the enacted House plan splits 48 VTDs, more than four times as many as the vast majority of the simulations. Tr. 270:6-271:3; PX1 at 38, 42 (Chen Report). From this, Dr. Chen concluded with over 99.9% statistical certainty that the enacted House plan subordinates the traditional districting criterion of following VTD boundaries, and splits far more VTDs than is reasonably necessary. Tr. 271:5-12.

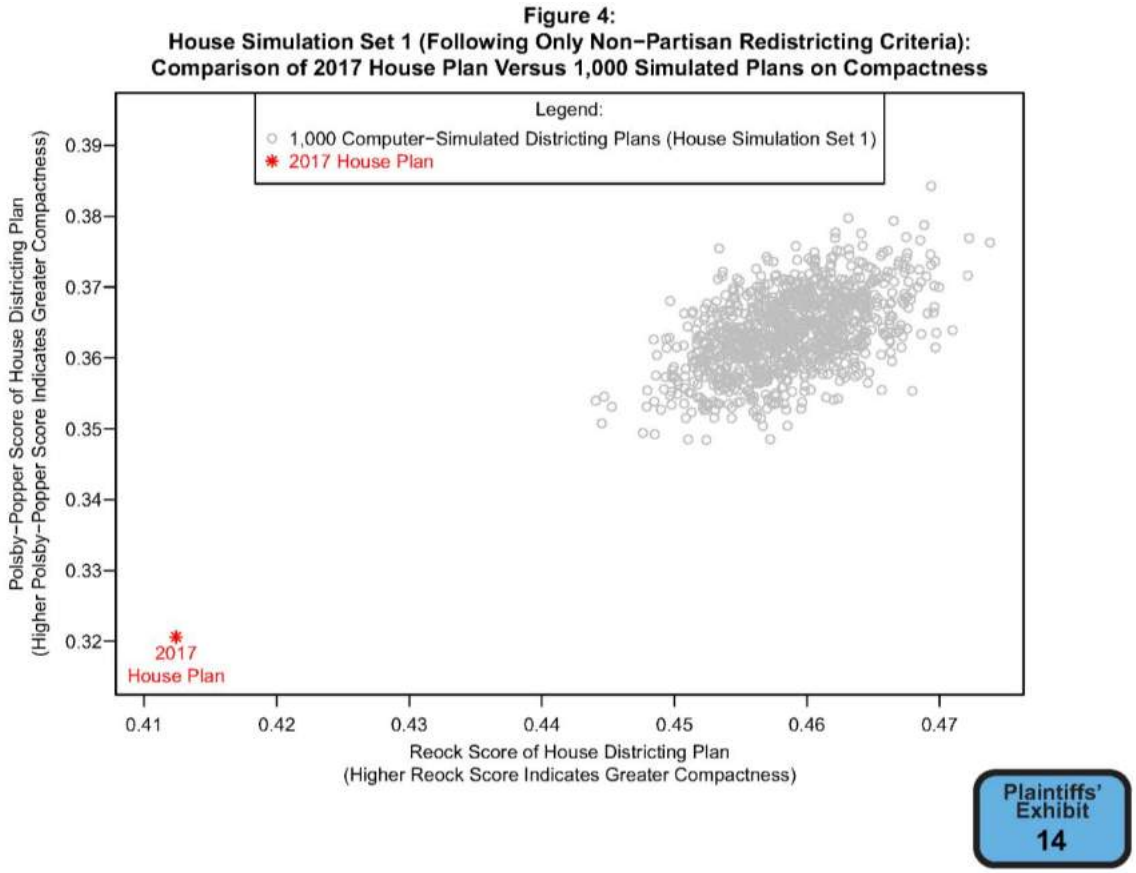
91. Plaintiffs' Exhibit 16 depicts the number of VTDs split under the enacted House plan and the 1,000 simulations in House Simulation Set 1:



92. The Court finds that the enacted House plan subordinates to partisanship the traditional districting principle of avoiding the unnecessary splitting of VTDs. The Court finds that the current House plan splits substantially more VTDs than would be split if the map-drawing process had not subordinated to partisanship this traditional districting principle.

93. Dr. Chen found the enacted House plan is also less compact than all 1,000 of his simulations in House Simulation Set 1. Dr. Chen employed the measures of compactness set forth in the Adopted Criteria, known as Reock and Polsby-Popper scores. Tr. 271:16-273:15; PX1 at 38 (Chen Report). For both measures, a higher score indicates that a plan's districts are more compact. *Id.* Dr. Chen found that, as measured by both Reock and Polsby-Popper scores, the compactness of the enacted House plan is outside the range of scores produced by the 1,000 simulated House plans. *Id.* From this, Dr. Chen concluded with over 99% statistical certainty that the enacted House plan subordinates the traditional districting criterion of compactness, and that the current districts are less compact than they would be under a map-drawing process that prioritizes and follows the traditional districting criteria. Tr. 273:18-274:4.

94. Plaintiffs' Exhibit 14 depicts the compactness of the enacted House plan and the 1,000 simulations in House Simulation Set 1:



95. The Court finds that the enacted House plan subordinates to partisanship the traditional districting principle of compactness. The Court finds that the current House districts are less compact than they would be under a map-drawing process that had not subordinated to partisanship this traditional districting criteria.

96. To compare the partisanship of his simulated plans to the enacted House and Senate plans, Dr. Chen used Census Block-level election results from recent statewide elections in North Carolina. Tr. 274:5-275:20; PX1 at 19-20 (Chen Report). For most of his analysis, Dr. Chen used the following ten statewide elections: 2010 U.S. Senate, 2012 U.S. President, 2012 Governor, 2012 Lieutenant Governor, 2014 U.S. Senate, 2016 U.S. President, 2016 U.S. Senate, 2016 Governor, 2016 Lieutenant Governor, and 2016 Attorney

General. *Id.* Dr. Chen provided several reasons for his choice of these ten statewide elections.

97. First, Representative Lewis indicated at an August 10, 2017, hearing that these ten statewide elections would be the elections that the Joint Redistricting Committees would use to evaluate the 2017 Plans. Tr. 275:8-11; PX1 at 20 (Chen Report).

98. Second, Dr. Chen testified that it is well-accepted in academic literature and in redistricting practice that statewide elections, rather than legislative elections, provide the best basis for measuring the partisanship of a district and for comparing the partisanship of districts across alternative possible plans. Tr. 276:3-27:18; PX1 at 19-20 (Chen Report). Dr. Chen explained that legislative elections, such as state House and state Senate elections, do not provide a sound basis for measuring the partisanship of Census Blocks and districts because the results of legislative elections can be skewed by various factors. *Id.* For instance, if districts are gerrymandered or otherwise uncompetitive, the results of the legislative elections can be biased by the district boundaries in a way that they would not be under an alternative plan. *Id.* As Dr. Chen noted, the General Assembly did not have Dr. Hofeller use legislative elections to measure partisanship in drawing the 2017 Plans. Tr. 277:9-14.

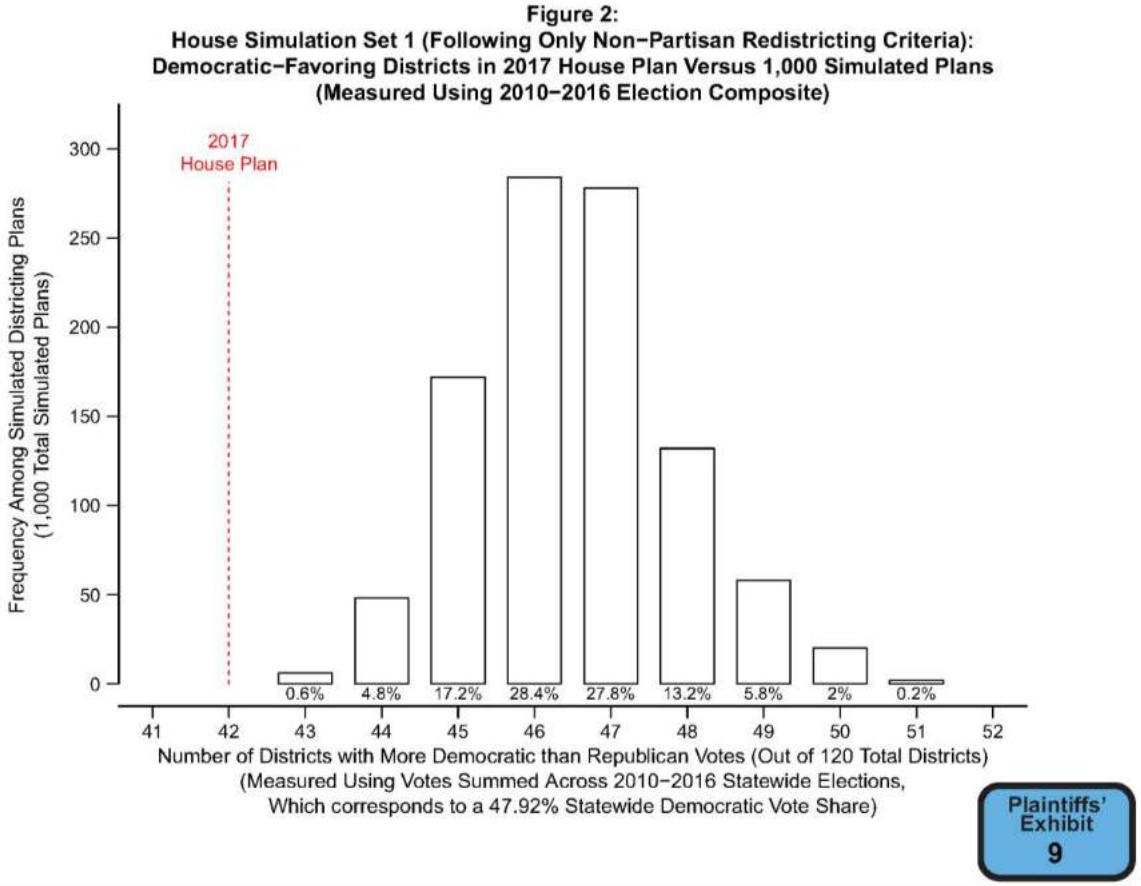
99. Third, Dr. Chen testified he did not use party registration to measure the partisanship of districts because it is well-known in academic literature and in the redistricting community that party registration is not a reliable indicator of actual partisan voting behavior. Tr. 277:19-278:10. That is particularly true in southern states such as North Carolina, where many registered Democrats now consistently vote for Republicans. *Id.* As Dr. Chen again noted, Legislative Defendants did not have Dr. Hofeller use party registration to measure partisanship in drawing the 2017 Plans. Tr. 278:11-15.

100. The Court finds the use of statewide elections by Plaintiffs' experts to measure the partisanship of simulated and enacted districts is a reliable methodology.

101. To measure the partisanship of his simulated districts and the enacted districts, Dr. Chen determined the set of Census Blocks that comprise each district. Tr. 278:24-283:10; PX1 at 20-22 (Chen Report). Dr. Chen then aggregated the elections results from the ten 2010-2016 statewide elections for that set of Census Blocks. *Id.* In other words, Dr. Chen calculated the total votes cast for Democratic candidates in those ten 2010-2016 statewide elections across the relevant set of Census Blocks and the total votes cast for Republican candidates in that set of Census Blocks. *Id.* If there were more votes in aggregate for the Democratic candidates, Dr. Chen classified the district as a Democratic district, and if there were more votes for the Republican candidates, Dr. Chen classified the district as a Republican district. *Id.*

102. Using this measure of partisanship, Dr. Chen compared the number of Democratic districts under the enacted 2017 House plan and under the 1,000 simulated plans in his House Simulation Set 1. While the enacted House plan has 42 Democratic districts using the 2010-2016 statewide elections, not a single one of the 1,000 simulated plans produce so few Democratic districts. Tr. 285:15-287:8; PX1 at 29-30 (Chen Report). The vast majority of simulated plans produce 46 to 51 Democratic districts using the 2010-2016 statewide elections, with the two most common outcomes in the simulations being 46 or 47 Democratic districts—*i.e.*, four or five more Democratic districts than exist under the enacted House plan. *Id.* From these results, Dr. Chen concluded with over 99% statistical certainty that the current House plan is an extreme partisan outlier, and one that could not have occurred under a districting process that adhered to the traditional districting criteria. Tr. 287:2-8; PX1 at 29 (Chen Report).

103. Plaintiffs' Exhibit 9 depicts the distribution of Democratic seats under the enacted House plan and under the 1,000 simulations in Dr. Chen's House Simulation Set 1:



104. Dr. Chen explained that the number of Democratic districts estimated for his simulated plans is depressed by the fact that the 2010-2016 statewide elections he used were relatively favorable for Republicans. Tr. 284:1-285:12; PX1 at 29 (Chen Report). Three of the four elections cycles in this period—2010, 2014, and 2016—were favorable for Republicans nationally. *Id.* Consequently, the aggregate Democratic share of the two-party vote across the ten statewide elections in the 2010-2016 composite used by Dr. Chen was just 47.92%. *Id.*

105. Dr. Chen also measured the number of Democratic districts that would exist under his simulated plans and the enacted House plan under electoral environments that

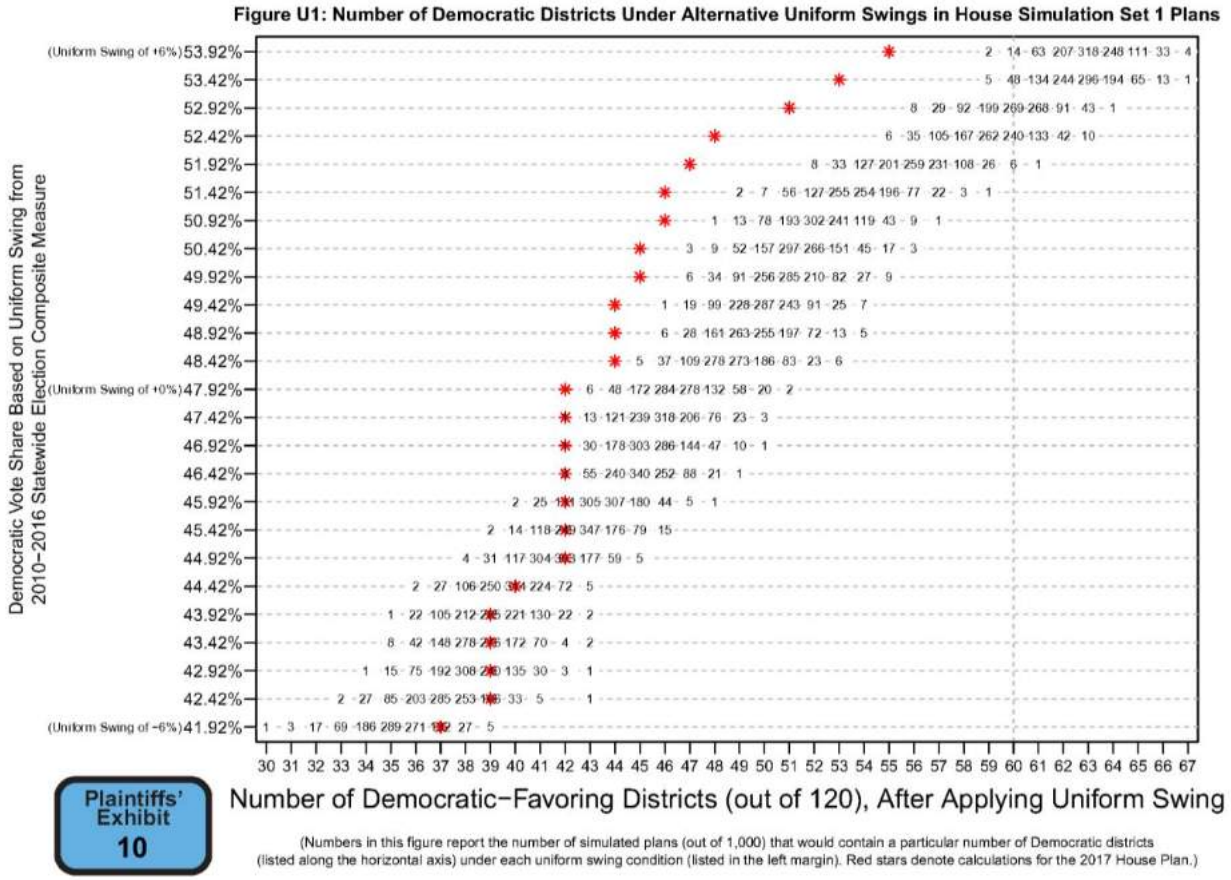
are more neutral or even favorable to Democrats. Tr. 287:15-22. First, Dr. Chen analyzed the number of Democratic districts using only the 2016 Attorney General election, which was a near tie. Tr. 287:19-289:14; PX1 at 29 (Chen Report). Using the 2016 Attorney General results, the enacted House plan produces 44 Democratic districts, while the 1,000 simulated House plans produce 48 to 55 Democratic districts, with the most common outcome being 52 Democratic districts. Tr. 287:24-289:14; PX119; PX1 at 29, 174, A1. The gap between the enacted House plan and the simulated plans therefore grows to eight Democratic seats in the most common outcome under the neutral electoral environment that was the 2016 Attorney General election. *Id.*

106. Dr. Chen also performed a "uniform swing" analysis to compare the enacted plan and the simulated plans under different electoral environments. Uniform swing analysis is a common technique used in academic literature and the redistricting community to measure how districts would perform under varying electoral conditions. Tr. 289:25-290:8. For his uniform swing analysis, Dr. Chen started with the Democratic vote share in every enacted and simulated district using the 2010-2016 statewide elections, and then increased or decreased the Democratic vote share uniformly in every district in 0.5% increments. Tr. 290:4-296:3.

107. Dr. Chen's uniform swing analysis revealed a "striking trend." Tr. 296:7. As the uniform swing increases in the direction of more favorable Democratic performance, the gap between the number of Democratic districts under the enacted plan and the simulated plans grows more and more. Tr. 296:7-20. In other words, "in electoral environments that are more favorable to Democrats, the gap between the enacted plan and all of the computer-simulated plans is widened." Tr. 296:18-20.

108. Plaintiffs' Exhibit 10 below depicts Dr. Chen's uniform swing analysis for House Simulation Set 1. The starting point is the row on the vertical axis for "47.92%,"

which represents the statewide Democratic vote share under the ten 2010-2016 statewide elections. Tr. 290:23-296:3; PX1 at 31-33 (Chen Report). Each row above this point represents the results when increasing the Democratic vote share in every enacted and simulated district by increments of 0.5%. *Id.* The red stars in each row represent the number of Democratic districts under the enacted 2017 House plan, and the numbers to the right of each red star represent the number of simulations (out of 1,000) that produce the number of Democratic districts found on the horizontal axis below. *Id.* For instance, for the starting row of a 47.92% statewide Democratic vote share, the enacted plan (the red star) produces 42 Democratic districts, six simulated plans produce 43 Democratic districts, 48 simulated plans produce 44 Democratic districts, 172 simulated plans produce 45 Democratic districts, and so on. *Id.*



109. Dr. Chen found that the gap between the enacted and simulated plans not only grew as the electoral environment became more favorable for Democrats, but the gap is "widest" at the point when Democrats would start winning a majority of House seats under the simulated plans. Tr. 296:20-297:21. Plaintiffs' Exhibit 11 (Figure U2) below depicts Dr. Chen's results for a uniform swing corresponding to a statewide Democratic vote share of 52.42%. In this scenario, the enacted House plan contains only 48 Democratic districts, but roughly one-third of the 1,000 simulations produce 60 or more Democratic districts, with a 60-60 tie being the second most common outcome. Tr. 298:2-299:7. Plaintiffs' Exhibit 12 (Figure U3) below depicts Dr. Chen's results for a uniform swing corresponding to a statewide Democratic vote share of 52.92%. In this scenario, there are 60 or more Democratic districts in nearly two-thirds of the simulations, and Democrats would win a majority (61 or more seats) in more than 40% of the simulations. Tr. 299:16-301:12. But Democrats would hold just 51 districts under the enacted House plan. *Id.*

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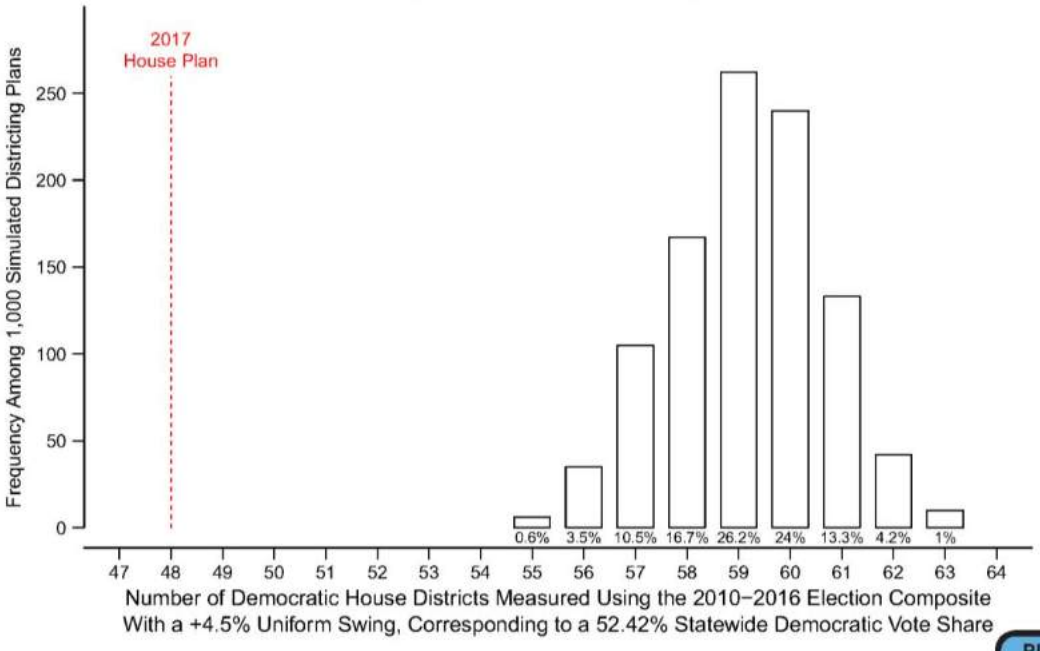
Figure U2:
Number of Democratic House Districts Measured Using the 2010–2016 Election Composite With a +4.5% Uniform Swing, Corresponding to a 52.42% Statewide Democratic Vote Share (House Simulation Set 1)



Plaintiffs' Exhibit 11

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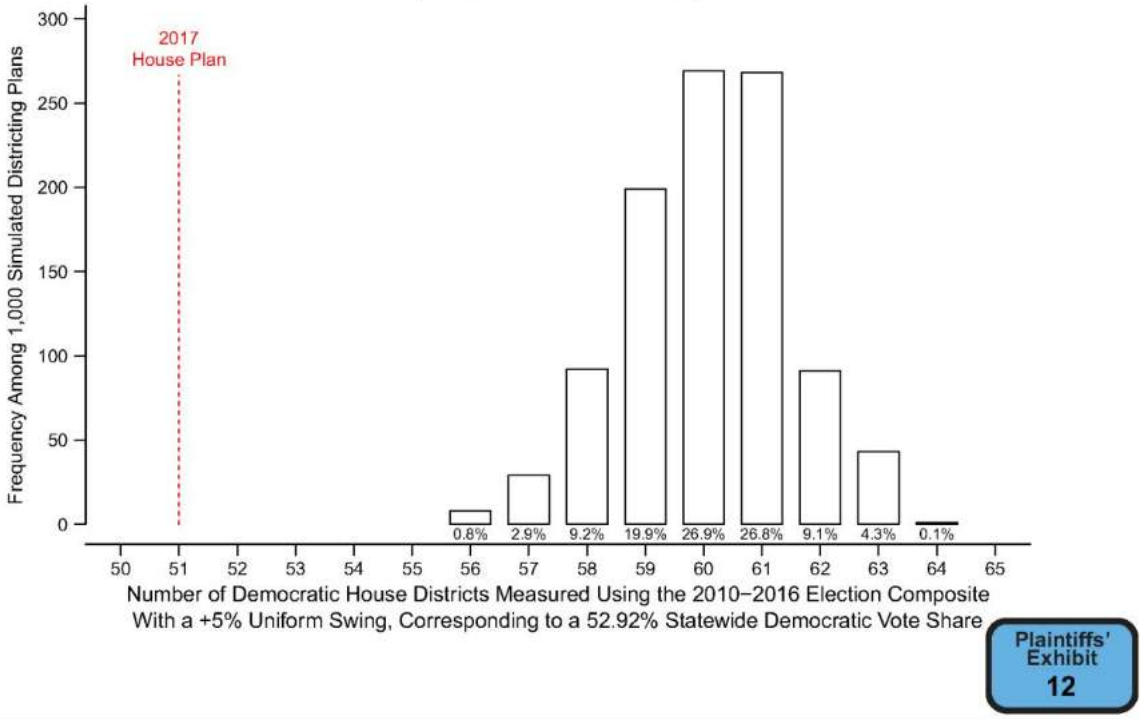
Figure U3:
Number of Democratic House Districts Measured Using the 2010–2016 Election Composite With a +5% Uniform Swing, Corresponding to a 52.92% Statewide Democratic Vote Share (House Simulation Set 1)



110. Dr. Chen analyzed the type of electoral environment that would produce 55 Democratic districts under the enacted House plan, which is the number of House districts that Democrats won in 2018. Tr. 301:16-302:14. Dr. Chen found that, in the type of electoral environment that would produce 55 Democratic districts under the enacted plan in his uniform swing analysis, Democrats would win *60 or more* House districts in over 99% of his simulated plans, and would win a majority of districts in over 98% of the simulated plans. *Id.*; PX10. In other words, while Democrats improved their seat share in 2018, they may well have won a majority had a nonpartisan plan been in place.

111. The Court finds Dr. Chen's uniform swing analysis to be substantial evidence of the intent and effects of Legislative Defendants' partisan gerrymander. The analysis establishes that the effects of the gerrymander are most extreme in electoral environments that are better for Democrats, specifically in electoral environments where Democrats could

win a majority of House seats under a nonpartisan map. Dr. Chen's uniform swing analysis is persuasive evidence the enacted House plan was designed specifically to ensure that Democrats would not win a majority of House seats under any reasonably foreseeable electoral environment.

112. The Court further gives weight to Dr. Chen's overall conclusions from his House Simulation Set 1. Dr. Chen concluded with over 99% statistical certainty that partisanship predominated in the drawing of the enacted House plan and subordinated the traditional districting criteria of compactness, avoiding splitting municipalities, and avoiding splitting VTDs. Tr. 307:12-24. The Court adopts these conclusions and finds the current House districts, regardless of whether they were drawn in 2017 or 2011, subordinated these three traditional districting criteria in order to accomplish Legislative Defendants' predominant partisan goals.

113. In his House Simulation Set 2, Dr. Chen programmed his algorithm to add avoiding pairing incumbents as an additional criterion. Dr. Chen performed this analysis to determine whether a hypothetical, nonpartisan effort to avoid pairing the incumbents in place at the time each of the relevant districts was drawn could account for the extreme partisan bias and subordination of traditional districting principles that Dr. Chen found in his Simulation Set 1. Tr. 308:15-21. Dr. Chen programmed his algorithm in Simulation Set 2 to avoid pairing the maximum number of incumbents possible who were in office at the time of the relevant redistrictings, and to ensure that the very same incumbents who were not paired with another incumbent under the enacted plans were not paired in the simulations. Tr. 308:3-14, 310:21-311:16; PX1 at 43 (Chen Report).

114. The method by which Dr. Chen avoided pairing incumbents in Simulation Set 2 is consistent with the Adopted Criteria's incumbency protection provision. The Court gives no weight to Legislative Defendants' contention that the Adopted Criteria required

incumbency protection beyond merely avoiding pairing incumbents; namely, that the Adopted Criteria required creating districts politically favorable to incumbents. As Representative Lewis stated, this criterion was interpreted as simply an intent to avoid pairing incumbents. *See* FOF ¶ 28. At the time of the 2017 redistricting, Republicans held supermajorities in both chambers of the General Assembly. Hence, seeking to enhance the reelection chances of every incumbent, Democrat and Republican alike, would have been a means of seeking to lock-in the Republican supermajorities. It would also have been particularly inappropriate to seek to preserve the "core" of the existing districts, as Legislative Defendants' expert Dr. Brunell suggested, since many of the existing districts had been found to constitute illegal racial gerrymanders.

115. In addition, the Court finds that Legislative Defendants did not seek to protect Democratic and Republican incumbents alike in a neutral manner. For example, in Buncombe County, the enacted plan paired two Democratic incumbents who were in office at the time these House districts were drawn in 2011, but Dr. Chen's algorithm was able to avoid pairing these two Democratic incumbents in all 1,000 of his simulations. Tr. 312:14-313:9; PX1 at 45, 47 (Chen Report). Legislative Defendants thus unnecessarily paired these two Democratic incumbents in creating the Buncombe County House districts, ensuring that one of the two would not be reelected. *Id.* Dr. Hofeller's Excel files further show that, in 2017, Dr. Hofeller focused solely on concerns for Republican incumbents and not Democratic incumbents. FOF § B.2.a. Dr. Hofeller analyzed "Pressure Points for GOP Incumbents" in both the House and the Senate, but performed no similar analysis for Democratic incumbents. *Id.*

116. Based on his House Simulation Set 2 analysis, Dr. Chen found that a nonpartisan effort to avoid pairing incumbents cannot explain the extreme partisan bias of the enacted House plan or its subordination of traditional districting criteria. Dr. Chen

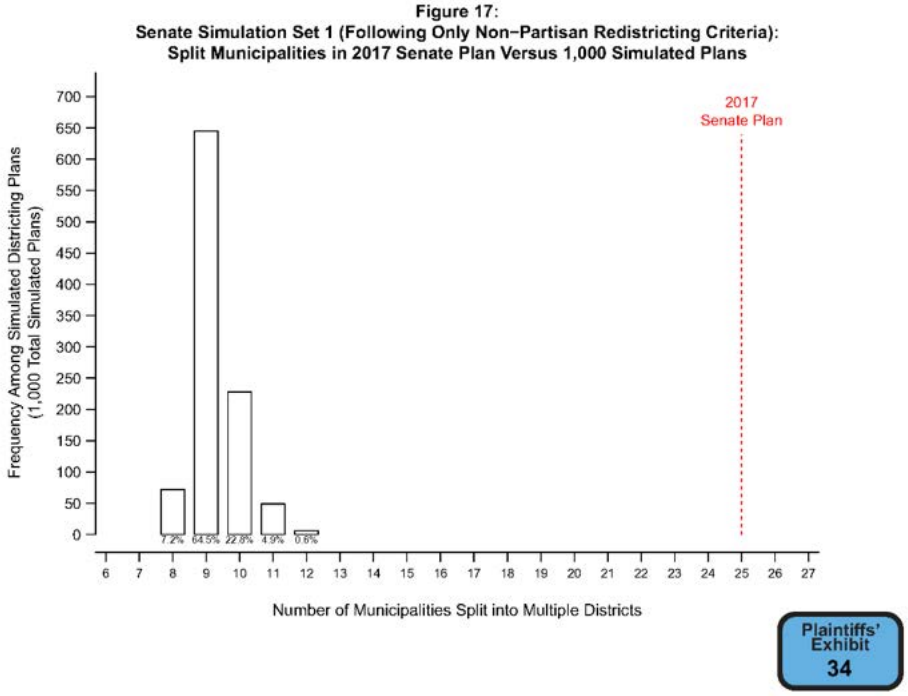
found that the enacted House plan is an extreme outlier with respect to the number of Democratic districts it produces, the number of municipalities and VTDs it splits, and the compactness of its districts compared to the 1,000 simulated plans in House Simulation Set 2. Tr. 313:11-317:24; PX7; PX18; PX23; PX1 at 44-56 (Chen Report). The Court gives weight to Dr. Chen's findings in House Simulation Set 2 and finds that a nonpartisan effort to protect incumbents cannot explain the extreme partisan bias and subordination of traditional districting principles in the enacted House plan.

117. For the Senate, Dr. Chen ran two sets of 1,000 simulations just as he did for the House. Tr. 318:11-319:9. Dr. Chen's Senate Simulation Set 1 applied the same algorithm used for House Simulation Set 1, prioritizing and equally weighting the traditional districting principles within the Adopted Criteria of compactness and avoiding splitting municipalities and VTDs.[3] Dr. Chen ran his algorithm 1,000 times for each Senate county grouping, producing 1,000 unique statewide plans in Senate Simulation Set 1. Tr. 319:10-320:10.

118. With respect to municipal splits, Dr. Chen found the enacted Senate plan splits 25 municipalities, while the 1,000 simulated plans in Senate Simulation Set 1 split between just 8 and 12 municipalities. Tr. 320:12-321:9; PX1 at 69, 71 (Chen Report). From this, Dr. Chen concluded with over 99.9% statistical certainty that the enacted Senate plan subordinates the traditional districting criterion of following municipal boundaries, and splits far more municipalities than is reasonably necessary. Tr. 321:12-17.

[3] Dr. Chen used the same Senate county groupings that exist under the enacted Senate plan, minimized the number of county traversals, and applied the Adopted Criteria's equal population and contiguity requirements. Tr. 318:11-319:9.

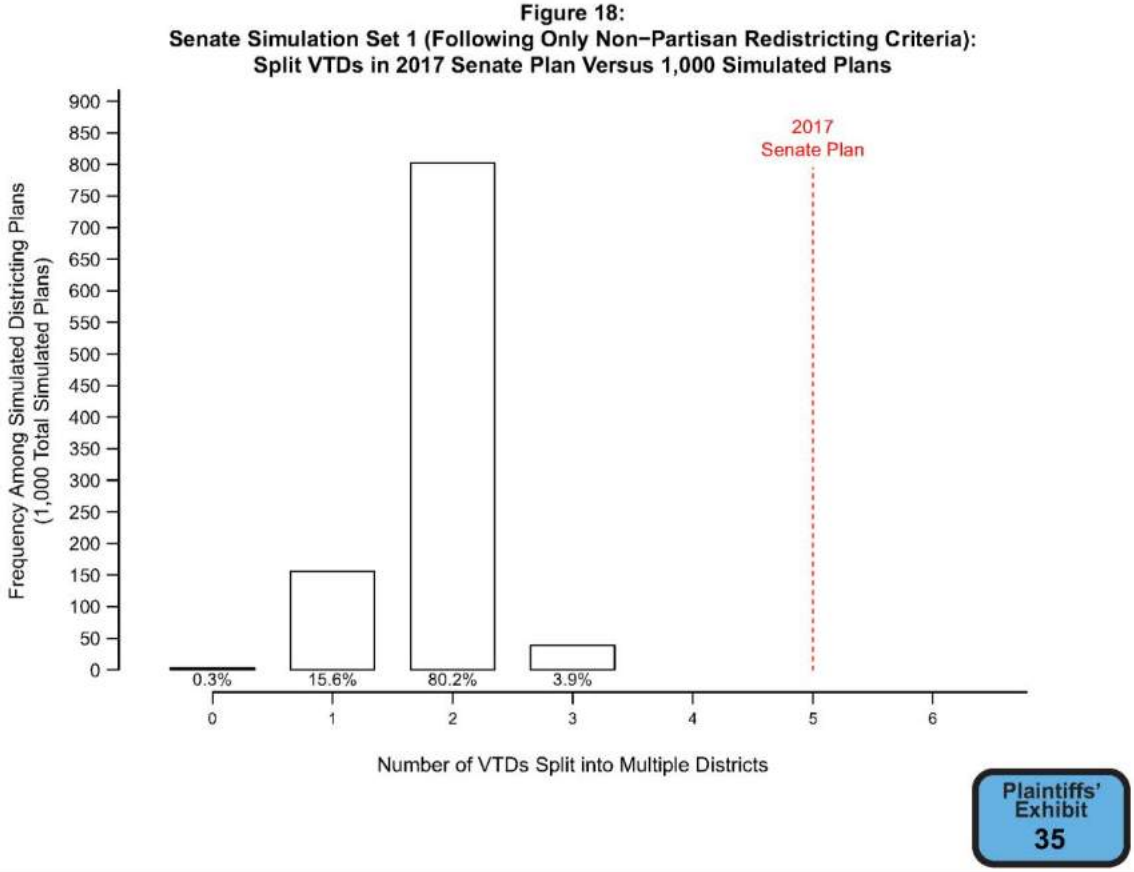
119. Plaintiffs' Exhibit 34 depicts the number of municipalities split under the enacted Senate plan and the 1,000 simulations in Senate Simulation Set 1:



120. The Court finds the enacted Senate plan subordinates to partisanship the traditional districting principle of avoiding the unnecessary splitting of municipalities. The Court finds the current Senate districts split substantially more municipalities than would be split if the map-drawing process had not subordinated to partisanship this traditional districting principle.

121. With respect to VTDs, Dr. Chen found the enacted Senate plan splits 5 VTDs, while his simulations split between 0 and 3 VTDs. Tr. 321:19-322:9; PX1 at 69, 72 (Chen Report). From this, Dr. Chen concluded with over 99.9% statistical certainty that the enacted Senate plan subordinates the traditional districting criterion of following VTD boundaries, and splits more VTDs than is reasonably necessary. Tr. 322:12-15.

122. Plaintiffs' Exhibit 35 depicts the number of VTDs split under the enacted Senate plan and the 1,000 simulations in Senate Simulation Set 1:

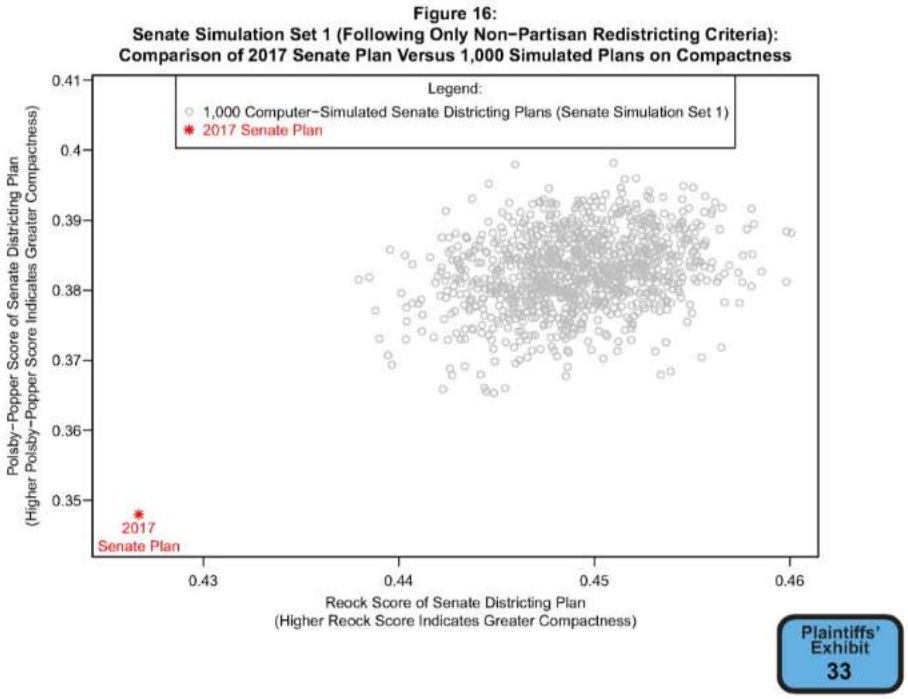


123. The Court finds the enacted Senate plan subordinates to partisanship the traditional districting principle of avoiding the unnecessary splitting of VTDs. The Court finds the current Senate districts split more VTDs than would be split if the map-drawing process had not subordinated to partisanship this traditional districting principle.

124. Dr. Chen found the enacted Senate plan is also less compact than all 1,000 of his Senate simulations. Using both the Reock and Polsby-Popper measures of compactness, all 1,000 simulated plans in Senate Simulation Set 1 are more compact than the enacted Senate plan. Tr. 322:17-324:3; PX1 at 67-69 (Chen Report). From this, Dr. Chen concluded with over 99% statistical certainty that the enacted Senate plan subordinates the traditional districting criterion of compactness, and that the current districts are less

compact than they would be under a map-drawing process that prioritizes and follows the traditional districting criteria. Tr. 324:6-15.

125. Plaintiffs' Exhibit 33 depicts the compactness of the enacted Senate plan and the 1,000 simulations in Senate Simulation Set 1:



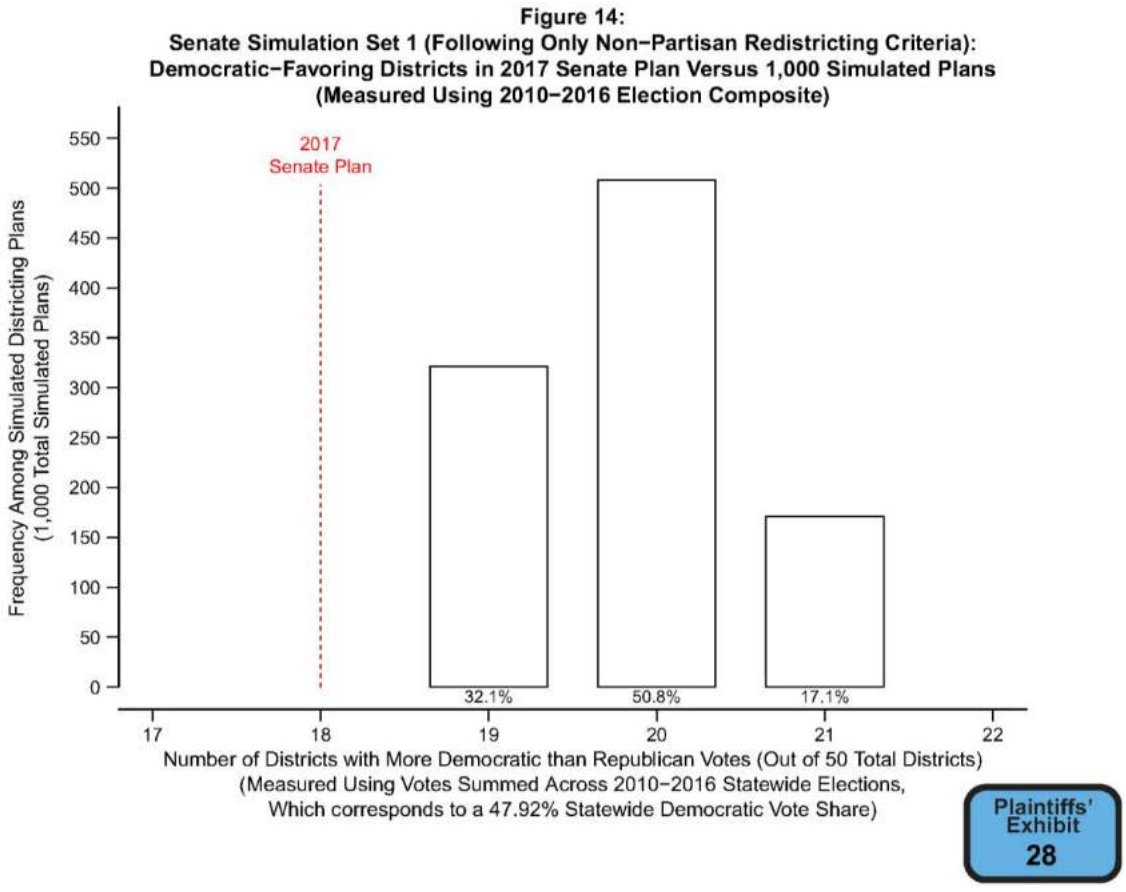
126. The Court finds the enacted Senate plan subordinates to partisanship the traditional districting principle of compactness. The Court finds the current Senate districts are less compact than they would be under a map-drawing process that had not subordinated to partisanship this traditional districting criteria.

127. As with the House, Dr. Chen compared the partisanship of his simulated Senate plans to the partisanship of the enacted Senate plan using the same ten statewide elections from 2010-2016 that Representative Lewis stated would be used. Tr. 324:16-325:5.

128. Using the 2010-2016 statewide elections, Dr. Chen found that the enacted Senate plan produces 18 Democratic districts. Tr. 325:7-326:11; PX1 at 57, 60 (Chen

Report). In contrast, none of the 1,000 simulated plans produce such an outcome. *Id.* The simulated Senate plans produce 19 to 21 Democratic districts using the 2010-2016 statewide elections, with the most common outcome in the simulations being 20 Democratic districts—*i.e.*, two more Democratic districts than exist under the enacted Senate plan. *Id.* From these results, Dr. Chen concluded with over 99% statistical certainty that the current Senate plan is an extreme partisan outlier, and one that could not have occurred under a districting process that adhered to the traditional districting criteria. Tr. 326:12-21; PX1 at 59 (Chen report).

129. Plaintiffs' Exhibit 28 depicts the distribution of Democratic seats under the enacted Senate plan and under the 1,000 simulations in Senate Simulation Set 1:



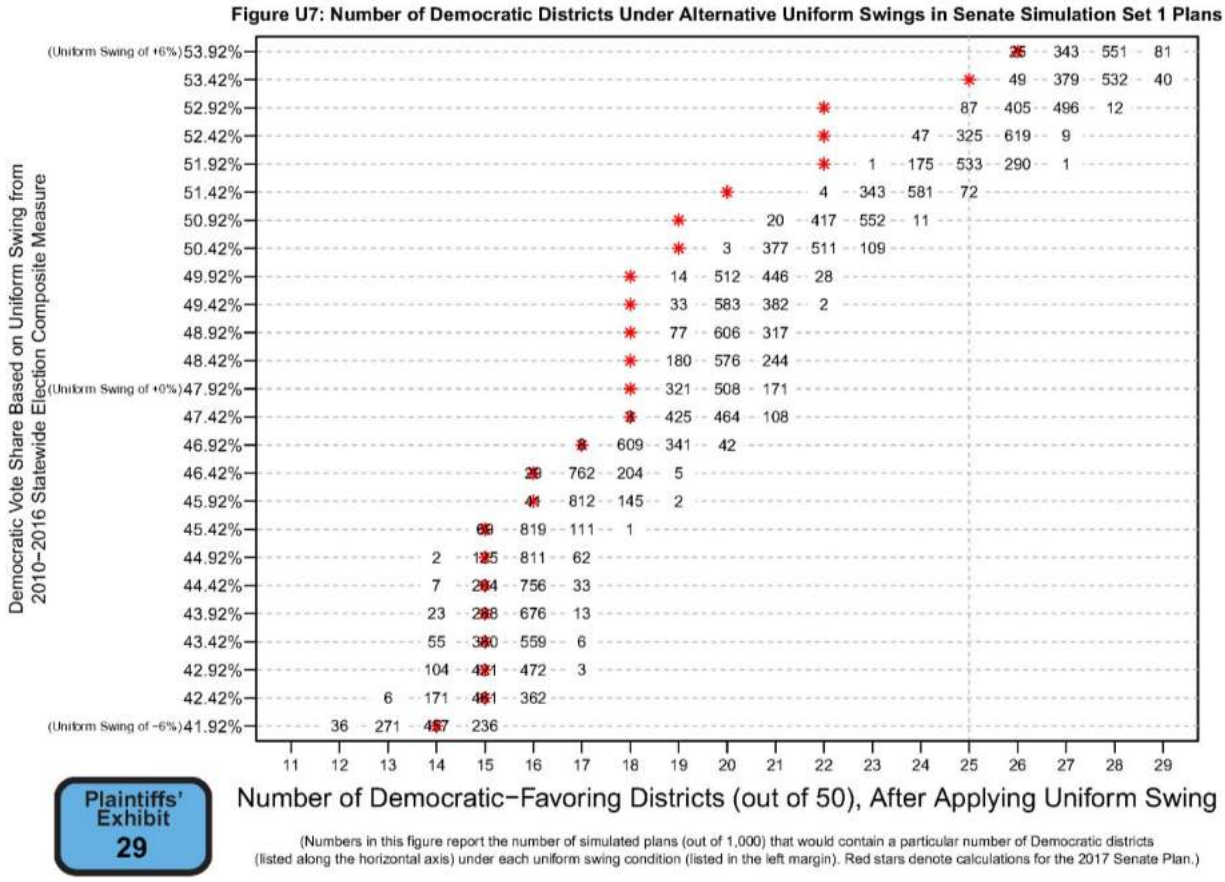
130. Like he did for the House, Dr. Chen measured the number of Democratic districts that would exist under his simulated plans and the enacted plan under electoral environments that are more neutral or even favorable to Democrats. Dr. Chen again analyzed the number of Democratic districts when using just the 2016 Attorney General election, which was a near tie. Tr. 327:8-11; PX121; PX1 at 59, 61, A3 (Chen Report). Dr. Chen found that the enacted Senate plan produces 20 Democratic districts using the 2016 Attorney General results, while the 1,000 simulated Senate plans most commonly produce 23 Democratic districts under the 2016 Attorney General results. Tr. 328:1-13. The gap between the enacted Senate plan and the simulated plans therefore grows to three Democratic seats in the most common outcome under the neutral electoral environment of the 2016 Attorney General election. *Id.*

131. Dr. Chen also performed a uniform swing analysis to compare the enacted Senate plan to the simulated Senate plans under different electoral environments. Just as he did for the House, in his uniform swing analysis for the Senate, Dr. Chen started with the Democratic vote share in every enacted and simulated district using the 2010-2016 statewide elections and then increased or decreased the Democratic vote share uniformly in every district in 0.5% increments. Tr. 328:25-329:7.

132. Dr. Chen found the same trend in his uniform swing analysis of the Senate that he found for the House. Tr: 330:7-23. He found that as he increases the uniform swing in the more Democratic direction, the gap between the number of Democratic districts under the enacted Senate plan and the simulated plans grows. *Id.* And the gap again becomes widest around the points where Democrats would come close to gaining a majority or would actually gain a majority under the nonpartisan simulated plans. *Id.*

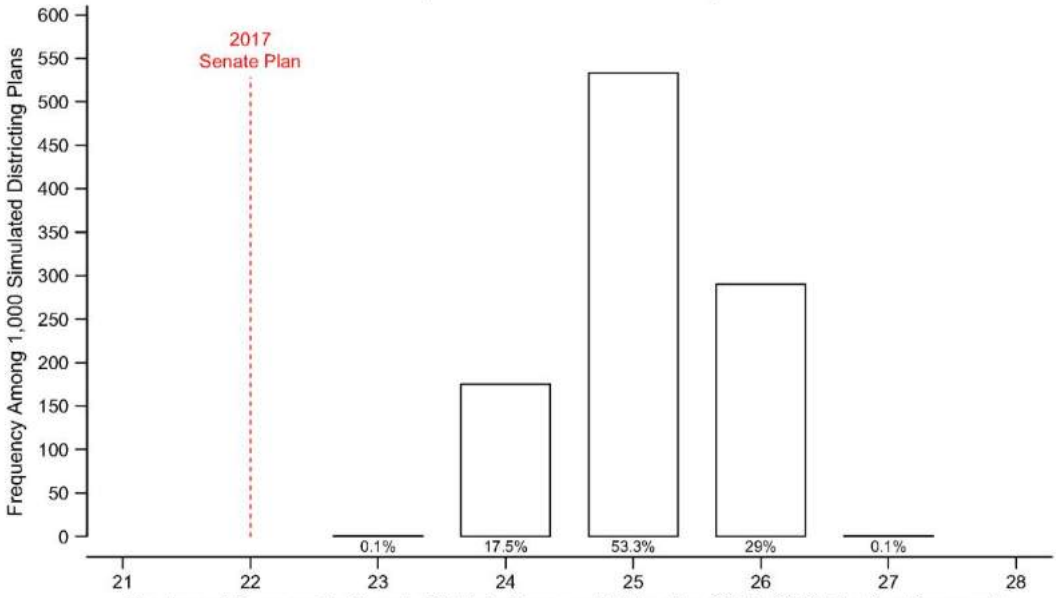
133. Plaintiffs' Exhibit 29 below depicts Dr. Chen's uniform swing analysis for the Senate. The red stars again reflect the number of Democratic districts under the enacted

Senate plan and the numbers to the right of the red stars reflect the number of simulations (out of 1,000) that produce the number of Democratic districts listed on the horizontal axis.



134. Plaintiffs' Exhibit 30 (Figure U8) below depicts Dr. Chen's Senate results for a uniform swing corresponding to a statewide Democratic vote share of 51.92%. The figure reveals that, in this scenario, the enacted Senate plan contains only 22 Democratic districts, but the vast majority of simulations would give Democrats a tie or an outright majority in the Senate. Tr. 331:2-332:23. Plaintiffs' Exhibit 31 (Figure U9) below depicts Dr. Chen's Senate results for a uniform swing corresponding to a statewide Democratic vote share of 52.42%. In this environment, Democrats would win half or more of the districts in over 95% of the simulations and would win an outright majority in over 62% of the simulations. Tr. 333:7-334:2. Yet, under the enacted Senate plan, Democrats would hold just 22 Senate districts in this scenario. *Id.*

Figure U8:
Number of Democratic Senate Districts Measured Using the 2010–2016 Election Composite With a +4% Uniform Swing, Corresponding to a 51.92% Statewide Democratic Vote Share (Senate Simulation Set 1)



Plaintiffs' Exhibit 30

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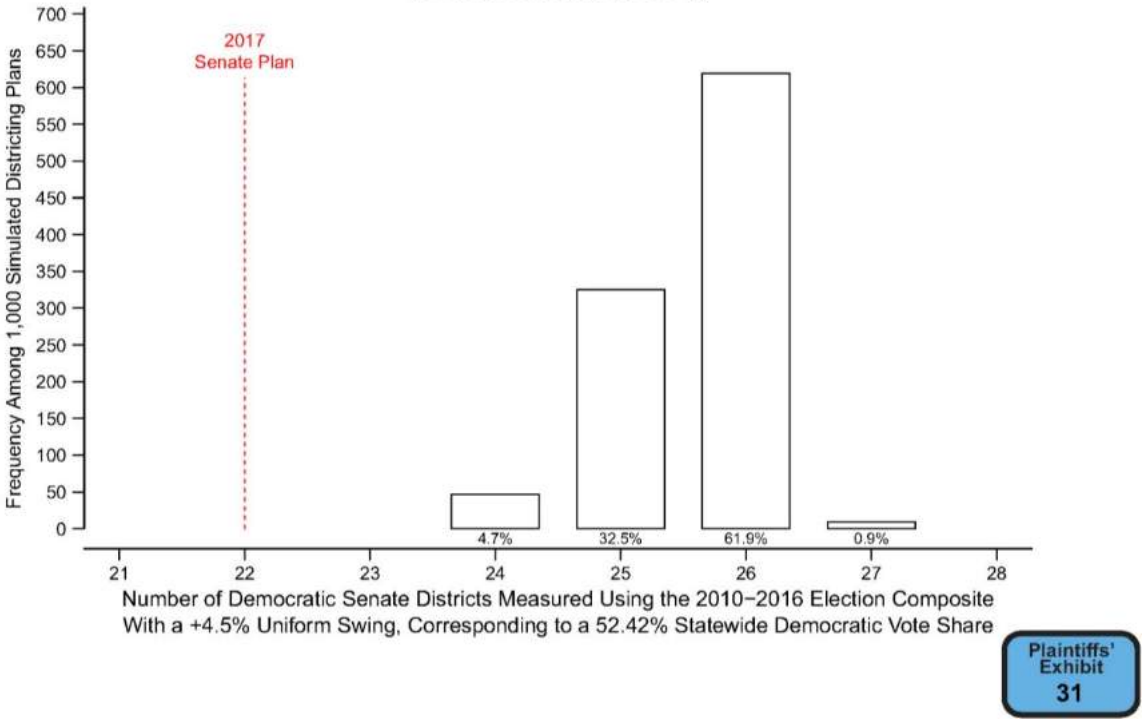
Figure U9:
Number of Democratic Senate Districts Measured Using the 2010–2016 Election Composite With a +4.5% Uniform Swing, Corresponding to a 52.42% Statewide Democratic Vote Share (Senate Simulation Set 1)



135. Dr. Chen also analyzed the type of electoral environment that would produce 21 Democratic districts under the enacted plan, which is the number of Senate districts that Democrats won in 2018. Tr. 334:3-335:7. Dr. Chen found that, in the type of environment that would produce 21 Democratic districts under the enacted plan in his uniform swing analysis, Democrats would win *25 or more* Senate districts in the vast majority of simulations. *Id.*; PX29. In other words, while Democrats improved their seat share in 2018, they may well have won a majority had a nonpartisan plan been in place.

136. The Court again finds Dr. Chen's uniform swing analysis to be substantial evidence of the intent and effects of the partisan gerrymander. Dr. Chen's analysis establishes that the effects of the gerrymander are most extreme in electoral environments that are better for Democrats, and in particular in environments under which Democrats could win a majority of Senate seats under a nonpartisan map. Dr. Chen's uniform swing

analysis is persuasive evidence that the enacted Senate plan was designed specifically to ensure that Democrats would not win a majority of Senate seats under any reasonably foreseeable electoral environment.

137. The Court further gives weight to Dr. Chen's overall conclusions from his Senate Simulation Set 1. Dr. Chen concluded with over 99% statistical certainty that partisanship predominated in the drawing of the enacted Senate plan and subordinated the traditional districting criteria of compactness, avoiding splitting municipalities, and avoiding splitting VTDs. Tr. 336:22-337:7. The Court adopts these conclusions and finds the current Senate districts, regardless of whether they were drawn in 2017 or 2011, subordinated these three traditional districting criteria in order to accomplish Legislative Defendants' predominant partisan goals.

138. Dr. Chen generated 1,000 more simulated plans in his Senate Simulation Set 2, adding the same incumbency criteria he used for the House. Dr. Chen found that a hypothetical, nonpartisan effort to avoid pairing the incumbents in place at the time each of the relevant districts was drawn could not explain the extreme partisan bias of the enacted Senate plan and its subordination of traditional districting principles. Tr. 341:18-342:8. Dr. Chen found the enacted Senate plan is an extreme outlier with respect to the number of Democratic districts it produces, the number of municipalities and VTDs it splits, and the compactness of its districts compared to the 1,000 simulated plans in Senate Simulation Set 2. Tr. 337:8-341:22, 26, 37, 42; PX1 at 73-85 (Chen Report). The Court gives weight to Dr. Chen's findings in Senate Simulation Set 2 and finds a nonpartisan effort to protect incumbents cannot explain the extreme partisan bias and subordination of traditional districting principles in the enacted Senate plan.

139. The Court also gives weight to and adopts Dr. Chen's conclusions that the partisan bias of the 2017 House and Senate Plans cannot be explained by North Carolina's

political geography, meaning the geographic locations of Republican and Democratic voters. Tr. 307:3-11, 336:11-19. Political geography can create a natural advantage for Republicans in winning seats where, for example, Democratic voters are clustered in urban areas. Tr. 304:9-18; PX1 at 7-8 (Chen Report). But Dr. Chen designed his simulations with the specific purpose of accounting for North Carolina's political geography and any other built-in advantages either party may have in redistricting. Tr. 304:19-305:19; *see* PX1 at 7-8 (Chen Report). The simulations build districts using the *same* Census geographies and population data that existed when the enacted plans were drawn; thus, the simulated plans capture any natural advantage one party may have had based on population patterns when the General Assembly passed the enacted plans. *Id.*

140. Dr. Chen found that Republicans may have a small degree of natural advantage in winning districts in both the House and Senate; Dr. Chen's analysis suggests that even under his nonpartisan plans, Democrats may win less than 50% of the seats when they win 50% of the votes. Tr. 305:21-307:2, 335:17-336:10; PX1 at 36, 66 (Chen Report). But Dr. Chen concluded, and the Court finds, that the enacted House and Senate plans are extreme partisan outliers compared to Dr. Chen's simulations that account for political geography and any other built-in advantages Republicans may have, and thus political geography and other built-in advantages cannot explain the enacted plans' extreme partisan bias. Tr. 307:3-11, 336:11-19.

141. The Court also rejects Legislative Defendants' critiques of the way in which Dr. Chen's simulation algorithm applied the traditional districting principles of compactness and avoiding splitting municipalities and precincts.

142. Dr. Chen's interpretation and application of the traditional districting principles is fully consistent with the guidance provided by Legislative Defendants at the time of the 2017 redistricting. At the first public hearing after the draft plans were

unveiled, Representative Lewis explained the Adopted Criteria meant "trying to keep towns, cities and precincts whole where possible." PX607 at 10:5-6. Representative Lewis made similar statements at the committee hearing where the Adopted Criteria were proposed and debated; he asserted, for example, that the criterion regarding municipal splits "says that the map drawer may and rightfully should consider municipality boundaries when they can." PX603 at 67:16-18. Representative Lewis added that "municipality, precinct lines are things that are all community-of-interest-type things that we're going to seek to preserve." *Id.* at 77:12-14. Representative Lewis did not qualify in these statements that the Redistricting Committees would seek only to promote these traditional principles up to a point, or would seek to intentionally split some *minimum* number of municipalities and VTDs.

143. The Court further gives weight to Dr. Chen's testimony that his application of these criteria is consistent with generally accepted redistricting principles and practice. Dr. Chen testified that no jurisdiction in the country prefers to split a *higher* number of municipalities or VTDs or wants *less* compact districts. Tr. 603:2-605:21, 774:5-21. Nor does any jurisdiction seek to split some *minimum* number of municipalities or VTDs or impose a *cap* on how compact the districts should be. *Id.*

144. Legislative Defendants did not introduce persuasive evidence of nonpartisan reasons why the enacted plans split particular municipalities or VTDs or made particular districts less compact.

145. The Court also rejects any suggestion that Dr. Chen should not have applied these traditional districting criteria in simulating county groupings that were drawn in 2011 because these principles were not expressly stated as official criteria during the 2011 redistricting process. *See* Tr. 629:19-636:12. The principles of compactness and avoiding split municipalities and VTDs were traditional districting criteria since well before 2011.

Tr. 776:8-777:8; *see, e.g.*, *Stephenson v. Bartlett*, 355 N.C. 354, 371, 562 S.E.2d 377, 389 (2002). That the General Assembly did not list these traditional districting principles as official criteria in 2011 does not change the fact that Legislative Defendants subordinated these principles to partisan considerations in drawing the 2011 districts at issue in this case. *Id.* And the fact that the General Assembly reenacted these districts without change in 2017 does not mean these districts no longer subordinate traditional districting principles to partisan considerations. *Id.*

146. Dr. Chen's analysis demonstrates the current districts subordinate these nonpartisan traditional principles to partisan intent.

b. Dr. Mattingly

147. Jonathan Mattingly, Ph.D., is a North Carolina native, the chairman of the Duke University Mathematics Department, and the James B. Duke Professor of Mathematics at Duke University. Tr. 1080:7-20. He also is a professor in the Duke Statistics Department. *Id.* Dr. Mattingly was accepted as an expert in applied mathematics, probability, and statistical science. Tr. 1083:1-10.

148. Dr. Mattingly developed his method of evaluating partisan gerrymandering in his academic research. Tr. 1086:20-24. He has since created a project at Duke called "Quantifying Gerrymandering." Tr. 1084:9-1085:4. In the one previous case in which Dr. Mattingly testified, a federal partisan gerrymandering case relating to North Carolina's congressional districts, the federal court credited Dr. Mattingly's testimony and concluded his analysis "provide[d] strong evidence" of partisan gerrymandering. *Rucho*, 279 F. Supp. 3d at 644. The court found his simulations "not only evidence[d] the General Assembly's discriminatory intent, but also provide[d] evidence of the 2016 Plan's discriminatory effects." *Id.* at 666.

149. For this case, Dr. Mattingly generated a collection, or "ensemble," of nonpartisan, alternative redistricting maps using the Markov chain Monte Carlo computer algorithm, which is a well-established algorithm dating back at least to the Manhattan Project. Tr. 1089:11-24; Tr. 1090:19-22. Dr. Mattingly generated approximately 1.1×10^{108} statewide maps in the House (of which 6.6×10^{86} were unique), and approximately 3.7×10^{93} statewide maps in the Senate (of which 5.3×10^{30} were unique). Tr. 1090:1-14; PX359 at 4. The number of maps that Dr. Mattingly generated is greater than the number of atoms in the known universe. Tr. 1090:12-14.

150. To generate the maps, Dr. Mattingly used all of the nonpartisan redistricting criteria identified by the General Assembly in its Adopted Criteria. The Markov chain Monte Carlo algorithm that Dr. Mattingly employed ensured that the collection of maps was a random and representative sample from the distribution of nonpartisan maps that adhere to North Carolina's political geography and nonpartisan redistricting criteria. Tr. 1094:5-1095:3. All of Dr. Mattingly's simulated maps followed North Carolina's Whole County Provision and split no counties that were kept whole under the enacted plans; he ensured population deviations were within the 5% threshold; he required contiguity; and he tuned his algorithm to ensure that the nonpartisan qualities of the simulated maps were similar to the nonpartisan qualities of the enacted map with respect to compactness and the number of counties, municipalities, and precincts split. Tr. 1091:3-1093:1; PX359 at 3-4. Dr. Mattingly did not try to optimize or maximize any particular criterion such as compactness; instead, he took a random, representative sample of the distribution of all maps that are comparable to the enacted maps in terms of compactness and municipal splits. Tr. 1091:3-23.

151. The Court finds that Dr. Mattingly's simulated maps provide a reliable and statistically accurate baseline against which to compare the 2017 Plans. Tr. 1089:11-24.

Dr. Mattingly's collection of nonpartisan maps tracked all the nonpartisan criteria adopted by the Committees. By comparing Dr. Mattingly's simulated plans to the enacted plans, the Court can reliably assess whether the characteristics and partisan outcomes under the enacted plans could plausibly have resulted from a nonpartisan process or be explained by North Carolina's political geography. The Court can also reliably assess whether the enacted plans reflect extreme partisan gerrymanders. The partisan bias Dr. Mattingly identified by comparing the enacted plans to his nonpartisan ensemble of plans could not be explained by political geography or natural packing. Tr. 1095:9-1096:8. Moreover, Dr. Mattingly's analysis did not rest on any assumption about proportional representation. Tr. 1132:6-1133:5; Tr. 1103:24-1104:5.

152. After creating a representative sample of hundreds of trillions of nonpartisan maps, Dr. Mattingly used votes from 17 prior North Carolina statewide elections to compare the partisan performance and characteristics of the 2017 Plans to the simulated plans. Dr. Mattingly chose all major statewide elections from 2008-2016 that were available to him, and those 17 elections demonstrated a range of Democratic support and Republican support and a range of spatial structures and vote patterns. Tr. 1097:8-1098:8; PX487 at 5.

153. The elections Dr. Mattingly considered and their statewide Democratic vote share are listed in the table below (PX778 at 7; Tr. 1097:8-1098:8):

17 Elections	Democratic Vote Share
AG08	61.06%
USS08	54.32%
CI08	53.57%
LG08	52.64%
CI12	51.81%
GV08	51.70%
AG16	50.20%
PR08	50.11%
GV16	50.04%
LG12	49.87%
USS14	49.16%
PR12	48.91%
PR16	48.02%
USS16	46.97%
LG16	46.58%
GV12	44.13%
USS10	43.98%

154. Dr. Mattingly concluded that the 2017 Plans displayed a "systematic, persistent bias toward the Republican Party, both on the statewide level and on the county cluster level." Tr. 1087:22-25. He concluded that the enacted plans were "extreme partisan outlier[s]" when compared to maps that respect the political geography of North Carolina and are similar to the enacted plans in terms of the nonpartisan Adopted Criteria such as compactness and splitting municipalities. Tr. 1088:1-7. He concluded that the "extreme partisan bias" was durable and persisted across a broad range of possible voting patterns and election results. Tr. 1088:1-7. He concluded that the gerrymander was particularly effective at preventing Democrats from breaking the Republican supermajority in both chambers when they would expect to do so under a nonpartisan plan, and from breaking

the Republican majority in both chambers when they would expect to do so under a nonpartisan plan. Tr. 1088:8-11. And Dr. Mattingly concluded that the probability that the General Assembly would have enacted the 2017 Plans without intentionally searching for such a biased plan was "astronomically small." Tr. 1088:12-14, Tr. 1158:3-8. The Court gives great weight to those conclusions.

155. With respect to the Senate, Dr. Mattingly concluded that the enacted Senate plan shows a systematic bias toward the Republican Party. Tr. 1110:22-1111:3. In 15 of the 17 elections he considered, the enacted Senate plan produces an atypical bias toward the Republican Party with respect to the number of expected Democrat and Republican seats using the results of these prior statewide elections. Tr. 1116:2-12. The probability of seeing such a consistent pro-Republican bias across so many elections was 0.005%, Tr. 1116:18-21; PX487 at 23, meaning that the chance the General Assembly would have picked such a partisan map if it were not looking for it is five in a million, Tr. 1116:22-1117:2.

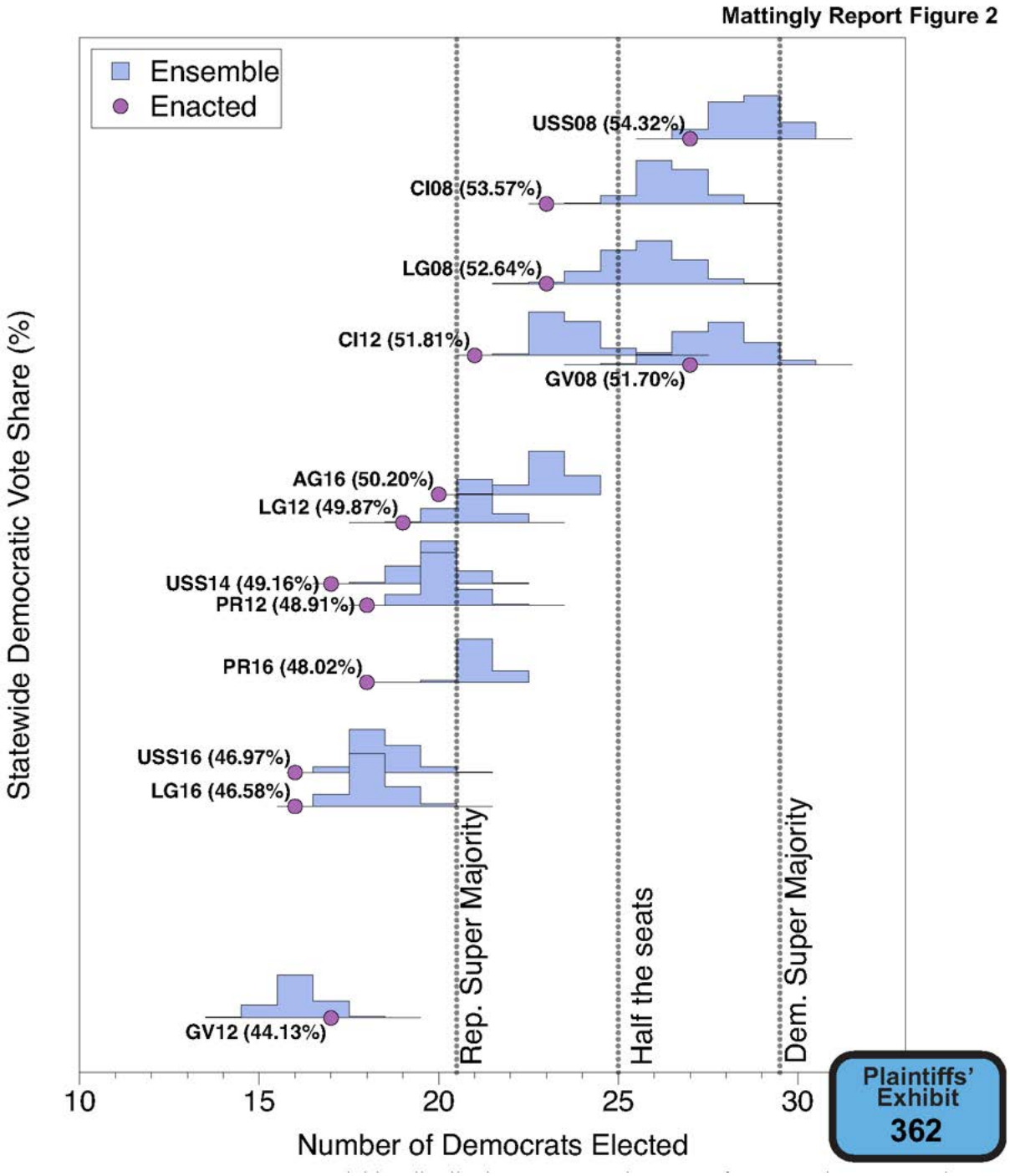
156. Dr. Mattingly concluded that the enacted Senate plan is an extreme outlier not just with respect to how consistently it favors Republicans, but with respect to the *amount* by which it favors Republicans. PX363 (Mattingly Report Figure 3). The enacted map caused Democrats to lose between 2 to 3 seats in the Senate in 13 of the 17 elections that Dr. Mattingly analyzed. *Id.* The Court finds this seat deviation to be significant. Tr. 1106:12-15.

157. Dr. Mattingly concluded that the 2017 Senate Plan's extreme partisan bias was responsible for creating firewalls protecting the Republican supermajority and majority in the Senate. He plotted the results of the statewide elections using the enacted Senate plan and his nonpartisan simulations (PX362). Tr. 1106:17-1110:4. He ordered the elections vertically from bottom (most Republican vote share) to top (most Democratic vote share), and then plotted the number of seats that Democrats would expect to receive under

the nonpartisan plans using blue histograms. *Id.* Using nonpartisan maps, the Democratic seat count would be expected to fall in the tallest part of the blue histogram. Tr. 1108:7-24. Dr. Mattingly used purple dots to report how many seats Democrats would win in the Senate using the results of each statewide election under the enacted Senate plan. Tr. 1109:3-10. Dr. Mattingly then used three vertical dotted lines to represent the point at which Democrats would break the Republican supermajority, the Republican majority, or win a supermajority themselves. Tr. 1111:5-24.[4] If the enacted plan is a pro-Republican outlier, the purple dot is to the left of the blue histogram (meaning the enacted plan elects fewer Democratic seats). If a purple dot is to the left of the Republican supermajority or majority line, and the bulk of the blue histogram is to the right, that is an election in which the enacted plan protects the Republican supermajority or majority where Democrats would break the firewalls in a nonpartisan plan. Tr. 1111:5-1112:24.

[4] Dr. Mattingly plotted only 13 of the 17 elections he considered in PX362 for visual clarity reasons, Tr. 1115:1-12, but he provided all the data for all 17 elections in Figure 3 (PX363) and Table 3 of his report (PX417).

158. Plaintiffs' Exhibit 362 is reproduced below:



159. Dr. Mattingly's analysis demonstrates that the enacted Senate plan creates two "firewalls," protecting Republican supermajorities and majorities which Democrats would break under a nonpartisan plan. Dr. Mattingly testified that, in elections where

Democrats win enough votes that they would typically be expected to break the Republican supermajority under nonpartisan plans, the Republicans win the supermajority in the enacted plan. Tr. 1112:8-24. This is visually demonstrated by Plaintiffs' Exhibit 362, which shows that the Democratic seat count in the enacted plan consistently stays to the left of the supermajority line even as the Democratic vote share rises and the nonpartisan plans break through the Republican supermajority line. PX362. In many cases the enacted plan is completely outside the distribution of nonpartisan plans. Tr. 1112:8-24.

160. The results of the Attorney General 2016 election illustrate Dr. Mattingly's conclusion that the enacted map is an extreme, pro-Republican partisan gerrymander. Tr. 1114:9-11. This was a relatively even election where Democrats won 50.20% of the statewide vote, and in 99.999% of the nonpartisan maps, the Democrats broke the Republican supermajority. But, using the results of this election, the enacted map preserves the Republican supermajority. Tr. 1112:25-1114:11.

161. Overall, in 5 of the 17 elections that Dr. Mattingly considered, the Democrats would have almost certainly broken the Republican supermajority in the nonpartisan plans but failed to do so under the enacted plan (the 2012 Lieutenant Governor; 2016 President, 2008 President, 2016 Governor, and 2016 Attorney General elections). PX363; PX487 at 25 (Mattingly Rebuttal Report). In two others (the 2014 U.S. Senate and 2012 President elections), the Democrats would have had a chance of breaking the Republican supermajority in the nonpartisan plans, but never do in the enacted plan. PX362; PX417. In all seven of those elections where the Democrats would be expected to break the supermajority under nonpartisan plans, the enacted plan is an "extreme outlier." *See* PX363 (fifth column).

162. In elections where the Democrats won so many votes that the enacted Senate plan's Republican supermajority firewall breaks, Dr. Mattingly showed that the enacted

Senate plan creates a second firewall preventing the Democrats from breaking the Republican majority. Tr. 1114:14-25. Using the results of the 2008 Commissioner of Insurance and 2008 Lieutenant Governor elections—both elections in which the Democrats won over 52.5% of the statewide vote—the enacted plan protects a Republican majority even where the overwhelming majority of nonpartisan plans would break its majority. *Id.*; PX362.

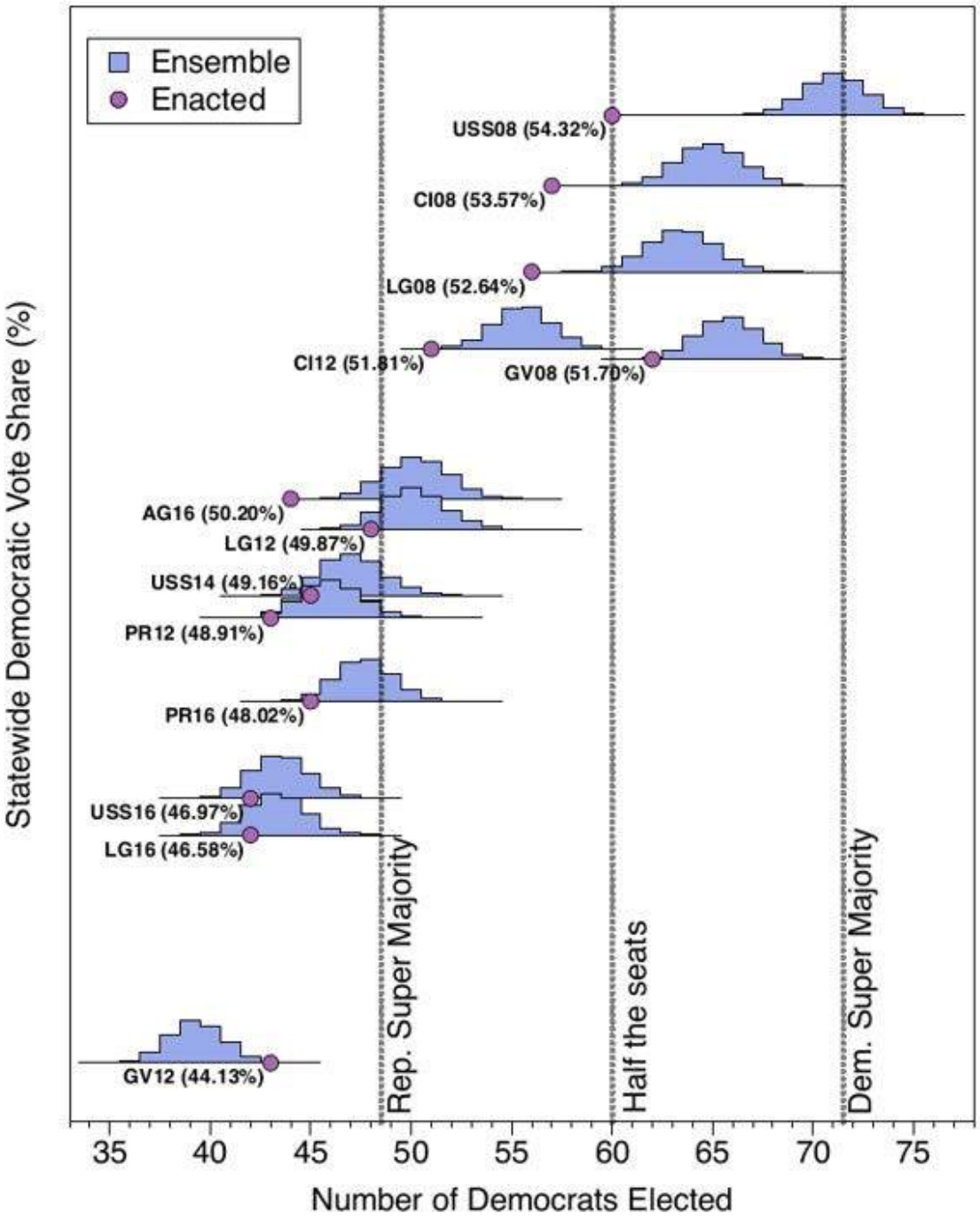
163. Dr. Mattingly found similar results for the House. Tr. 1087:22-25. Once again, in 15 of the 17 elections he considered, the enacted House Plan produced an atypical bias toward the Republican Party with respect to the number of Democrat and Republican seats. Tr. 1121:23-1122:5. The probability of seeing such a consistent pro-Republican bias across so many elections was 1.4%, Tr. 1122:6-13; PX359 at 11 (Mattingly Report), making it extremely unlikely that the General Assembly would have picked such a partisan map if it were not looking for it, Tr. 1122:14-17.

164. Dr. Mattingly concluded that the enacted House plan is an extreme outlier not just with respect to how consistently it favors the Republicans, but with respect to the *amount* by which it favors the Republicans. PX359 at 11 ("We never see any plans that favor the Republican Party to the same extent" in terms of seats); PX366 (Mattingly Report Figure 6). The House plan becomes a greater and greater pro-Republican outlier under elections that have more Democratic votes, and becomes an "incredibly extreme outlier" in such elections. Tr. 1120:4-11; Tr. 1119:14-20. The enacted map caused Democrats to lose between 2 and 11 seats in the House in 13 of the 17 elections that Dr. Mattingly analyzed. PX366. The Court finds this seat deviation to be significant.

165. Dr. Mattingly concluded that the enacted House plan's extreme partisan bias is responsible for creating firewalls protecting the Republican supermajority and majority in the House. Tr. 1120:15-1121:18. As with the Senate, Dr. Mattingly plotted the results of

various statewide elections using the enacted House plan and his nonpartisan simulations in Figure 5 of his report (PX365). Tr. 1118:5-1120:14.

166. Plaintiffs' Exhibit 365 is reproduced below:



167. As Dr. Mattingly testified, Plaintiff's Exhibit 365 illustrates how the enacted House plan becomes a greater and greater pro-Republican outlier as Democrats win more votes statewide, and how the enacted House plan creates firewalls protecting the Republican supermajority and majority which Democrats would break under a nonpartisan plan. Tr. 1120:4-1121:18. In the elections in the lower left of the figure where the Republicans have more statewide votes and have a supermajority even in the nonpartisan plans, the enacted plan is generally within the distribution of nonpartisan plans. PX365 (see, *e.g.*, the 2016 Lieutenant Governor and 2016 U.S. Senate elections). Dr. Mattingly explained that this makes sense from the mapmaker's perspective, because the mapmaker would not design the map for environments where Republicans are assured a "commanding supermajority" no matter what. Tr. 1123:17-24.

168. Plaintiffs' Exhibit 365 shows that in elections where the Democrats begin to break the Republican supermajority in the nonpartisan plans, the enacted plan becomes an outlier and consistently protects the Republican supermajority. Tr. 1120:15-1121:8. Dr. Mattingly testified that the enacted map "has a firewall that retards the advance of the Democratic Party particularly when they're about to break through and break the Republican supermajority." Tr. 1121:6-8.

169. Overall, in 4 of the 17 elections that Dr. Mattingly considered, the Democrats would have almost certainly broken the Republican supermajority in the nonpartisan plans but failed to do so under the enacted plan (2008 President, 2012 Lieutenant Governor, 2016 Attorney General, 2016 Governor). *See* PX366 (Mattingly Report Figure 6). By contrast, the enacted map never creates a Democratic supermajority in the House when one would not be expected under the nonpartisan ensemble. PX359 at 13-14.

170. In elections where the Democrats win so many votes that the enacted House plan's Republican supermajority firewall breaks, Dr. Mattingly showed that the enacted

House plan creates a second firewall preventing the Democrats from breaking the Republican majority. Tr. 1119:14-20; Tr. 1121:9-18. Using the results of the 2008 U.S. Senate, 2008 Lieutenant Governor, or 2008 Commissioner of Insurance elections, where the Democrats virtually always have a majority in the collection of hundreds of trillions of nonpartisan plans and sometimes have a supermajority, the Democrats never win a majority under the enacted plan. Tr. 1121:11-18; PX365 (Mattingly Report Figure 5); PX359 at 13.

171. In a race like the 2008 U.S. Senate election—where the Democrats won 54.32% of the statewide vote—the enacted map is a particularly extreme pro-Republican outlier. Tr. 1121:11-18. Using that election, the Republicans win 11 more seats in the enacted House plan than they would expect to win under the nonpartisan collection of plans. PX366 (Mattingly Report Figure 6). In more than 40.1% of the plans in the nonpartisan collection, Democrats actually win a supermajority, but the Democrats do not even win a majority under the enacted plan. PX359 at 14; PX418 (Mattingly Report Table 4). By contrast, there were no historical elections under which the Republicans would have been expected to receive a majority under the nonpartisan House plans but would not receive a majority in the enacted House plan. PX359 at 13.

172. Dr. Mattingly also performed a uniform swing analysis that confirmed the enacted plan's persistent, durable, and extreme bias toward the Republican party. Tr. 1123:25-1131:5. Using six different historical elections ranging from very pro-Republican (e.g., 2012 Governor, where the Democrats won 44.13% of the statewide vote) to very pro-Democratic (e.g., 2008 U.S. Senate, where the Democrats won 54.32% of the statewide vote), Dr. Mattingly showed that the House plan's gerrymandered protection of the Republican supermajority and majority was highly robust over many different electoral structures and statewide vote fractions. Tr. 1127:15-18; Tr. 1129:5-1131:5; PX488

(Mattingly Rebuttal Report Figure 1). Each of the elections end up looking "remarkably the same" as the Democratic vote share increases; in all of the elections, the enacted map creates a firewall protecting the Republican supermajority and majority. Tr. 1129:11-1130:2; Tr. 1130:23-1131:5. Dr. Mattingly concluded on the basis of his uniform swing analysis that the House plan was "designed" to "consistently protect" the Republican supermajority and majority across all of the "very different" elections he studied, which contain many different "spatial vote patterns" and "historical voting patterns from the state of North Carolina." Tr. 1130:23-1131:5.

173. In particular, under the nonpartisan maps, the Republicans do not win a supermajority when the Democratic statewide vote share rises above 50 percent, but in the enacted plan, the Republicans do. Tr. 1130:7-19. And the uniform swing analysis shows that the enacted plan becomes an especially extreme outlier whenever the Democrats would win a majority of seats under the ensemble of nonpartisan plans. Tr. 1128:12-1129:4; Tr. 1130:3-6. Dr. Mattingly's uniform swing analysis shows that the enacted map prevents Democrats from winning a majority of the seats in the House unless they have around 55% of the statewide vote. Tr. 1131:6-16. That is well more than the Democrats would need in a non-gerrymandered plan to win a majority of House seats. *See* PX488 (Mattingly Rebuttal Report Figure 1).

174. Plaintiffs' Exhibit 488 (Mattingly Rebuttal Report Figure 1) shows Dr. Mattingly's uniform swing analysis of the House plans:

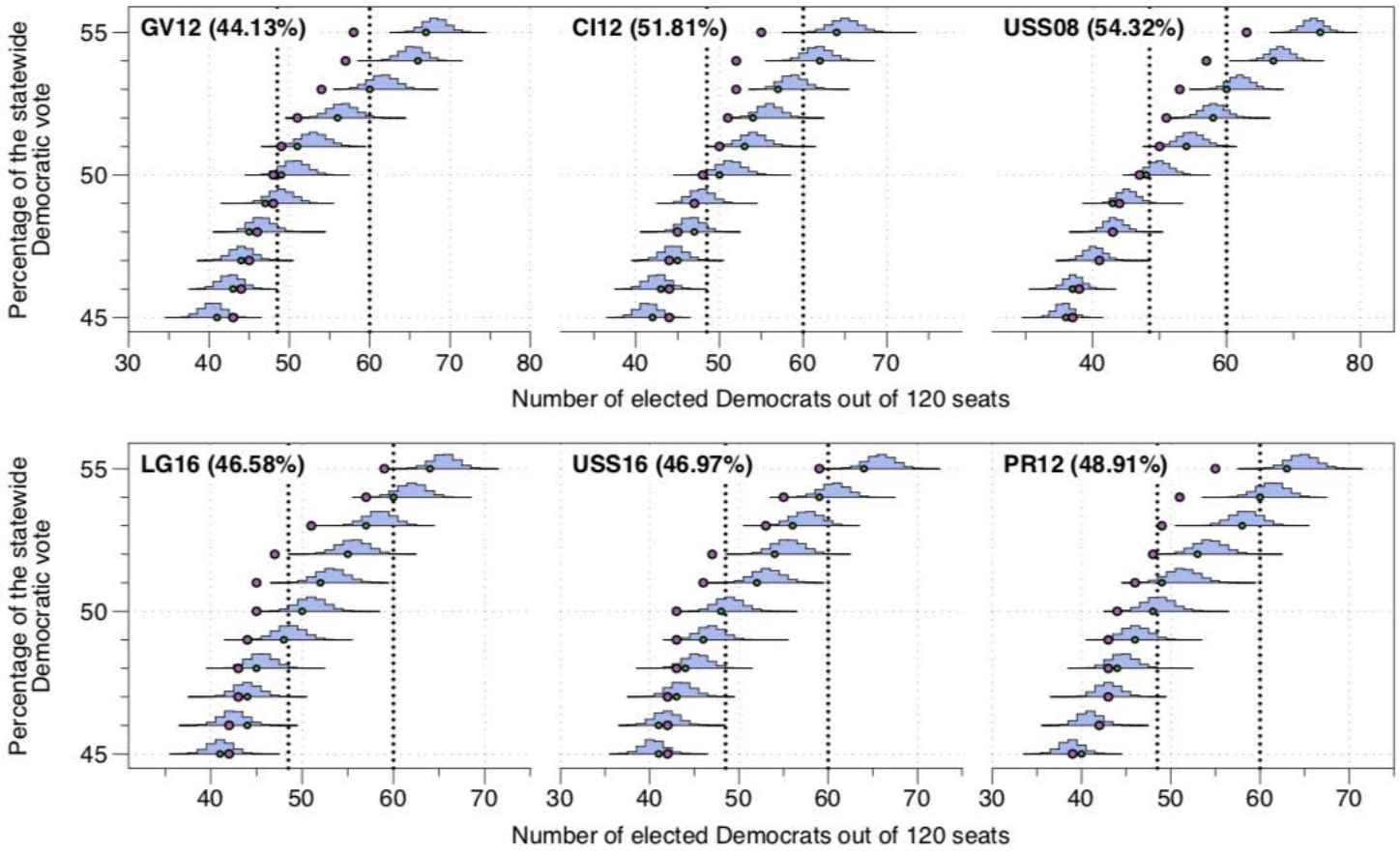


FIGURE 1. Purple dots show the enacted plan; the green dots show a plan in the ensemble. The dashed line at 60 seats shows the majority, and the dashed line at 48.5 seats shows the Republican supermajority threshold. The number of Democrats elected in the Senate which has a total of 120 seats.

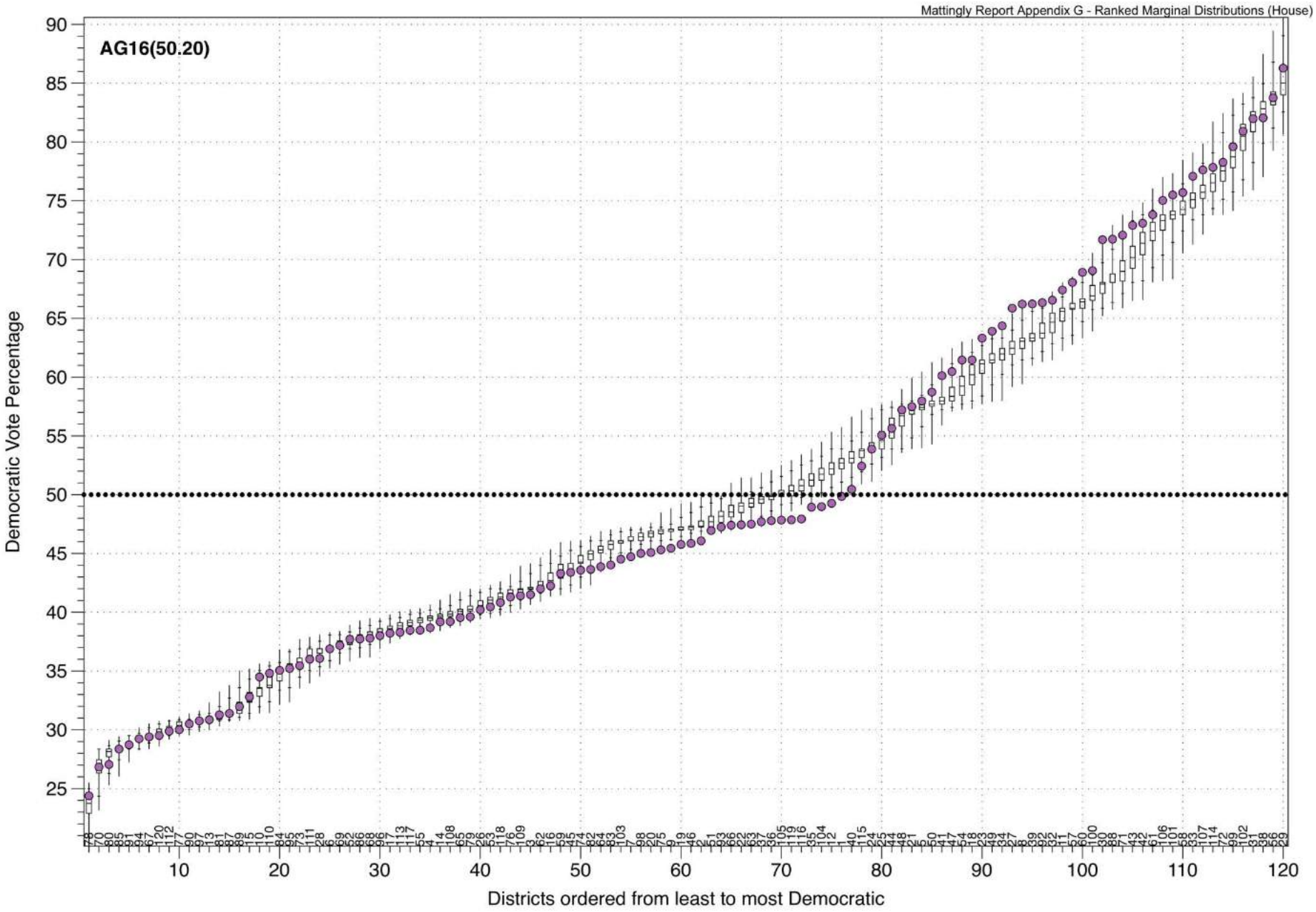
175. Dr. Mattingly preferred to compare the enacted plan to nonpartisan plans election-by-election, because taking an average seat shift across a set of elections can obscure a gerrymander's effect in close elections where control of the Senate or House is at issue. Tr. 1214:8-13, 1216:16-19, 1216:22-1217:3. Even considering the average, however, Dr. Mattingly found that the enacted plan is an extreme pro-Republican outlier. Tr. 1216:4-12. Comparing the enacted Senate plan to the median Senate plan in the ensemble for each of the 17 elections, the enacted plan causes Democrats to lose on average 1.94 seats

in the Senate across all 17 elections. PX363. Not a single one of Dr. Mattingly's 3.7×10^{93} statewide maps in the Senate favors the Republican Party as much as the enacted plan under this metric. PX363 (bottom right image); PX487 at 23 (Mattingly Rebuttal Report). Similarly, comparing the enacted House plan to the median House plan in the ensemble for each of the 17 elections, the enacted plan causes Democrats to lose on average 3.35 seats in the House across all 17 elections. Not a single one of Dr. Mattingly's 1.1×10^{108} statewide maps in the House favors the Republican Party as much as the enacted plan under this metric. PX366 (bottom right image); PX359 at 11 (Mattingly Report) (noting that the average seat difference in favor of the Republicans across all 17 elections is "greater than all plans in the ensemble").

176. Dr. Mattingly's separate analysis of the structure of the enacted House and Senate plans provided further confirmation that both plans are extreme partisan gerrymanders, even putting aside the effect on seat count in any particular election. He demonstrated that the General Assembly cracked and packed Democratic voters for partisan gain across the House and the Senate plans, with a particular focus on cracking Democratic voters out of the middle seats that determine supermajority and majority control of both Chambers.

177. Dr. Mattingly ordered the 120 districts in the House in his ensemble of nonpartisan plans from lowest to highest based on the Democratic vote fraction in each district. He did this for each of the 17 statewide elections he analyzed. Tr. 1159:4-15; PX483.

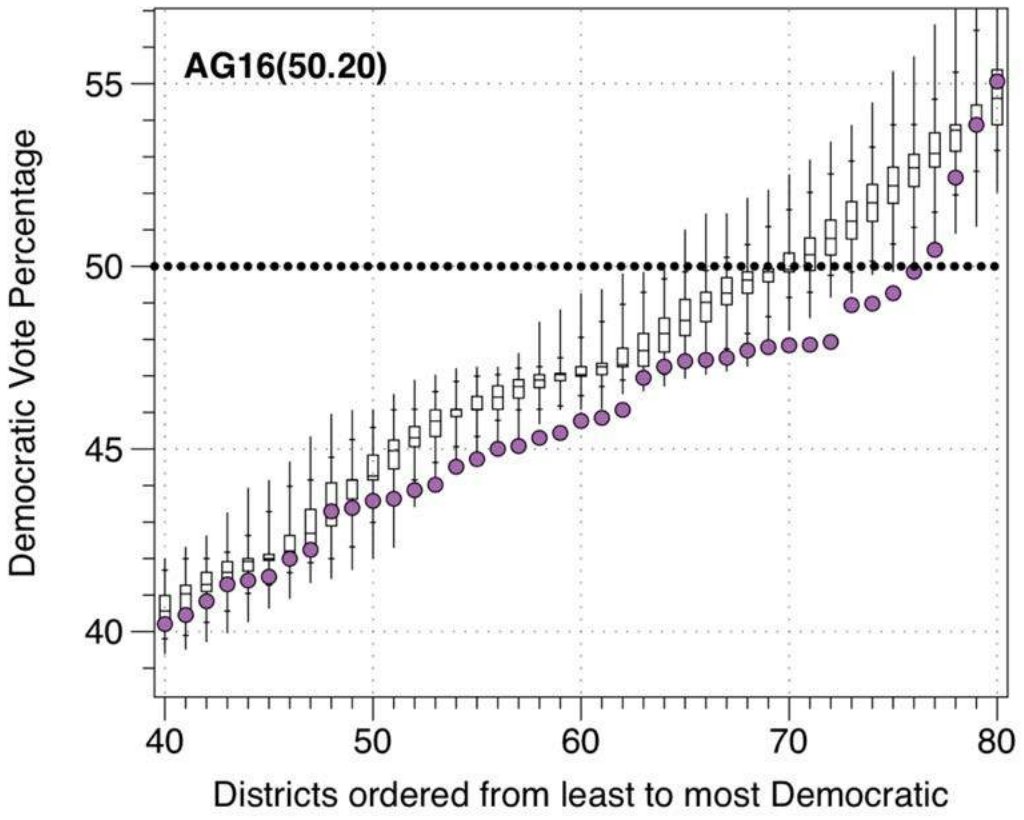
178. Below is an example of Dr. Mattingly's structural analysis of the 120 districts in the House using the votes from the 2016 Attorney General's Election. *See* PX483 at 13; PX778 at 33 (Mattingly PowerPoint presentation).


Mattingly Report Appendix G - Ranked Marginal Distributions (House)
AG16(50.20)
Democratic Vote Percentage
90
85
80
75
70
65
60
55
50
45
40
35
30
25
10
20
30
40
50
60
70
80
90
100
110
120
Districts ordered from least to most Democratic

179. The purple dots in the ranked-ordered box plots from Plaintiffs' Exhibit 483 represent the Democratic vote fraction in the enacted plan for each district ordered from least to most Democratic; the boxes represent the Democratic vote fraction across Dr. Mattingly's ensemble of nonpartisan plans. Tr. 1159:4-1162:1. The key in the top left-hand corner shows the statewide election and the Democratic statewide vote fraction in that election.

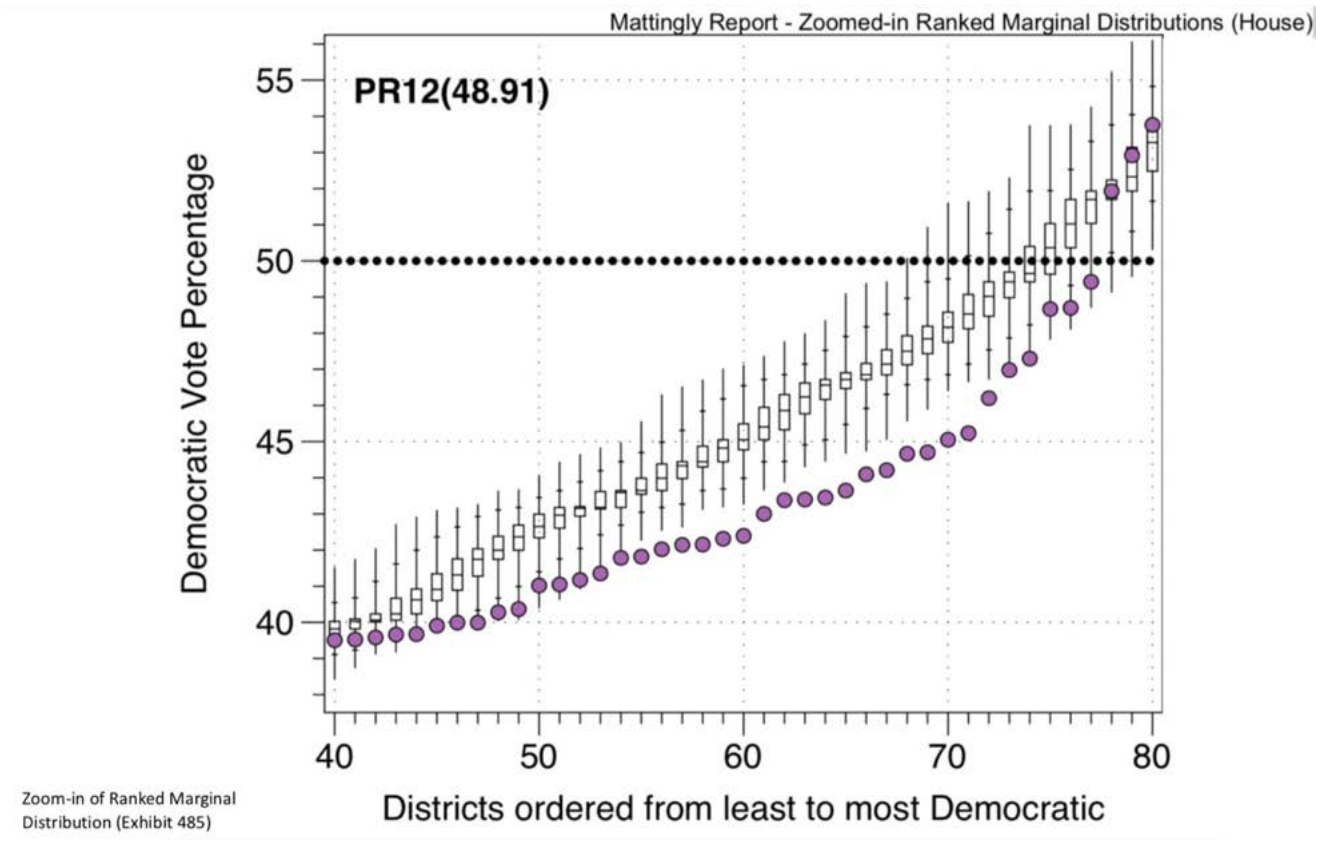
180. Dr. Mattingly explained that in the 40 seats in the middle—between the 40th most Democratic seat and the 80th most Democratic seat—the Democratic vote fraction in the enacted plan is far below the boxes representing the nonpartisan plans. Tr. 1162:7-25. Those "are the seats that determine who has a supermajority and who has the majority," and they are the "critical seats for the structure of the House." Tr. 1162:19-25. But in the most Democratic districts, beginning around the 99th least Democratic seat, the Democratic vote fraction is much higher in the enacted plan. Tr. 1162:7-12. In other words, across the map, Democrats have been cracked out of the districts that determine control of the House and packed into districts they would win anyway. Tr. 1162:7-25. In the 2016 Attorney General election, this structural gap between the Democratic vote share in the enacted plan and the nonpartisan plans in the critical districts means that the Republicans kept the supermajority even though they would have lost it under the ensemble of nonpartisan plans. Tr. 1163:3-25.

181. An examination of the dis tricts between the 40th least Democratic district and the 80th least Democratic district in the House using the 2016 Attorney General election further demonstrates the cracking of Democratic voters in these critical seats. (PX485 at 13; PX778 at 34):



182. Dr. Mattingly testified that the large gap between the Democratic vote fraction in the enacted plan and in the ensemble at the 72-seat marker is the structural feature of the House map that is responsible for the firewall protecting the Republican supermajority. Tr. 1164:1-9.

183. Dr. Mattingly's ranked-ordered box plot using the results of the 2012 Presidential election revealed that same structural anomaly (PX485 at 11; PX778 at 35):



184. Using the results of the 2012 Presidential election, Dr. Mattingly testified that again the enacted map shows a "huge depletion of Democratic voters" in these districts that matter for supermajority and majority control. Tr. 1164:17-1165:7; PX485 at 11. Dr. Mattingly explained that, although the Presidential 2012 election was a fairly Republican election where the Republicans would win a House majority even under the nonpartisan plans, the significant deviation in the Democratic vote fraction in the seats that matter most will have a "dramatic effect" in elections where the Democrats get more votes statewide. Tr. 1166:1-17.

185. Plaintiffs' Exhibit 484 contains Dr. Mattingly's ranked-ordered box plots for the Senate. Dr. Mattingly ordered all 50 Senate districts in his ensemble from lowest to highest based on the Democratic vote fraction in each district. He did this for each of the 17 statewide elections he analyzed. PX484. Below is an example of Dr. Mattingly's structural

analysis of the 50 Senate districts using the 2016 Lieutenant Governor election. PX484 at 15; PX778 at 40.

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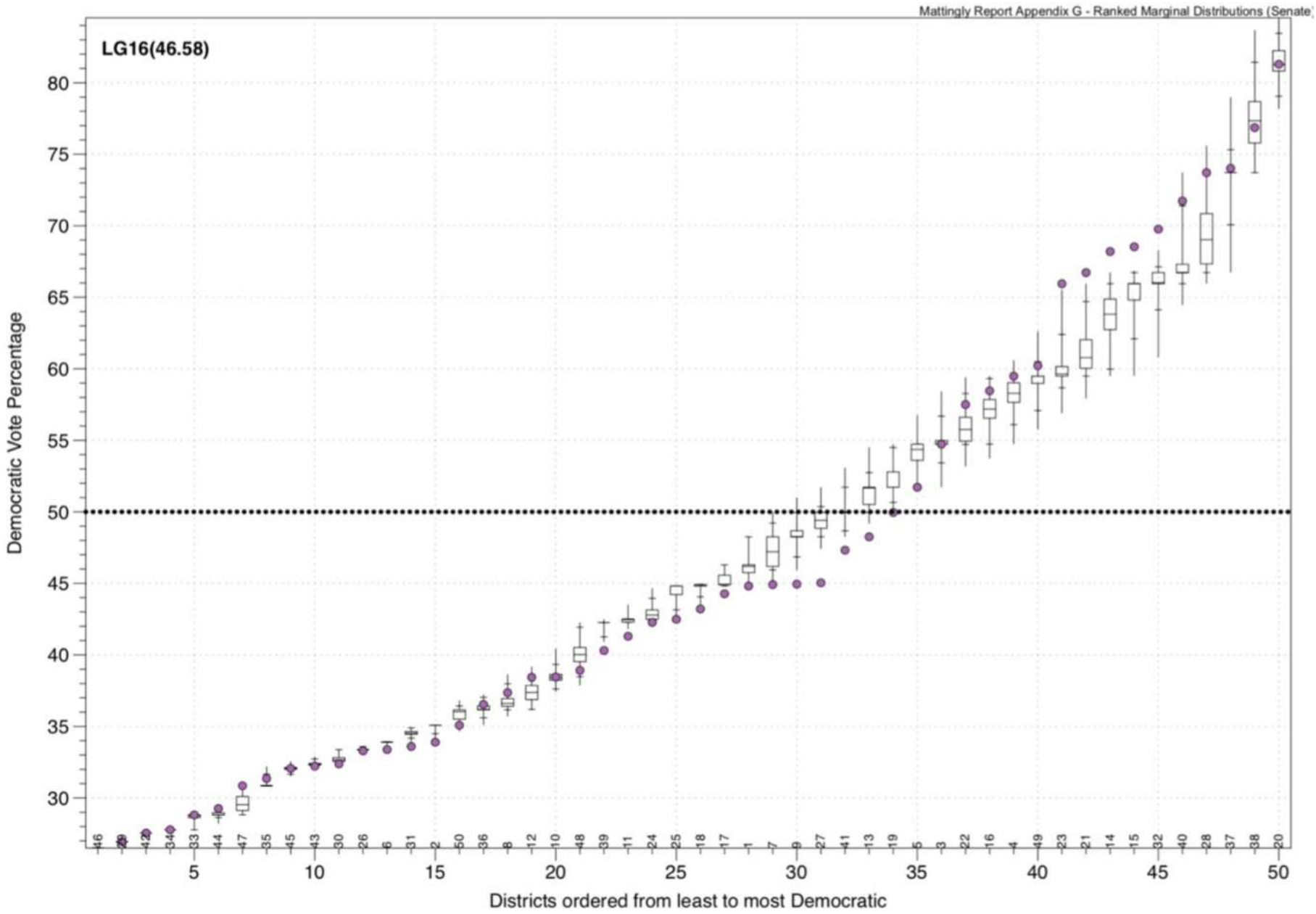

Mattingly Report Appendix G - Ranked Marginal Distributions (Senate)
LG16(46.58)
Democratic Vote Percentage
80
75
70
65
60
55
50
45
40
35
30
5
10
15
20
25
30
35
40
45
50
Districts ordered from least to most Democratic

186. The ranked-ordered box plot using the 2016 Lieutenant Governor results demonstrates the same significant suppression of Democratic votes in the enacted plan in the districts that matter most—the 25th most Democratic district, which determines who wins the majority in the Senate, and the 29th least Democratic district, which the Democrats need to win to break the supermajority. Tr. 1175:12-24; PX484 at 15. Dr. Mattingly testified that the gap between the enacted plan and the ensemble around the 25th and 29th/30th district shows that the enacted plan is an "extreme outlier." Tr. 1176:5-9. In turn, in the most Democratic districts, the enacted plan has significantly more Democrats than in the nonpartisan ensemble, PX484 at 15—representing packing of Democrats into these districts. Tr. 1175:4-9.

187. As noted, Dr. Mattingly performed this same structural analysis of the House and Senate enacted plans using all 17 of his statewide elections. PX483, PX484. He testified that all 34 of his ranked-ordered box plots overwhelmingly show the same gaps between the enacted plan and the ensemble in the Democratic vote fraction in the seats that matter most in the Senate and the House, and overwhelmingly show the firewalls protecting the Republican supermajorities and majorities. Tr. 1176:10-23. Dr. Mattingly testified that it would "almost be impossible to build this structure" in the absence of an intentional choice to do so. Tr. 1176:24-1177:2. The Court gives great weight to this conclusion.

188. In his report, Dr. Mattingly conducted a statistical analysis to quantify the statewide cracking and packing of Democratic voters in the House and Senate plans that the ranked-ordered box plots from Plaintiffs' Exhibits 483 and 484 visually illustrate. That analysis confirms to a high degree of statistical significance that the structure of the enacted plans reflects extreme bias in favor of the Republicans that will persist in election after election.

189. Specifically, in the House, Dr. Mattingly analyzed the 48th to the 72nd least Democratic districts (again, the range that determines majority and supermajority control). PX359 at 13 (Mattingly Report). Dr. Mattingly found that in 15 of the 17 elections, there is less than a 0.0005% chance of finding a plan in the ensemble that had fewer Democratic votes across those districts than did the enacted plan. *Id.*; PX359 at 13. In the remaining 2 elections, there was less than a 0.02% and 0.3% chance of finding a plan in the ensemble with as much cracking of Democrats out of the middle districts as the enacted plan. *Id.*

190. Dr. Mattingly's statewide quantification of the Senate showed the same extreme cracking of Democrats out of the districts that determine majority and supermajority control. For the Senate, Dr. Mattingly considered the 20th to 30th least Democratic districts. PX359 at 9. He found that in 14 of the 17 statewide elections, there is less than a 0.0005% chance of finding an ensemble plan with fewer Democratic votes across those districts than the enacted plan. *Id.* In two other elections, the enacted plan was still an extreme outlier, at the 0.1% level. *Id.*

191. Dr. Mattingly also created video animations of his uniform swing analysis using six different elections in both the House and Senate. PX772 (video animations). In the videos, the blue histograms represent the distribution of seats using Dr. Mattingly's nonpartisan plans; the "enacted" marker represents the enacted plan, and the three vertical lines represent the Republican supermajority, Republican majority, and Democratic supermajority lines. *Id.* Dr. Mattingly played two of the videos for the Court, representing uniform swing analysis in the House using the results of the 2012 Presidential election and 2016 Lieutenant Governor election. Tr. 1168:4-8, 1169:17-1172:15; PX778 at 37, 38 (PowerPoint slides); PX772 (video animations). The 2012 Presidential election video showed that the enacted plan started out looking fairly typical of the ensemble of nonpartisan plans; that is the video starts with a 45% Democratic vote share where

Republicans retain the supermajority under the nonpartisan plans as well. Tr. 1169:17-25. As the Democratic vote fraction increases, the blue histograms representing the nonpartisan plans shifts to the right and the number of seats that Democrats win increase. Tr. 1169:25-1170:9. But the enacted plan begins to lag "dramatically" behind the nonpartisan plans. Tr. 1170:6-13. In particular, at the Republican supermajority and majority lines, the enacted plan "sticks" on the Republican side of the line even as the blue histogram representing the nonpartisan plans move completely past those lines. Tr. 1171:8-21. The gerrymander is sometimes so effective that it retains a Republican supermajority in the enacted plan even where the Democrats win a majority in the nonpartisan plans. Tr. 1172:6-10.

192. Dr. Mattingly's video animation of a uniform swing analysis of the 2016 Lieutenant Governor election showed the same thing, Tr. 1172:17-1174:20, as do Dr. Mattingly's four remaining videos, PX772.

193. The Court finds that these video animations provide significant evidence confirming Dr. Mattingly's conclusions that the enacted House and Senate maps exhibit extreme partisan bias and create partisan firewalls protecting the Republican supermajority and majority. The Court finds that Dr. Mattingly's uniform swing videos are also significant evidence that the gerrymanders cause the enacted House and Senate maps to be largely nonresponsive to the actual votes cast in North Carolina's elections. Moreover, as Dr. Mattingly explained, the ranked-ordered box plots that he created using all 17 statewide elections showing the systematic suppression of Democratic vote fractions in the districts that matter most for the House and Senate demonstrate—without any need to conduct uniform swing analysis—that the enacted plan will be nonresponsive to the votes actually cast in North Carolina elections. Tr. 1174:25-1176:9.

194. Dr. Mattingly's findings regarding the firewall to protect the Republican majorities in the General Assembly are significantly similar to Dr. Chen's findings. Dr. Chen, like Dr. Mattingly, found that the gap between the number of Democratic districts under the enacted plans and under his simulated plans gets wider in electoral environments that are better for Democrats, and are at their widest around the point where Democrats would win a majority of seats in the House or Senate in his simulated plans. The independent findings of Drs. Chen and Mattingly strengthen and reinforce the conclusion that Legislative Defendants drew the enacted House and Senate plans with the specific goal of making it extremely difficult, if not impossible, for Democrats to take control of either chamber of the General Assembly.

195. Dr. Mattingly's county-grouping analysis, discussed in greater detail below, also allowed him to draw statistically significant conclusions about the intent of the mapmaker in creating the statewide Senate and House plans. Tr. 1157:24-1158:8. In particular, he explained that the design of each county grouping in the House and Senate plans represented an independent choice by the mapmaker, because "how you redistrict one county cluster does not affect how you redistrict the next one since you can't cross county cluster lines." Tr. 1157:17-23. Dr. Mattingly found that numerous county groupings in the House and Senate were extreme pro-Republican partisan outliers at the 100% or 99% level. PX778 at 29-30. He testified that the probability that the extreme partisan bias in the enacted maps was unintentional was "astronomically small," because the chance of making so many independent choices "with such extreme bias" in one map was "astronomically small if you are not looking for it." Tr. 1158:3-8.

196. Dr. Mattingly conducted a secondary analysis in which he only considered plans that preserved incumbents "to the same extent, or better, than they are preserved" in the enacted plan in each grouping. PX359 at 81. Dr. Mattingly found that accounting for

the effects of incumbency did not change his conclusion that the enacted plans are extreme pro-Republican gerrymanders. Tr. 1093:21-1094:3. Defendants failed to offer evidence sufficient to rebut Dr. Mattingly's conclusion that the enacted plan's extreme bias could not be explained by a nonpartisan effort to avoid pairing incumbents.

197. Dr. Mattingly performed extensive robustness checks establishing that his results were insensitive to the choices he made and criteria he used to generate the distribution of nonpartisan plans. Among other things: Dr. Mattingly went through every district in every grouping he analyzed to confirm that the compactness and municipal splits in the ensemble tracked those qualities in the enacted plan. PX359 at 57-80 (Mattingly Report). He performed a secondary analysis considering only plans that were equal to or better than the enacted plan along the dimension of compactness and municipal splits and found that it did not affect his results. PX359 at 82; PX468, 472-473. He created different collections of nonpartisan maps using six different sets of weights for compactness and other nonpartisan criteria and confirmed that changing the weights did not change the results. PX487 at 11 (Mattingly Rebuttal Report). And when Defendants' experts raised various speculative critiques in their reports—asking whether changing one criterion or another would make a difference—Dr. Mattingly performed a follow-up analysis in his rebuttal report confirming that it did not. *Id.* at 6-11.

198. The Court finds that none of Legislative Defendants' objections to Dr. Mattingly's analysis calls into question its persuasive value. The fact that, in a few individual elections, the enacted plan is not an extreme outlier relative to the ensemble of plans in terms of seat count alone does not undermine Dr. Mattingly's conclusion that the enacted plans are extreme partisan gerrymanders designed to protect Republican supermajorities and majorities. Tr. 1117:9-11 (Senate); Tr. 1122:18-1123:24 (House). First, Dr. Mattingly explained that the underlying structure of the enacted plans reflected a

trade-off. To crack Democrats out of districts where it matters, the mapmaker had to pack Democrats into other districts. Tr. 1123:5-24. Under certain circumstances—*i.e.*, in Republican wave elections—the packing of Democratic voters in the enacted plan causes Republicans to lose districts that they would have won in nonpartisan plans that did not pack Democratic voters into these districts. But such an electoral environment is one in which Republicans would already win a commanding supermajority. *Id.* As Dr. Mattingly explained, someone gerrymandering a map would happily hold the supermajority or the majority in elections where their control is at risk, even if the cost is a few less seats in elections where they will always have a commanding supermajority anyway. *Id.*

199. The 2012 Governor election—a highly Republican election where the Republicans win a supermajority in Dr. Mattingly's nonpartisan plans—provides an example. When Dr. Mattingly conducted a uniform swing analysis using the 2012 Governor election, the enacted map became an "extreme outlier in favor of the Republican Party" as the statewide vote swings to the Democrats and the Democrats approached the point where they would break the Republican supermajority and majority under his nonpartisan plans. Tr. 1126:7-1127:9; PX488. Although the 2012 Governor election may not appear to be a partisan outlier for the Republicans, Dr. Mattingly testified that in fact "it is." Tr. 1127:19-1128:11.

200. During Dr. Mattingly's cross examination, Legislative Defendants suggested that he should have included other purportedly nonpartisan criteria in his simulated plans beyond the ones listed in the adopted criteria. The Court, however, gives no weight to Legislative Defendants' suggestions that secret and undisclosed nonpartisan agreements between "representatives of different political parties" might explain the partisan bias that Dr. Mattingly identified. *E.g.*, Tr. 1204:11-14. The Court also gives no weight to the suggestion that Dr. Mattingly should have accounted for "communities of interest" in a

manner other than by avoiding splitting counties, cities, and towns, *see, e.g.*, Tr. 1192:19-1193:4, considering Legislative Defendants expressly declined to include "communities of interest" as a criterion for the 2017 Plans. Tr. 1223:8-1224:1; *see* PX603 at 67:14-25 (Rep. Lewis stating that "communities of interest" is not a "criteria that we have proposed" because the Committee "couldn't find a concise definition"); *id.* at 73:16-20 (Rep. Lewis stating that he opposed listing "communities of interest" as a criteria because "municipalities are defined and understood" but the Committee couldn't "agree[]" on what a community of interest was beyond that); *id.* at 77:3-25 (Rep. Lewis again rejecting the use of "communities of interest"); *id.* at 106:10-11 (Rep. Lewis stating that "I don't believe [communities of interest] belongs in this criteria").

201. When asked by interrogatory to "identify and describe all criteria that were considered or used in drawing or revising districting boundaries for the 2017 Plans," Legislative Defendants made a binding concession that the only "criteria used to draw the 2017 plans is the criteria adopted by the Redistricting Committees." PX579 at 13. As such, the Court gives little credence to Legislative Defendants' critique that Plaintiffs' experts failed to include criteria not in the Adopted Criteria, or a claim that other considerations purportedly explain the contours of the 2017 Plans.

c. Dr. Pegden

202. Wesley Pegden, Ph.D., is an Associate Professor in the Department of Mathematical Sciences at Carnegie Mellon University, and testified as an expert in probability. Tr. 1294:19-21, 1302:6-12; PX509. Dr. Pegden has published numerous papers on discrete mathematics and probability in high-impact, peer-reviewed journals, and has been awarded multiple prestigious grants, fellowships, and awards. Tr. 1295:4-20; PX509. He has been appointed by the Governor of Pennsylvania to that state's Redistricting Reform Commission. Tr. 1301:24-1302:5.

203. Dr. Pegden's academic work on redistricting involves Markov chains. A Markov chain is "a random walk around some abstract space." Tr. 1295:23-1296:1. For example, if a person walks around a city, and whenever she reaches an intersection, she chooses which way to turn at random, her position over time "would evolve as a Markov chain." Tr. 1296:5-7. In the context of redistricting, one can imagine taking a random walk "over the space of maps." Tr. 1296:8-14.

204. In 2017, before Dr. Pegden had ever served as an expert in redistricting litigation, he published a peer-reviewed article (PX510) entitled "Assessing Significance in a Markov Chain Without Mixing" in the Proceedings of the National Academy of Sciences—a top-ranked, science-wide journal. Tr. 1295:13-17, 1296:24-1297:1. This article provides a new way to demonstrate that a given object is an outlier compared to a set of possibilities. Tr. 1297:2-7.

205. Dr. Pegden explained that there are three ways to show that a given object is an outlier. The first, most basic way is simply to examine every single member of the entire set of possibilities, and then determine whether the object in question is different than all or most of those possibilities. The second form of outlier analysis is to take a random sample from the set of possibilities, and then compare the object in question to that sample. This type of analysis is the basis of most modern statistics, and is the form of outlier analysis used by Drs. Chen and Mattingly in generating nonpartisan simulated plans and comparing the enacted plans to those random nonpartisan plans. Tr. 1297:10-1298:11, 1309:10-18.

206. The third form of outlier analysis, developed by Dr. Pegden and his co-authors, is a kind of "sensitivity analysis" that begins with the object in question, uses a Markov chain to make a series of small, random changes to the object, and then compares the objects generated by making the small changes to the original object. Tr. 1298:16-

1299:4. Dr. Pegden's article illustrates this methodology using a redistricting plan. Tr. 1299:8-18. The article demonstrates that, by using an existing plan as a starting point and then making small random changes to the district boundaries, one can prove the extent to which the existing plan is an outlier compared to all possible maps meeting certain criteria. Dr. Pegden's article proves mathematical theorems showing that this approach can establish a redistricting plan's outlier status in a way that is "completely statistically rigorously grounded in mathematics." Tr. 1299:1-4.

207. In mid-2018, before this case was filed, Dr. Pegden began working on a new article entitled "Practical Tests for Significance in Markov Chains." Tr. 1300:8-1301:4; PX511. This article further develops this new, third form of outlier analysis with new, more powerful statistical tools. Tr. 1301:5-12. Though unpublished, this second article has been vetted by the mathematical community, including through detailed presentations Dr. Pegden gave at the Duke Statistical and Applied Mathematical Sciences Institute and the Harvard Center for Mathematical Sciences and Applications. Tr. 1300:13-23.

208. In this case, Dr. Pegden used this new, third form of outlier analysis to evaluate whether and to what extent the 2017 Plans were drawn with the intentional and extreme use of partisan considerations. Tr. 1302:24-1303:1. To do so, using a computer program, Dr. Pegden began with the enacted plans, made a sequence of small random changes to the maps while respecting certain nonpartisan constraints, and then evaluated the partisan characteristics of the resulting comparison maps. Tr. 1304:1-1306:21. As explained in further detail below, Dr. Pegden found that the enacted House and Senate plans are more favorable to Republicans than 99.999% of the comparison maps his algorithm generated by making small random changes to the enacted plans. Tr. 1304:14-18, 1342:10-18, 1344:18-1345:3; PX515; PX519. And based on these results, Dr. Pegden's theorems prove that the enacted House and Senate maps are more carefully crafted to favor

Republicans than at least 99.999% of all possible maps of North Carolina satisfying the nonpartisan constraints imposed in his algorithm. Tr. 1342:13-25, 1344:18-1345:7; PX515; PX519.

209. Dr. Pegden's analysis proceeded in several steps. He began with the enacted House or Senate map. His computer program then randomly selected a geographic unit on the boundary line between two districts and attempted to move or "swap" the unit from the district it is in into the neighboring district. Tr. 1309:19-24, 1311:1-5; PX508 at 9 (Pegden Report).

210. Dr. Pegden's method uses two different geographic units, VTDs and geounits. Tr. 1309:25-1310:2; PX508 at 9 (Pegden Report). His method uses VTDs when analyzing enacted maps that split few or no VTDs. Such maps include the enacted Senate map and the Senate county groupings Dr. Pegden analyzed. Tr. 1310:3-6; PX508 at 9 (Pegden Report). When analyzing enacted maps that split many VTDs—including the enacted House map and certain House county groupings Dr. Pegden analyzed—Dr. Pegden's method uses a sub-VTD geographic unit known as a "geounit." Tr. 1310:3-11; PX508 at 9 (Pegden Report). Created by a computer program, geounits are compact collections of census blocks that lie entirely within one VTD and one district, containing roughly 500-1000 people. There are roughly six or seven geounits per VTD. Tr. 1310:12-25; PX508 at 9 (Pegden Report).

211. When attempting to swap a randomly selected VTD or geounit from one district to another, Dr. Pegden allowed the swap to occur only if certain constraints were satisfied. Tr. 1311:1-8; PX508 at 7-8 (Pegden Report). These constraints were based on the 2017 Adopted Criteria, and were designed to ensure that the comparison maps generated by Dr. Pegden's algorithm are "good, reasonable comparisons to the enacted map." Tr. 1311:9-12, 1317:25-1318:25. The constraints that Dr. Pegden imposed included contiguity,

population deviation, compact districts, county preservation, municipality preservation, precinct preservation, and incumbency protection. Tr. 1311:13-1317:10; PX508 at 7-8 (Pegden Report). Dr. Pegden also froze boundary lines redrawn by the Special Master in 2017. Tr. 1319:1-22.

212. Dr. Pegden applied these constraints in a conservative way, so as to "accept choices the mapmaker made." Tr. 1312:19-22. For example, with respect to population deviation, while the 2017 enacted criteria allows districts to vary between plus-or-minus 5% from the ideal district population, the actual enacted House map does not use all of that range, and instead varies between plus 5% to minus 4.97% from ideal. Dr. Pegden accepted that choice by the mapmaker and required all of his comparison maps to fall within that slightly narrower range. Tr. 1312:1-22; PX508 at 8 (Pegden Report). Similarly, with respect to county preservation, Dr. Pegden's algorithm not only respected North Carolina's county groupings, capped the number of county traversals, and preserved the same number of counties as in the enacted map—his algorithm also preserved whole the very same counties preserved whole in the enacted plan. Tr. 1314:9-1315:3. Likewise, with respect to municipality preservation, Dr. Pegden's algorithm not only preserved the same number of municipalities preserved in the enacted map, but also preserved the very same municipalities, and preserved them within the very same districts as in the enacted plan. Tr. 1315:4-19.

213. Dr. Pegden's conservative application of these constraints "ties [his] comparisons very strongly to the enacted map itself." Tr. 1315:22-24. This makes it all the more remarkable that the enacted maps are such outliers in his analysis, even against this very similar comparison set. Tr. 1315:24-1316:2, 1331:6-10.

214. Dr. Pegden also constrained the compactness of his comparison maps. In his main analysis, Dr. Pegden required that the average compactness score for each

comparison map not exceed the corresponding average for the enacted plan, with an error of up to 5%. Tr. 1312:23-1313:5; PX508 at 8 (Pegden Report). Dr. Pegden also ran robustness checks using several other compactness constraints—a 10% error, a 0% error, and a completely different measure based on total district perimeter—and found that altering the compactness constraint did not affect his results. Tr. 1313:6-1314:8; PX508 at 32-34 (Pegden Report).

215. For some county groupings, because of Dr. Pegden's conservative application of his constraints, it was impossible for his algorithm to find a swap that satisfied all of the constraints. Tr. 1319:25-1320:10. When this occurred, Dr. Pegden ran a modification of his algorithm allowing multiple swaps in one step. Tr. 1320:11-25; PX508 at 9-10 (Pegden Report).

216. For some county groupings, even with multi-move swaps, Dr. Pegden's algorithm still was unable to generate any comparison maps—or only a very small number—meeting all of his constraints. Where this occurred, Dr. Pegden was unable to draw any conclusions about the county groupings in question. Tr. 1321:1-16. Dr. Pegden, however, credibly explained that this does not mean that the maps in those groupings were *not* drawn with the intentional use of partisanship. For example, partisan considerations could have predominated in choosing which municipalities to preserve whole in which districts, a choice Dr. Pegden's comparison maps took as a given. Tr. 1321:17-25, 1349:11-1350:4; PX508 at 10-11 (Pegden Report).

217. Once Dr. Pegden's algorithm made a swap satisfying his constraints, his algorithm evaluated the partisan characteristics of the comparison map that resulted from the swap. Tr. 1322:1-6. For his main analysis, Dr. Pegden used data from the 2016 Attorney General race to analyze the whole House and Senate maps, the subset of House and Senate districts redrawn in 2017, and any House or Senate county grouping last

changed in 2017. Dr. Pegden then used data from the 2008 Commissioner of Insurance race to analyze the subset of House and Senate districts last changed in 2011, as well as any House or Senate county grouping last changed in 2011. Dr. Pegden used these particular elections because they were reasonably close, statewide, down-ballot elections that were available to the General Assembly at the relevant times. Tr. 1322:7-24. Dr. Pegden explained that the "point of [his] analysis is really to get at the intent of the legislature," to "understand the decisions they made with information available to them at the time." Tr. 1322:25-1323:3.

218. Dr. Pegden also re-ran his analysis using four additional elections—the 2016 Governor election, the 2014 U.S. Senate election, the 2012 Presidential election, and the 2012 Lieutenant Governor election. Tr. 1323:4-12; PX508 at 35-36 (Pegden report). Using these different historical elections did not alter Dr. Pegden's conclusions. Tr. 1323:13-15.

219. To evaluate the partisan characteristics of each comparison map, Dr. Pegden's algorithm calculates the number of seats Republican candidates would win, on average, if a random uniform swing were repeatedly applied to the historical voting data being used. This metric captures how a given comparison map would perform over a range of electoral environments centered around the base election being used (i.e., the 2016 Attorney General's election for Dr. Pegden's primary analysis). Tr. 1324:8-1326:20.

220. Dr. Pegden also re-ran his analysis using a different partisan metric, which measures the Republican vote share in the 61st-most Republican House district, or the 26th-most Republican Senate district. This metric captures, for a given comparison map, how comfortably Republicans would win the seat that would give them the majority in the relevant chamber of the General Assembly. Put differently, this metric captures how large of a Democratic wave election the Republican House or Senate majority could withstand. Tr. 1326:21-1327:20.

221. In his rebuttal report, in response to certain criticisms by Legislative Defendants' experts, Dr. Pegden also re-ran his analysis yet again, this time using a third partisanship metric. In this analysis, Dr. Pegden's algorithm simply measured the number of seats Republicans would have won in an election precisely mirroring the 2016 Attorney General election, without any uniform swing or rank-ordering of districts by Republican vote share. Tr. 1327:21-1328:10.

222. Dr. Pegden's analysis is statistically robust across three different partisanship metrics, none of which altered his conclusions. Tr. 1326:21-1327:15.

223. Dr. Pegden's algorithm repeats the foregoing steps billions or trillions of times in sequence. The algorithm begins with the enacted map, makes a small random change complying with certain constraints, and uses historical voting data to evaluate the partisan characteristics of the resulting map. The algorithm then repeats those steps, each time using the comparison map generated by the previous change as the starting point. By repeating this process many times, Dr. Pegden's algorithm generates a large number of comparison maps in sequence, each map differing from the previous map only by one small random change. Tr. 1328:22-1329:12.

224. Each sequence of billions or trillions of small changes in Dr. Pegden's analysis is one "run." His algorithm performs multiple runs for each map being analyzed, with each run beginning with the enacted plan as the starting point. Dr. Pegden ran his algorithm with a sufficient number of steps and runs in order to generate results that are statistically significant but capable of being replicated within a reasonable time. Tr. 1329:3-22.

225. The comparison maps generated by Dr. Pegden's algorithm are not intended to provide a baseline for what neutral, nonpartisan maps of the North Carolina House or Senate should look like. Instead, Dr. Pegden's comparison maps are intended to be similar

to the enacted map in question with respect to each map's relevant nonpartisan characteristics, in order to assess how carefully created the enacted plan is to maximize partisan advantage. Tr. 1308:4-12, 1309:10-18, 1329:23-1330:6, 1362:23-1363:6, 1369:25-1370:4.

226. Dr. Pegden performed two levels of analysis on the comparison maps generated by his algorithm. Dr. Pegden's first-level analysis simply "report[s] what happened" in each run when his algorithm made random swaps to the enacted plan's district boundaries. Tr. 1332:8-16. For the enacted House and Senate maps, Dr. Pegden reports that—in every run—the enacted map was more favorable to Republicans than 99.999% of the comparison maps generated by his algorithm making small random changes to the district boundaries. PX515; PX519.

227. Dr. Pegden's first-level analysis provides clear, intuitive evidence that the 2017 Plans were meticulously crafted for Republican partisan advantage.

228. Dr. Pegden provided a stark illustration from his first-level analysis of how precisely the enacted plans are drawn to maximize partisan advantage. Dr. Pegden explained that, in his runs for the Wake-Franklin county grouping in the Senate, after "the first fraction of a second," his algorithm "never again" encountered a "single comparison map as advantageous to the Republican Party as the enacted plan itself." Tr. 1308:15-1309:7.

229. Dr. Pegden's second-level analysis provides mathematically precise calculations of how "carefully crafted" the 2017 Plans are—that is, how precisely the district boundaries align with partisan voting patterns so as to advantage Republicans—when compared not just to the comparison maps generated in each run of his algorithm, but to *all possible maps of North Carolina* that satisfy his constraints. Tr. 1332:24-1335:20. In other words, Dr. Pegden is able to determine—to a mathematical certainty—the extent to

which the enacted plan is an outlier relative to every single other possible House or Senate map of North Carolina that could exist meeting the contiguity, equal population, compactness, political subdivision, and Special Master constraints that his algorithm applies. For the enacted House and Senate maps, Dr. Pegden reports that under this second-level analysis the enacted map is more carefully crafted for Republican partisan advantage than at least 99.999% of all possible maps of North Carolina satisfying his constraints. PX515; PX519.

230. The results of Dr. Pegden's second-level analyses follow from his theorems, which have been validated by other mathematicians. Tr.1337:9-18. And the results of Dr. Pegden's second-level analyses are intuitive. In effect, Dr. Pegden's analysis shows that the 2017 Plans not only are quite advantageous to Republicans, but also are surrounded in the space of maps by a plethora of other maps that are *less* advantageous to Republicans. It is simply not possible, even in principle, for a typical map of North Carolina (or any other state) to be favorable to Republicans and be surrounded by maps that are less favorable. The only explanation is that the map drawer intentionally crafted the district boundaries to maximize partisan advantage. Tr. 1337:9-1340:8; *see* PX508 at 7 ("In other words, it is mathematically impossible for any state, with any political geography of voting preferences and any choice of districting criteria, to have the property that a significant fraction of the possible districtings of the state satisfying the chosen districting criteria appear carefully crafted.")

231. For both the House and the Senate, Dr. Pegden performed three different analyses. First, using voting data from the 2016 Attorney General election, Dr. Pegden analyzed the entire House and Senate maps. Second, again using voting data from the 2016 Attorney General election, Dr. Pegden analyzed only the districts that were redrawn in 2017, while freezing the districts that were last changed in 2011. Third, using voting

data from the 2008 Commissioner of Insurance election, Dr. Pegden analyzed only the districts that were last changed in 2011, while freezing the districts that were redrawn in 2017. Tr. 1340:14-1341:15.

232. Dr. Pegden's statewide analyses conclusively show that the pertinent districts drawn in 2011, the districts drawn in 2017, and the maps as a whole were all drawn with the intentional and extreme use of partisan considerations. The following demonstrative chart summarizes Dr. Pegden's statewide results:

Map Analyzed	First-level Analysis (% of algorithm maps less partisan than enacted map)	Second-level Analysis (% of all maps less carefully crafted than enacted map)
	House	
Whole state	99.99984%	99.9991%
2017 districts only	99.9982%	99.99%
2011 districts only	99.9999988%	99.999993%
	Senate	
Whole state	99.99999983%	99.999999%
2017 districts only	99.99999975%	99.9999985%
2011 districts only	99.9995%	99.997%

Sources: Plaintiffs' Exhibits 515-517, 519-521

PX904; *see also* PX515-517, 519-521; Tr. 1341:18-1346:16.

233. These results cannot be explained by North Carolina's political geography. Dr. Pegden's algorithm compares the enacted map to other maps of North Carolina, with the very same political geography. And Dr. Pegden's theorems do not depend on any aspect of North Carolina's political geography—the theorems are mathematically valid for any state with any political geography. Indeed, Dr. Pegden's theorems are mathematically valid not just for redistricting plans, but for any abstract space on which one could imagine taking a random walk using a Markov chain. Tr. 1333:14-24, 1401:9-1402:5.

234. The results of Dr. Pegden's statewide analyses also conclusively show that it is possible for a North Carolina map drawer to make intentional and extreme use of partisan considerations even within the Whole County Provision and the other constraints set forth in the 2017 Adopted Criteria. All of Dr. Pegden's comparison maps respect the Whole County Provision and the other constraints set forth in the 2017 Adopted Criteria. And in his algorithm, Dr. Pegden applied those constraints in a very conservative way that respects the choices made by the map drawer with respect to compactness and the divisions and preservation of particular counties and municipalities. Even within those tight constraints, there were many different maps for a map drawer to choose from, and the enacted maps demonstrate that the map drawer intentionally chose maps that were more carefully crafted for Republican partisan advantage than at least 99.999% of all possible alternatives. Tr. 1402:15-1403:8; PX515; PX519.

235. The Court gives great weight to Dr. Pegden's testimony, analysis, and conclusions.

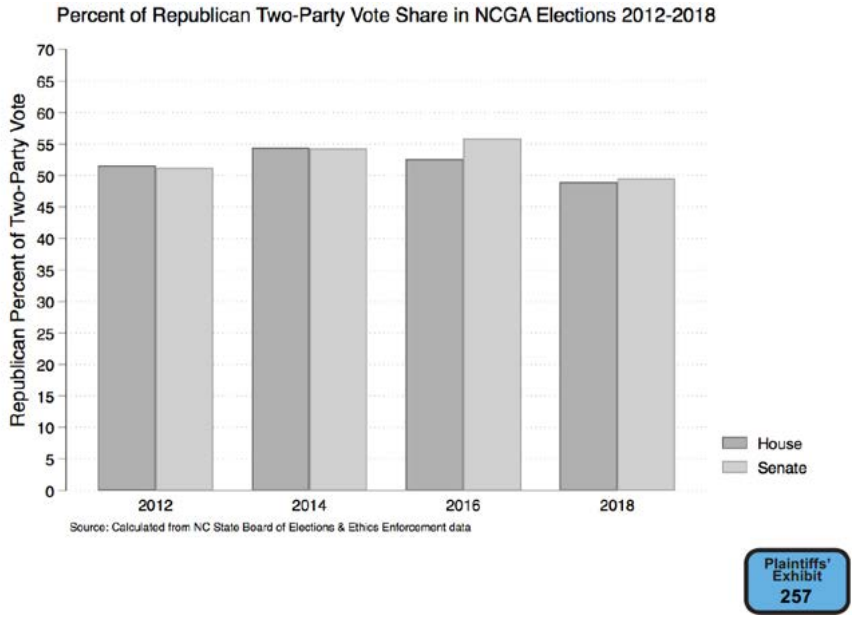
d. Dr. Cooper

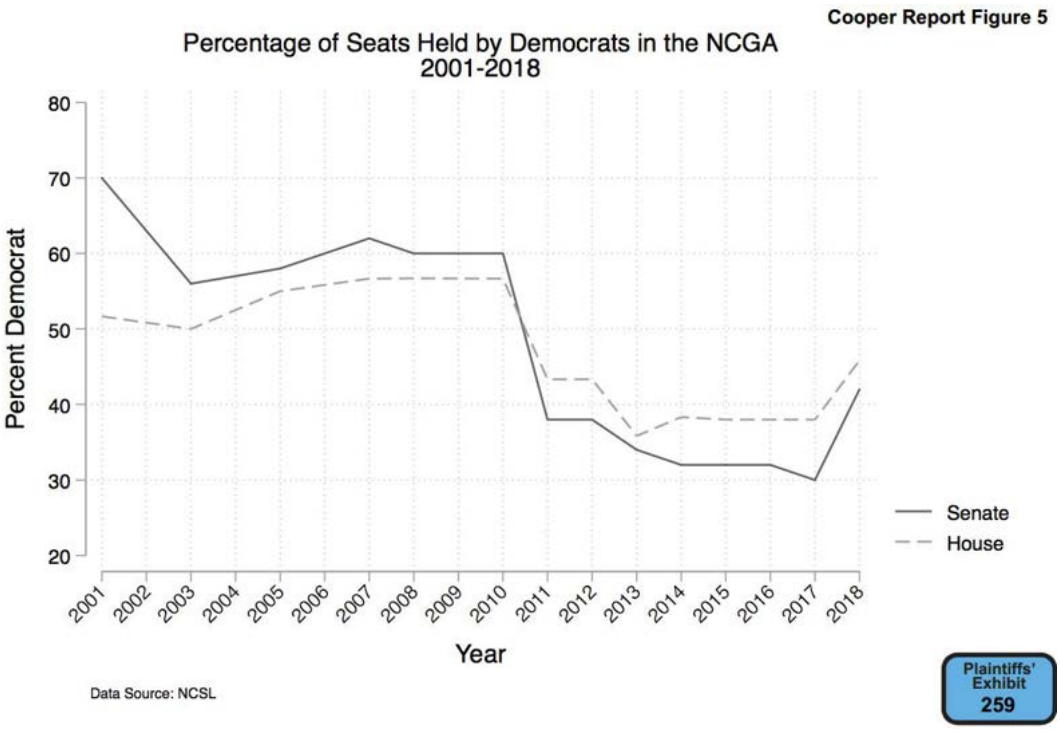
236. Christopher A. Cooper, Ph.D., has resided in North Carolina for 17 years and is the Robert Lee Madison Distinguished Professor and Department Head of Political Science and Public Affairs at Western Carolina University. Tr. 848:18-849:7. Dr. Cooper was accepted as an expert in political science with a specialty in the political geography and political history of North Carolina. Tr. 861:21-862:5.

237. As Dr. Cooper explained, North Carolina is a "purple state" that, on the whole, is politically moderate. Tr. 862:21-22. In statewide elections, which are not susceptible to gerrymandering, Democratic candidates perform as well as Republican candidates. Tr. 859:14-18, 864:1-8, 865:5-18. Dr. Cooper's analysis demonstrated that North Carolina is a "two-party" state where Democrats can compete and succeed with

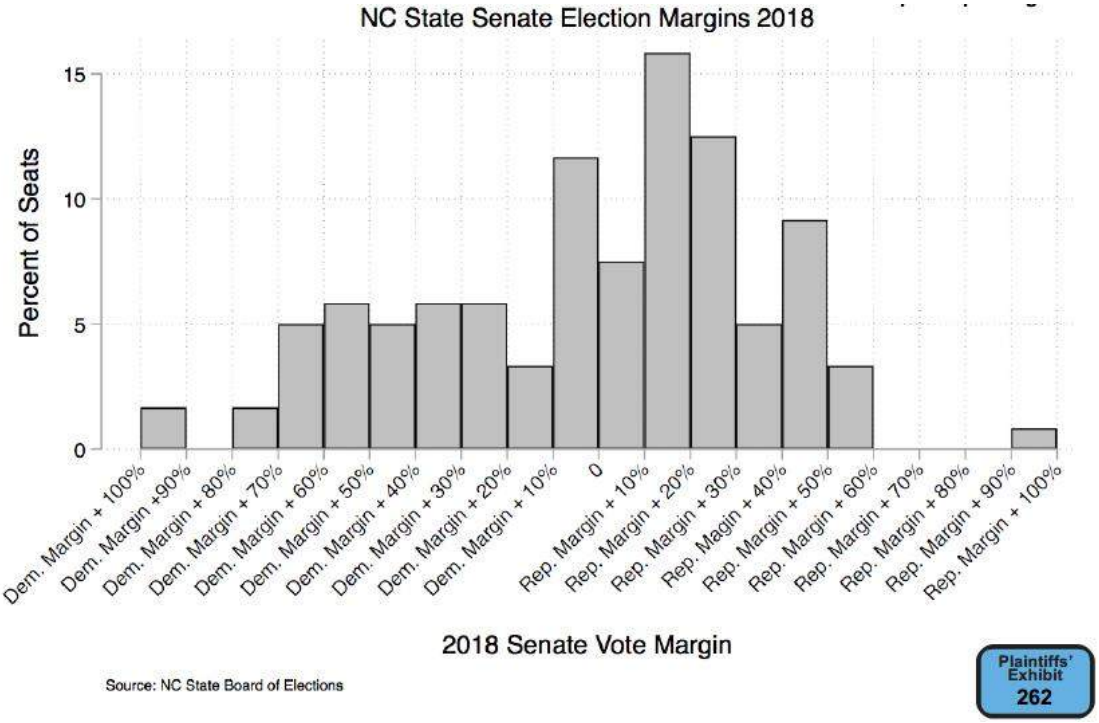
respect to U.S. Presidential elections, Tr. 863:2-864:8; PX255; PX253 at 5-6 (Cooper Report), and elections for North Carolina's Council of State, Tr. 864:21-865:18; PX256; PX253 at 6-7 (Cooper Report).

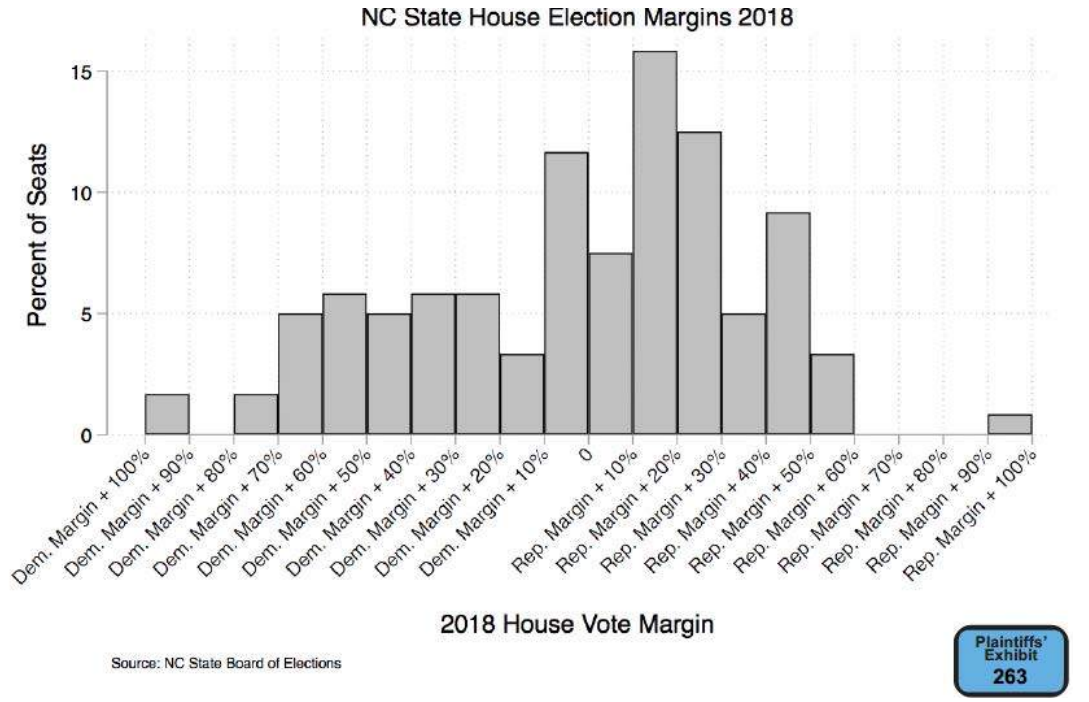
238. Dr. Cooper also analyzed the aggregate vote share of Democratic and Republican candidates in General Assembly elections since 2012, finding that Democrats received close to or over 50% of the vote in each election. Tr. 865:23-866:16; PX257. But over the same period, Republicans controlled the North Carolina General Assembly, winning supermajorities in both chambers from 2012-2016 and majorities in 2018. Tr. 866:24-868:12; PX259. Despite winning close to or more than 50% of the statewide vote in General Assembly elections since 2012, Democrats have "never approached" a roughly corresponding percentage of seats, a sign of "gross disproportionality." Tr. 868:4-12; PX257; PX259; PX264; PX253 at 8, 11 (Cooper Report).





239. Dr. Cooper also used the results of the 2018 elections to show how, under the enacted House and Senate plans, Democratic votes translate to seats far less efficiently than Republican votes. Consistent with the packing and cracking of Democratic voters, when Democrats win seats in the House and Senate, they win by large margins, meaning that many votes tend to be "wasted." Republicans win by significantly narrower margins. Tr. 869:23-871:3; PX262; PX263; PX253 at 14-16 (Cooper Report).





240. The Court finds Dr. Cooper's analysis of the 2018 elections to be persuasive and consistent with Plaintiffs' experts' findings regarding the packing and cracking of Democratic voters within individual county groupings, described below.

C. The 2017 Plans Were Designed Intentionally and Effectively to Maximize Republican Partisan Advantage Within Specific County Groupings

241. Each of Plaintiffs' four experts analyzed seven county groupings in the Senate and 16 county groupings in the House. Plaintiffs' experts concluded that partisan gerrymandering and bias in these groupings was responsible for the extreme partisan bias that they found in their statewide analysis of the House and Senate. Tr. 1134:1-5 (Dr. Mattingly).

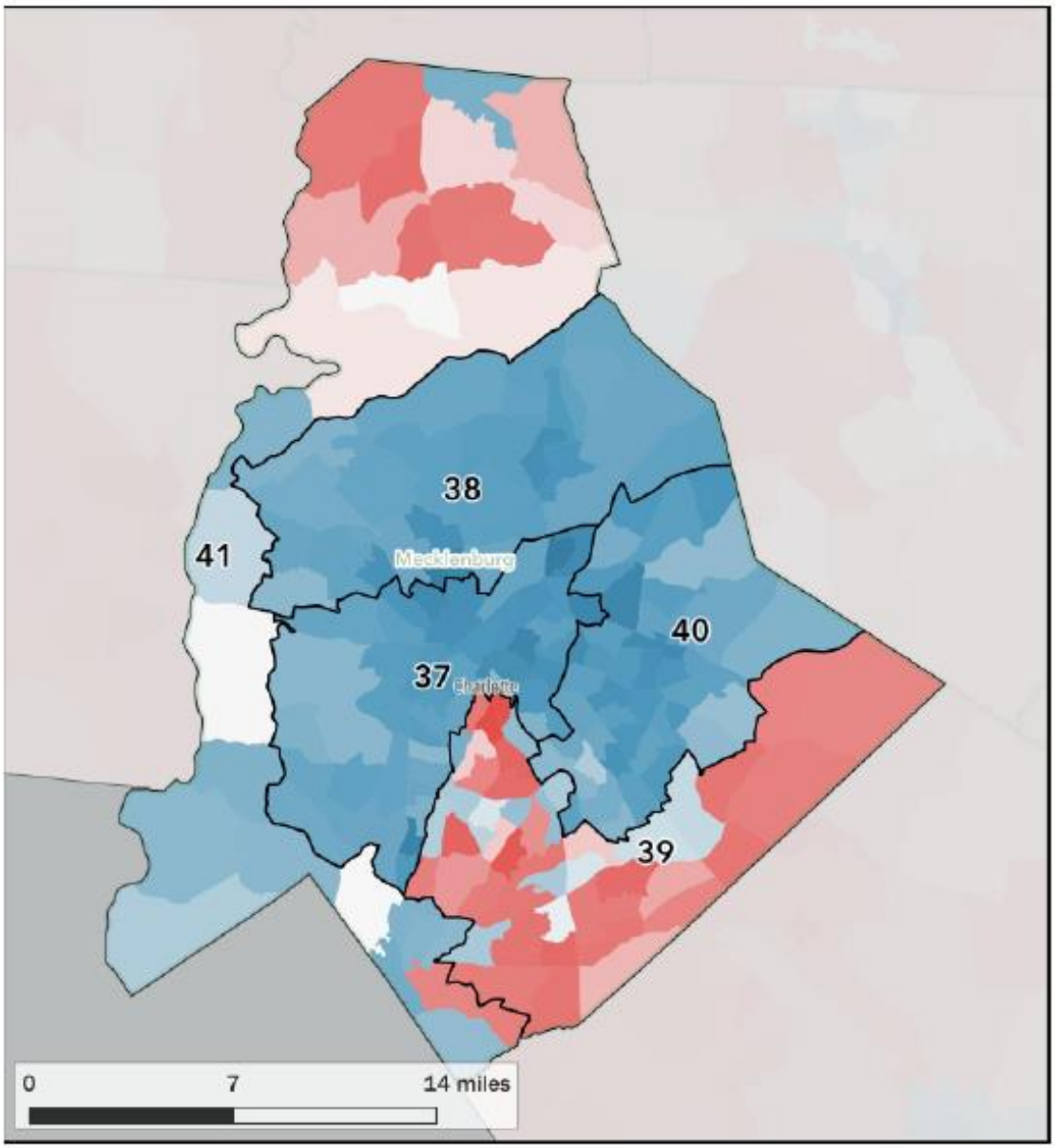
1. Senate County Groupings

a. Mecklenburg

242. The Mecklenburg Senate county grouping contains Senate Districts 37, 38, 39, 40, and 41. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

243. For each House and Senate county grouping that Plaintiffs' experts analyzed, Dr. Cooper produced a map showing the district boundaries within the grouping and the partisanship of every VTD within the grouping using the results of the 2016 Attorney General election. In each map, darker red shading indicates a larger Republican vote share in the VTD, darker blue shading indicates a larger Democratic vote share in the VTD, and lighter colors indicate VTDs that were closer to evenly split in Democratic and Republican vote shares.

244. Plaintiffs' Exhibit 285 is Dr. Cooper's map for this county grouping:



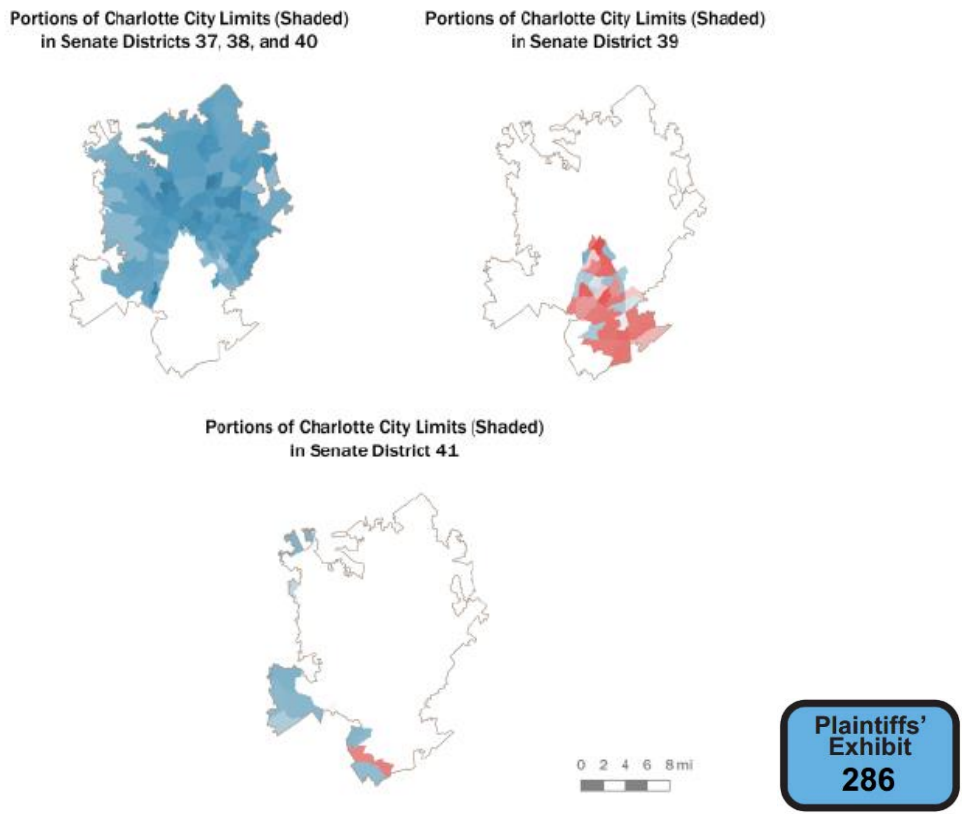
245. As Dr. Cooper explained, the mapmaker packed Democratic voters into Senate Districts 37, 38, and 40 to make Senate Districts 39 and 41 as favorable for Republicans as possible. Tr. 901:16-20; PX253 at 47 (Cooper Report).

246. Senate District 41 stretches from the farthest northern boundaries of Mecklenburg County all the way to the farthest south, traversing two narrow passageways. One passageway is so narrow that the district's contiguity is maintained only by the Martin

Marietta Arrowood Quarry, which is less than a mile wide. Tr. 902:22-903:4; PX287; PX253 at 48 (Cooper Report). The Court is persuaded that the clear intent of this elongated district is to connect the Republican areas north of Charlotte with the Republican-leaning areas in the southern tip of Charlotte. Tr. 902:5-8.

247. Senate District 39 contains the Republican-leaning VTDs in the southern portion of Charlotte, which resemble a "pizza slice" in Dr. Cooper's maps. Tr. 901:11-15, 902:7-10; PX285; PX286. Those Republican VTDs in Charlotte are grouped with the Republican-leaning areas in the south of Mecklenburg County, outside of Charlotte, so that Senate District 39 is more favorable to Republicans. Tr. 901:18-20; PX253 at 47.

248. Dr. Cooper also illustrated the packing and cracking of Democratic voters in this grouping by focusing just on the division of Charlotte. As illustrated in Plaintiffs' Exhibit 286 below, the enacted plan places Charlotte's most Democratic VTDs in Senate Districts 37, 38, and 40, while placing all of Charlotte's Republican-leaning VTDs in Senate Districts 39 and 41. Tr. 902:1-9; PX253 at 47 (Cooper Report). As Dr. Cooper explained, with large municipalities such as Charlotte, the mapmaker's partisan intent is not apparent from the mere fact that a municipality is split, but rather from "where do those municipal splits take place and what are the partisan effects." Tr. 900:12-21; *see* Tr. 877:24-25. In the Mecklenburg Senate county grouping, the Court is persuaded the mapmaker split Charlotte strictly along partisan lines for partisan gain.



249. Legislative Defendants' expert Dr. Johnson offered alternative explanations for the configuration of this grouping. While Dr. Johnson admitted that he had no personal knowledge as to why Dr. Hofeller or the General Assembly drew the districts this way, Tr. 1972:18-1973:6, Dr. Johnson stated that Senate District 41 was "drawn to capture as much of" the Charlotte suburbs as possible into a single district, Tr. 1844:11-12, and that Senate 39 similarly reflected an effort to "unite[] the southern suburbs" of Charlotte, LDTX289 at 4; Tr. 1845:4-9.

250. The Court rejects Dr. Johnson's explanations as it appears to be purely speculative, and in any event his speculation does not withstand minimal scrutiny. Rather than seeking to create a "suburban" district, Senate District 41 stretches to Mecklenburg County's southern tip in order to pick up areas of the City of Charlotte itself, and specifically Republican-leaning VTDs in Charlotte. Tr. 1972:7-1974:15. In so doing, Senate

District 41 *avoids* suburban areas north of Charlotte, with those suburbs packed into Senate District 38 instead because they are Democratic-leaning. *Id.* Similarly, Senate District 39 cuts into the heart of Charlotte, taking all of Charlotte's most Republican-leaning areas, while avoiding suburbs in southeast Mecklenburg County. Tr. 1975:5-1976:14. The Court finds Dr. Johnson's speculative alternative explanations for the configuration of the Mecklenburg Senate county grouping not credible.

251. Dr. Johnson also opined at trial that the enacted plan version of this county grouping is not the most favorable possible configuration of this grouping for Republicans. Dr. Johnson created an alternative version of this grouping that he asserted would be even more favorable for Republicans. Tr. 1840:17-1841:19. However, Dr. Johnson's alternative map suffered from a critical error: it paired the two Republican incumbents who were in office at the time of the 2017 redistricting. Tr. 1977:2-1978:7. Clearly, the most favorable possible configuration of this grouping for Republicans would not pair the only two Republican incumbents together, and Dr. Johnson conceded that he did not analyze whether the enacted plan represents the most favorable possible configuration of this grouping possible that would not have paired those two Republican incumbents. *Id.*

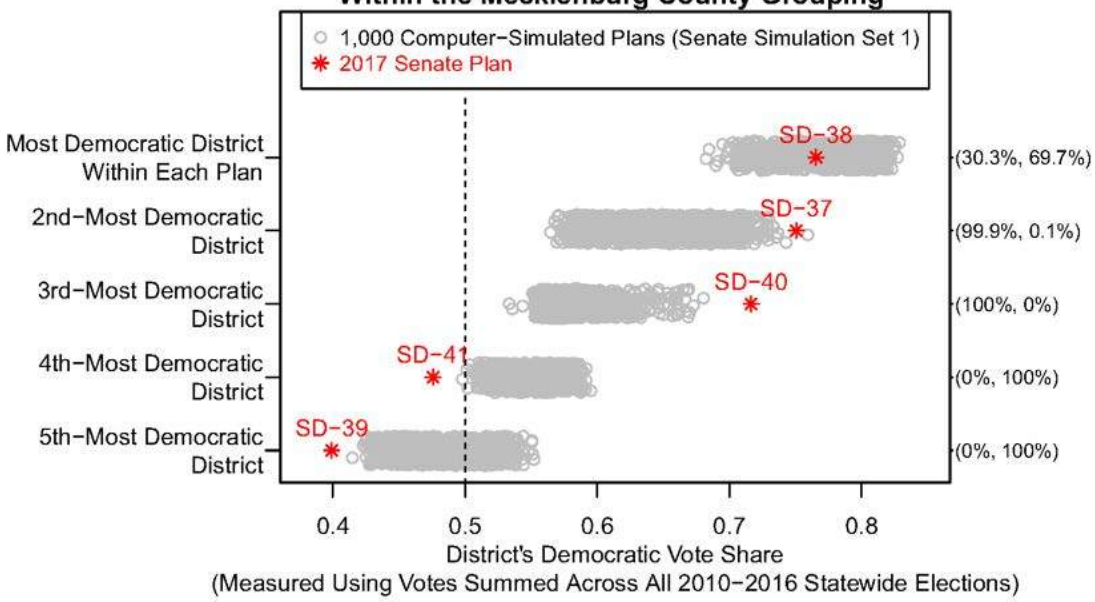
252. The simulations of Plaintiffs' other experts confirm and independently establish that this county grouping is an extreme partisan gerrymander.

253. Dr. Chen analyzed individual county groupings by comparing the most Democratic district in the grouping under the enacted plan with the most Democratic district in the grouping under the simulated plans, comparing the second most Democratic district in the grouping under the enacted plan with the second most Democratic district in the grouping under the simulated plans, and so on.

254. Using this methodology, Dr. Chen found that the Mecklenburg Senate county grouping has four districts in the enacted plan that are extreme partisan outliers. PX098;

see Tr. 377:8-14. Dr. Chen found that Senate Districts 39 and 41 have a lower Democratic vote share than their corresponding districts in all 1,000 of his simulated plans of this grouping, and that Senate Districts 37 and 40 have a higher Democratic vote share than 99.99% and 100% than their corresponding districts in his simulations. Dr. Chen's findings show the packing of Democratic voters into certain districts in this grouping and the cracking of Democratic voters in Senate Districts 39 and 41, in an effort to create two districts as favorable for Republicans as possible. The Court gives weight to Dr. Chen's findings for this county grouping, which are reflected in Plaintiffs' Exhibit 98 below:[5]

Figure 78: Senate Simulation Set 1:
Democratic Vote Share of the Enacted and Computer-Simulated Districts
Within the Mecklenburg County Grouping

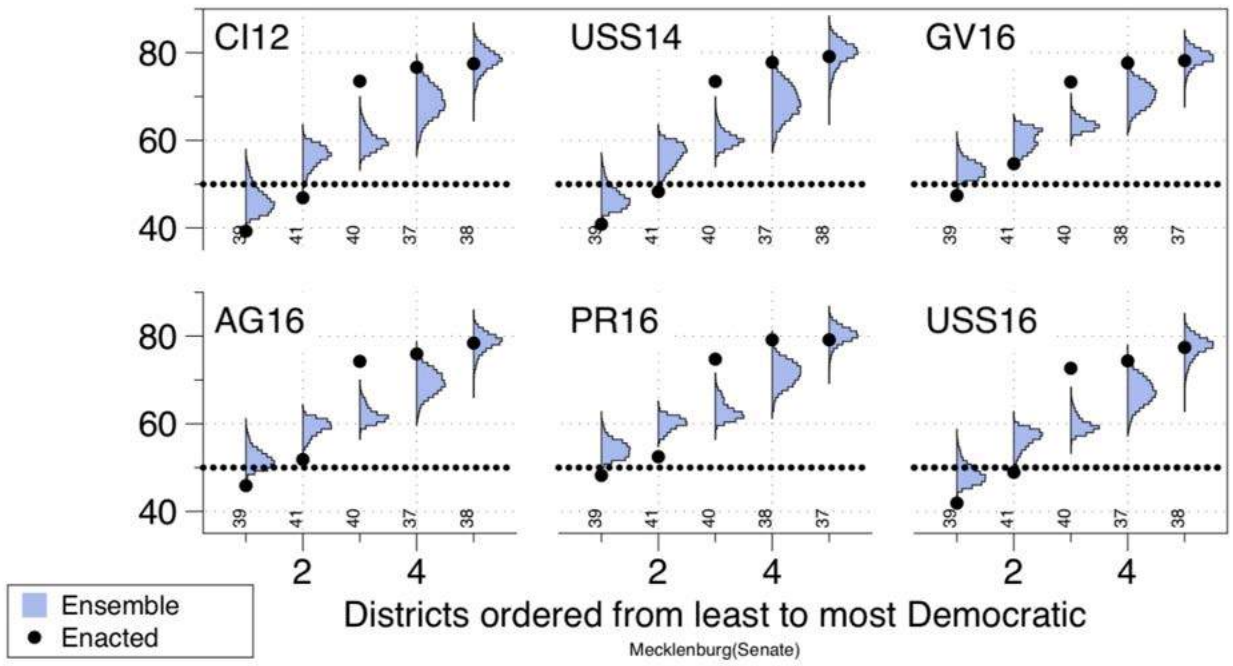


255. Dr. Mattingly analyzed individual county groupings by plotting the Democratic vote fraction in each district in the grouping, ordered from least to most Democratic. He conducted this analysis for the enacted plan (represented by a black dot in his county-grouping-level figures) and for his ensemble of nonpartisan plans (represented

[5] Unless otherwise noted, Dr. Chen's results for individual House and Senate county groupings were materially the same for his Simulation Set 2 as for his Simulation Set 1. Tr. 349:12-18.

by the blue histograms), using six prior statewide elections. Tr. 1134:14-1138:6. If the black dot representing the enacted plan is above the dotted black line at 50%, the Democrats win that district under the enacted plan. Tr. 1135:23-1136:6. If all or the bulk of the blue histogram representing the ensemble is above the dotted black line at 50%, the Democrats would expect to win that district under the ensemble. Tr. 1137:8-1138:6. Dr. Mattingly labeled the historical election whose statewide vote counts he was using in the upper left corner of the plots. Black dots that are at the bottom of the corresponding blue histogram represent districts that Democrats have been cracked out of, because the enacted plan has many fewer Democrats than would be expected in the nonpartisan plans; black dots that are at the top of the corresponding blue histogram represent districts that Democrats have been packed into. Tr. 1138:14-1139:4.

256. Plaintiffs' Exhibit 370 shows Dr. Mattingly's analysis of the Mecklenburg Senate county grouping:



257. As the figure above shows, Democrats were cracked out of the two most Republican districts in this grouping, and packed into heavily Democratic districts. In the enacted plan, there is a significant jump in Democratic vote share between: (i) the two least Democratic districts (Senate Districts 39 and 41), and (ii) the three most Democratic districts (Senate Districts 40, 37, and 38). PX370; PX 359 at 16 (Mattingly Report). Dr. Mattingly testified that the jump signifies intentional gerrymandering—he called it "signature gerrymandering"—and means that elections in the grouping will be nonresponsive to the votes cast. Tr. 1139:19-21; *see* 1146:13-21; *see* PX 359 at 14-15 (Mattingly Report). As the figure above shows, the gerrymander cost Democrats one or two seats in certain electoral environments, because the black dots for Senate Districts 39 and 41 often fall below the 50% line while the blue histograms often rise above it. Tr. 1142:22-1143:1.

258. Dr. Mattingly mathematically quantified the "jump"—*i.e.*, the cracking and packing in this grouping—using all 17 statewide elections he studied. Specifically, Dr. Mattingly calculated the average Democratic vote share in the two least Democratic districts and the average Democratic vote share in the three most Democratic districts, for both the enacted plans and his ensemble plans. PX 359 at 16 (Mattingly Report). He found that the two least Democratic districts in the enacted plan had fewer Democratic voters than 100% of the comparable districts in the nonpartisan ensemble, while the three most Democratic districts in the enacted plan had more average Democratic votes than 100% of the comparable Democratic districts in the nonpartisan ensemble, meaning that *not a single plan* in his nonpartisan ensemble showed as much of a jump—*i.e.*, as much cracking and packing—as the enacted plan. Tr. 1143:2-20. Dr. Mattingly concluded that the Mecklenburg Senate grouping is an extreme pro-Republican partisan gerrymander, Tr. 1143:21-24, and the Court gives weight to his conclusion.

259. Dr. Pegden found that the Mecklenburg Senate county grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version of this grouping is more favorable to Republicans than 99.9985% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.995% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. Tr. 1356:25; PX540. The Court gives weight to Dr. Pegden's analysis and conclusions.

260. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme and intentional partisan gerrymander.

b. Franklin-Wake

261. The Franklin and Wake Senate county grouping contains Senate Districts 14, 15, 16, 17, and 18. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

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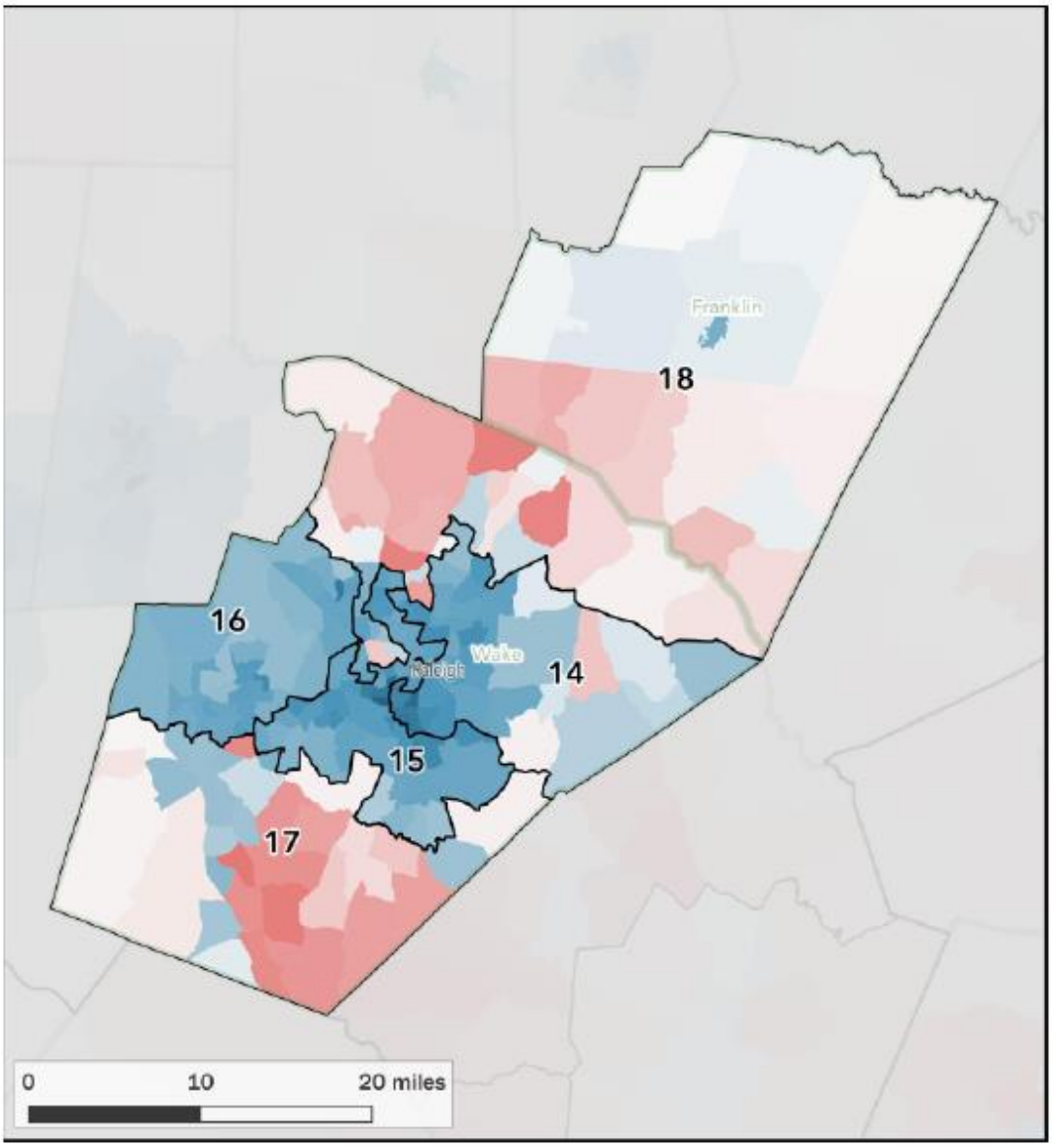
262. Plaintiffs' Exhibit 276 is Dr. Cooper's map for this county grouping:



263. As Dr. Cooper testified and is clear from a visual inspection, this grouping packs Democratic voters into Senate Districts 14, 15, and 16 in order to make Senate Districts 17 and 18 as favorable for Republicans as possible. Tr. 892:11-13; PX253 at 36 (Cooper Report).

264. Senate District 18 includes Franklin County and the only Republican-leaning VTDs within Raleigh, near the center of the city. Tr. 892:13-23; PX278; PX253 at 37-38 (Cooper Report).

265. As with Charlotte, the fact that Raleigh is split is not itself revealing, but how and "where Raleigh is split" illustrates the partisan intent behind the districts in this grouping. Tr. 893:16-894:21; PX253 at 37-38. Plaintiffs' Exhibit 278, reproduced below, shows how the mapmaker put the most Democratic VTDs in Raleigh in Senate Districts 14, 15, and 16, and put all of Raleigh's moderate and Republican-leaning VTDs in Senate District 18. *Id.*

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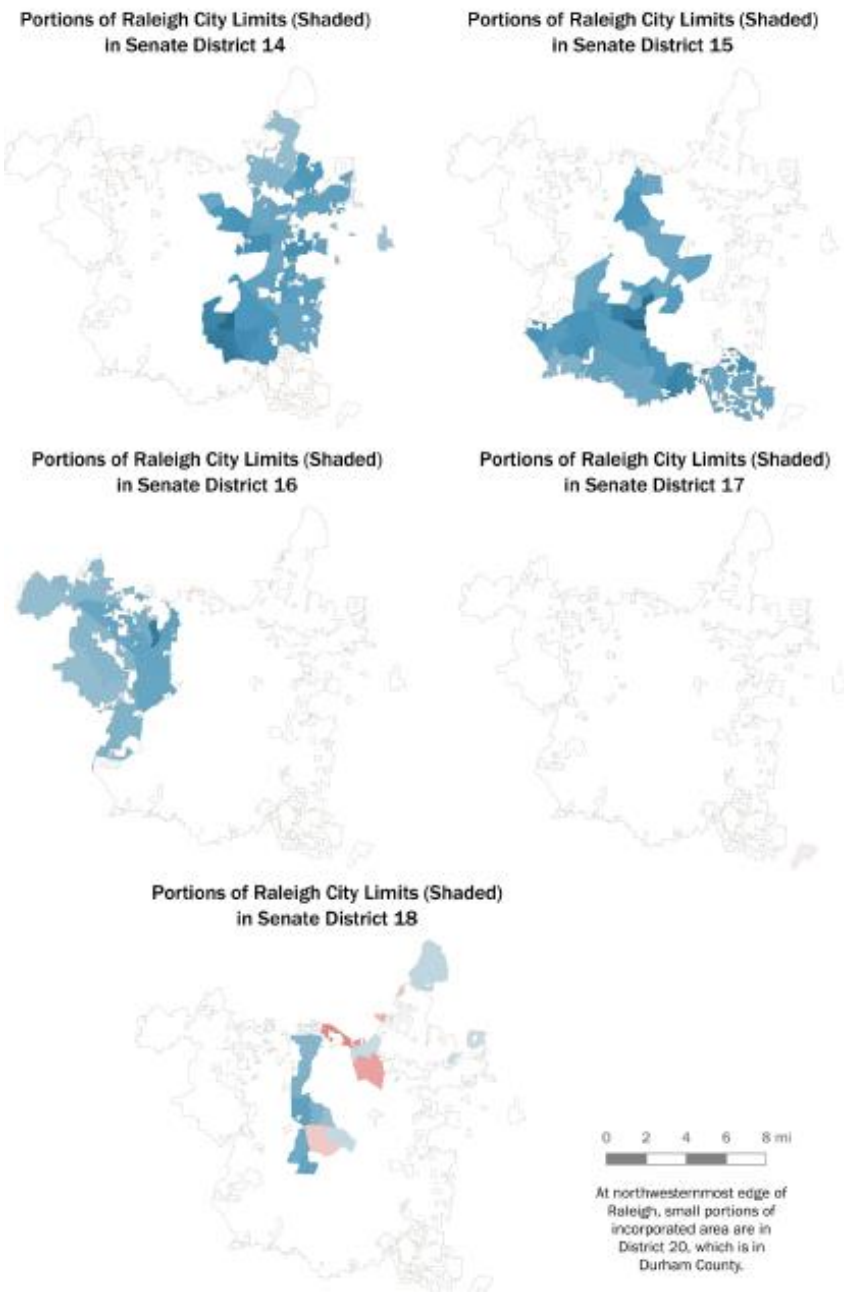


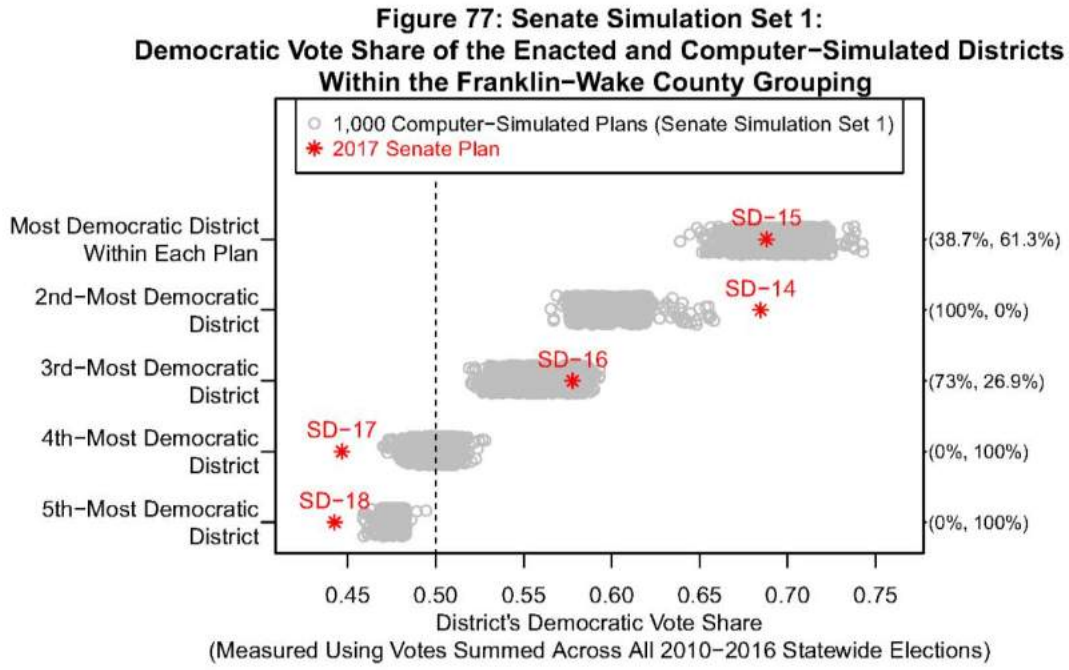
266. Senate District 17 includes all of the Republican VTDs in southern Wake County while carefully avoiding heavily Democratic areas. PX276; PX253 at 36 (Cooper Report).

267. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of Senate Districts 17 and 18. At trial, Legislative Defendants focused on an amendment that Democratic Senator Daniel Blue

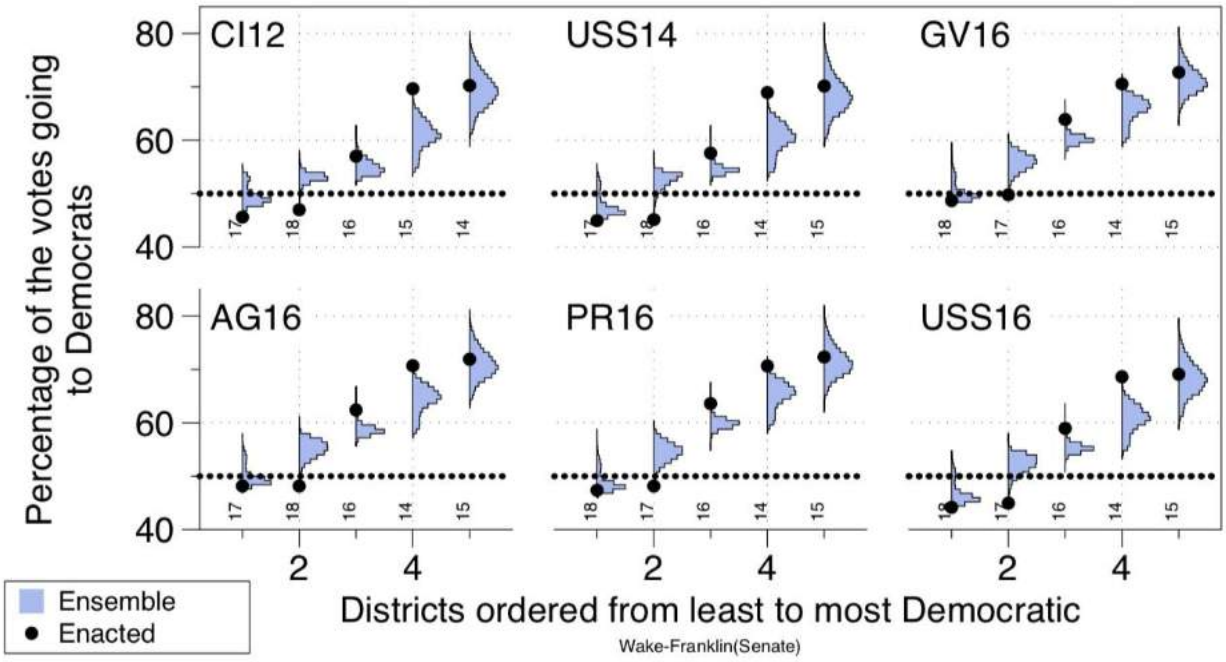
introduced that altered this grouping, but that amendment did *not* affect the contours of Senate Districts 17 and 18. Senator Blue testified that he was told by Republican leadership that he could not change the boundaries of Senate Districts 17 and 18, but instead could only shift population between the heavily Democratic districts in this grouping. Tr. 155:20-156:15. Senator Blue's amendment did just that, as it only shifted population between Senate Districts 14 and 15, both of which had been packed with Democratic voters. Tr. 150:5-8; PX619. Senator Blue's amendment did not result in, and cannot explain, the composition of Senate Districts 17 and 18 and their extreme partisan outlier status.

268. The simulations of Plaintiffs' other experts confirm and independently establish that this county grouping is an extreme partisan gerrymander.

269. Dr. Chen found that this county grouping contains three districts that are extreme partisan outliers. Tr. 381:2-18. Senate District 14 has a higher Democratic vote share than its corresponding district in all of the simulations, while Senate Districts 17 and 18 have lower Democratic vote shares than their corresponding districts in all of the simulations. *Id.*; PX97. Dr. Chen's findings show the packing of Democratic voters into districts in this grouping in an effort to create two districts (Senate Districts 17 and 18) that are as favorable for Republicans as possible. The Court gives weight to Dr. Chen's analysis and findings for this county grouping, which are reflected in Plaintiffs' Exhibit 97 below.



270. Plaintiffs' Exhibit 372 shows Dr. Mattingly's analysis of this grouping:



271. Dr. Mattingly's analysis shows that Democrats were cracked out of the two least Democratic districts in this grouping (Districts 17 and 18), and packed into heavily Democratic districts. PX372; Tr. 1145:2-7. In the enacted plan, there is a significant jump

between the Democratic vote share in the least two Democrats districts and the three most Democratic districts. PX372. Dr. Mattingly found that not a single plan in his ensemble showed as much of a jump between these sets of districts as the enacted plan, Tr. 1145:11-14, and concluded that this grouping showed more pro-Republican advantage than 100% of the maps in his ensemble. Tr. 1153:24-1154:4. As the figure above shows, the gerrymander causes Democrats to lose two seats in this grouping in many electoral environments, because the black dots for Senate Districts 17 and 18 fall below the 50% line while the blue histograms often rise above it. *See* Tr. 1142:22-1143:1. Dr. Mattingly concluded that the Wake-Franklin Senate grouping is an extreme pro-Republican partisan gerrymander, Tr. 1153:17-23, and the Court gives weight to his conclusion.

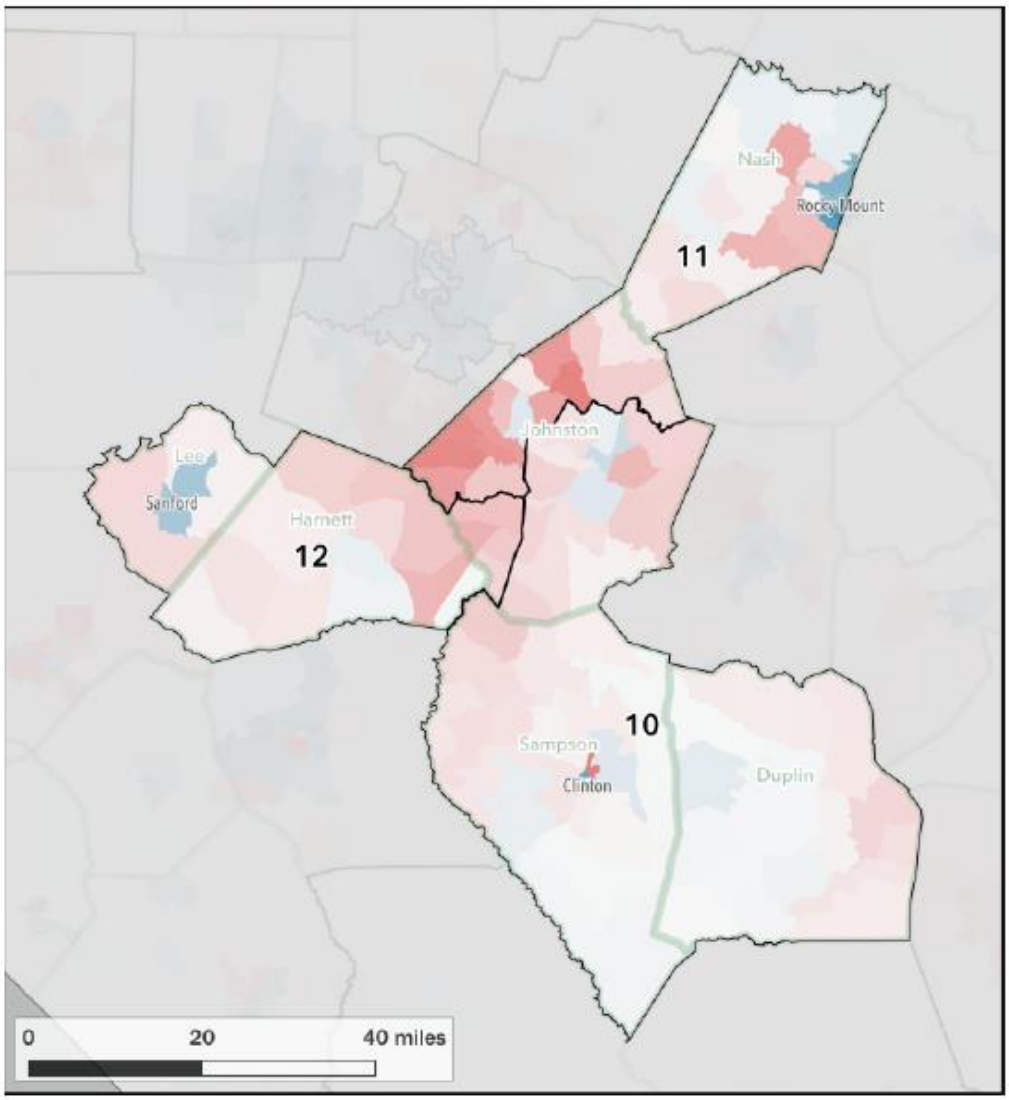
272. Dr. Pegden found that this grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version of this grouping is more favorable to Republicans than 99.99999995% of the maps that his algorithm encountered by making small changes to the district boundaries. Tr. 1356:23-24; PX539. In his second level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.99999985% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. *Id.* Dr. Pegden also testified that the changes made by Senator Blue to the boundaries between Senate Districts 14 and 15 cannot explain his results for this county grouping. *See* Tr. 1352:2-1354:22. The Court gives weight to Dr. Pegden's analysis and conclusions.

273. The analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

c. Nash-Johnston-Harnett-Lee-Sampson-Duplin

274. The Nash-Johnston-Harnett-Lee-Sampson-Duplin Senate county grouping contains Senate Districts 10, 11, and 12. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

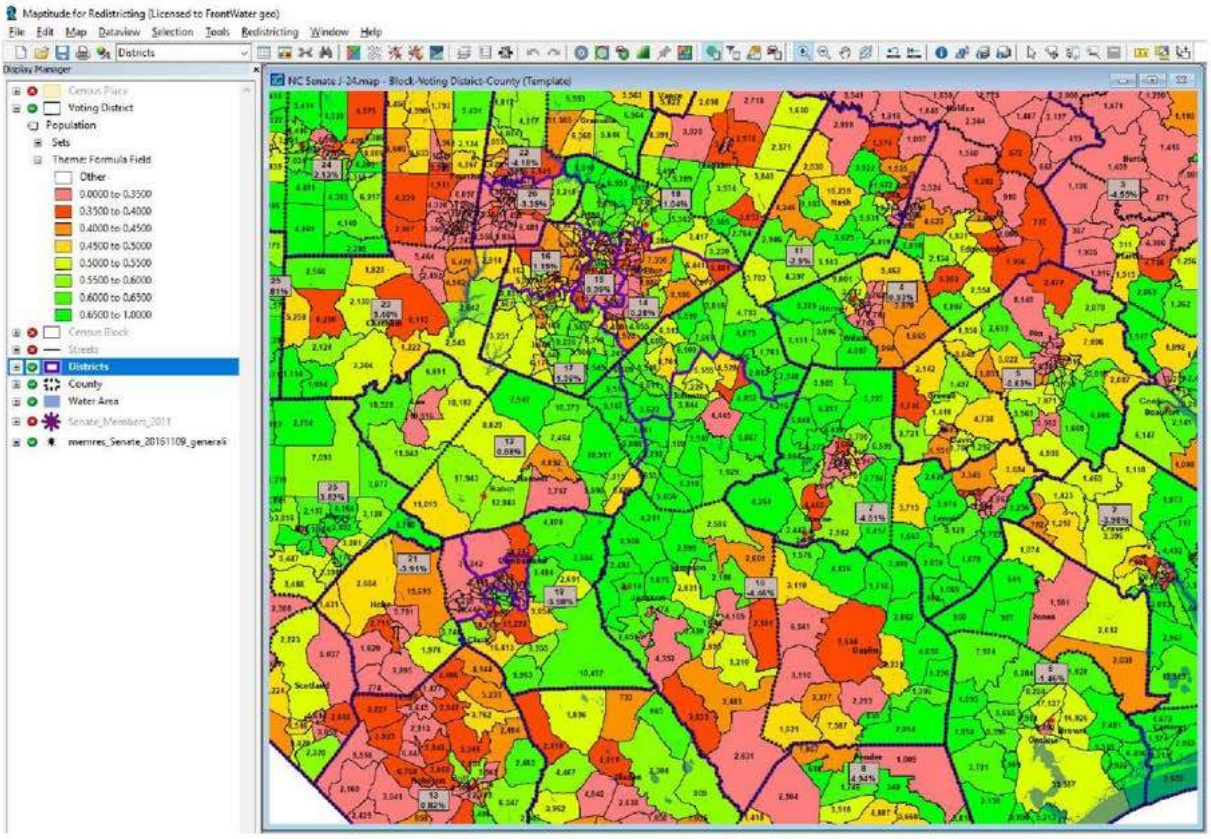
275. Plaintiffs' Exhibit 274 is Dr. Cooper's map of this county grouping:



276. Dr. Cooper explained how the district boundaries connect the most Republican VTDs in Johnston County with the Democratic stronghold of Rocky Mount in Senate District 11, ensuring that those Rocky Mount Democratic voters are separated from

the moderate and Democratic-leaning VTDs in Johnston County, diluting the voting strength of these various Democratic voters. Tr. 890:4-891:17; PX253 at 33 (Cooper Report). Dr. Hofeller's Maptitude files further illustrate this intentional cracking of Democratic voters. Dr. Hofeller's file, below in Plaintiffs' Exhibit 332, reveals how he drew these districts with "remarkable precision" by "building a fence" around the moderate and Democratic-leaning VTDs in central Johnston County—shaded yellow and red in the image below—making sure to keep these VTDs in Senate District 10 separate from Rocky Mount's voters in Senate District 11. Tr. 968:12-969:8.

Figure 3: Partisan Targeting in Senate Districts 10, 11, and 12



277. Dr. Hofeller's Microsoft Excel files provide evidence that Dr. Hofeller placed special attention on this country grouping and its partisan composition. In a file titled "Johnston Senate Switch," Dr. Hofeller compared two alternative drafts of this county

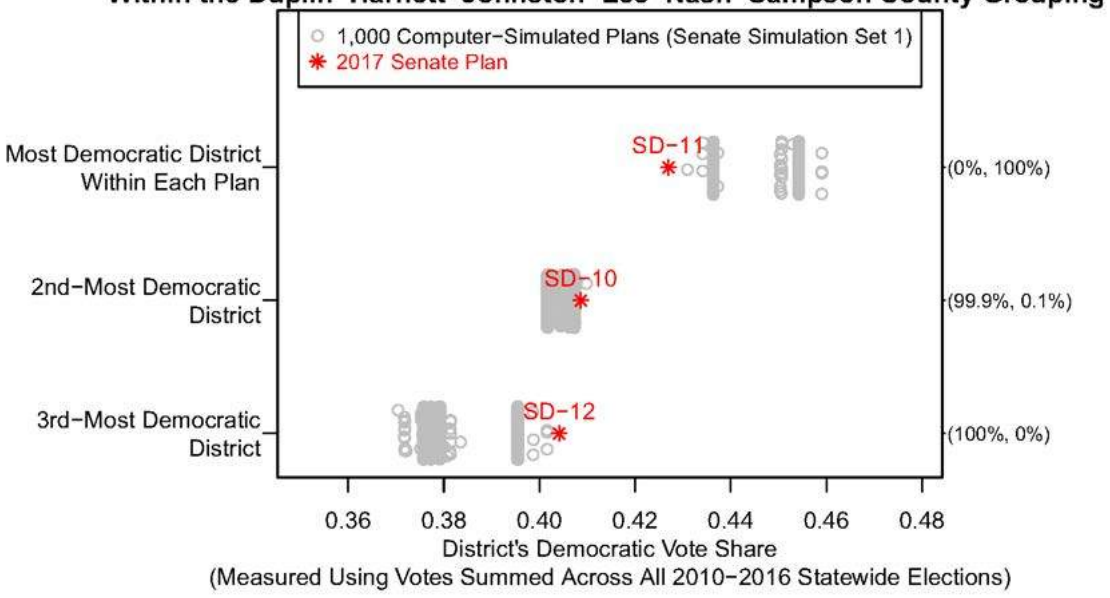
grouping and the expected Republican performance of the three districts in this grouping under each of the two alternatives. Tr. 469:5-470:3; PX166; PX123 at 68-69 (Chen Rebuttal Report). The file analyzed no information other than partisanship considerations, demonstrating Dr. Hofeller's predominant partisan intent in constructing the districts in this grouping. *Id.*

278. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of these districts.

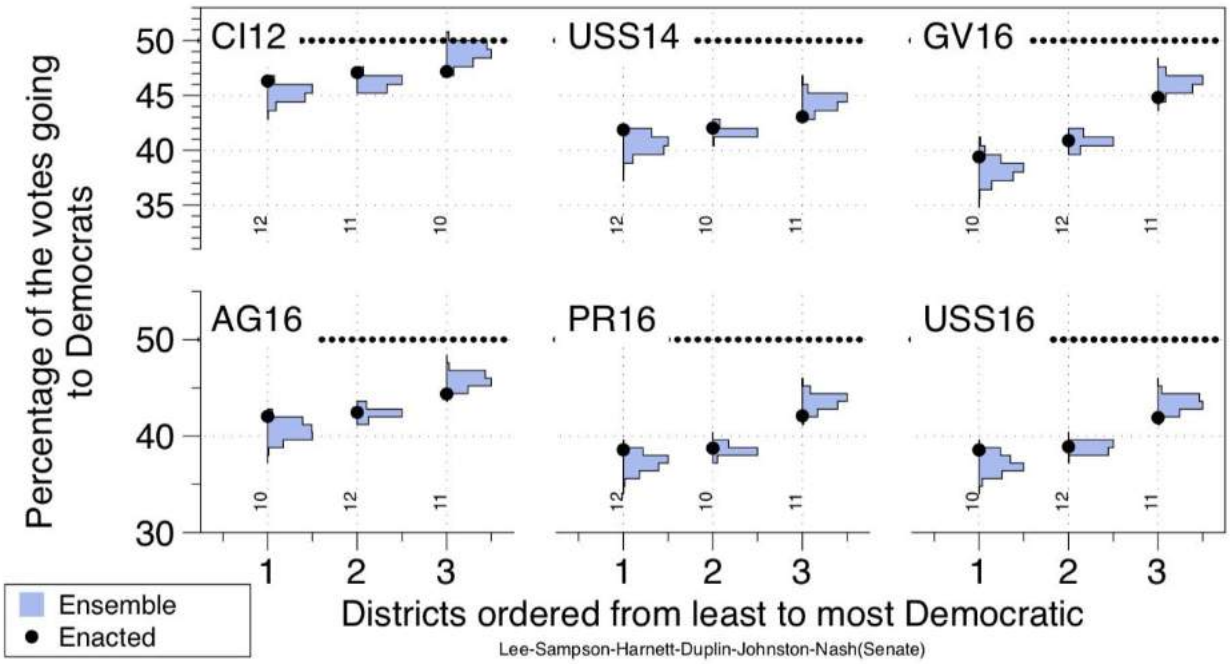
279. The simulations of Plaintiffs' other experts confirm and independently establish that this county grouping was gerrymandered to favor Republicans.

280. Dr. Chen found that all three districts in this county grouping are extreme partisan outliers. Tr. 375:14-25. Senate District 11 has a lower Democratic vote share than its corresponding district in all the simulations, while Senate Districts 10 and 12 have a higher Democratic vote share than their corresponding districts in all the simulations. PX96. Dr. Chen's findings demonstrate the cracking of Democratic voters across all three districts in this grouping to ensure that all three districts are safe Republican seats. The most Democratic district in this grouping would be far more competitive or even Democratic-leaning under a nonpartisan plan, particular in electoral environments that are more neutral or favorable for Democrats than the 2010-2016 statewide elections. Tr. 376:1-8. The Court gives weight to Dr. Chen's analysis and findings for this county grouping, which are reflected in Plaintiffs' Exhibit 96 below:

Figure 76: Senate Simulation Set 1:
Democratic Vote Share of the Enacted and Computer-Simulated Districts
Within the Duplin-Harnett-Johnston-Lee-Nash-Sampson County Grouping



281. Plaintiffs' Exhibit 382 shows Dr. Mattingly's analysis of this grouping:



282. Dr. Mattingly concluded that this grouping reflects a pro-Republican partisan bias, Tr. 1154:20-1155:1, and the Court gives weight to Dr. Mattingly's conclusion. Dr. Mattingly's analysis shows that, in this grouping, the number of Democrats in the districts

was flattened or squeezed to advantage the Republicans. PX778 at 29; Tr. 1154:20-22. Squeezing represents pure cracking, Tr. 1150:22-1151:2. Here, Democrats were cracked out of the most Democratic district and placed in the two least Democratic districts where their presence would not affect the results. When Dr. Mattingly mathematically quantified the cracking in this grouping using all 17 statewide elections, he found that the least two Democratic districts in the enacted plan had more Democratic voters than 77.21% of the comparable districts in the nonpartisan ensemble. Although Dr. Mattingly did not label this grouping an "outlier" because he used a 90% threshold, he explained that the pro-Republican bias evidence in this grouping still contributed to the extreme pro-Republican bias he found statewide. Tr. 1151:21-1153:2, 1154:23-1155:1. Because the lines in each county grouping are independent of each other, if the mapmaker time after time makes choices that systematically bias each grouping to one party, that effect accumulates across the map. Tr. 1151:21-1153:2.

283. Moreover, while Dr. Mattingly's "jump" analysis evaluated the districts in this grouping using all 17 statewide elections, analyzing the most Democratic district in this grouping based on the more recent elections depicted in the figure above reveals the intent and effects of the gerrymander. Dr. Mattingly's figure shows that the most Democratic district in this grouping under the enacted plan, which is Senate District 11 in most of the elections shown, has less Democrats than the most Democratic district in almost all of his simulations under these more recent six statewide elections. PX382.

284. Dr. Pegden found evidence that this county grouping is an extreme partisan gerrymander. Due to Dr. Pegden's conservative methodology, his algorithm was only able to generate 18 comparison maps for this Senate county grouping. Tr. 1355:5-23; PX542. Of those 18 maps, Dr. Pegden found that the enacted map for this county grouping is more

favorable to Republicans than every single one. Tr. 1356:3-8. The Court gives weight to Dr. Pegden's analysis and conclusions.

285. The analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

d. Guilford-Alamance-Randolph

286. The Guilford-Alamance-Randolph Senate county grouping contains Senate Districts 24, 26, 27, and 28.

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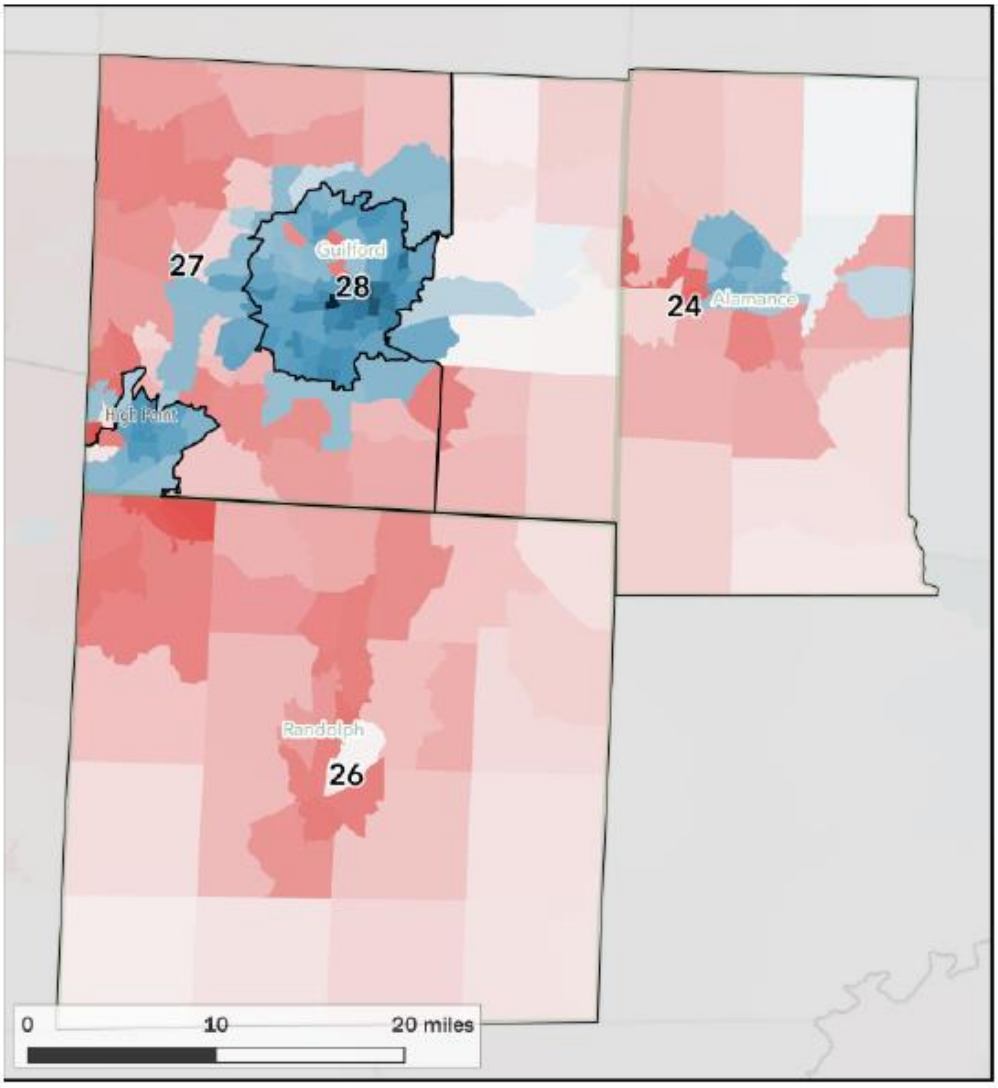
287. Plaintiffs' Exhibit 281 is Dr. Cooper's map for this county grouping:



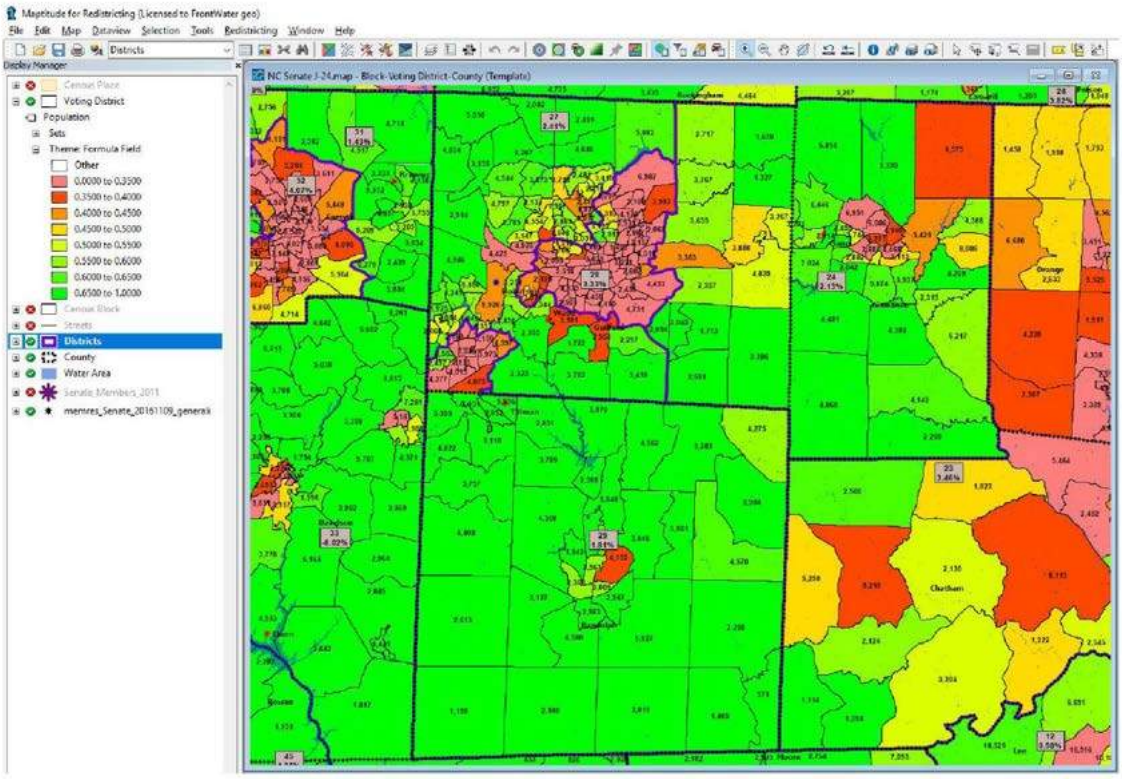
288. For this county grouping, the *Covington* court tasked the Special Master with redrawing Senate District 28 because the General Assembly's enacted version of Senate District 28 did not cure the racial gerrymander. 2017 WL 11049096, at *1-2 (M.D.N.C. Nov. 1, 2017). In redrawing Senate District 28, the Special Master also made changes to Senate District 24. *See* LDTX159 at 19; *Covington*, ECF No. 220 at 34. Plaintiffs do not challenge Senate Districts 24 and 28 in this case and do not seek relief with respect to them.

289. Unlike Senate Districts 24 and 28, the Special Master did *not* make any changes to the General Assembly's enacted version of Senate District 26. *See Covington*, ECF No. 220 at 34 ("2017 Enacted Senate District 26 remains untouched"); Tr. 378:9-16. The Special Master made certain changes to Senate District 27 in carrying out his assignment to redraw Senate District 28, but in so doing, the Special Master did not alter any part of the border between Senate Districts 27 and 26. *See* Chen Demonstrative D6 at 3; LDTX159 at 19. According to estimates presented at trial by Legislative Defendants' expert Dr. Johnson, of the current population of Senate District 27, 77% of the population was put into the district by the General Assembly under the enacted 2017 Senate plan.

290. In drawing Senate District 26, the mapmaker cracked Democratic voters in Guilford County, placing the Democratic stronghold of High Point in Senate District 26 and separating these voters from Democratic voters in the Greensboro suburbs. Tr. 895:15-896:25; PX254 at 42-43 (Cooper Report). This has the effect of "washing out" the influence of High Point's Democratic voters, who are joined with the heavily Republican Randolph County in a safe Republican district (Senate District 26), preventing them from influencing the competitive Senate District 27 and thereby making Senate District 27 more favorable for Republicans. *Id.*

291. Dr. Hofeller's Maptitude files confirm that he was using VTD-level partisanship data in constructing the districts in this and other county groupings. Tr. 971:16-18; 975:2-5. For example, Dr. Hofeller drew the boundaries of Senate District 26 to grab only the most Democratic VTDs on the border of Randolph County. Tr. 975:10-13, 974:19-975:5. The partisan implications of which are illustrated by Dr. Hofeller's draft map, which is Plaintiffs' Exhibit 334:

Figure 5: Partisan Targeting in Senate Districts 24, 26, 27, and 28



292. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the decision to place High Point's most-Democratic VTDs in Senate District 26.

293. The simulations of Plaintiffs' other experts confirm and independently establish that Senate Districts 26 and 27 are extreme partisan gerrymanders.

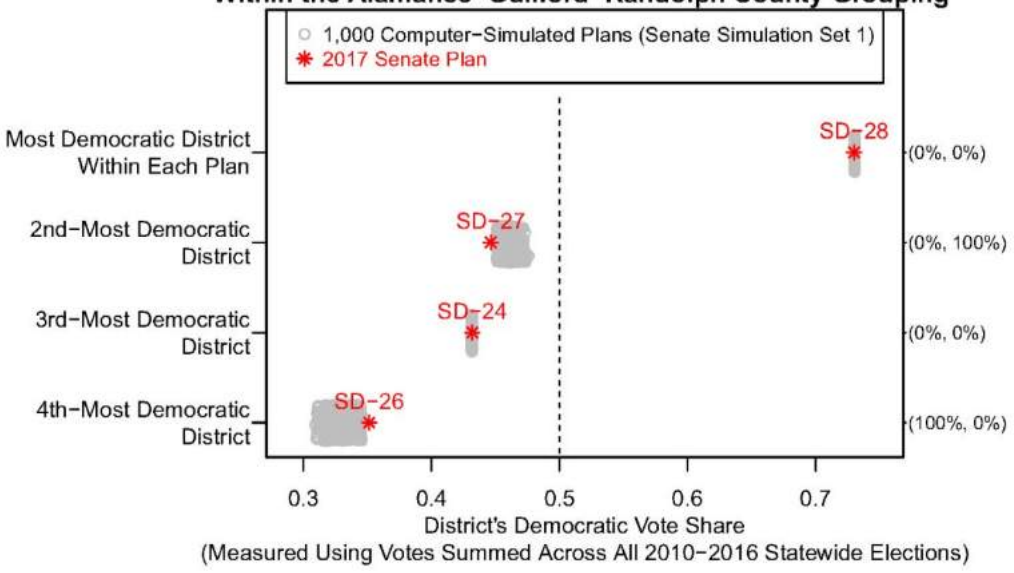
294. Drs. Chen, Mattingly, and Pegden all froze Senate Districts 24 and 28 in this grouping. Tr. 378:17-379:19; PX359 at 23 (Mattingly Report); PX508 at 30 (Pegden Report).

295. Dr. Chen explained in unrebutted testimony that his simulations of the Alamance-Guilford-Randolph House county grouping did not make any changes to the portion of Senate District 27 added by the *Covington* Special Master, and instead altered only the southwest portion of Senate District 27 that borders Senate District 26. Tr. 773:8-22; Chen Demonstrative D6 at 4, 5; PX1 at 18-19 (Chen Report). The Court finds that

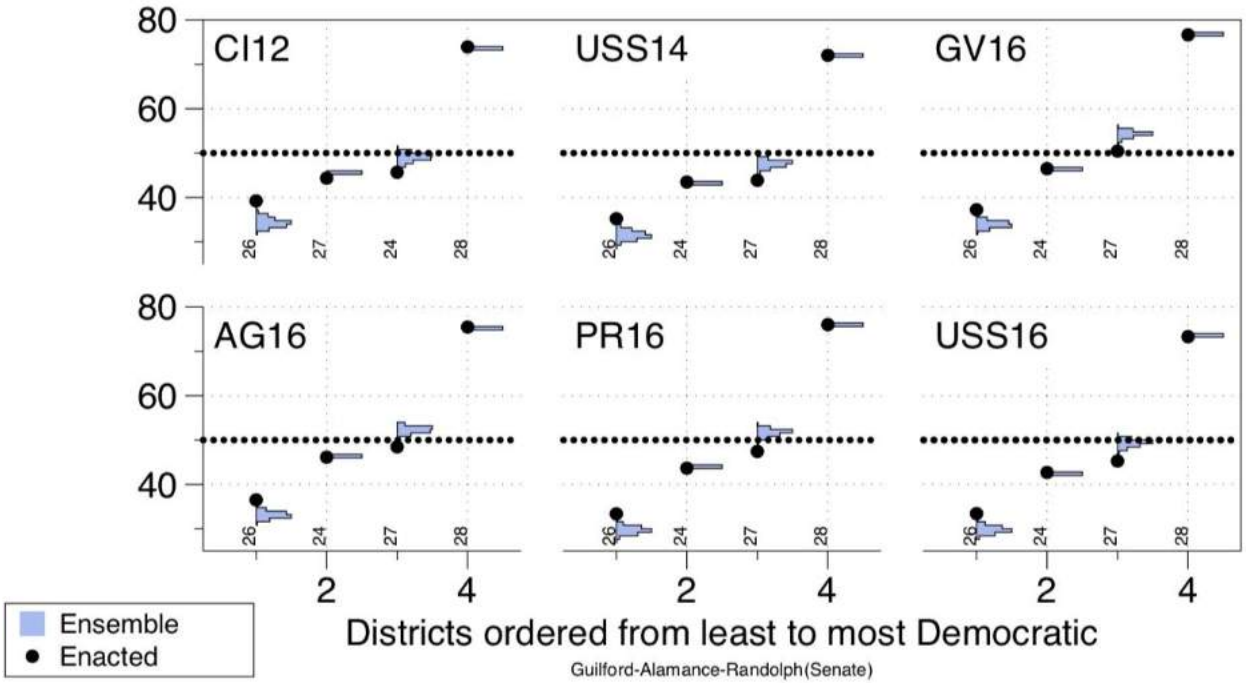
because Dr. Chen's simulations altered only portions of Senate District 27 drawn by the mapmaker, and did not touch the portions of the district added by the Special Master, the mapmaker necessarily is responsible for the extreme partisan bias that Dr. Chen finds for Senate District 27.

296. Dr. Chen found that both districts in this county grouping that he did not freeze are extreme partisan outliers. Senate District 26 has a higher Democratic vote shares than its corresponding district in all of the simulations, while Senate District 27 has a lower Democratic vote share that its corresponding district in all of the simulations. Tr. 380:1-18; PX94. Dr. Chen's findings show the mapmaker's intentional placing of High Point's Democratic voters into Senate District 26 to make Senate District 27 as favorable for Republicans as possible. The Court gives weight to Dr. Chen's findings and analysis for this grouping, which are reflected in Plaintiffs' Exhibit 94 below:

Figure 74: Senate Simulation Set 1:
Democratic Vote Share of the Enacted and Computer-Simulated Districts
Within the Alamance-Guilford-Randolph County Grouping



297. Plaintiffs' Exhibit 380 shows Dr. Mattingly's analysis of the Guilford-Alamance-Randolph Senate county grouping:



298. Setting aside the frozen districts, Dr. Mattingly's analysis shows that Democrats were cracked between the grouping's two remaining districts—an example of what Dr. Mattingly called flattening or squeezing. PX380; PX778 at 29; PX359 at 23. Not a single plan in Dr. Mattingly's nonpartisan ensemble showed as much cracking of Democratic voters in the grouping as was present in the enacted plan, PX359 at 23, and thus the grouping has more pro-Republican advantage than 100% of the maps in his nonpartisan ensemble. Tr. 1153:24-1154:4. Dr. Mattingly concluded that this grouping is an extreme pro-Republican partisan gerrymander, Tr. 1153:17-23; PX778 at 29; PX359 at 23, and the Court gives weight to this conclusion.

299. Dr. Pegden found that this Senate county grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version of this grouping is more favorable to Republicans than 99.95% of the maps that his

algorithm encountered by making small changes to the district boundaries. In his second level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.85% of all possible districtings of this grouping that satisfy the criteria Dr. Pegden used. Tr. 1357:1; PX543. The Court gives weight to Dr. Pegden's analysis and conclusions.

300. The analyses of Plaintiffs' experts independently and together demonstrate that Senate Districts 26 and 27 are extreme partisan gerrymanders.

e. Davie-Forsyth

301. The Davie-Forsyth Senate county grouping contains Senate Districts 31 and 32. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

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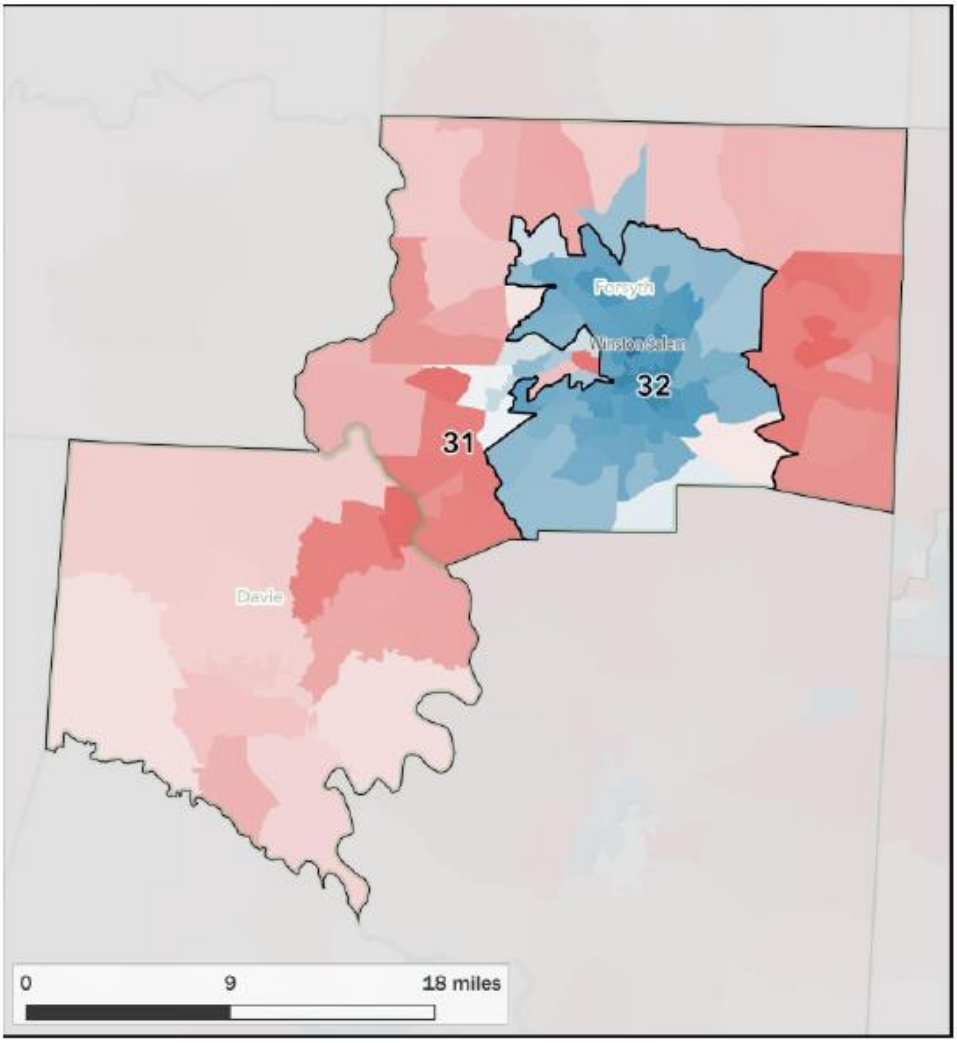
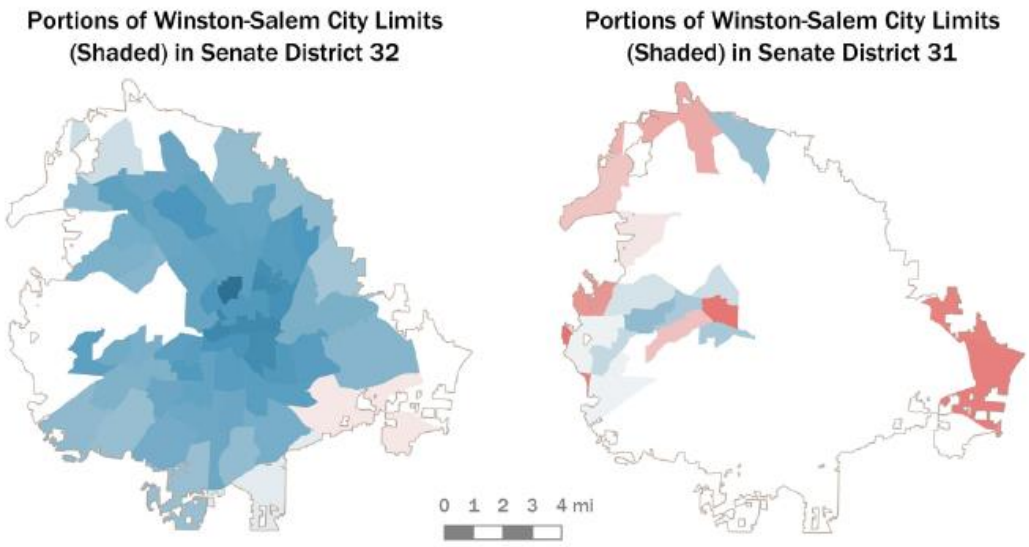
302. Plaintiffs' Exhibit 282 is Dr. Cooper's map for this county grouping:



303. Dr. Cooper explained what is apparent from the above map: the mapmaker packed Democratic voters into Senate District 32, thereby ensuring that Senate District 31 would be a safe Republican district. Tr. 897:9-24; PX253 at 44 (Cooper Report).

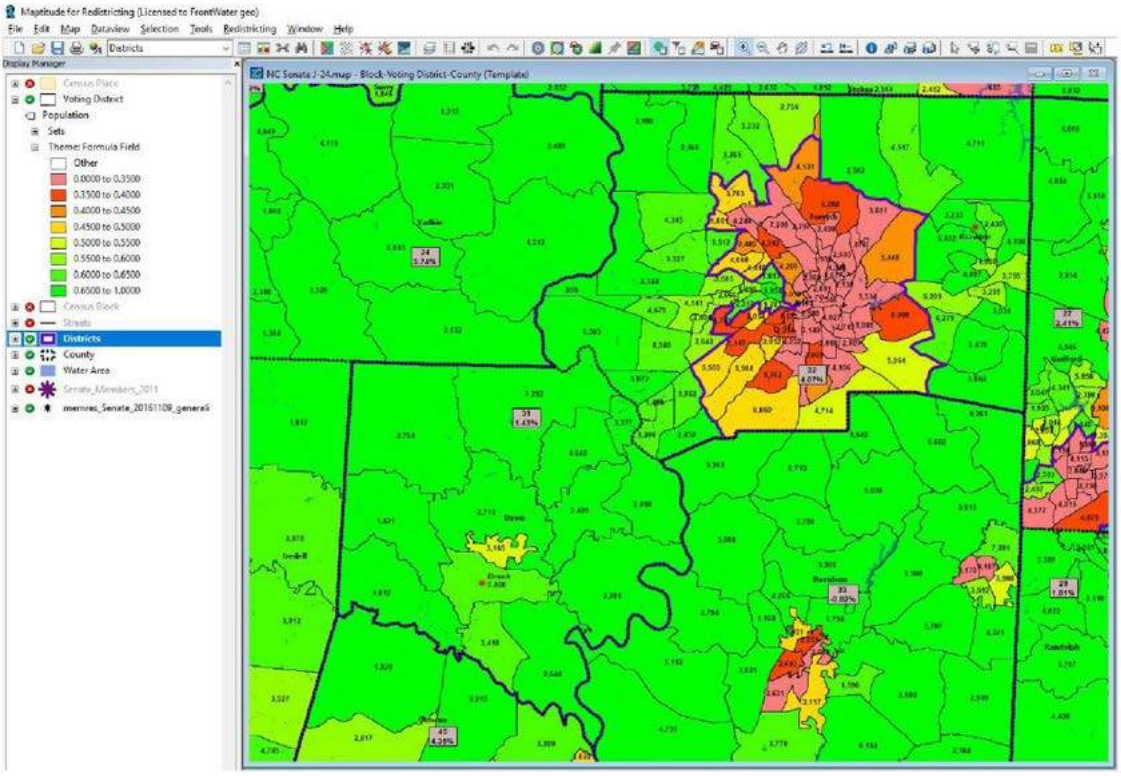
304. This packing occurred not only at the grouping-level, but within Winston-Salem. The map packs all of Winston-Salem's most Democratic VTDs into Senate District 32, and puts almost all of the city's Republican-leaning VTDs in Senate District 31. Tr.

898:1-16; PX283; PX253 at 44 (Cooper Report). As shown in Plaintiffs' Exhibit 283 below, Senate District 31 wraps around Winston-Salem to avoid the Democratic-leaning VTDs in the city, while taking in the Republican-leaning VTDs on the western, northern, and eastern sides of the city:



305. Dr. Hofeller's Maptitude files confirm his predominant partisan intent in drawing this grouping. The district boundaries are drawn "almost perfectly" so that the green areas on the map, which reflect Republican VTDs, are all placed in Senate District 31. Tr. 976:24-977:4; PX335; PX329 at 11 (Cooper Rebuttal Report). The "bite mark" on the west side of Winston-Salem, where Republican-leaning VTDs were carved out of Senate District 32, is evident on Dr. Hofeller's draft map of these districts, which is Plaintiffs' Exhibit 335:

Figure 6: Partisan Targeting in Senate Districts 31 and 32

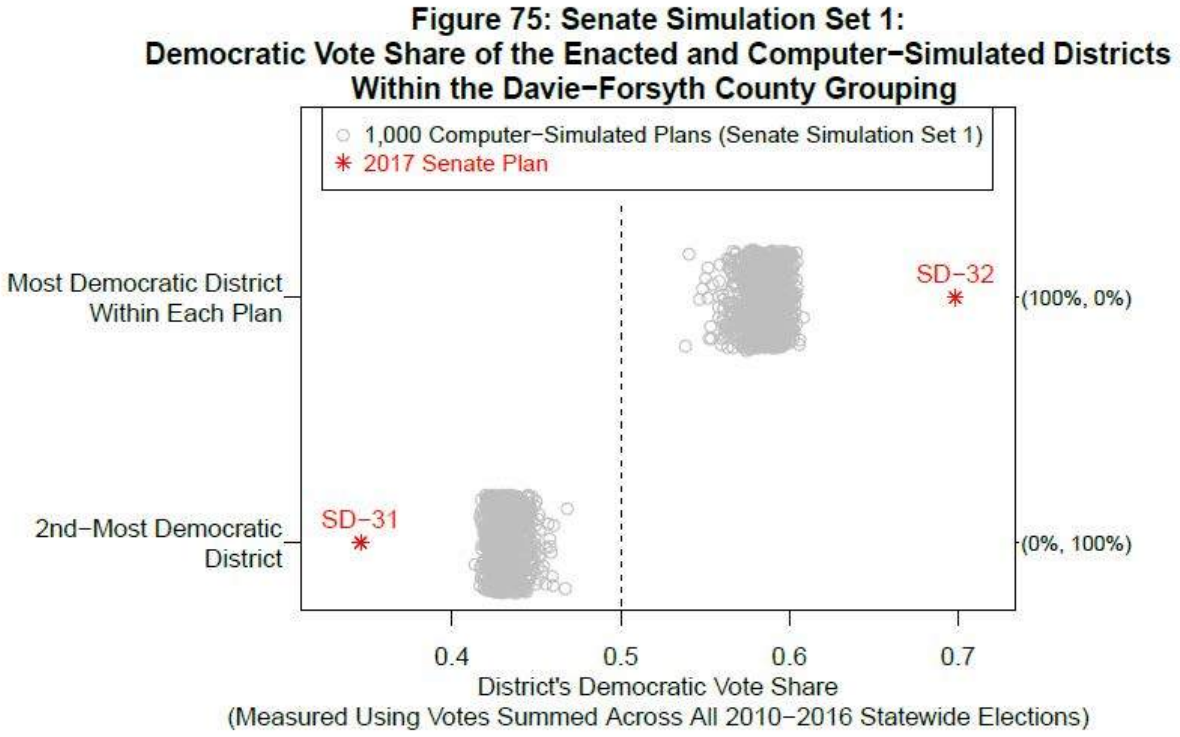


306. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of these districts.

307. The simulations of Plaintiffs' other experts confirm and independently establish that the Davie-Forsyth county grouping is an extreme partisan gerrymander.

308. Dr. Chen found that both districts in this grouping are extreme partisan outliers. Tr. 373:18-374:12. Senate District 32 has a far higher Democratic vote share than its corresponding district in all of the simulations, while Senate District 31 has a far lower Democratic vote share than its corresponding district in all of the simulations. PX95. Dr. Chen's findings demonstrate the packing of Democratic voters into Senate District 32 in order to make Senate District 31 a safe Republican seat. As Dr. Chen explained, the less Democratic district in this grouping would be far more competitive for Democrats under a nonpartisan plan, particularly in electoral environment that are more neutral or favorable

for Democrats than the 2010-2016 statewide elections. Tr. 374:13-23. The Court gives weight to Dr. Chen's analysis and findings for this county grouping, which are reflected in Plaintiffs' Exhibit 95 below:



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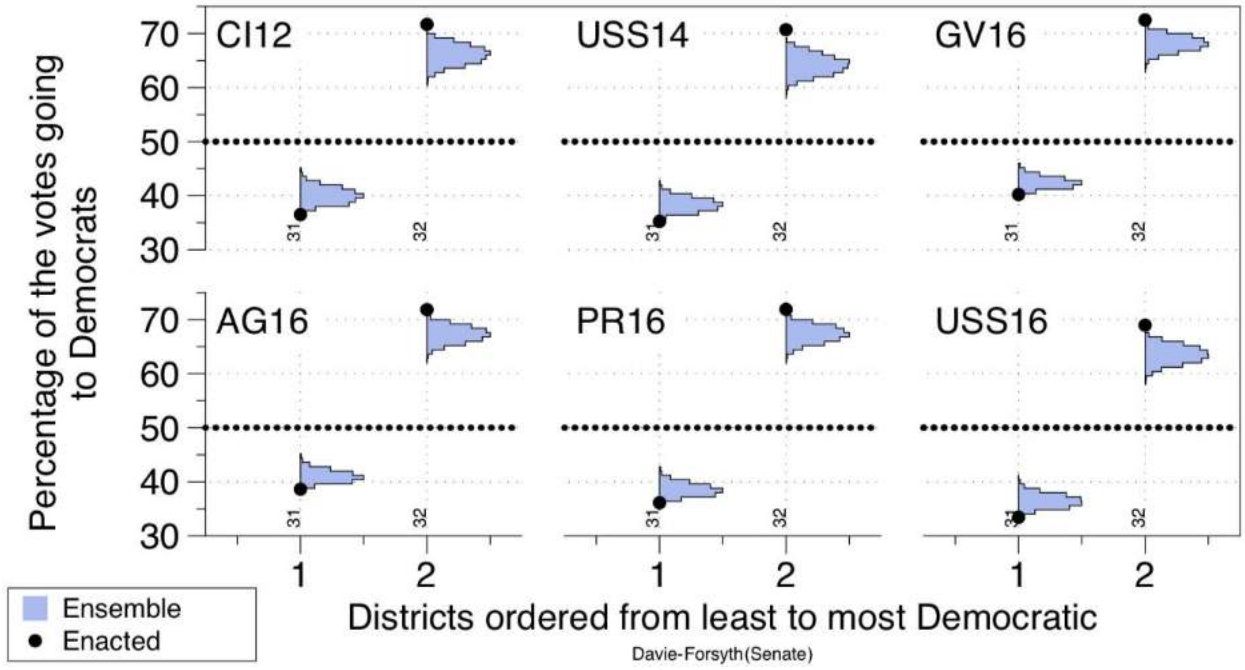
309. Plaintiffs' Exhibit 374 shows Dr. Mattingly's analysis of this county grouping:



310. Dr. Mattingly's analysis shows that Democrats were cracked out of the most Republican district in this county grouping, and packed into the most Democratic district. PX374; PX778 at 29. Dr. Mattingly found that not a single plan in his nonpartisan ensemble showed as much packing of Democratic voters in the Davie-Forsyth Senate grouping as was present in the enacted plan, PX359 at 18, and thus the grouping has a more pro-Republican advantage than 100% of the maps in his nonpartisan ensemble, Tr. 1153:24-1154:4. Dr. Mattingly concluded that this grouping is an extreme pro-Republican partisan gerrymander, Tr. 1153:17-23; PX778 at 29; PX359 at 18, and the Court gives weight to his conclusion.

311. Dr. Pegden found that this county grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version of the grouping is more favorable to Republicans than 99.993% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second

level analysis, Dr. Pegden found that the grouping is more carefully crafted to favor Republicans than at least 99.98% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. Tr. 1356:25; PX538. The Court gives weight to Dr. Pegden's analysis and conclusions.

312. The analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

f. Bladen-Pender-New Hanover-Brunswick

313. The Bladen-Pender-New Hanover-Brunswick Senate county grouping, drawn in 2011 and left unchanged in 2017, contains Senate Districts 8 and 9. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

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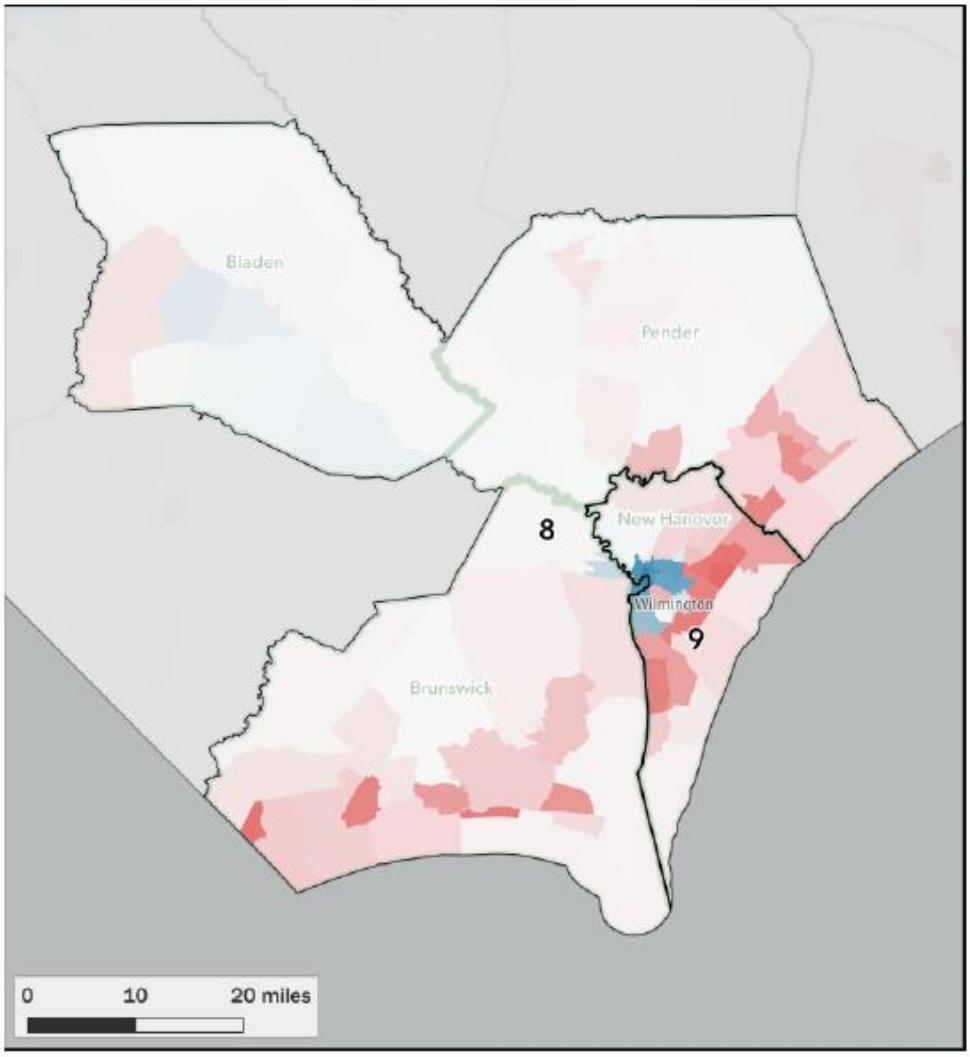
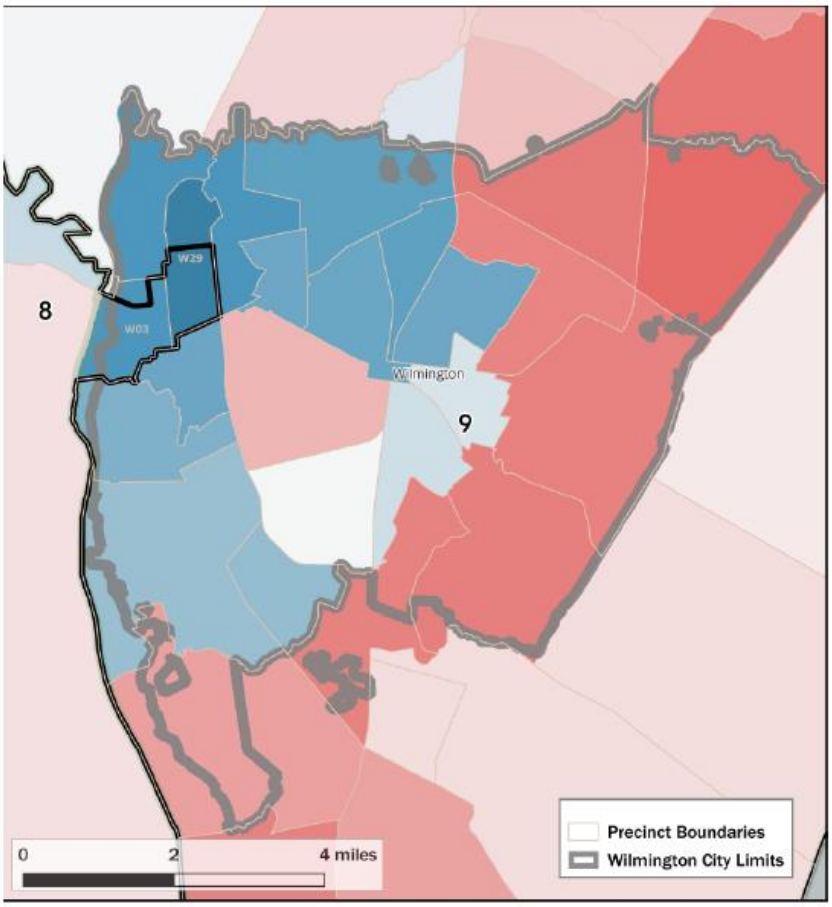
314. Plaintiffs' Exhibit 272 is Dr. Cooper's map of this county grouping:



315. In this grouping, the population of New Hanover County is slightly too large to fit into one Senate district, and thus the mapmaker had to place a small portion of New Hanover in Senate District 8. Tr. 887:8-9. The mapmaker chose to take heavily Democratic VTDs in Wilmington, separating them from the rest of Wilmington (which is in Senate District 9) and grouping them instead with heavily Republican areas in Bladen, Pender, and Brunswick counties. Tr. 887:5-888:8; PX253 at 29-31 (Cooper Report). As Dr. Cooper explained, the clear intent and effect of this decision was to waste the votes of the

Democratic voters in these Wilmington VTDs, placing them in a heavily Republican district (Senate District 8) and removing them from a highly competitive district (Senate District 9) where their votes could make a difference. *Id.* Plaintiffs' Exhibit 273 provides a zoomed-in view of the cracking of the Democratic voters in these two VTDs, which has come to be known as the "Wilmington Notch":



316. Dr. Cooper credibly testified that the enacted plan is the most maximally favorable construction of the grouping possible for Republicans. Tr. 887:24-25. This grouping illustrates Dr. Cooper's conclusion about all of the groupings he analyzed: "whenever there's discretion to be exercised, that discretion tended to go in favor of one party, in this case the Republican Party, and against the other party, in this case the Democrat party." Tr. 889:22-25.

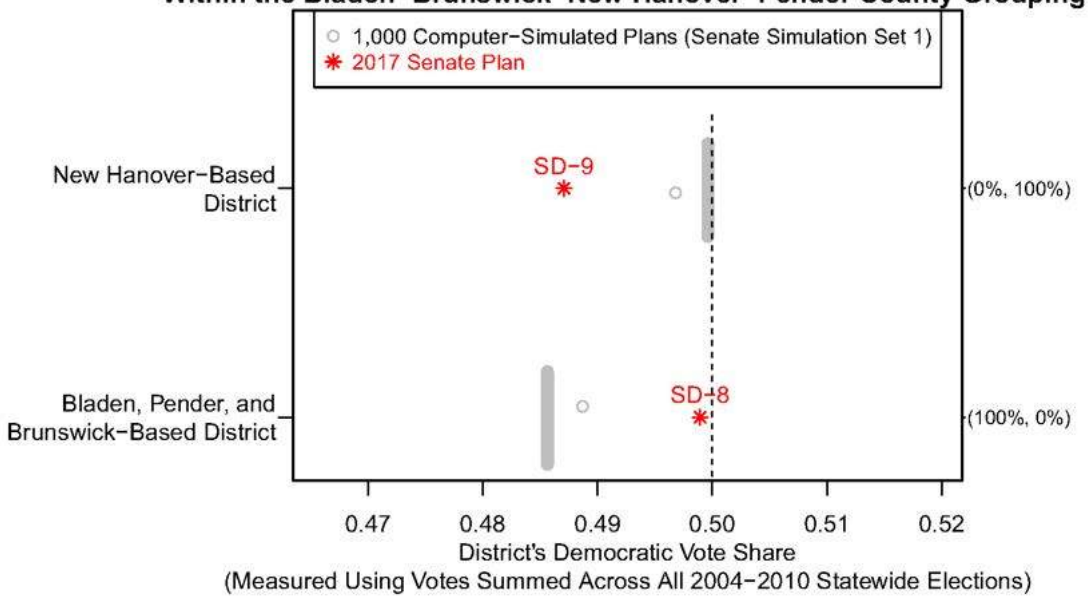
317. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of these districts. While they noted that some portion of New Hanover County must be placed in Senate District 9 for equal population purposes, Legislative Defendants failed to rebut the fact that alternative ways to draw the grouping would not split municipalities in the manner that the enacted plan does. Over 97% of Dr. Mattingly's simulations of this county grouping do not split Wilmington. PX429.

318. The simulations of Plaintiffs' other experts confirm that the Bladen-Brunswick-New Hanover-Pender Senate county grouping is an outlier.

319. Because this county grouping was drawn in 2011 and remained unchanged in 2017, in analyzing this individual county grouping, Dr. Chen used the statewide elections from 2004 to 2010 that the General Assembly used during the 2011 redistricting process, rather than the 2010-2016 statewide elections. Tr. 366:8-367:1, 382:23-383:11; PX720. Dr. Chen used these 2004-2010 statewide elections because, to assess the question of partisan intent, he wanted to use the same elections data that the mapmaker had available and was considering when it drew this grouping in 2011. Tr. 367:2-23; PX1 at 21-24 (Chen Report).

320. Dr. Chen found that both districts in this county grouping are extreme partisan outliers. Tr. 384:2-386:19. Senate District 9 has a lower Democratic vote share than all of its corresponding districts in all of the simulations, while Senate District 8 has a higher Democratic vote share than all of its corresponding districts in all of the simulations. *Id.*; PX100. Dr. Chen's analysis demonstrates that the moving of Democratic voters in the Wilmington Notch into Senate District 8 made Senate District 9 as favorable for Republicans as possible. The Court gives weight to Dr. Chen's findings for this county grouping, which are reflected in Plaintiffs' Exhibit 100 below:

Figure 80: Senate Simulation Set 1:
Democratic Vote Share of the Enacted and Computer-Simulated Districts
Within the Bladen-Brunswick-New Hanover-Pender County Grouping



321. Dr. Mattingly similarly concluded that the Bladen-Pender-New Hanover-Brunswick Senate grouping was "certainly an outlier" but when on to state that "there were some features of [the Bladen] district that meant that the type of analysis that [he] had initially chosen was not as illuminating in that district. So [he] couldn't say something is conclusive." Tr. 1154:11-16. When he mathematically quantified cracking in the Bladen grouping across all 17 statewide elections, he found that the most Democratic district in the Bladen grouping had fewer Democrats than in 92.46% of plans in the nonpartisan ensemble. PX359 at 19-20 (Mattingly Report); PX778 at 29.[6]

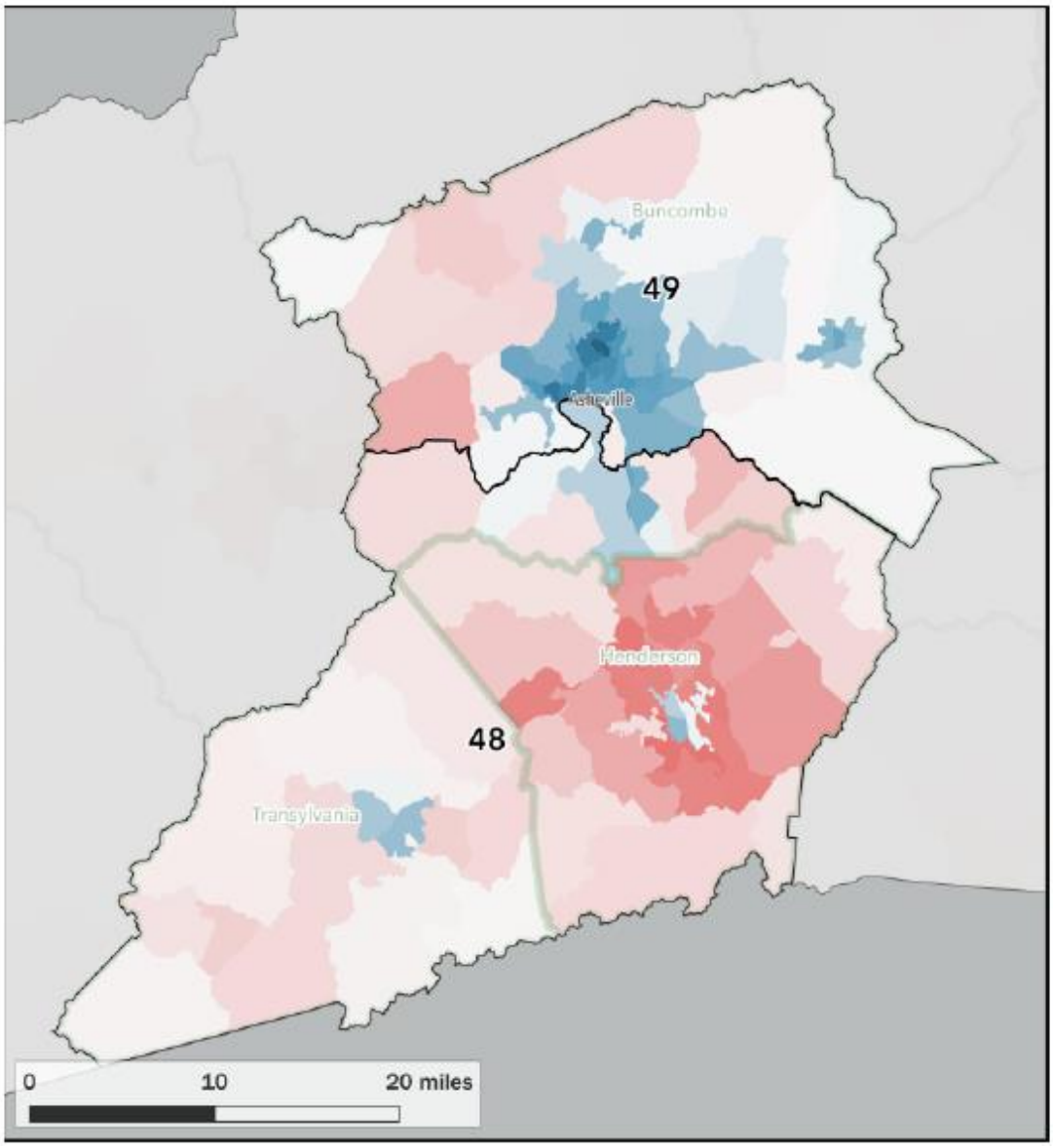
322. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme and intentional partisan gerrymander.

[6] Dr. Pegden was unable to generate any comparison districtings of this county grouping due to his conservative methodology. Tr. 1357:12-23; PX544. As Dr. Pegden testified, the fact that his algorithm does not generate any comparison districtings for a given county grouping does *not* mean that the mapmaker did not make extreme and intentional use of partisan considerations in that county grouping. *See* Tr. 1321:17-25, 1349:11-1350:4.

g. Buncombe-Henderson-Transylvania

323. The Buncombe-Henderson-Transylvania Senate county grouping, drawn in 2011 and left unchanged in 2017, contains Senate Districts 48 and 49. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

324. Plaintiffs' Exhibit 288 is Dr. Cooper's map of this county grouping:



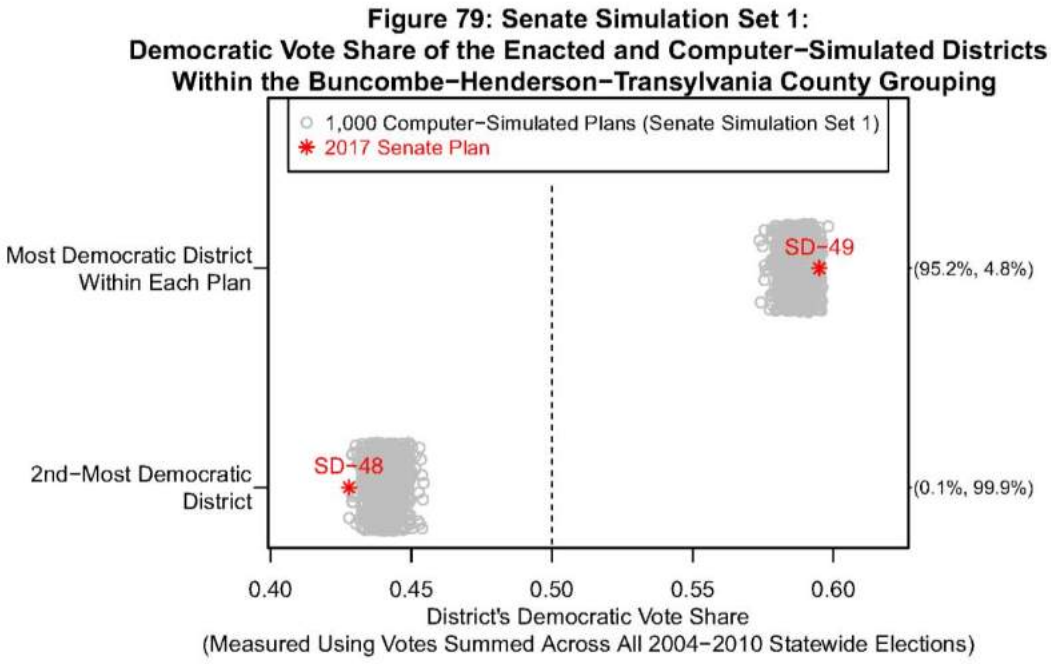
325. Dr. Cooper explained how these district boundaries combine the heavily Democratic VTDs in Asheville with Democratic VTDs in Black Mountain, packing those Democratic voters to create a safe Democratic district in Senate District 49, allowing Senate District 48 to comfortably favor Republicans. Tr. 903:23-904:13; PX253 at 50 (Cooper Report).

326. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of these districts.

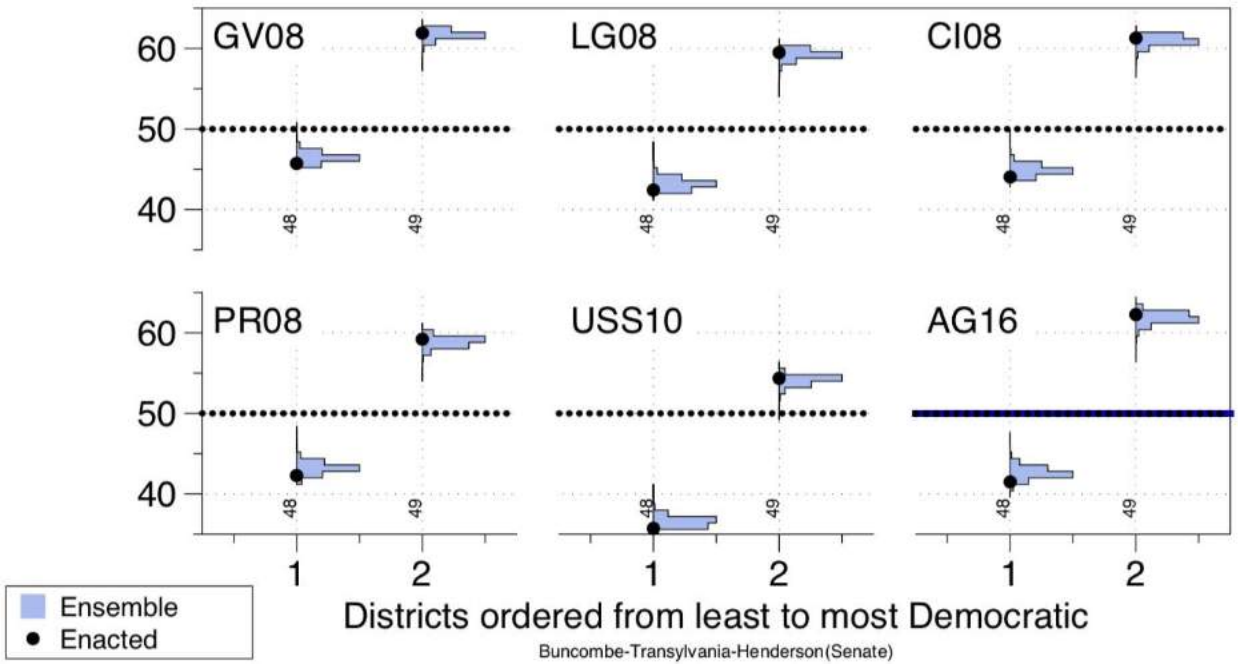
327. The simulations of Plaintiffs' other experts confirm and independently establish that this county grouping is an extreme partisan gerrymander.

328. Dr. Chen found that both districts in this county grouping are extreme partisan outliers. Tr. 383:12-19.[7] Senate District 49 has a higher Democratic vote share than its corresponding district in nearly all of the simulations, while Senate District 48 has a lower Democratic vote share than its corresponding district in nearly all of the simulations. PX99. Dr. Chen's findings demonstrate the packing of Democratic voters into Senate District 49 to make Senate District 48 a safe Republican seat. The Court gives weight to Dr. Chen's analysis and findings for this county grouping, which are reflected in Plaintiffs' Exhibit 99 below:

[7] Because this county grouping was drawn in 2011, Dr. Chen used the 2004 to 2010 statewide elections to analyze this county grouping. Tr. 383:16-22; PX99.



329. Plaintiffs' Exhibit 378 shows Dr. Mattingly's analysis of the Buncombe-Transylvania-Henderson Senate county grouping:



330. Dr. Mattingly's analysis shows that Democrats were cracked out of Senate District 48 and packed into Senate District 49. PX378; PX778 at 29; Tr. 1153:7-1154:9. Dr.

Mattingly found that the least Democratic district in the enacted plan has fewer Democratic votes than in 95.44% of the plans in his ensemble, meaning that the grouping showed more pro-Republican partisan advantage than 95.44% of the nonpartisan plans. PX778 at 29; PX359 at 21-22. Dr. Mattingly concluded that this grouping reflects a pro-Republican partisan gerrymander, Tr. 1154:6-10; PX778 at 29; PX359 at 21-22, and the Court gives weight to his conclusion.

331. Dr. Pegden found that this county grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version of the grouping is more favorable to Republicans than 99.8% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second level analysis, Dr. Pegden found that the grouping is more carefully crafted to favor Republicans than at least 99.4% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. Tr. 1357:2; PX541. The Court gives weight to Dr. Pegden's analysis and conclusions.

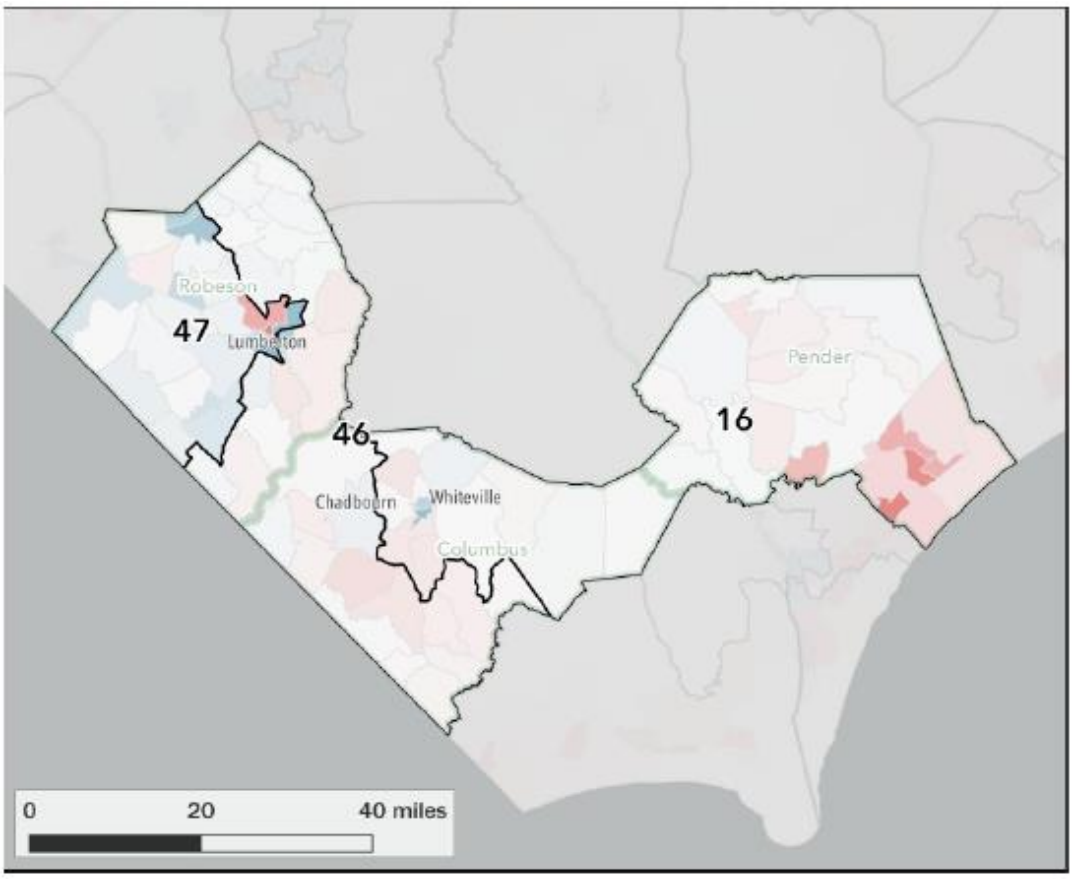
332. The analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

2. House County Groupings

a. Robeson-Columbus-Pender

333. The Robeson-Columbus-Pender House county grouping contains House Districts 16, 46, and 47. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

334. Plaintiffs' Exhibit 301 is Dr. Cooper's map of this county grouping:

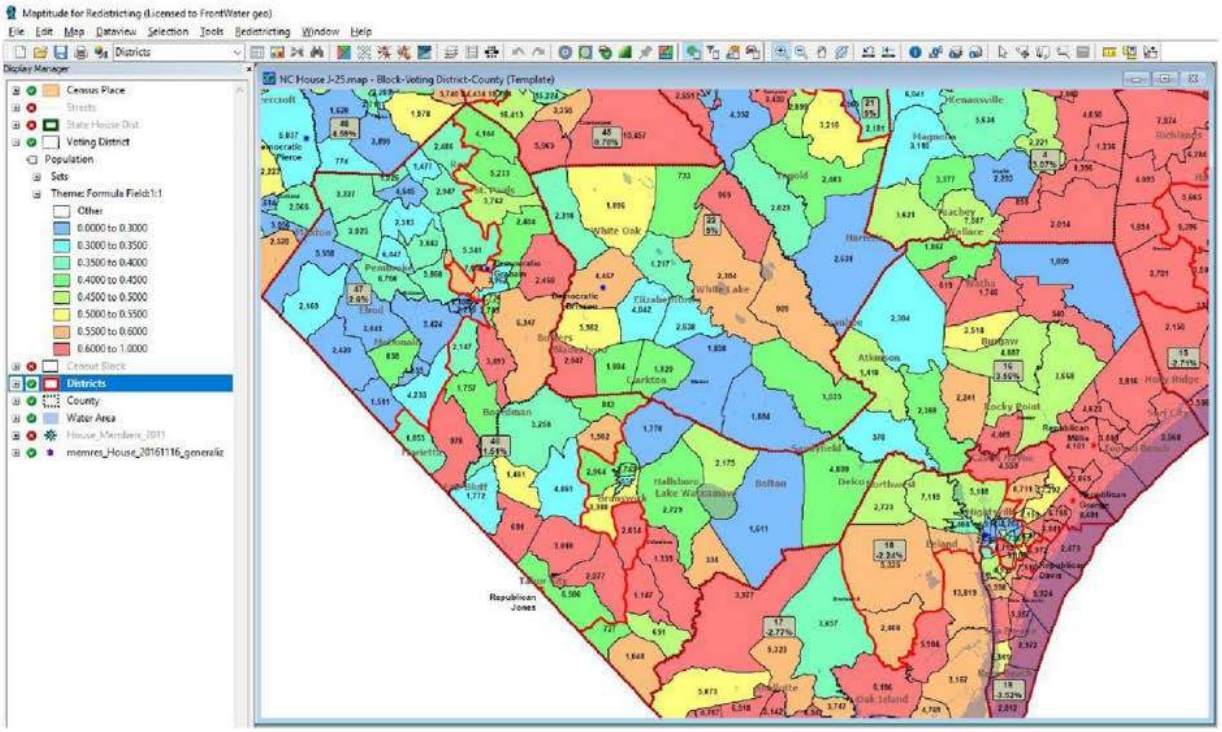


335. Dr. Cooper explained that House District 47 packs as "many . . . Democratic voters as possible" into that district, including in Lumberton and the area around UNC Pembroke. The packing of Democrats in House District 47 makes House Districts 16 and 46 more favorable to Republicans. Tr. 912:19-913:3; PX253 at 70 (Cooper Report).

336. Dr. Hofeller's Maptitude files confirm he "had full knowledge of the partisan effects of drawing those lines exactly where they were drawn, essentially drawing a fence between districts 47 and 46 . . . between Democratic and Republican voters." Tr. 985:15-19; PX342; PX329 at 18 (Cooper Rebuttal Report). In the files for his draft House plan, Dr. Hofeller shaded more Democratic VTDs darker blue, more Republican VTDs red and orange, and moderate VTDs green and yellow. Tr. 979:20-980:19. As shown in Plaintiffs'

Exhibit 342, Dr. Hofeller placed all of the Republican-leaning VTD near Lumberton (shaded orange and red) on the right side of the red line, in House District 46, rather than in House District 47:

Figure 13: Partisan Targeting in House Districts 16, 46, and 47



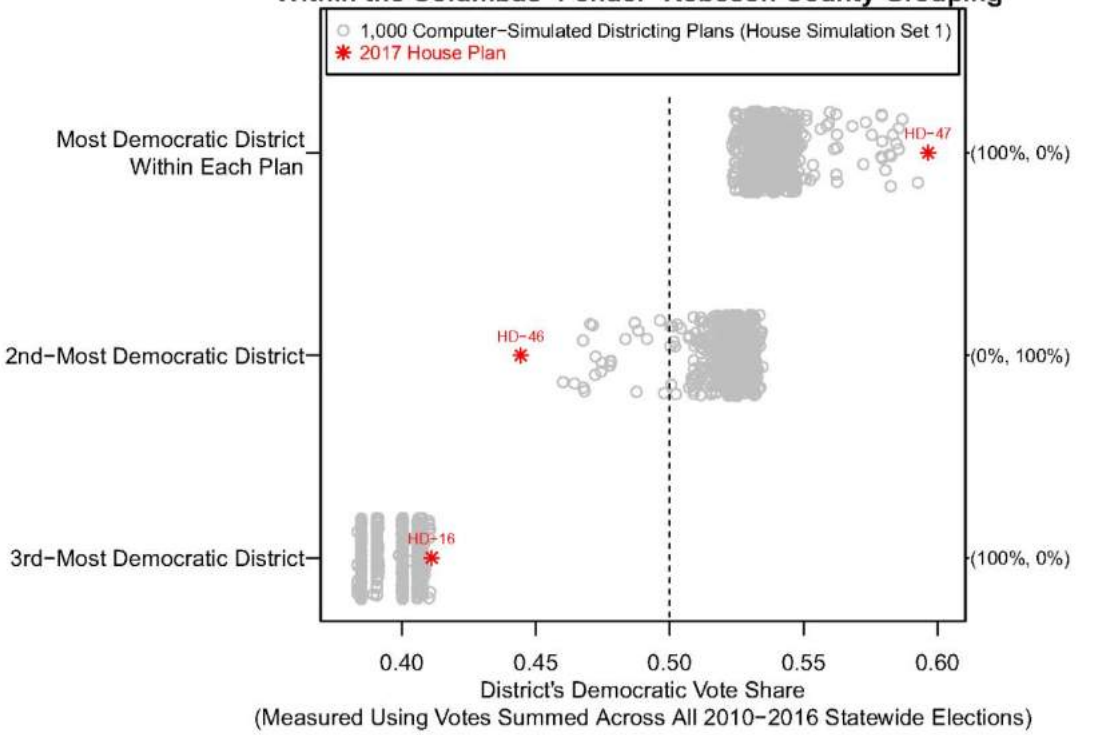
337. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of the districts in this county groupings.

338. The simulations of Plaintiffs' other experts independently establish that the Columbus-Pender-Robeson county grouping is an extreme partisan gerrymander.

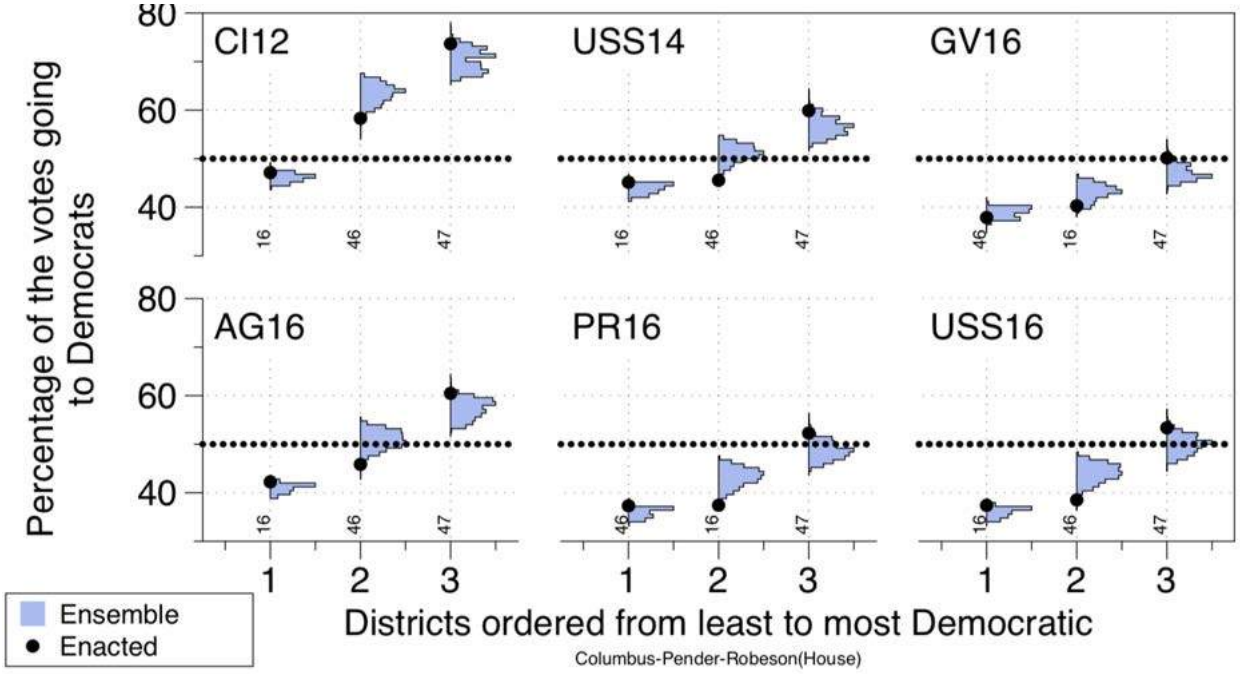
339. Dr. Chen found that all three House districts in this county are extreme partisan outliers. Dr. Chen found that House District 47 has a higher Democratic vote share than the corresponding districts in all of Dr. Chen's simulated plans. Tr. 346:4-347:14. Dr. Chen found that House District 46 has a lower Democratic vote share than the corresponding districts across all of Dr. Chen's simulations, while House District 16 has a

higher Democratic vote share than the corresponding districts in all of Dr. Chen's simulations. Tr. 347:16-348:7. Dr. Chen's findings demonstrate the packing of Democratic voters into House District 47 and the cracking of Democratic voters across House Districts 16 and 46. Dr. Chen finds that, as a result of this packing and cracking, almost all of his simulations would produce two Democratic-leaning districts in this county grouping, while the enacted House plan produces just one such district in this grouping. Tr. 348:8-23. The Court gives weight to Dr. Chen's analysis and findings for this county grouping, which are reflected in Plaintiffs' Exhibit 47 below:

Figure 27: House Simulation Set 1:
Democratic Vote Share of the Enacted and Computer-Simulated Districts
Within the Columbus-Pender-Robeson County Grouping



340. Plaintiffs' Exhibit 388 shows Dr. Mattingly's analysis of the Columbus-Pender-Robeson House county grouping:



341. Dr. Mattingly's analysis shows that Democrats were cracked in the two least Democratic districts in this grouping (Districts 16 and 46) and packed into the most Democratic district (District 47). PX388; PX359 at 28; PX778 at 30. There is a significant jump between the number of Democratic votes in the two least and the most Democratic districts in the enacted plan. *Id.* Dr. Mattingly found that the two least Democratic districts in the enacted plan have fewer Democratic voters than 97.98% of the comparable districts in the nonpartisan ensemble. *Id.* As the figure above shows, the gerrymander causes Democrats to lose a seat in this grouping in certain electoral environments. Dr. Mattingly concluded that this grouping reflects a clear pro-Republican partisan gerrymander, PX778 at 30; Tr. 1155:17-21; PX359 at 28, and the Court gives weight to Dr. Mattingly's conclusion.

342. Dr. Pegden found that this county grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version

of this grouping is more favorable to Republicans than 98.7% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 96% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. Tr. 1351:8; PX526. The Court gives weight to Dr. Pegden's analysis and conclusions.

343. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

b. Cumberland

344. The Cumberland House county grouping contains House Districts 42, 43, 44, and 45. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

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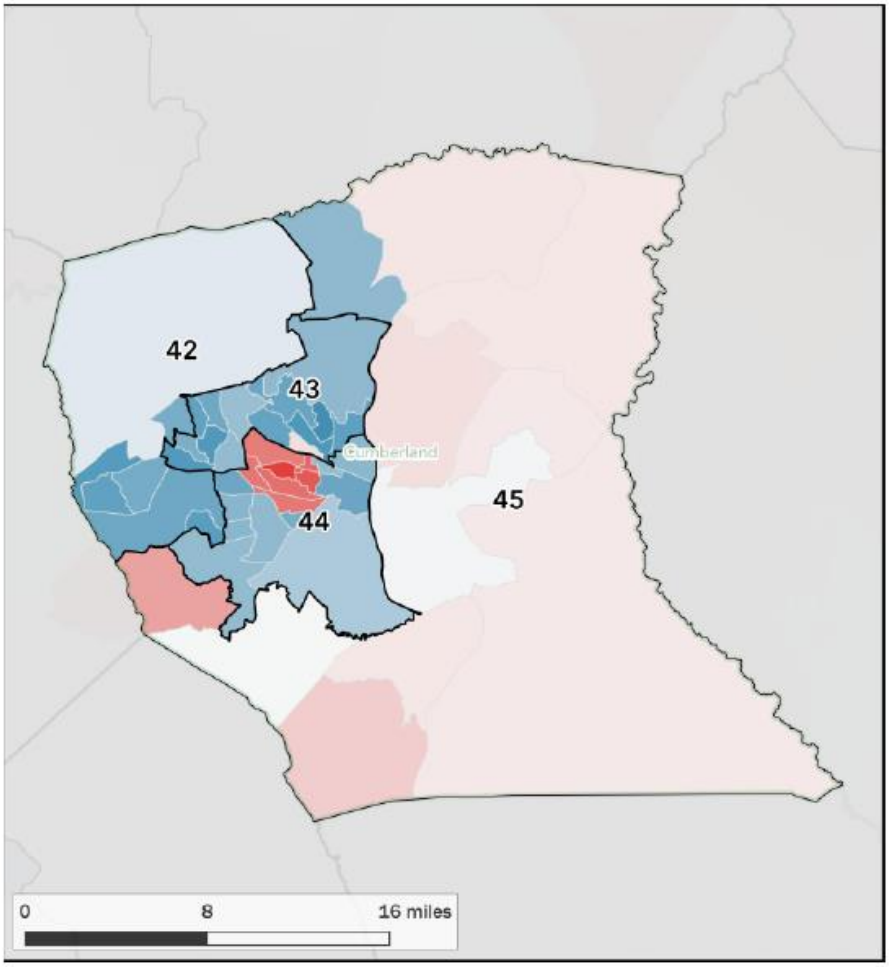
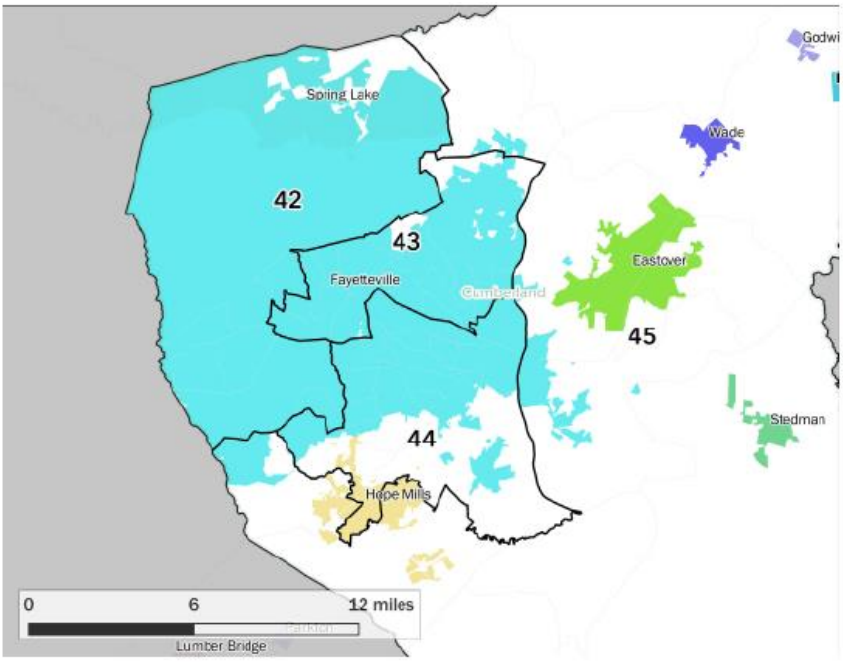
345. Plaintiffs' Exhibit 305 is Dr. Cooper's map of this county grouping:



346. Dr. Cooper described how House District 45 has a "backwards C-shape" that is "a very clear attempt to connect these Republican leaning [VTDs] all together and avoid . . . the Democratic leaning VTDs." Tr. 917:7-14. In such a way, the district boundaries make House District 45 more favorable for Republicans, while packing the Democratic-leaning VTDs in the Fayetteville area into House Districts 42 and 43. Tr. 917:14-16; PX253 at 76 (Cooper Report).

347. The district boundaries in this grouping, shown below in Plaintiffs' Exhibit 306, divide Fayetteville between all four districts in a way that does not correspond to

Fayetteville's boundaries of or any other municipality. Tr. 917:23-918:5; PX253 at 76 (Cooper Report).



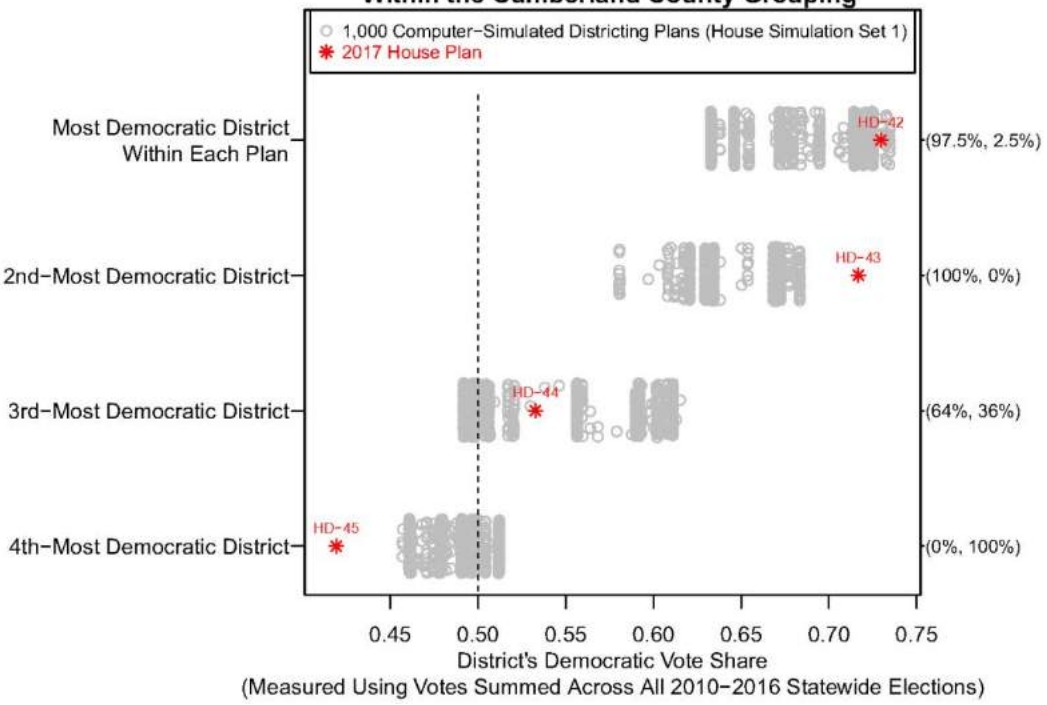
348. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of these districts.

349. The simulations of Plaintiffs' other experts independently establish that the Cumberland county grouping is an extreme partisan gerrymander.

350. Dr. Chen found that this county grouping contains three districts that are extreme partisan outliers. Dr. Chen found that House Districts 42 and 43 have a higher Democratic vote shares than their corresponding districts in all or almost all of Dr. Chen's simulated plans, while House District 45 has a much lower Democratic vote share that the corresponding district in all of the simulations. Tr. 350:2-12. Dr. Chen's findings demonstrate the packing of Democratic voters into House Districts 42 and 43 in order to make House District 45 as favorable for Republicans as possible. Indeed, the least Democratic district in this grouping would be very competitive or even Democratic-leaning

in Dr. Chen's simulations. The Court gives weight to Dr. Chen's findings for this county grouping, which are reflected in Plaintiffs' Exhibit 48 below:

Figure 28: House Simulation Set 1:
Democratic Vote Share of the Enacted and Computer-Simulated Districts
Within the Cumberland County Grouping



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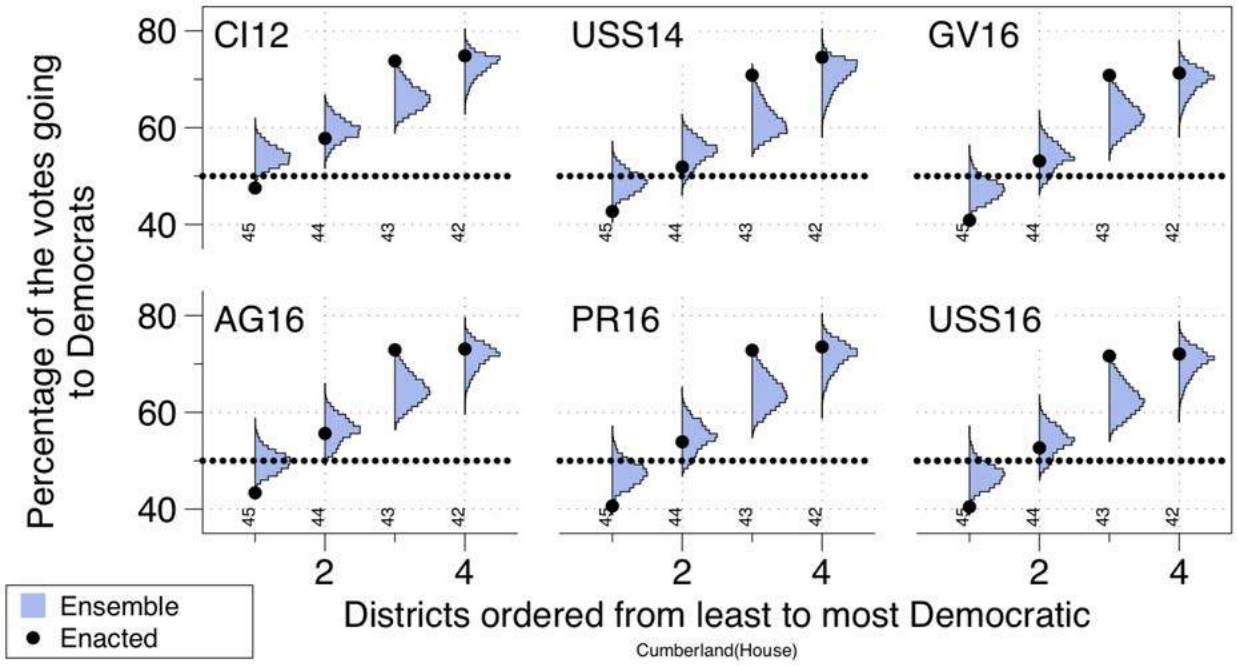
351. Plaintiffs' Exhibit 390 shows Dr. Mattingly's analysis of the Cumberland House county grouping:



352. Dr. Mattingly's analysis shows that the least Democratic district (District 45) show cracking of Democrats, while the two most Democratic districts (District 43 and 42) show extreme packing of Democrats, in comparison to the nonpartisan plans. PX390; PX778 at 30; PX359 at 29. He found that the two most Democratic districts in the enacted plan have more Democratic votes than 99.79% of the comparable Democratic districts in the nonpartisan ensemble. *Id.* As the figure above shows, the gerrymander causes Democrats to lose a seat in this grouping in certain electoral environments, because the black dot in House District 45 always falls below the 50% line while the blue histogram often rises above it. Dr. Mattingly concluded that the Cumberland House grouping is an extreme pro-Republican partisan gerrymander, Tr. 1155:5-16; PX778 at 30; PX359 at 29; PX390, and the Court gives weight to Dr. Mattingly's conclusion.

353. Dr. Pegden found that this grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version

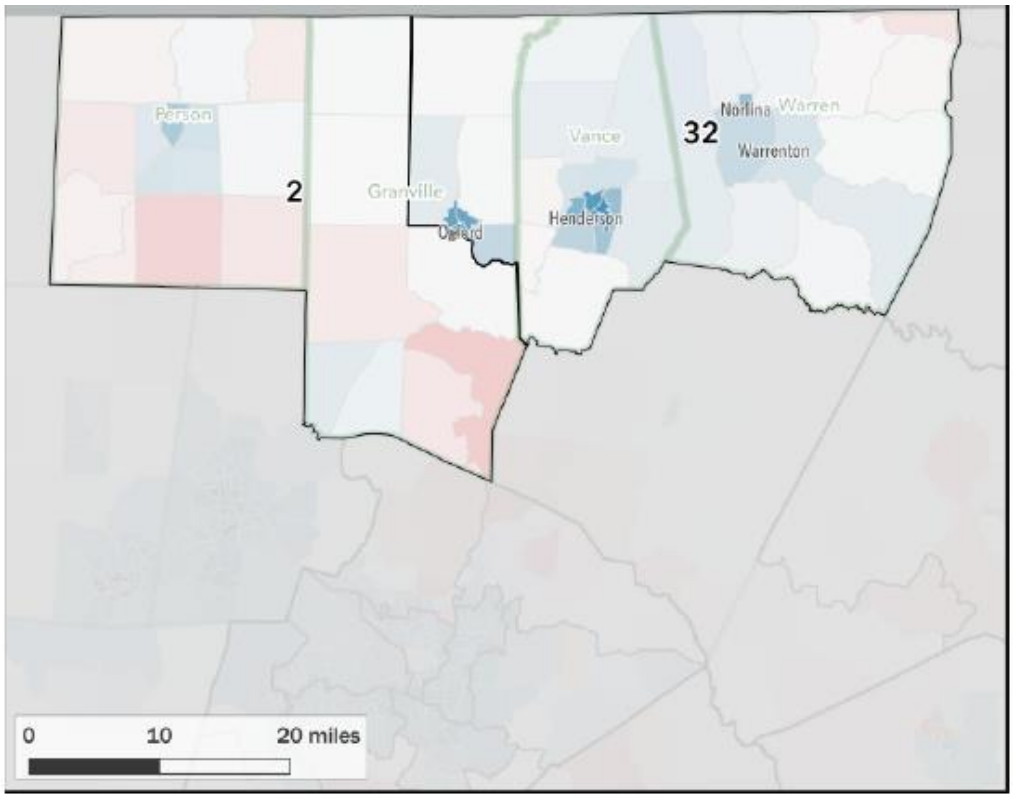
of this grouping is more favorable to Republicans than 98.3% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 95% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. Tr. 1351:9; PX529. The Court gives weight to Dr. Pegden's analysis and conclusions.

354. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

c. Person-Granville-Vance-Warren

355. The Person-Granville-Vance-Warren House county grouping contains House Districts 2 and 32.

356. Plaintiffs' Exhibit 289 is Dr. Cooper's map of this county grouping:



357. Several of Plaintiffs' experts testified that there are only a limited number of possible ways to draw this county grouping. Tr. 359:4-360:2 (Dr. Chen), 905:17-19 (Dr. Cooper); 1156:25-1157:16 (Dr. Mattingly). Because of the Whole County Provision, the only differences between the alternative ways to draw this grouping involve which of Granville County's few VTDs are placed in each of the two districts. *See id.*

358. This county grouping is one of two drawn by Campbell Law students and ultimately adopted by Dr. Hofeller. Tr. 474:7-475:23; PX123 at 71. The evidence from Dr. Hofeller's files suggests that Dr. Hofeller intentionally chose to include this configuration because it most favored Republicans, to the detriment of Democratic voters. *See* Tr. 905:21-906:8.

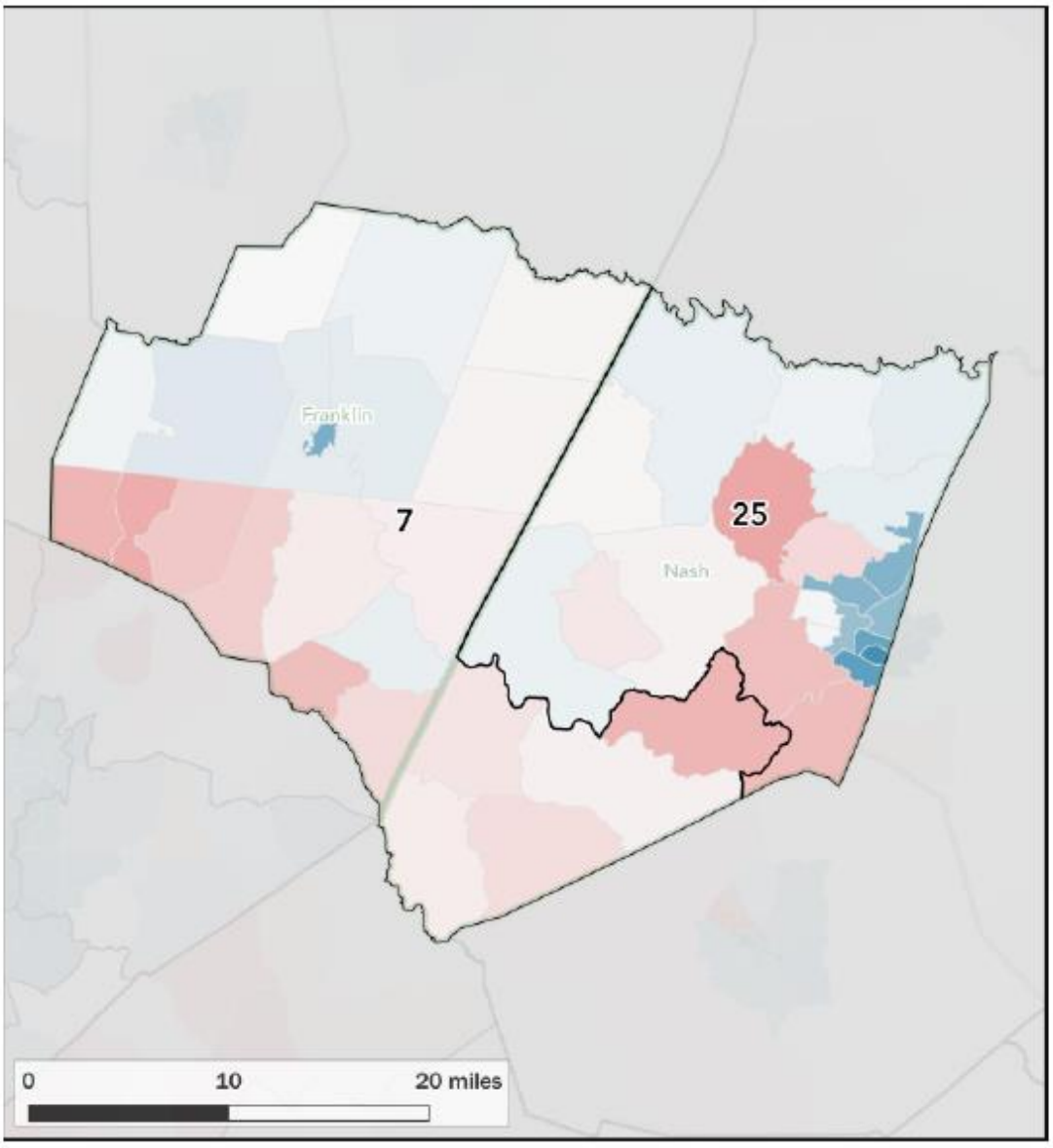
359. However, because of the limited possible configurations for this county grouping, and the limited statistical evidence that could be generated by Plaintiffs' experts, the Court does not find that this grouping, or the districts contained therein, constitute an extreme partisan gerrymander. *See* PX051 (Dr. Chen Figure 31 showing Democratic vote share of each district well below his extreme partisan outlier threshold); Tr. 1156:25-1157:16 (Dr. Mattingly found very few possible unique maps for this grouping that satisfied his criteria); Tr. 1349:11-1350:4; PX536 (Dr. Pegden was unable to generate any comparison districtings of this House county grouping due to his conservative methodology).

360. The Court, though, does find that this county grouping does reflect a clear pro-Republican partisan tilt that can contribute to the extreme pro-Republican bias statewide.

d. Franklin-Nash

361. The Franklin-Nash House county grouping contains House Districts 7 and 25. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

362. Plaintiffs' Exhibit 293 is Dr. Cooper's map of this county grouping:

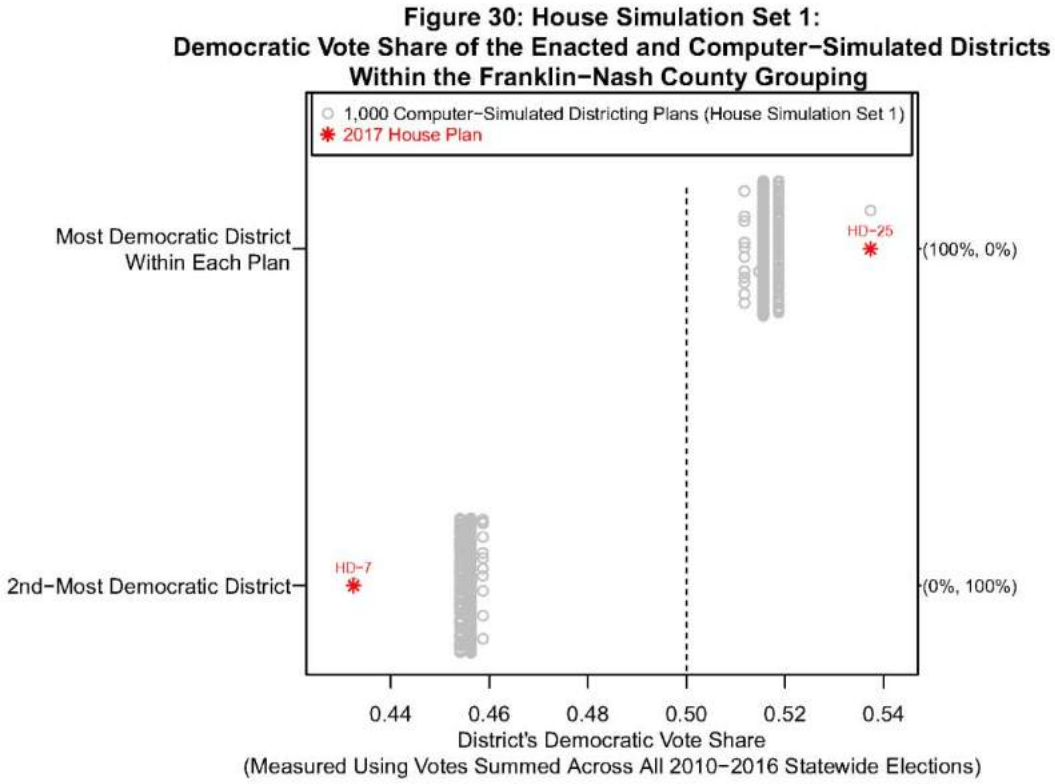


363. These district boundaries avoid grouping the more Democratic-leaning and competitive VTDs on Nash County's western border in House District 7, instead stretching

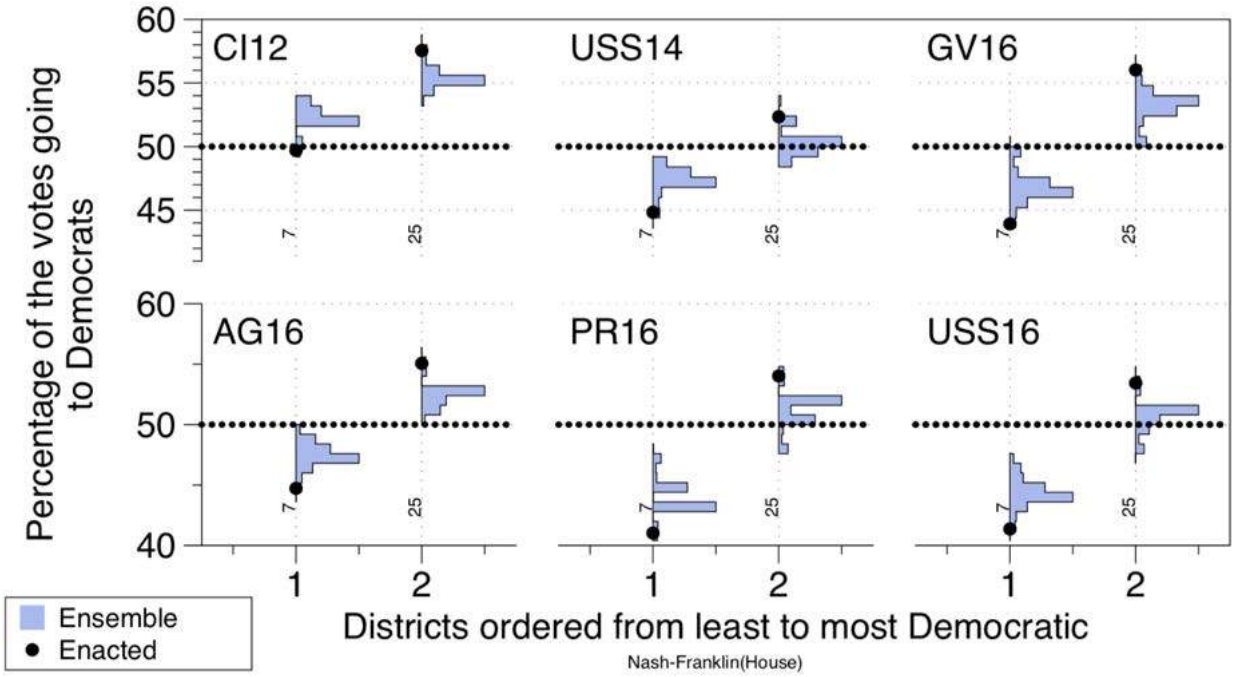
House District 7 into the southeast corner of Nash County to grab the heavily Republican VTDs there. The placement of this district boundary made House District 7 more favorable to Republicans. As Dr. Cooper explained, if the mapmaker had included "any other VTD" in House District 7 from Nash County, House District 7 would have been less favorable to Republican candidates. Tr. 907:4-13; PX253 at 59 (Cooper Report).

364. The Court gives little weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of these districts. They noted that the enacted version of this county grouping matches the draft drawn by the Campbell Law students, but the mapmaker adopted these districts because they were maximally favorable for Republicans, FOF § B.2.a., and as the simulations of Plaintiffs' experts Dr. Chen and Dr. Mattingly confirm and independently establish, the Nash-Franklin House county grouping is indeed an extreme partisan gerrymander.

365. Dr. Chen found that both districts in county grouping are extreme partisan outliers. Dr. Chen found that House District 25 has a higher Democratic vote share than its corresponding district in all of Dr. Chen's simulated plans, while House District 7 has a lower Democratic vote share that the corresponding district in all of the simulations. Tr. 356:8-17. Dr. Chen's findings demonstrate the packing of Democratic voters into House Districts 25 in order to make House District 7 a safe Republican seat. In Dr. Chen's simulations, the less Democratic district in this grouping would be more competitive for Democrats, particularly in a more favorable electoral environment for them than the 2010-2016 statewide elections. Tr. 356:18-357:1. The Court gives weight to Dr. Chen's analysis and findings for this county grouping, which are reflected in Plaintiffs' Exhibit 50 below:



366. Plaintiffs' Exhibit 402 shows Dr. Mattingly's analysis of the Nash-Franklin House county grouping:



367. Dr. Mattingly concluded that the most Democratic district shows extreme packing of Democrats, while the most Republican district shows extreme cracking of Democrats, in comparison to the nonpartisan plans. Tr. 1149:2-9. He found that the least Democratic district in the enacted plan has fewer Democratic voters than 95.58% of the comparable districts in the nonpartisan ensemble, demonstrating packing. PX778 at 30; PX359 at 36-37. As the figure above shows, the gerrymander could cause the Democrats to lose a seat in this grouping in certain electoral environments, because the black dot for House District 7 falls below the 50% line while the blue histogram sometimes rises above it or gets very close. Dr. Mattingly concluded that the Nash-Franklin House grouping is a pro-Republican partisan gerrymander, PX778 at 30; Tr. 1155:17-21; PX359 at 36-37, and the Court gives weight to Dr. Mattingly's conclusion.[8]

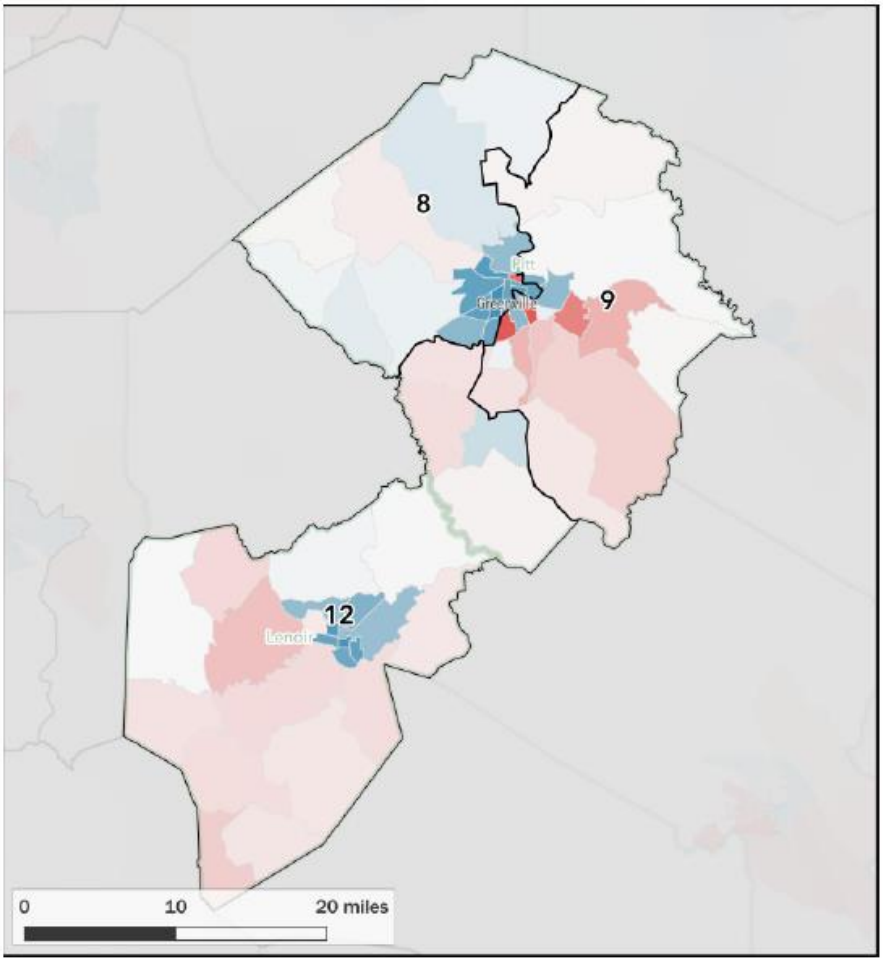
368. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

e. Pitt-Lenoir

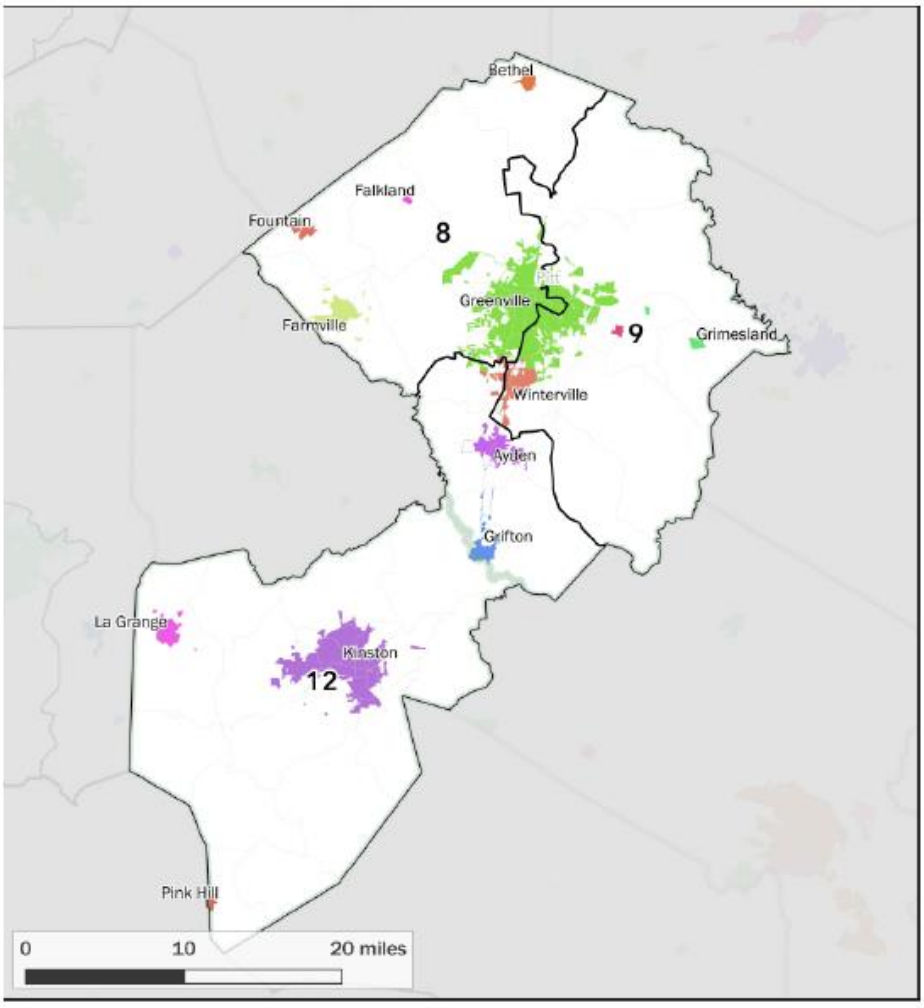
369. The Pitt-Lenoir House county grouping contains House Districts 8, 9, and 12. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

[8] Dr. Pegden was unable to generate any comparison districtings of this House county grouping due to his conservative methodology. Tr. 1351:22-1352:10; PX537.

370. Plaintiffs' Exhibit 294 is Dr. Cooper's map of this county grouping:

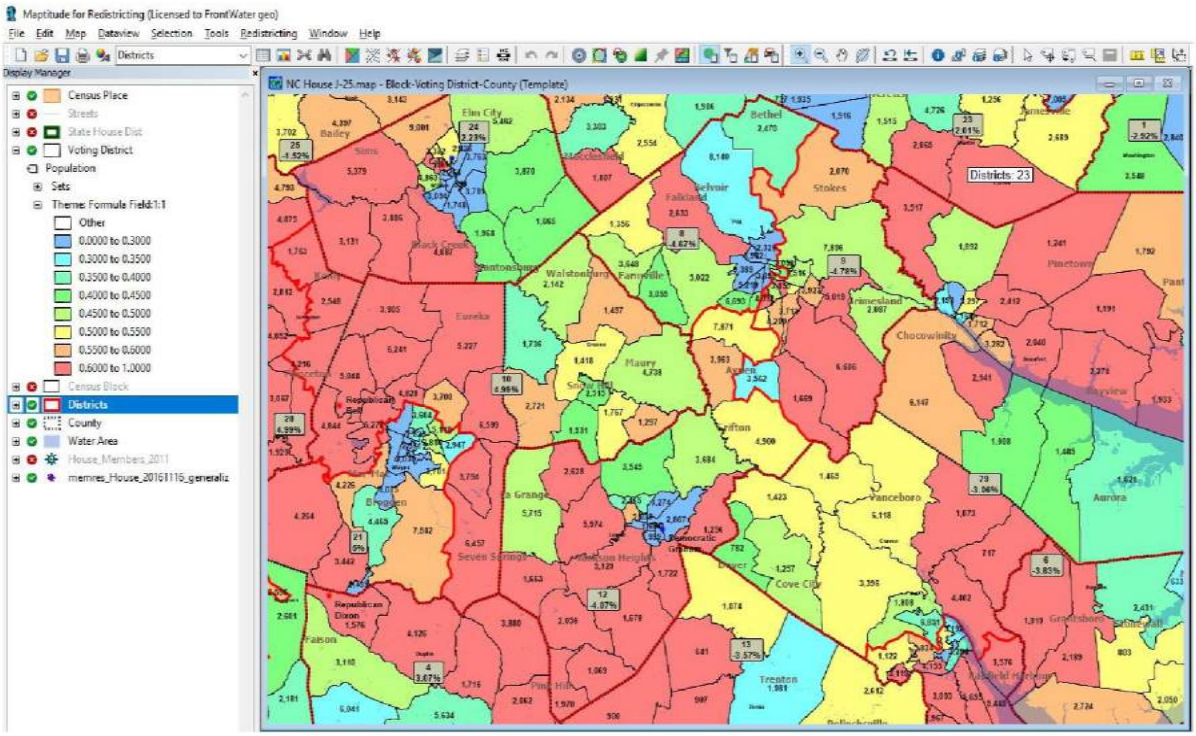


371. The districts in this county grouping split Greenville between all three House districts and even bisect East Carolina University's campus. The district lines pack the most Democratic-leaning VTDs in Greenville into House District 8, while placing all but one of the Republican-leaning VTDs into House District 9. Tr. 908:3-8, 909:23-910:8; PX253 at 61 (Cooper Report). Plaintiffs' Exhibit 295 below shows the municipalities within this county grouping and how the districts split Greenville. Tr. 908:16-23.



372. The Maptitude files from Dr. Hofeller's hard drive confirm he used VTD-level partisanship data with "surgical precision" to construct the districts in this grouping. Tr. 983:5-984:7; PX340; PX329 at 16 (Cooper Rebuttal Report). Dr. Hofeller's Maptitude file, reproduced below in Plaintiffs' Exhibit 340, demonstrates how Dr. Hofeller meticulously packed all of Greenville's bluest VTDs into House District 8 (on the left side of the red line), in order to make House Districts 9 and 12 favorable for Republicans.

Figure 11: Partisan Targeting in House Districts 8, 9, and 12

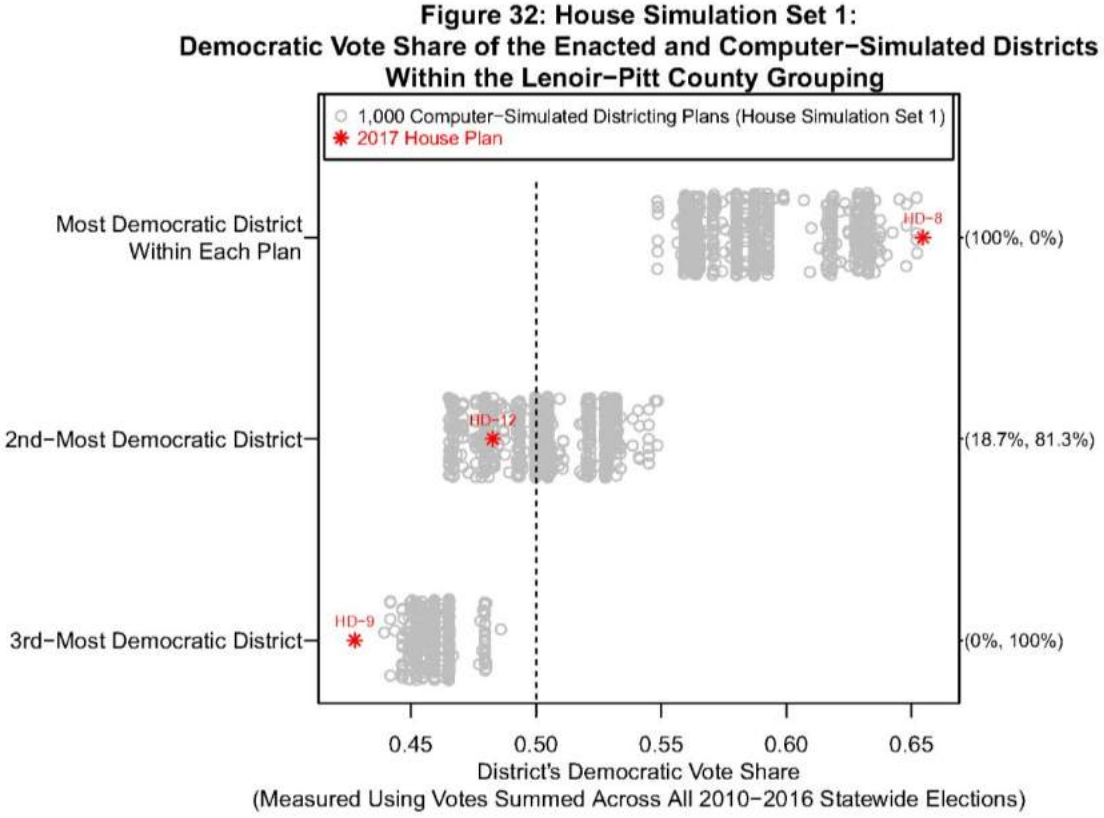


373. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of the districts in this county grouping.

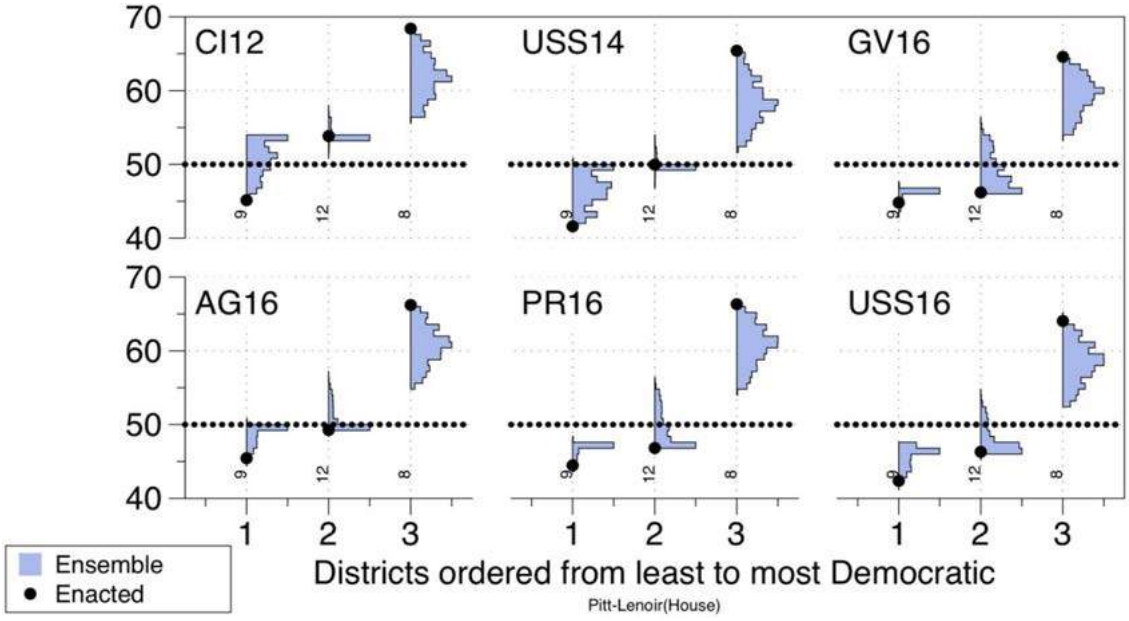
374. The simulations of Plaintiffs' other experts independently establish that the Lenoir-Pitt county grouping is an extreme partisan gerrymander.

375. Dr. Chen found that House District 8 has a higher Democratic vote shares than its corresponding districts in all Dr. Chen's simulated plans, while House District 9 has a lower Democratic vote share than the corresponding district in all of the simulations. PX52; Tr. 360:16-22. Dr. Chen further found that the remaining district in this grouping, House District 12, is less Democratic than over 81% of the corresponding districts across Dr. Chen's simulations. *Id.* Dr. Chen's findings demonstrate the packing of Democratic voters into House District 8 and the cracking of Democratic voters in House Districts 9 and,

to some extent, 12. The Court gives weight to Dr. Chen's analysis and findings for this county grouping, which are reflected in Plaintiffs' Exhibit 52 below:



376. Plaintiffs' Exhibit 408 shows Dr. Mattingly's analysis of this grouping:



377. Dr. Mattingly concluded that the two most Republican districts show extreme cracking of Democrats, while the most Democratic shows extreme packing of Democrats, as evidence by the "jump" between these sets of districts. PX408; PX778 at 30; PX359 at 41. Dr. Mattingly found that the two least Democratic districts in the enacted plan have fewer Democratic voters than 99.98% of the comparable districts in the nonpartisan ensemble, while the most Democratic district in the enacted plan has more Democratic votes than 99.95% of the comparable Democratic districts in the ensemble. PX778 at 30; PX359 at 43. As the figure above shows, the gerrymander causes the Democrats to lose one or possibly two seats in this grouping in certain electoral environment, because the black dot in House Districts 9 and 12 often falls below the 50% line while the blue histograms rise above it. Dr. Mattingly concluded that the Pitt-Lenoir House grouping is an extreme pro-Republican partisan gerrymander, Tr. 1155:5-16; PX778 at 30; PX359 at 41; PX408, and the Court gives weight to Dr. Mattingly's conclusion.

378. Dr. Pegden found that this grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version of this grouping is more favorable to Republicans than 99.97% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.91% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. Tr. 1351:6; PX532. The Court gives weight to Dr. Pegden's analysis and conclusions.

379. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

f. Guilford

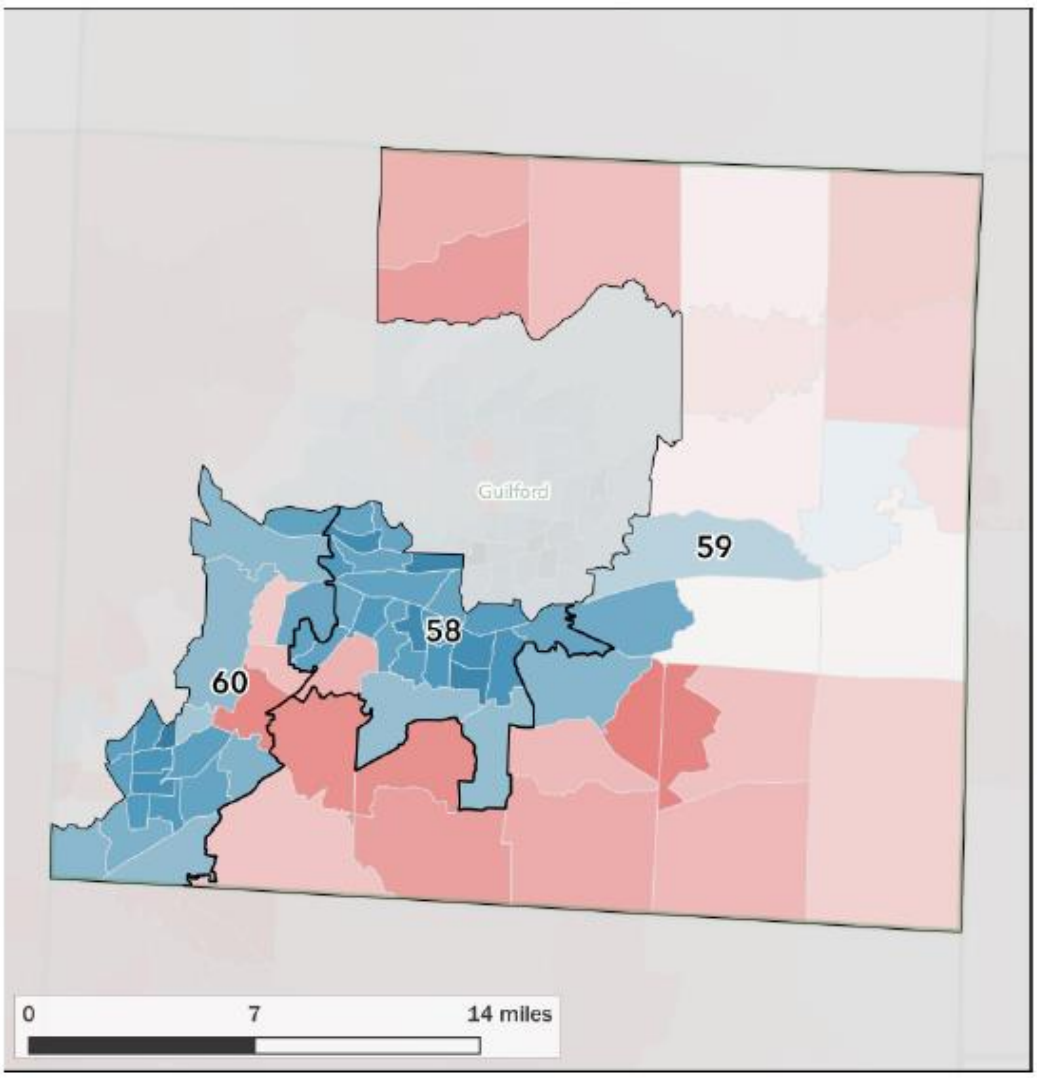
380. The Guilford House county groupings contains House Districts 57, 58, 59, 60, 61, and 62. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

381. This grouping contains several districts that were altered by the *Covington* Special Master. The *Covington* court tasked the Special Master with redrawing House District 57 after the court found that the enacted House plan did not cure the racial gerrymander of the district. *Covington*, 2017 WL 11049096, at *1-2. In directing the Special Master to redraw House District 57, the court further directed that "the redrawn lines shall also ensure that the unconstitutional racial gerrymanders in 2011 Enacted House Districts 58 and 60 are cured." *Id.* at *2. The *Covington* court did *not* direct the Special Master to redraw House District 59, and did not even mention House District 59 in its order.

382. Consistent with the court's guidance, the Special Master redrew House District 57, and in so doing, also made substantial changes to House District 61 and 62. Tr. 351:14-25; *see* LDTX 159 at 27-29 (Special Master's Recommend Plan). In redrawing these three districts, the Special Master also made what he described as "minor changes" to House District 59 to equalize population. *Covington*, ECF No. 220 at 46. The Special Master explained that he altered House District 59 "only a little." LDTX 159 at 28. Specifically, the Special Master moved one precinct from the enacted District 59 into the Special Master's District 57, and added "two additional precincts" to the northwest corner of House District 59 to equalize population. *Covington*, ECF No. 220 at 46; *see* Chen Demonstrative D5 at 3; Tr. 352:1-21. According to estimates presented at trial by Legislative Defendants' expert Dr. Johnson, of the current population of House District 59, 92% of the population was put into the district by the General Assembly under the enacted

House plan. LDTX314; Tr. 1978:19-22. The Special Master did not make any changes at all to House Districts 58 and 60. Plaintiffs do not bring allegations, and do not seek relief, with respect to the three House districts that the Special Master substantially redrew, House Districts 57, 61, and 62.

383. Plaintiffs' Exhibit 310 is Dr. Cooper's map for this grouping:

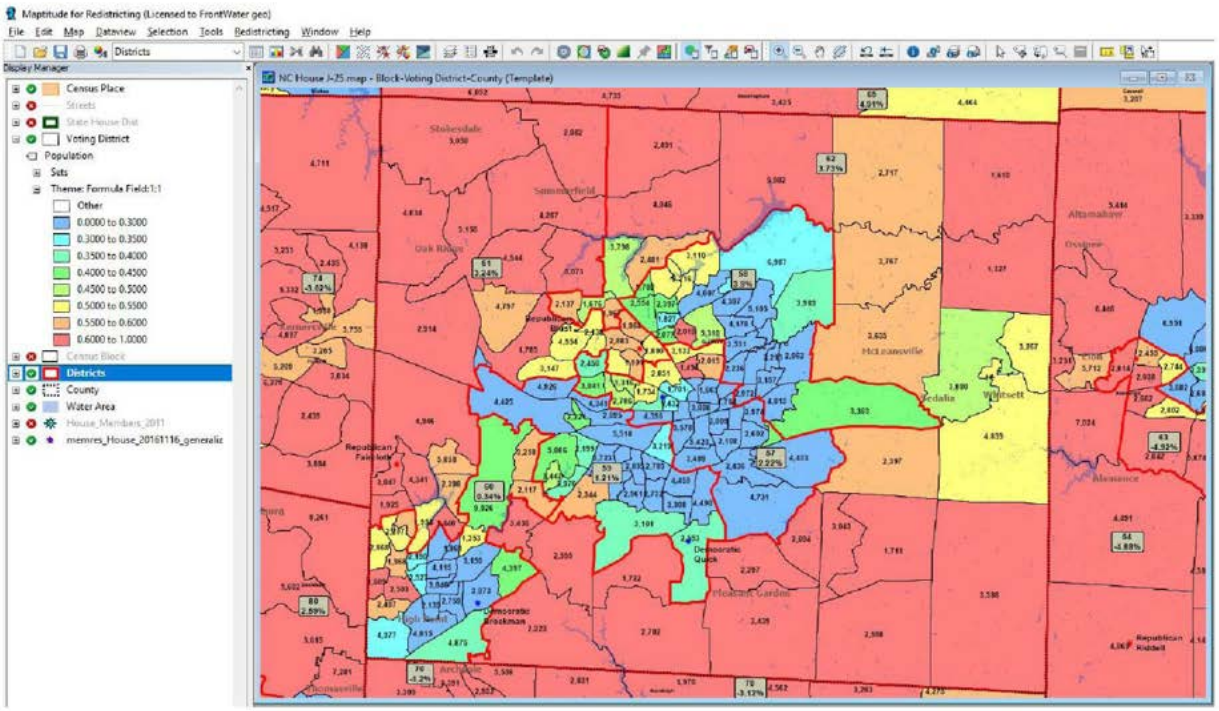


384. The mapmaker packed Democratic voters into House Districts 58 and 60 to make House District 59 favorable to Republicans. Tr. 923:3-23; PX253 at 82 (Cooper

Report). House District 58 has "boot-like appendages" to grab Democratic VTDs and ensure these voters could not make House District 59 competitive or Democratic-leaning. *Id.*

385. The Maptitude files from Dr. Hofeller's hard drive confirm Dr. Hofeller drew this grouping with extreme partisan intent. Tr. 986:13-987:9. Specifically, Dr. Hofeller drew the boundaries of House Districts 58, 59, and 60 "almost like a fence" "separating [Republican voters] from the Democratic voters" in the southern portion of Guilford County. Tr. 987:20-988:5; PX344; PX329 at 20 (Cooper Rebuttal Report). Plaintiffs' Exhibit 344 depicts the Dr. Hofeller's Maptitude file showing the Guilford grouping.

Figure 15: Partisan Targeting in House Districts 58, 59, and 60



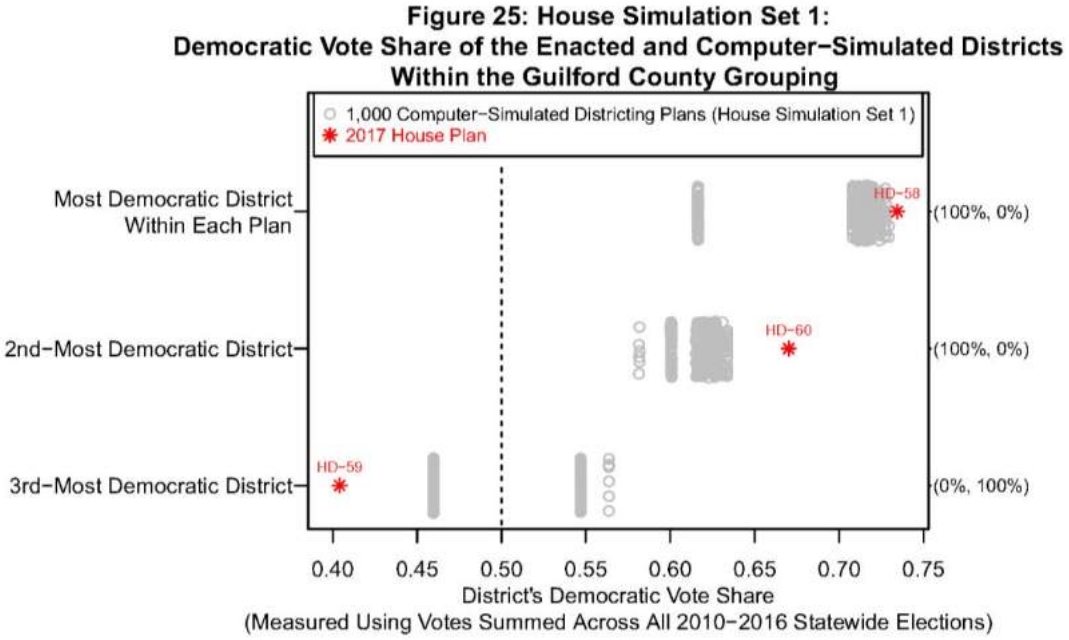
386. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries the mapmaker drew for House Districts 58, 59, and 60.

387. The simulations of Plaintiffs' other experts independently establish that the Guilford county grouping is an extreme partisan gerrymander.

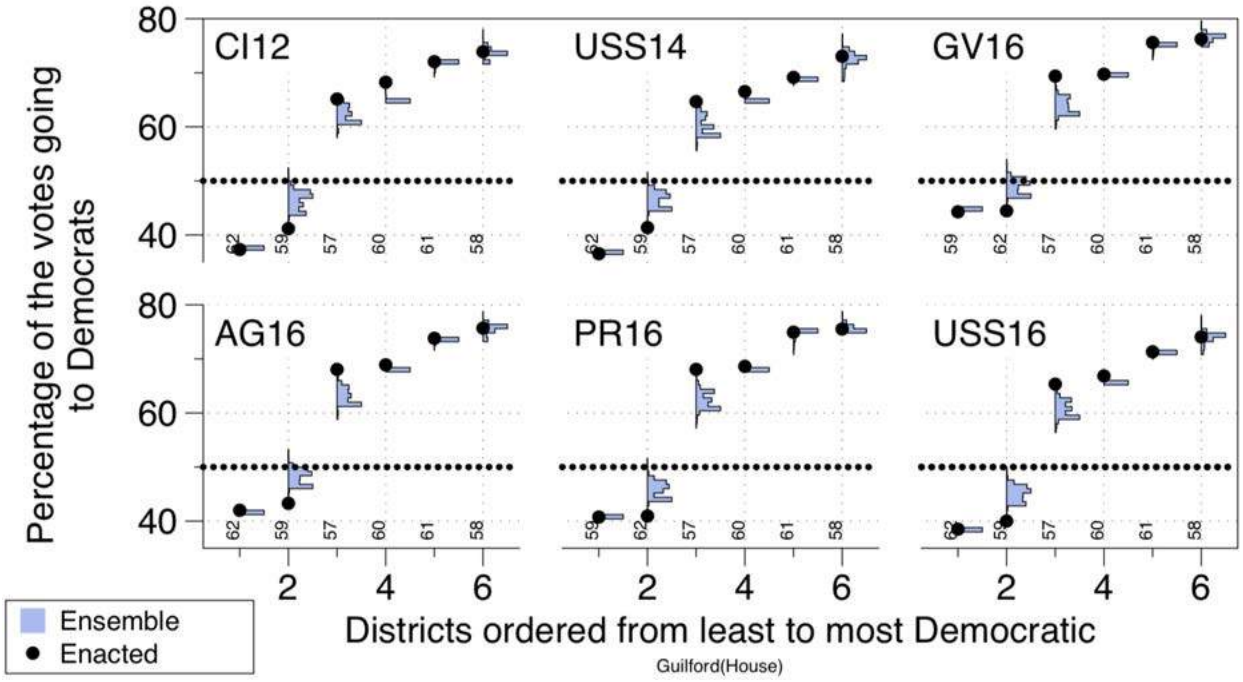
388. Drs. Chen, Mattingly, and Pegden all froze three districts in this grouping that were substantially redrawn by the *Covington* Special Master: House Districts 57, 61, and 62. Tr. 352:24-353:3; PX359 at 33 (Mattingly Report); PX508 at 19 (Pegden Report).

389. Dr. Chen explained in unrebutted testimony that his simulations of the Guilford House grouping did not make any changes to the portion of House District 59 added by the Special Master. Tr. 770:12-771:12; Chen Demonstrative D5 at 4. The Court finds that because Dr. Chen's simulations altered only portions of House District 59 drawn by the mapmaker, and did not touch the very small portions of the district added by the Special Master, the mapmaker necessarily is responsible for the extreme partisan bias that Dr. Chen finds for House District 59.

390. Dr. Chen found that all three districts in the Guilford grouping that he did not freeze are extreme partisan outliers. He found that House Districts 58 and 60 have higher Democratic vote shares than their corresponding districts in all of Dr. Chen's simulations, while House District 59 has a much lower Democratic vote share that the corresponding district in all of the simulations. Tr. 353:17-21; PX45. Dr. Chen's findings demonstrate the packing of Democratic voters into House Districts 58 and 60 to make House District 59 favorable for Republicans. Indeed, the least Democratic district in this grouping would be competitive or Democratic-leaning in Dr. Chen's simulations, whereas House District 59 under the enacted plan is much less favorable for Democrats using the 2010-2016 statewide elections. The Court gives weight to Dr. Chen's findings for this county grouping, which are reflected in Plaintiffs' Exhibit 45 below.



391. Plaintiffs' Exhibit 398 shows Dr. Mattingly's analysis of the Guilford grouping:



392. Setting aside the frozen districts, Dr. Mattingly concluded that the least Democratic district (House District 59) shows extreme cracking of Democrats, while the remaining two districts (House Districts 58 and 60) shows extreme packing of Democrats,

in comparison to the nonpartisan plans. PX398; PX778 at 30; PX359 at 33-34. Dr. Mattingly found that House 59 has fewer Democratic voters than 99.89% of the comparable districts in the nonpartisan ensemble, while House Districts 58 and 60 have more average Democratic votes than 99.86% of the comparable Democratic districts in the nonpartisan ensemble. PX778 at 30; PX359 at 33-34; PX398. As the figure above shows, the gerrymander could cause the Democrats to lose a seat in this grouping in certain electoral environments, because the black dot for House District 59 falls below the 50% line while the blue histogram sometimes rises above it or gets very close. Dr. Mattingly concluded that the Guilford House grouping is an extreme pro-Republican partisan gerrymander, Tr. 1155:5-16; PX778 at 30; PX359 at 33-34; PX398, and the Court gives weigh to Dr. Mattingly's conclusion.

393. Dr. Pegden found that this grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version of this grouping is more favorable to Republicans than 93.9% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 82% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. Tr. 1351:10; PX527. The Court gives weight to Dr. Pegden's analysis and conclusions.

394. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

g. Davie-Rowan-Cabarrus-Stanly-Montgomery-Richmond

395. The Davie-Rowan-Cabarrus-Stanly-Montgomery-Richmond House county grouping contains House Districts 66, 67, 76, 77, 82, and 83. The Court gives weight to the analysis of Plaintiffs' experts and finds that significant portions of this county grouping are an extreme partisan gerrymander.

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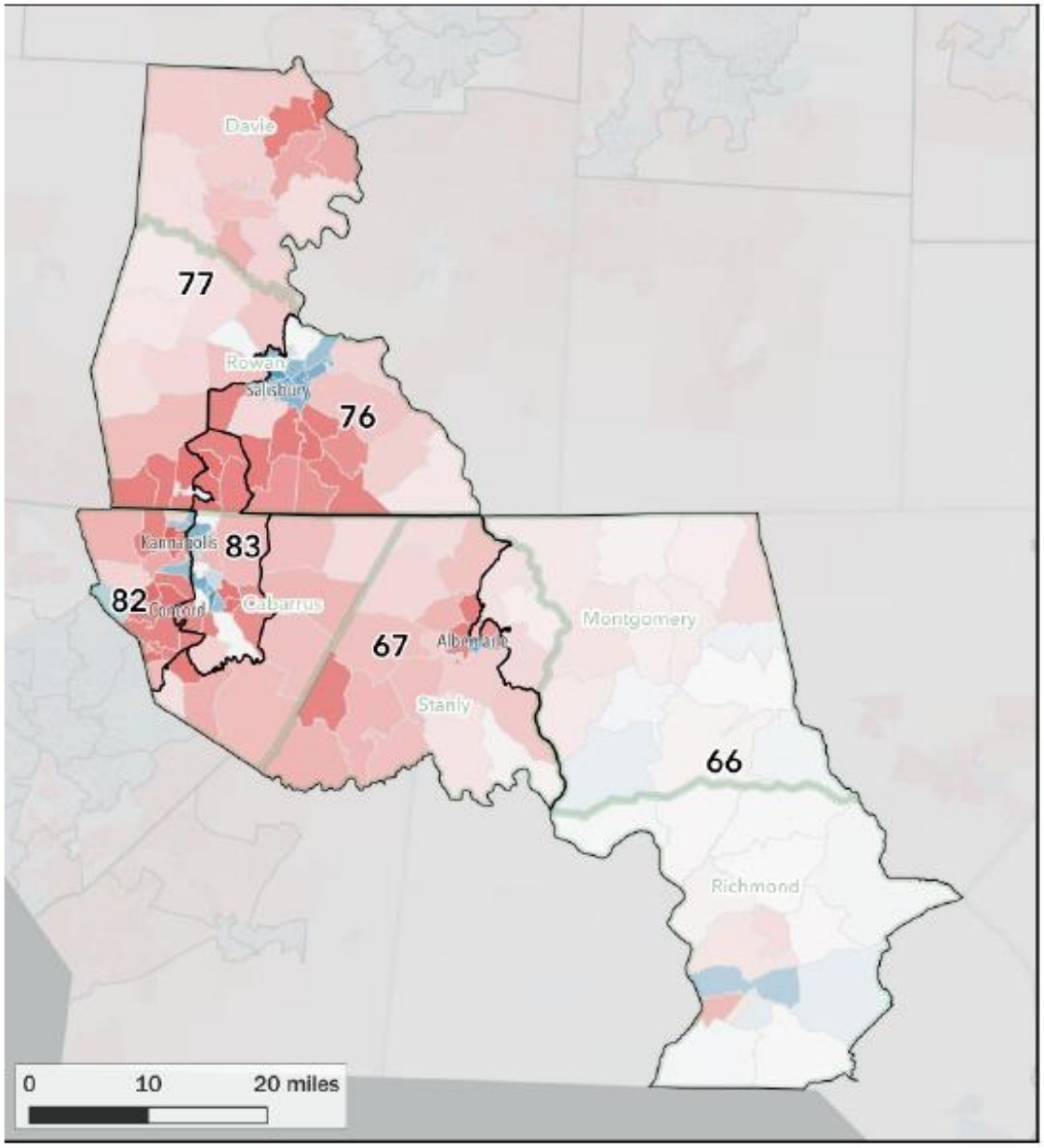
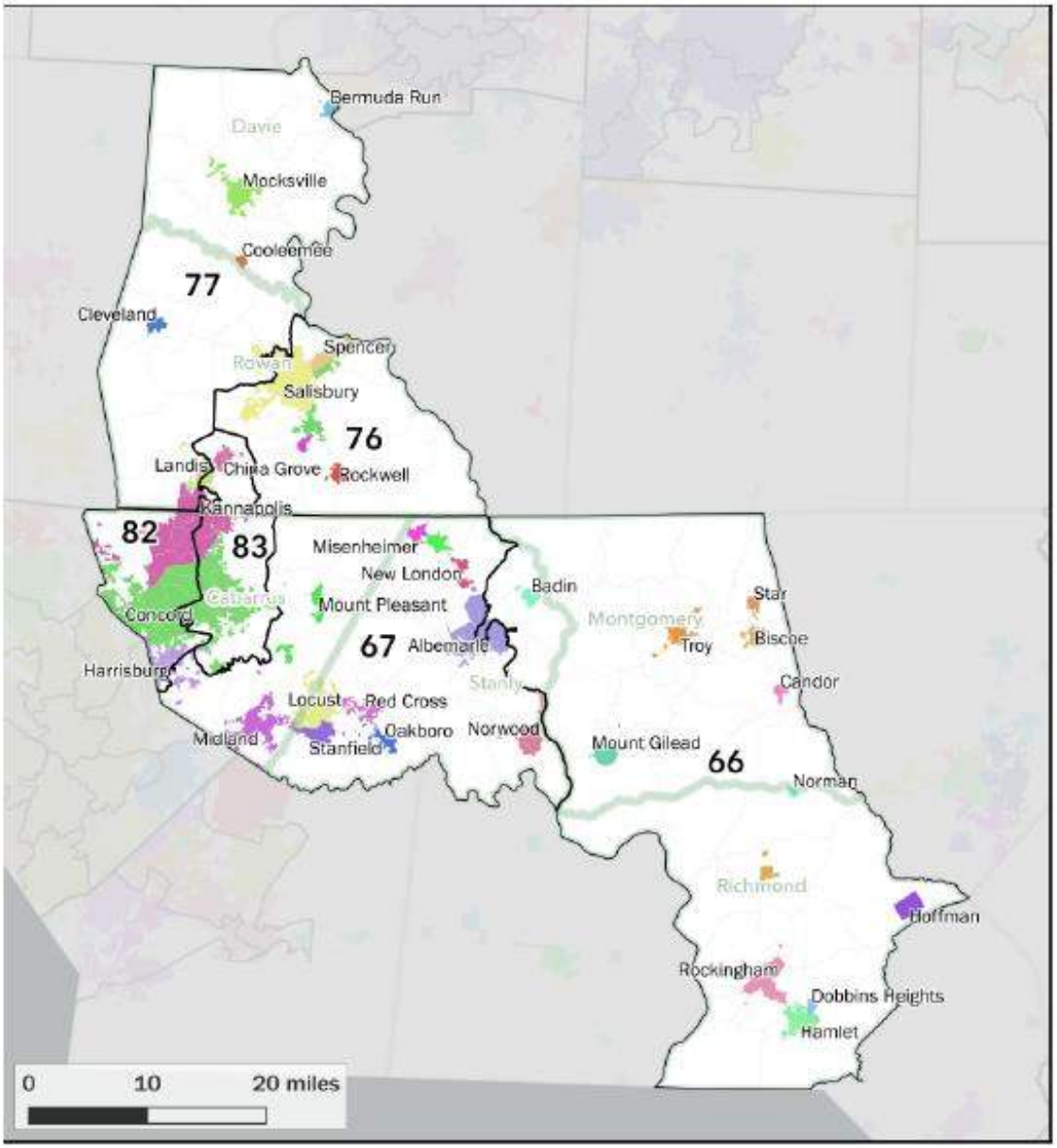
396. Plaintiffs' Exhibit 314 is Dr. Cooper's map for this county grouping:



397. This county grouping cracks Democratic voters across its districts. In particular, Dr. Cooper explained how the mapmaker "maximize[d] partisan advantage" by splitting municipalities in "critical ways" that crack Democratic voters. Tr. 926:18-24. The cities of Kannapolis and Concord are both split across House Districts 82 and 83, cracking the Democratic voters across these districts to dilute their voting power. Tr. 926:23-927:24;

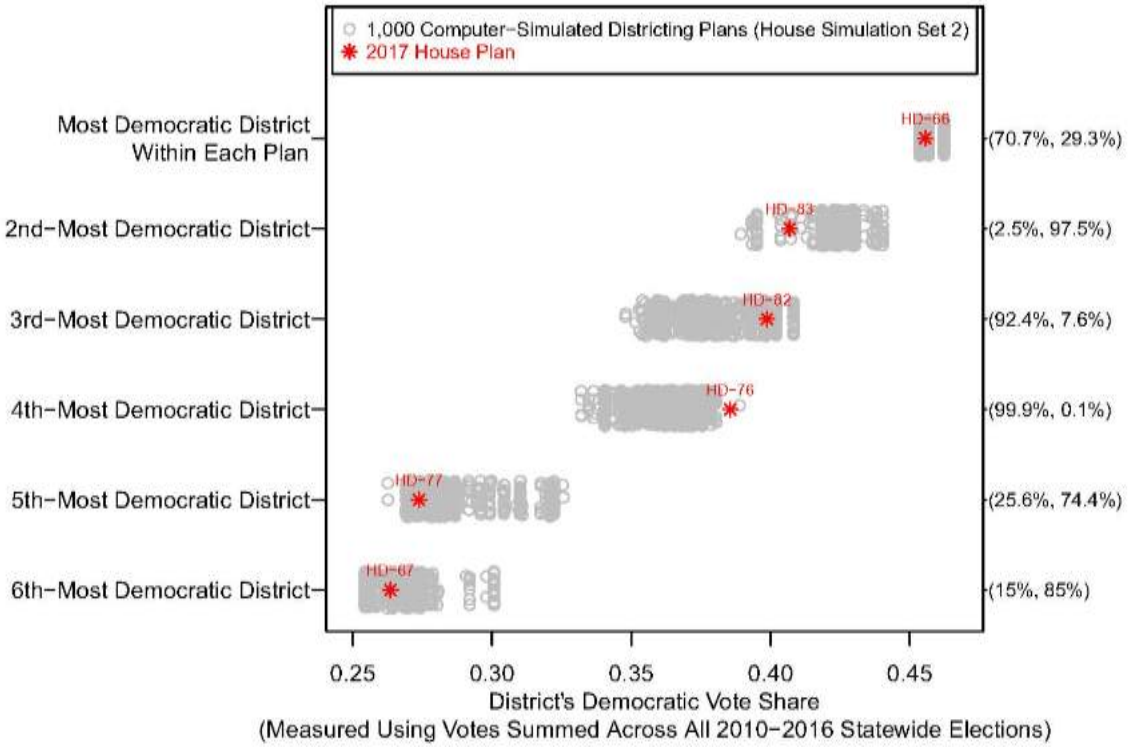
PX253 at 87-88 (Cooper Report). The Democratic voters from both of these cities are kept separate from the Democratic voters in Salisbury, which is placed in House District 76. *Id.* Plaintiffs Exhibit 315 depicts the splitting and treatment of these municipalities (Concord is shaded green, Kannapolis is pink, and Salisbury is yellow).



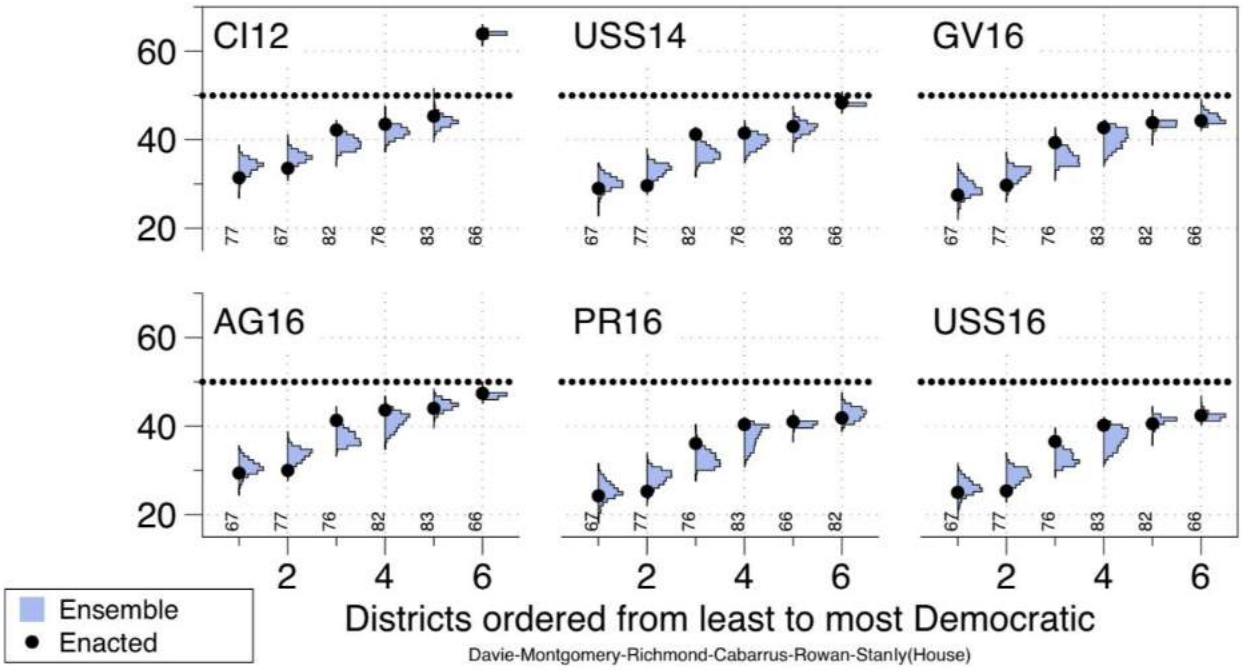
398. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of these districts.

399. Dr. Chen found that, in his House Simulation Set 1, one of the districts in this grouping, House District 83, is an extreme partisan outlier, as it has a lower Democratic vote than its corresponding district in nearly all of the simulations. Tr. 363:6-12; PX46. Dr. Chen further found, however, that this grouping has three districts (House Districts 76, 82, and 83) that are partisan outliers in his House Simulation Set 2 that avoided pairing the incumbents in office in 2017. Tr. 363:14-364:10; PX70. Dr. Chen's findings demonstrate the cracking of Democratic voters across the districts in this grouping, particularly given Legislative Defendants' representations that the General Assembly sought to avoid pairing incumbents in 2017. *See* Tr. 364:11-22. The Court gives weight to Dr. Chen's findings for this county grouping, which are reflected in Plaintiffs' Exhibit 70 below.

Figure 50: House Simulation Set 2:
Democratic Vote Share of the Enacted and Computer-Simulated Districts
Within the Cabarrus-Davie-Montgomery-Richmond-Rowan-Stanly County Grouping



400. Plaintiffs' Exhibit 392 shows Dr. Mattingly's analysis of this grouping:



401. When Dr. Mattingly mathematically quantified cracking in this grouping across all 17 statewide elections, he found that the four most Democratic districts in the Davie grouping had more Democrats than in 97.38% of plans in the nonpartisan ensemble. PX359 at 30; PX778 at 30; PX392.[9] Dr. Mattingly concluded that this grouping reflects an "anomalous structure," Tr. 1156:1-16, and the Court gives weight to that conclusion.

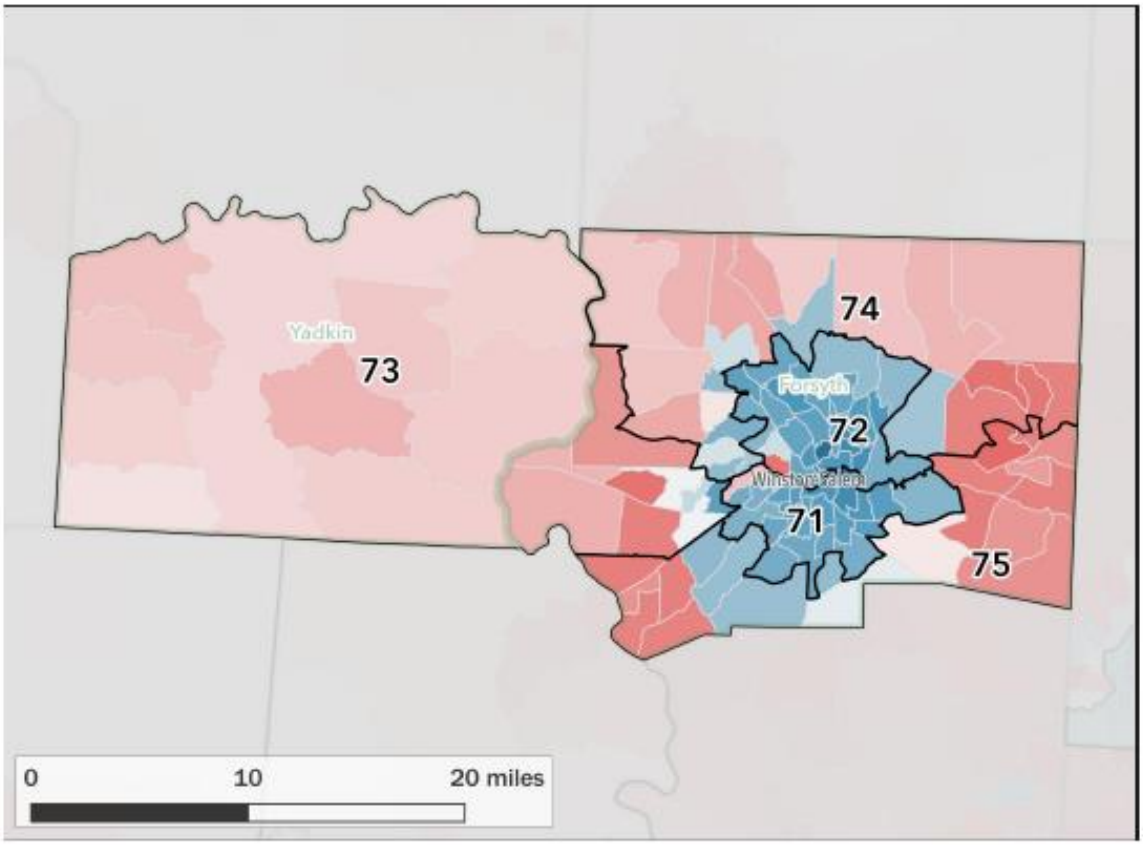
402. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that significant portions of this county grouping are an extreme partisan gerrymander that was drawn to dilute the votes of Democratic voters and maximize the number of Republican districts in this grouping.

[9] Dr. Pegden's conservative methodology resulted in comparison maps that are very similar to the enacted plan for this grouping. Tr. 1351:17-1352:10. In particular, Dr. Pegden's conservative choice to allow his algorithm to split the same municipalities that are split under the enacted plan results in his comparison maps frequently splitting the Democratic strongholds of Kannapolis and Concord. PX535; PX508 at 24 (Pegden Report).

h. Yadkin-Forsyth

403. The Yadkin-Forsyth House County grouping contains House Districts 71, 72, 73, 74, and 75. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

404. Plaintiffs' Exhibit 316 is Dr. Cooper's map for this county grouping:

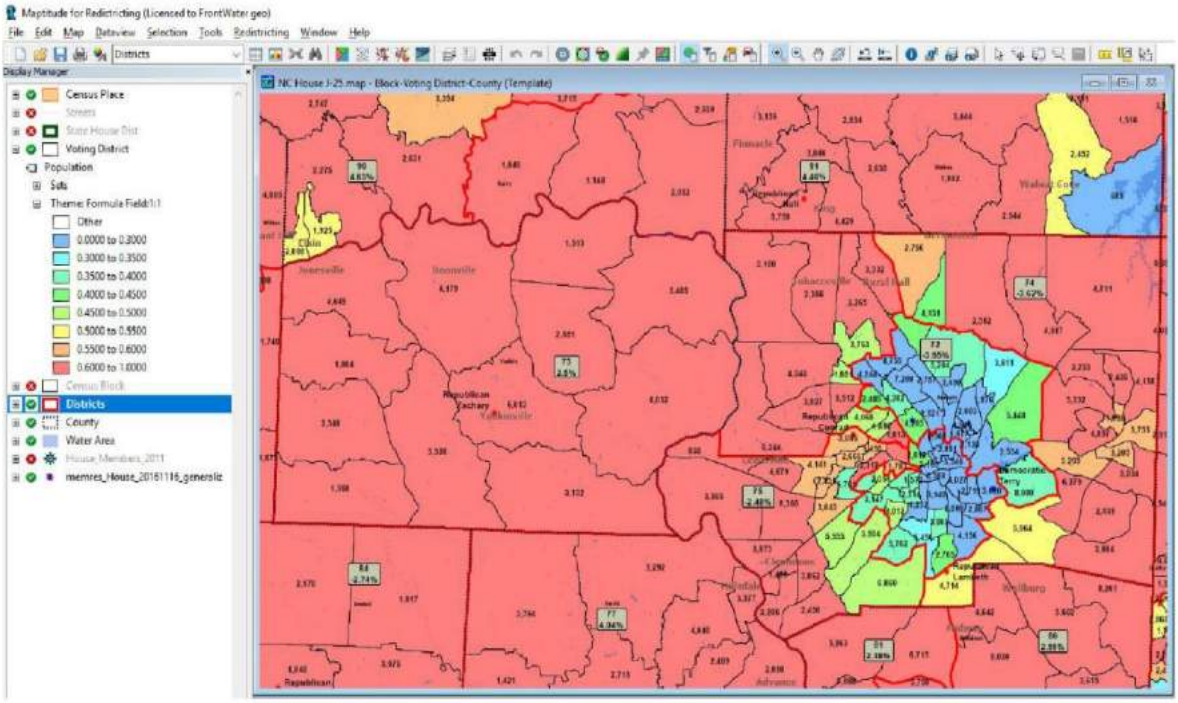


405. Legislative Defendants packed Democratic voters into House Districts 71 and 72. Tr. 928:20-21; PX253 at 90 (Cooper Report). Legislative Defendants then cracked the remaining Democratic voters in this grouping across the remaining districts, where those Democratic voters' influence is washed out by heavily Republican VTDs. House District 73 includes all of Republican-leaning Yadkin County and just two Democratic-leaning VTDs on the west side of Winston-Salem, ensuring that it will be a safe Republican district. House Districts 74 and 75 include Democratic-leaning VTDs on the northern and southern

sides of Winston-Salem, respectively, but both of those districts wrap around the city to include Republican-dominated VTDs on either side of Forsyth County. Indeed, in order to join Republican VTDs, House District 75 traverses an extremely narrow passageway on the border of Forsyth County. Tr. 928:5-21; PX253 at 90-91 (Cooper Report).

406. The Maptitude files from Dr. Hofeller's hard drive illustrate the "anatomy of this gerrymander." Tr. 988:17-989:4; PX345; PX329 at 21 (Cooper Rebuttal Report). They show Dr. Hofeller's intentional packing of all of the most Democratic VTDs in Forsyth County into House Districts 71 and 72, while putting all of the moderate and Republican-leaning VTDs (shaded tan, yellow, light green, and red) into House Districts 73, 74, and 75. *Id.* Plaintiffs' Exhibit 345 shows Dr. Hofeller's Maptitude file containing this county grouping:

Figure 16: Partisan Targeting in House Districts 71, 72, 73, 74, and 75

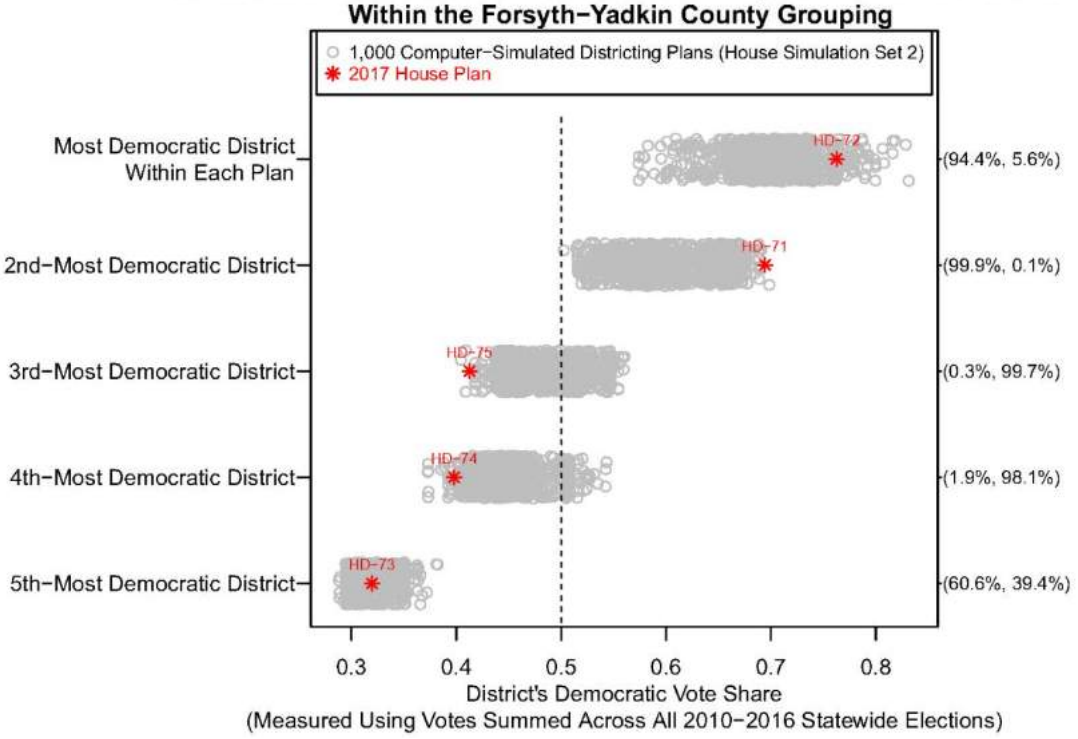


407. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of these districts.

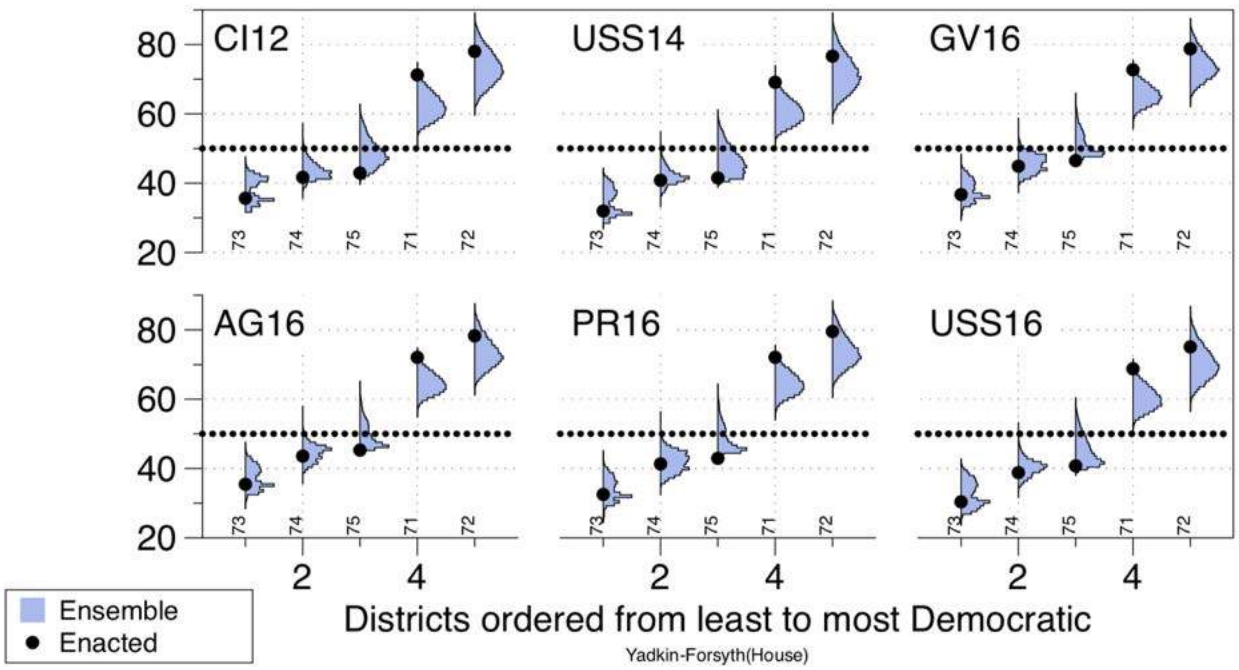
408. The simulations of Plaintiffs' other experts independently establish that the Forsyth-Yadkin county grouping is an extreme partisan gerrymander.

409. Dr. Chen found that, in his House Simulation Set 1, two of the districts in this grouping (House Districts 71 and 75) are extreme partisan outliers above the 95% level, and another two districts in the grouping (House Districts 72 and 74) have higher or lower Democratic vote shares than over 80% of their corresponding districts. Tr. 354:1-20; PX49. Dr. Chen further found, however, that all four of these districts are extreme partisan outliers in his House Simulation Set 2 that avoided pairing the incumbents in office in 2017. Tr. 355:1-18. In Simulation Set 2, House Districts 71 and 72 have higher Democratic vote shares than nearly all of their corresponding districts in the simulations, while House Districts 74 and 75 have lower Democratic vote shares than nearly all of their corresponding districts in the simulations. *Id.* Dr. Chen's findings demonstrate the packing of Democratic voters into House Districts 71 and 72 and the cracking of Democratic voters in the remaining districts in this grouping, particularly given Legislative Defendants' representations that the General Assembly sought to avoid pairing incumbents in 2017. *See* Tr. 355:19-356:4. The Court gives weight to Dr. Chen's findings for this county grouping, which are reflected in Plaintiffs' Exhibit 67 below.

Figure 47: House Simulation Set 2:
Democratic Vote Share of the Enacted and Computer-Simulated Districts
Within the Forsyth-Yadkin County Grouping



410. Plaintiffs' Exhibit 414 shows Dr. Mattingly's analysis of this grouping:



411. Dr. Mattingly concluded that the three least Democratic districts show extreme cracking of Democrats while the two most Democratic districts shows extreme packing of Democrats, as evidenced by the significant jump between these sets of districts. Tr. 1144:3-9. Dr. Mattingly's analysis showed that the three least Democratic districts in the enacted plan had fewer average Democratic votes than 99.46% of the comparable districts in the nonpartisan ensemble, while the two most Democratic districts in the enacted plan had more average Democratic votes than 99.84% of the comparable Democratic districts in the nonpartisan ensemble. PX778 at 30; PX359 at 44. As the figure above shows, the gerrymander causes the Democrats to lose one, possibly two, seats in this grouping in certain electoral environments, because the black dots for House District 74 and 75 always below the 50% line while the blue histograms sometimes rise above it. Tr. 1144:6-9. Dr. Mattingly concluded that the Yadkin-Forsyth grouping is an extreme pro-Republican partisan gerrymander, Tr. 1144:13-16, and the Court gives weight to his conclusion.

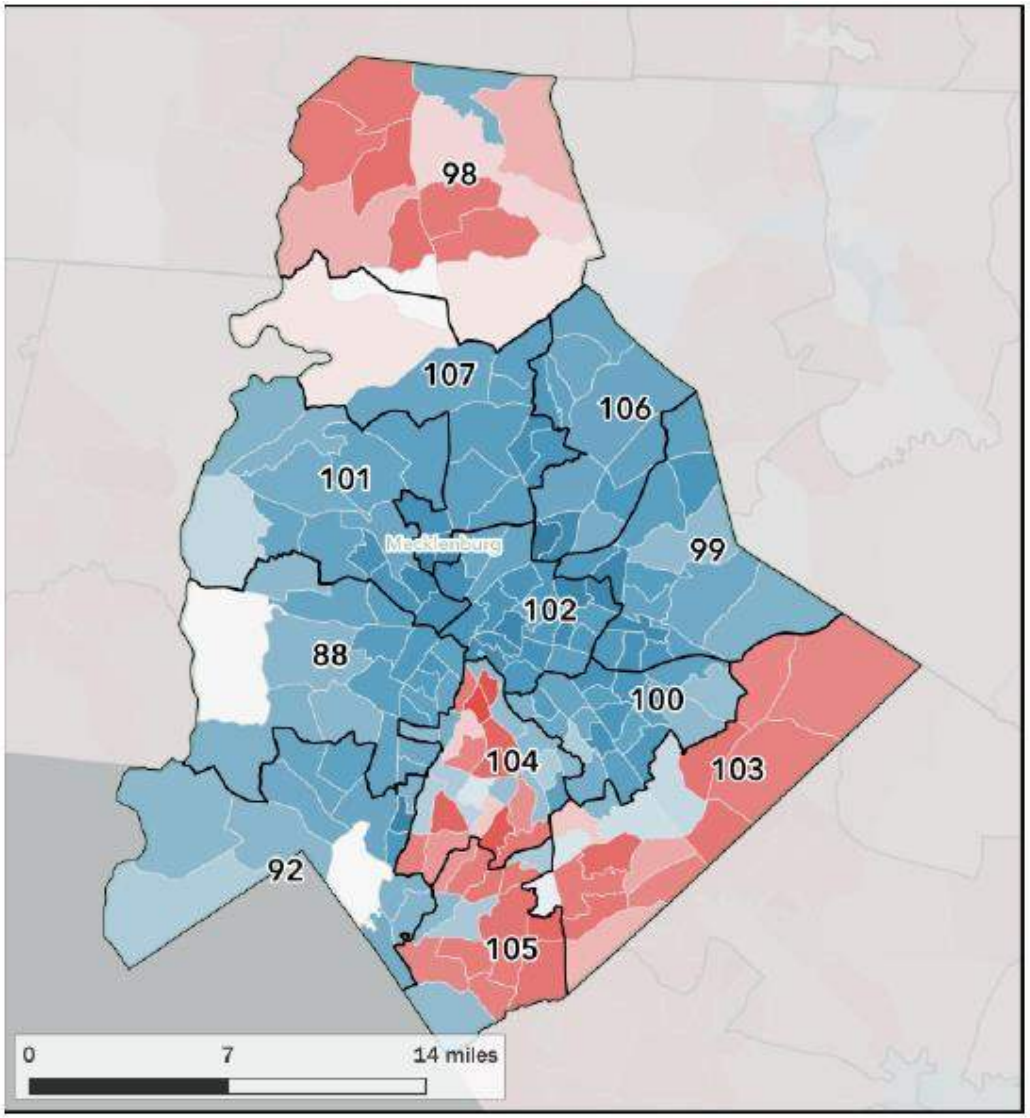
412. Dr. Pegden found that this grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version of this grouping is more favorable to Republicans than 99.7% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.1% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. Tr. 1351:7; PX530. The Court gives weight to Dr. Pegden's analysis and conclusions.

413. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

i. Mecklenburg

414. The Mecklenburg House County grouping contains House Districts 88, 92, 98, 99, 100, 101, 102, 103, 104, 105, 106, and 107. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

415. Plaintiffs' Exhibit 319 is Dr. Cooper's map for this county grouping:



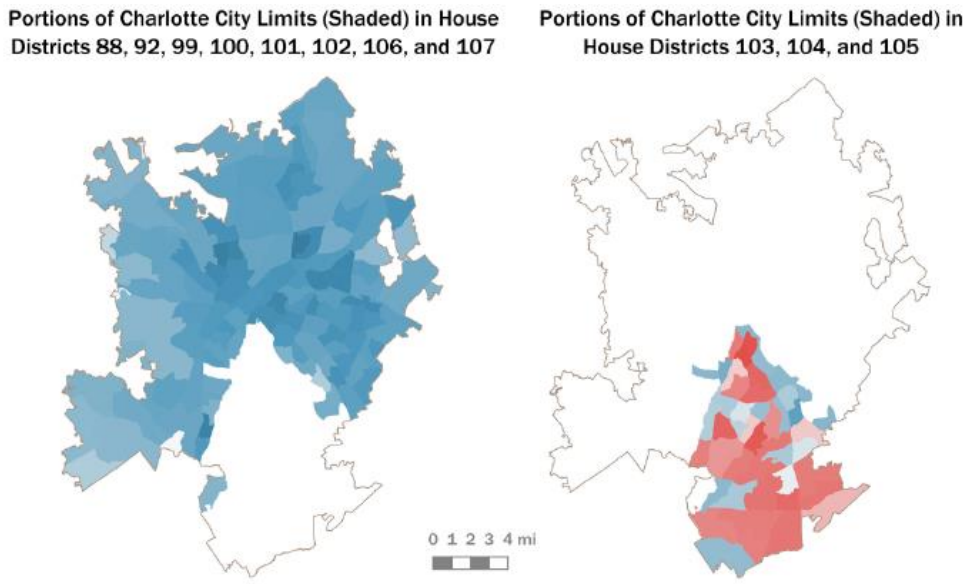
416. Dr. Cooper detailed how House Districts 88, 92, and 101 pack Democratic voters on the western side of Mecklenburg County while House Districts 99, 100, 102, and 106 pack Democratic voters on the eastern and central portions of the county. There is not

a single Republican-leaning VTD included in any of these packed House Districts. Tr. 930:13-24; PX253 at 93 (Cooper Report).

417. House Districts 103, 104, and 105, meanwhile, include all of the Republican-leaning VTDs on the southern side of Mecklenburg County, allowing those districts to be "as competitive as possible for Republicans." Tr. 930:25-931:7; PX253 at 93 (Cooper Report).

418. House District 98, on the northern boundary of Mecklenburg County, includes almost all Republican-leaning VTDs, avoiding the Democrat-heavy VTDs that are packed into House Districts 106 and 107. Tr. 931:7; PX253 at 93 (Cooper Report).

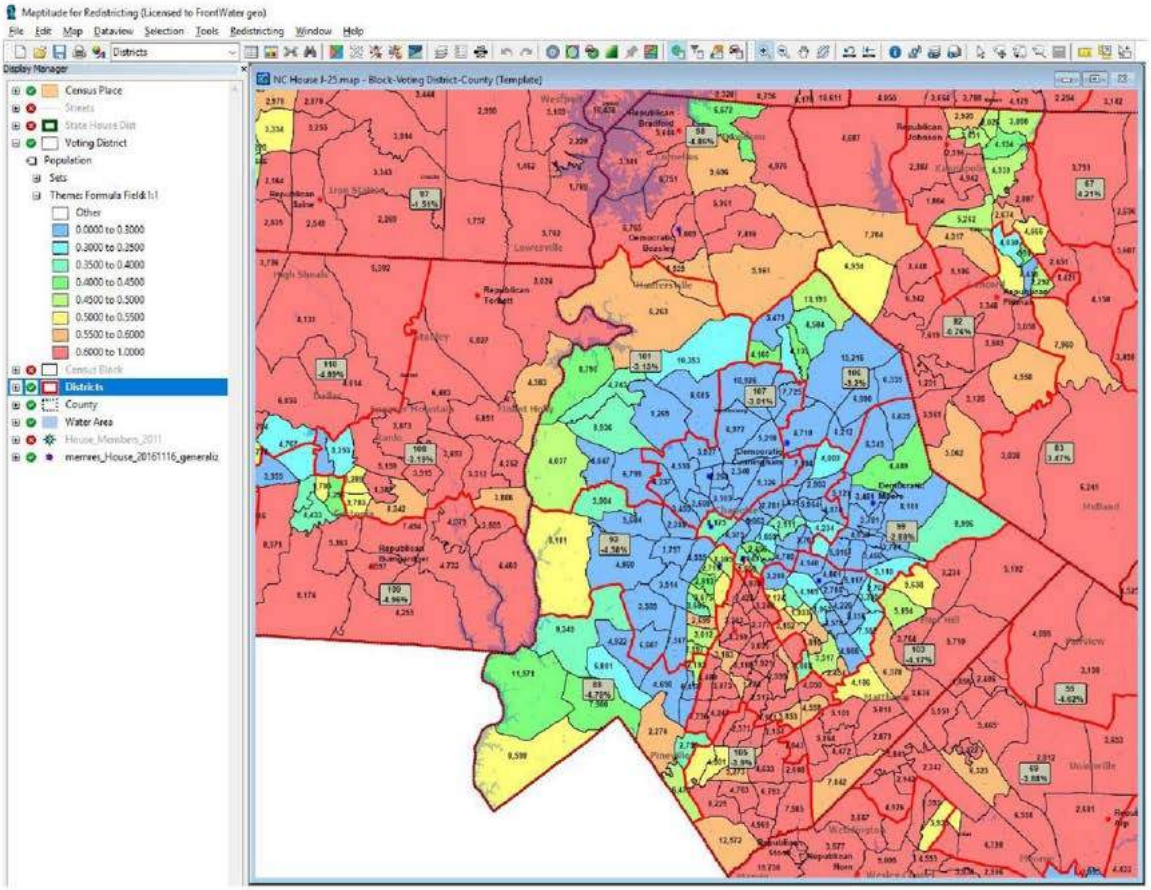
419. As depicted in Plaintiffs' Exhibit 320, these district boundaries split Charlotte between 11 House Districts but manage to place every Republican-leaning VTD within the city—the "red pizza" slice—into House Districts 103, 104, and 105. Tr. 932:1-17; PX320; PX253 at 93 (Cooper Report).



420. Dr. Hofeller's Maptitude files confirm he drew the districts in this grouping to maximize partisan gain. The "pizza slice" that contains the Republican-leaning VTDs within Charlotte is evident in Dr. Hofeller's color-coded draft map, which groups those

Republican-leaning VTDs into three House Districts and packs almost all of the Democratic VTDs into other districts. Tr. 990:4-21; PX329 at 22 (Cooper Rebuttal Report). Plaintiffs' Exhibit 346 shows Dr. Hofeller's Maptitude files containing this county grouping:

Figure 17: Partisan Targeting in House Districts 88, 92, 98, 99, 101, 102, 103, 104, 105, 106, and 107.



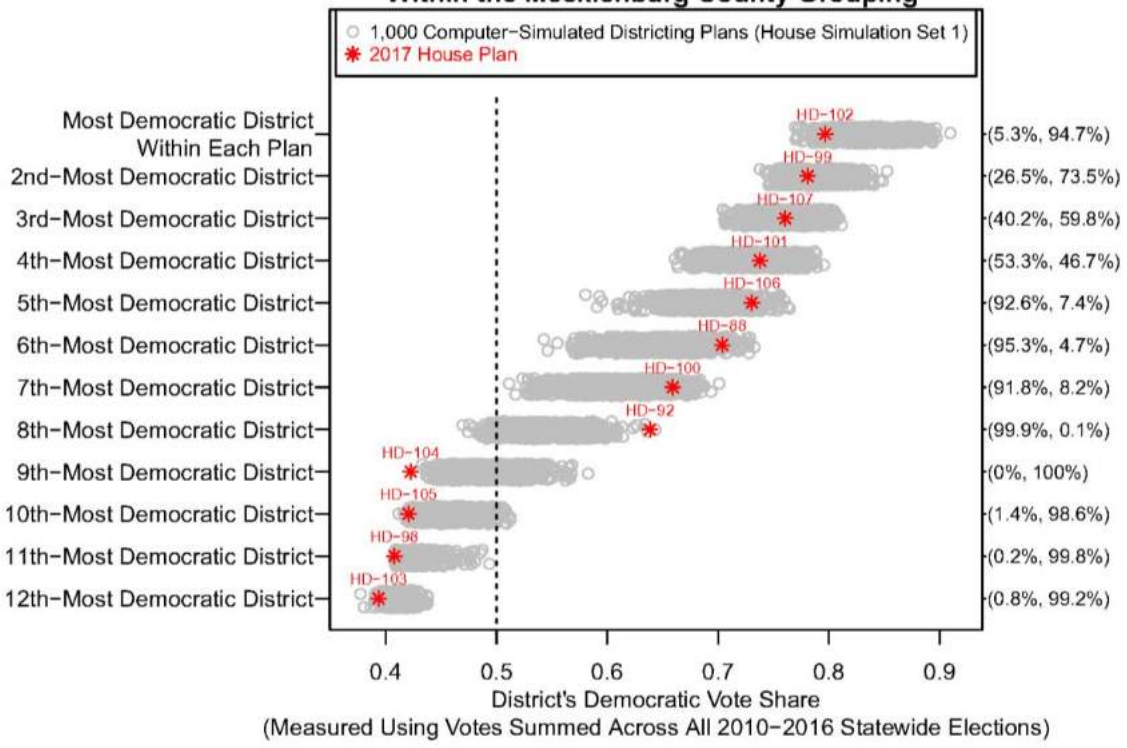
421. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of these districts.

422. The simulations of Plaintiffs' other experts independently establish that the Mecklenburg county grouping is an extreme partisan gerrymander.

423. Dr. Chen found that this county grouping contains six districts that are extreme partisan outliers above the 95% outlier level, and another three districts that are

outliers above the 90% level. Tr. 361:20-22; PX53. The enacted plan packs Democratic voters into a number of districts in order to create four districts—House Districts 98, 103, 104, and 105—that are less Democratic than all of nearly of their corresponding districts in Dr. Chen's simulations. PX53. Dr. Chen's findings demonstrate the packing and cracking of Democratic voters in this grouping. The Court gives weight to Dr. Chen's analysis and findings for this county grouping, which is reflected in Plaintiffs' Exhibit 53 below.

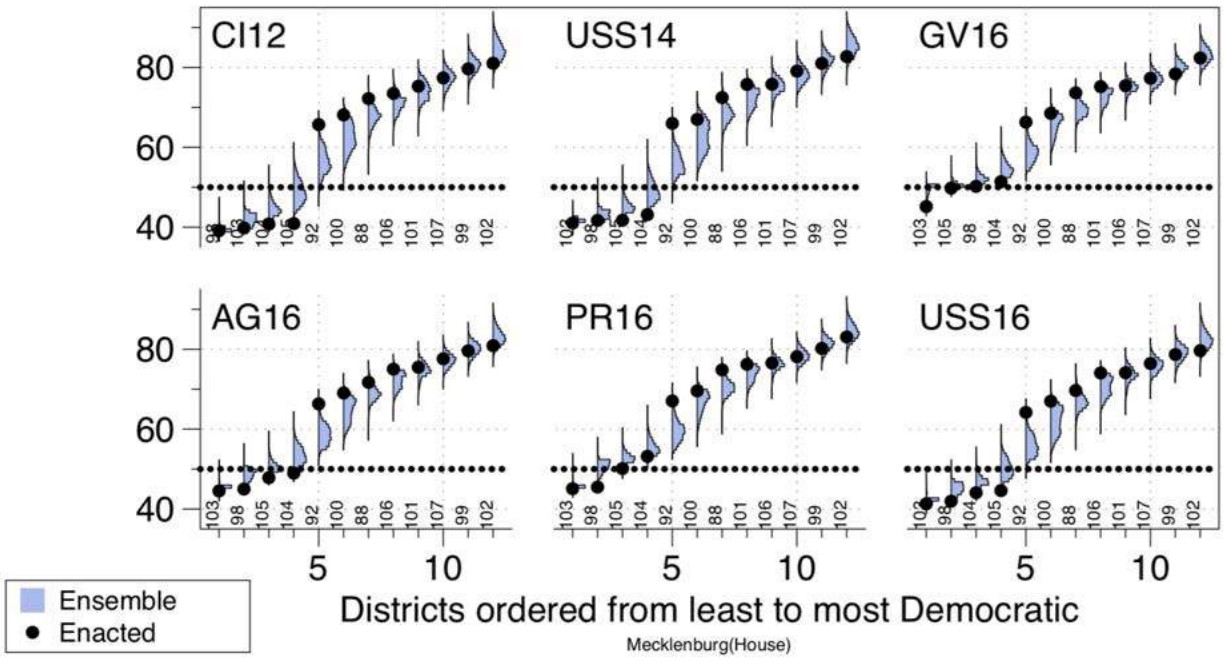
Figure 33: House Simulation Set 1:
Democratic Vote Share of the Enacted and Computer−Simulated Districts
Within the Mecklenburg County Grouping



424. As Dr. Chen explained at trial, the fact that Democrats won House Districts 98, 103, 104, and 105 by small or extremely small margins in 2018 does not contradict his findings. Tr. 362:2-363:2; *see* JSF ¶¶ 125, 132-35. Rather, Dr. Chen's simulations suggest that Democrats very likely would have won each of these districts by larger margins if not for the gerrymander. *Id.* Moreover, Dr. Hofeller's own assessment of these districts demonstrates that he believed these districts to be Republican-leaning, and that it took the

Democratic wave of 2018 to squeak out wins in them. Dr. Hofeller estimated that House District 98 would have a 62.76% Republican vote share and he characterized it as a "strong Rep. district in Mecklenburg." PX246 at 3. Dr. Hofeller similarly estimated that House Districts 103, 104, and 105 would have 62% to 64% Republican vote shares. *Id.* Dr. Hofeller's spreadsheets evidence the partisan intent behind the creation of these districts and the strong possibility that Democratic could lose them in the next election under the current district lines intended to produce that result.

425. Plaintiffs' Exhibit 400 shows Dr. Mattingly's analysis of this grouping:



426. Dr. Mattingly concluded that the four most Republican districts showed extreme cracking of Democrats while the next four districts showed extreme packing of Democrats, as evidenced by the significant jump between these sets of districts. Tr. 1138:7-1139:4. Dr. Mattingly found that the least four Democratic districts in the enacted plan had fewer average Democratic votes than 99.9% of the comparable districts in the nonpartisan ensemble, while the eight most Democratic districts in the enacted plan had

more average Democratic votes than 99.5% of the comparable Democratic districts in the nonpartisan ensemble. Tr. 1141:8-25; PX778 at 30; PX359 at 34-35. As the figure above shows, the gerrymander causes the Democrats to lose up to three, possibly four, seats in this grouping in certain electoral environments, because the black dots for House Districts 98, 103, 104, and 105 often fall below the 50% line while the blue histograms rise above it. Tr. 1140:12-1140:25. Dr. Mattingly concluded that this grouping is an extreme pro-Republican partisan gerrymander, Tr. 1142:1-4, and the Court gives weight to his conclusion.

427. Like Dr. Chen, Dr. Mattingly explained that the fact that Democrats won all the seats in the Mecklenburg grouping in the 2018 election does not undermine his conclusion that the grouping is an extreme pro-Republican partisan gerrymander. Tr. 1142:5-14. That the Democrats did well in one election and were able to prevail over the gerrymander does not change the fact that the grouping provides an extreme and atypical structural advantage to the Republicans that could cause the Democrats to lose seats in the next election. Tr. 1142:10-17.

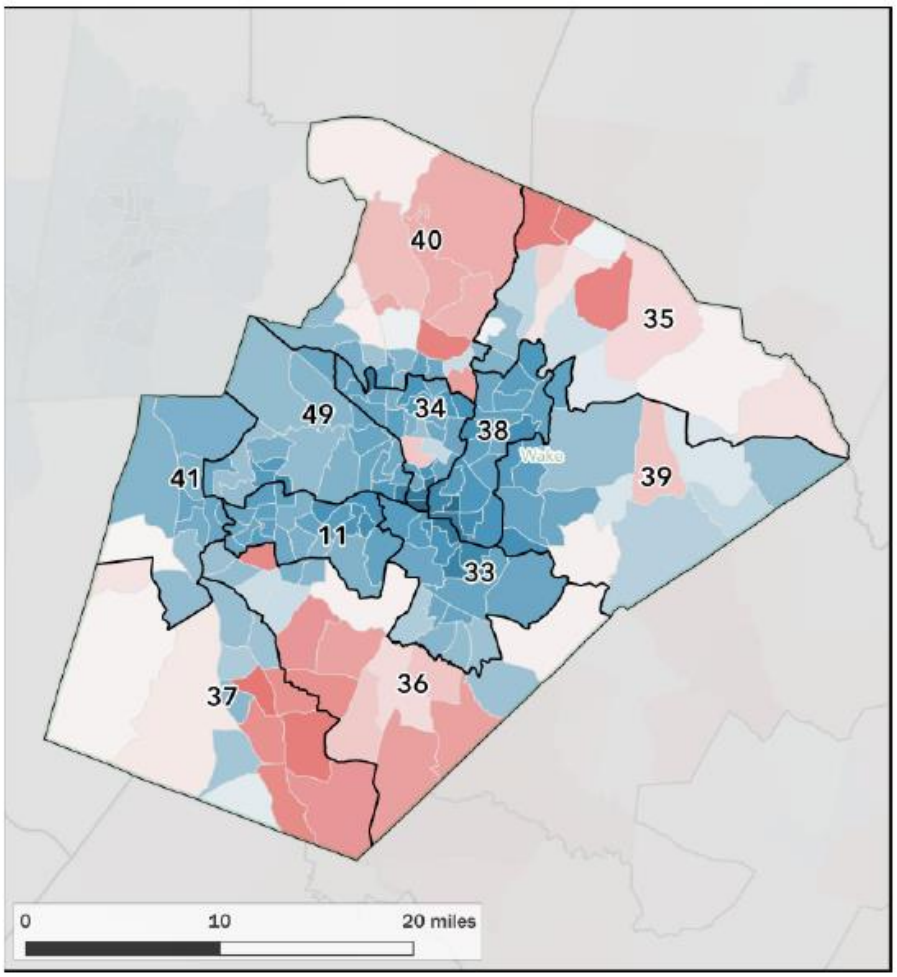
428. Dr. Pegden found that this county grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version of this grouping is more favorable to Republicans than 99.994% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.98% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. Tr. 1351:5-6; PX531. The Court gives weight to Dr. Pegden's analysis and conclusions.

429. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

j. Wake

430. The Wake House county grouping contains House Districts 11, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 49.[10]

431. Plaintiffs' Exhibit 297 is Dr. Cooper's map for this county grouping:



432. The 2017 versions of House Districts 11, 33, 38, and 49 packed Democratic voters to allow House Districts 35, 36, 37, and 40, on the north and south sides of Wake

[10] Plaintiffs presented evidence at trial that the enacted 2017 version of the Wake House county grouping was a partisan gerrymander, but Plaintiffs presented no evidence regarding this grouping as revised pursuant to this Court's ruling in *North Carolina State Conference of NAACP Branches, et al. v. David Lewis, et al.* Plaintiffs do not seek a remedy for the current, revised version of this grouping. However, the analysis and findings of Plaintiffs' experts with respect to the 2017 version of this county grouping is evidence of Legislative Defendants' intentional and systematic gerrymandering across the State during the 2017 redistricting.

County to be more favorable to Republicans. Tr. 911:15-912:16; PX253 at 65 (Cooper Report).

433. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of these 2017 districts.

434. The simulations of Plaintiffs' other experts independently establish that the 2017 enacted House plan version of the Wake grouping was an extreme partisan gerrymander.

435. Dr. Chen found that the 2017 version of this county grouping contained three districts that were extreme partisan outliers above the 95% outlier level. Tr. 365:15-366:1; PX54. The Court gives weight to Dr. Chen's analysis and findings for this county grouping.

436. Dr. Mattingly's analysis showed that the four most Republican districts in the 2017 version of this grouping show extreme cracking of Democrats, while the next four districts show extreme packing of Democrats, in comparison to the nonpartisan plans. PX412; PX778 at 30; PX359 at 43. His analysis showed that the least Democratic districts in the enacted plan had fewer Democratic voters than 99.98% of the comparable districts in the nonpartisan ensemble, while the most Democratic districts in the enacted plan had more average Democratic votes than 99.99% of the comparable Democratic districts in the ensemble. PX778 at 30; PX359 at 43; PX412. The Court gives weight to Dr. Mattingly's analysis and conclusions for this grouping.

437. Dr. Pegden found that the 2017 version of this grouping constituted an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version of this grouping is more favorable to Republicans than 99.9997% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.9991% of all possible districtings of

this county grouping that satisfy the criteria Dr. Pegden used. Tr. 1351:4; PX533. The Court gives weight to Dr. Pegden's analysis and conclusions.

438. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that the 2017 version of this county grouping was an extreme partisan gerrymander. While Plaintiffs do not challenge any individual House districts in Wake County as currently drawn, the Court gives weight to the findings and conclusions of Plaintiffs' experts in regard to the consistency of the partisan intent throughout the statewide map.

k. New Hanover-Brunswick

439. The New Hanover-Brunswick House county grouping, drawn in 2011 and left unchanged in 2017, contains House Districts 17, 18, 19, and 20. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

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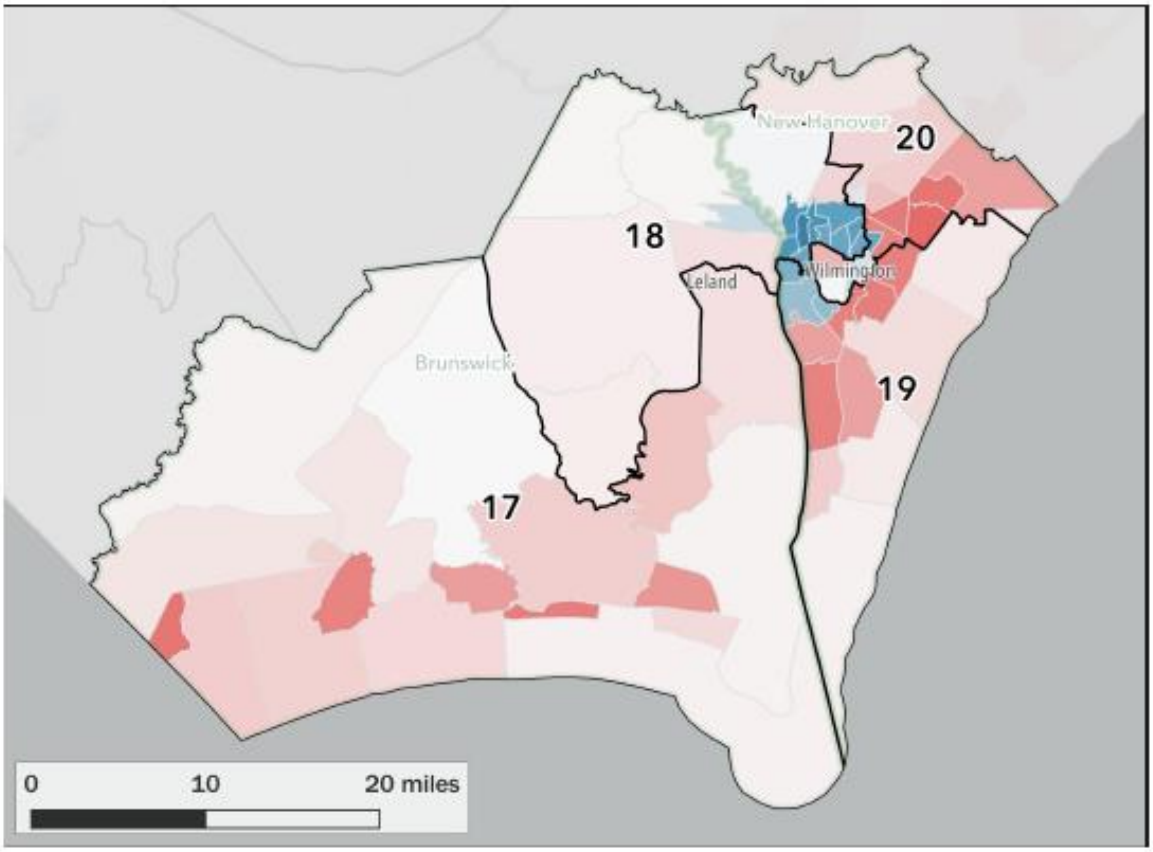
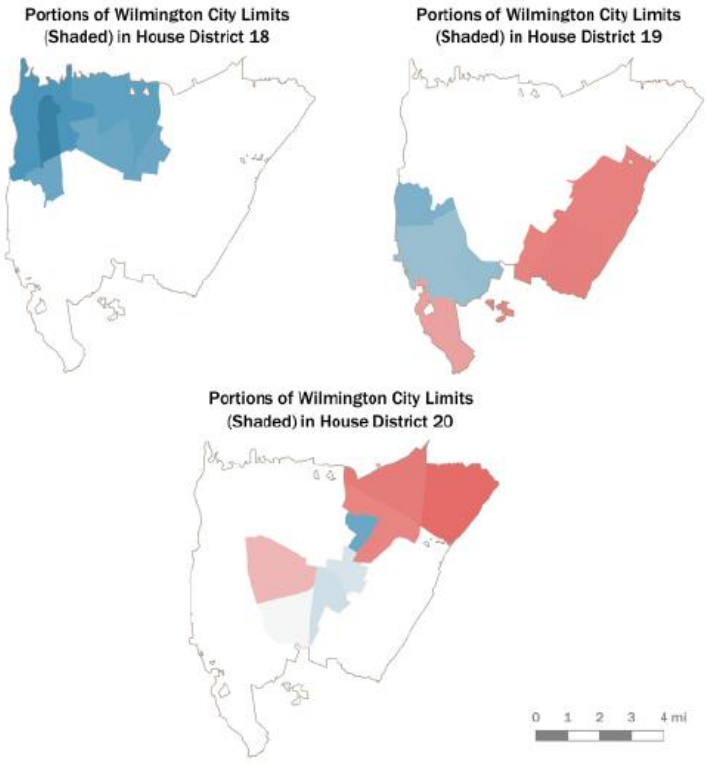
440. Plaintiffs' Exhibit 302 is Dr. Cooper's map of this county grouping:



441. As Dr. Cooper testified, House District 18 packs the most Democratic-leaning VTDs in this grouping into that district, thereby making House Districts 17, 19, and 20 more favorable to Republicans. Tr. 913:17-914:7; PX253 at 72 (Cooper Report).

442. Wilmington is split between House Districts 18, 19, and 20, with the most Democratic-leaning VTDs in that city packed into House District 18 and the Republican-leaning VTDs placed in the two adjacent districts. In order to accomplish the packing of voters in House District 18, the district boundaries split Wilmington and the UNC Wilmington campus. Tr. 914:13-20; PX253 at 73 (Cooper Report); PX303. By dividing the campus in this manner, the district boundaries enable House District 20 to connect to Republican-leaning VTDs in the Wilmington area, creating a boot-like appendage in the southwest portion of House District 20. PX253 at 75 (Cooper Report); Tr. 916:12-21.

Plaintiffs' Exhibit 303 show which portions of Wilmington are placed into each of the three districts:



443. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of these districts.

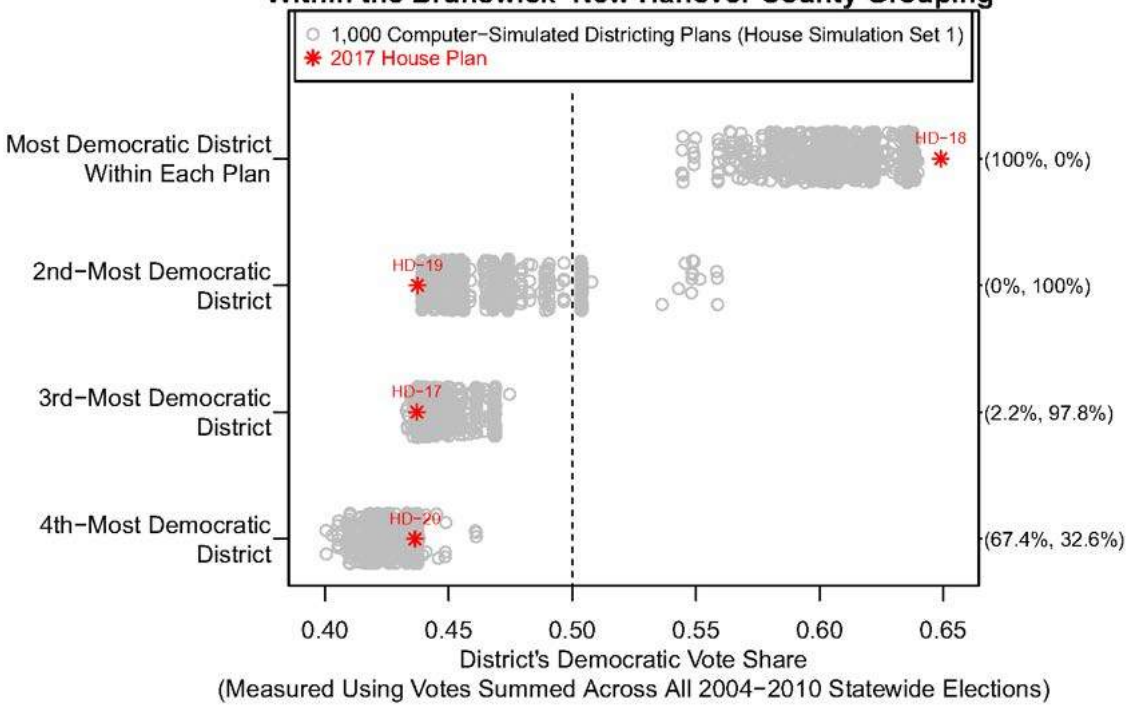
444. The simulations of Plaintiffs' other experts independently establish that the Brunswick-New Hanover county grouping is an extreme partisan gerrymander.

445. Dr. Chen found that this county grouping contains three districts that are extreme partisan outliers. Tr. 369:3-7.[11] House District 18 has a higher Democratic vote share than its corresponding district in all the simulations, while House Districts 17 and 19 have lower Democratic vote shares than their corresponding districts in all or nearly all of the simulations. Dr. Chen's findings demonstrate the packing of Democratic voters in

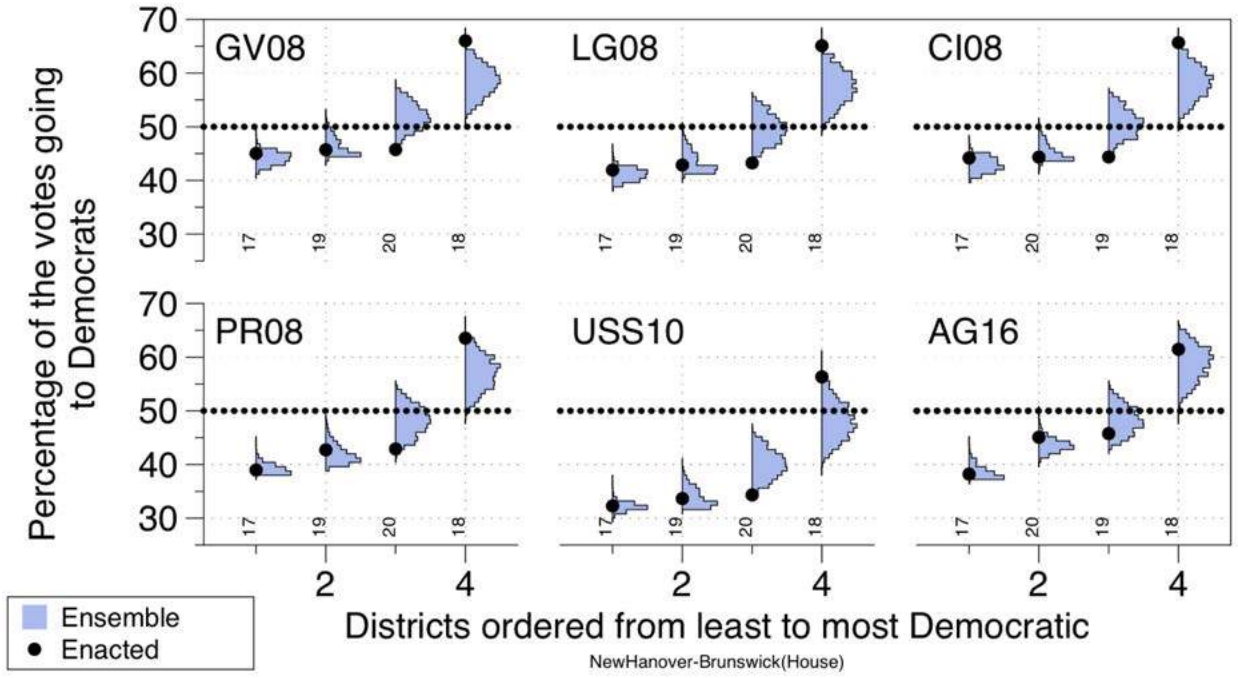
[11] For all House county groupings drawn in 2011 and unchanged in 2017, Dr. Chen used the 2004 to 2010 statewide elections to analyze these county groupings.

House District 18 and the cracking of Democratic voters across the other districts. The vast majority of Dr. Chen's simulations would produce up to two additional districts in this grouping that are competitive or even Democratic-leaning, compared to the enacted plan. PX57. The Court gives weight to Dr. Chen's analysis and findings for this grouping, which are reflected in Plaintiffs' Exhibit 57 below:

Figure 37: House Simulation Set 1:
Democratic Vote Share of the Enacted and Computer−Simulated Districts
Within the Brunswick−New Hanover County Grouping



446. Plaintiffs' Exhibit 404 shows Dr. Mattingly's analysis of this grouping:



447. Dr. Mattingly concluded that the most Democratic district shows extreme packing of Democrats, while the three least Democratic districts show extreme cracking of Democrats, as evidenced by the significant jump between these sets of districts. Tr. 1145:17-1146:12. Dr. Mattingly found that the most Democratic district in the enacted plan had more Democratic voters than 92.01% of the comparable districts in the nonpartisan ensemble. PX778 at 30; PX359 at 38. As the figure above shows, the enacted map causes the Democrats to lose one seat in this grouping in certain electoral environments, because the black dot in the second most Democratic district always falls below the 50% line while the blue histograms often rise above it. Tr. 1146:5-9. Dr. Mattingly concluded that the New Hanover-Brunswick House grouping reflected a pro-Republican partisan gerrymander, Tr. 1146:22-1147:2, and the Court gives weight to his conclusion.

448. Dr. Pegden found that this county grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version

of this grouping is more favorable to Republicans than 99.97% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.91% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. Tr. 1351:6-7; PX524. The Court gives weight to Dr. Pegden's analysis and conclusions.

449. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

l. Duplin-Onslow

450. The Duplin-Onslow House county grouping, drawn in 2011 and left unchanged in 2017, contains House Districts 4, 14, and 15. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

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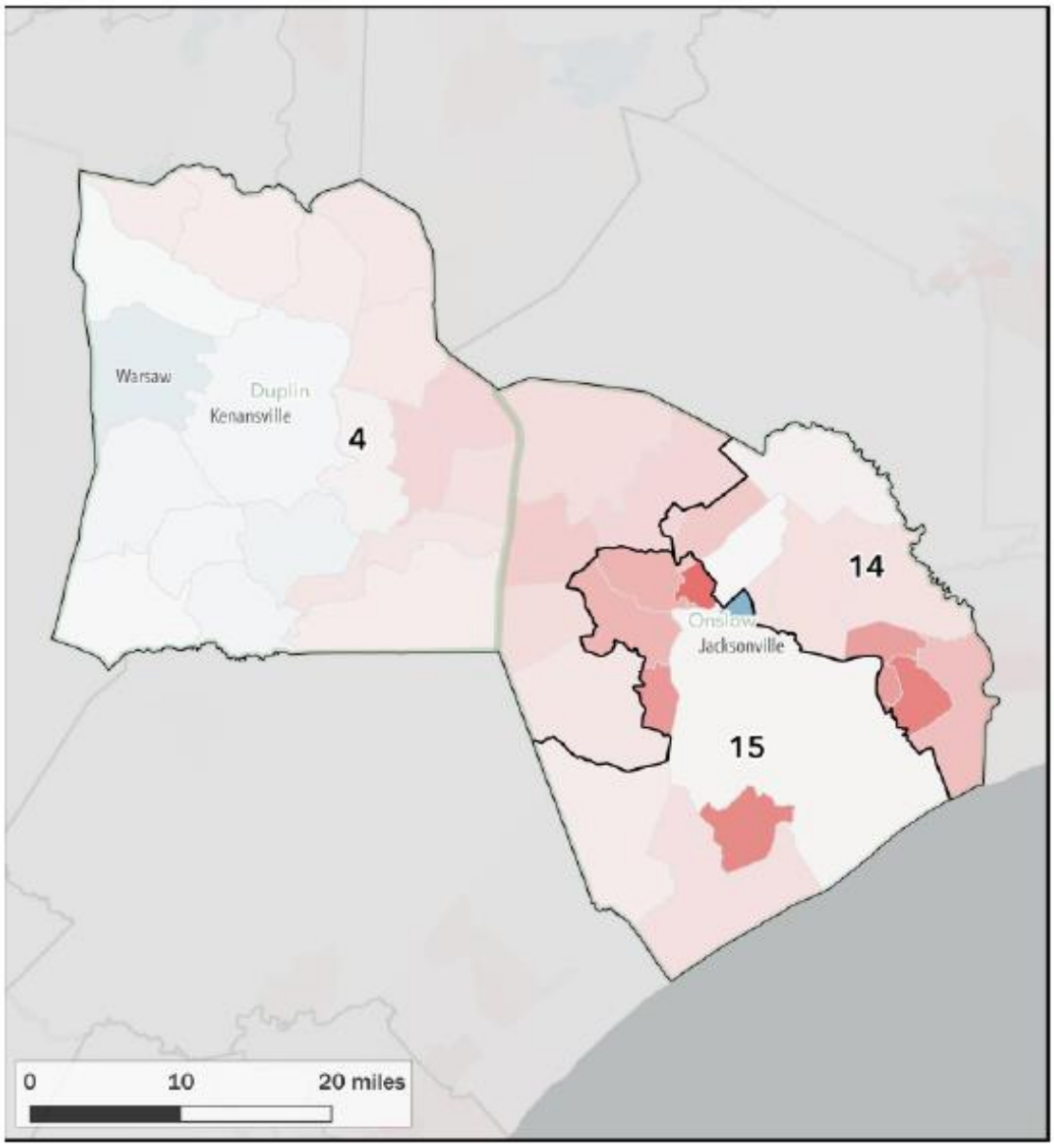
451. Plaintiffs' Exhibit 291 is Dr. Cooper's map for this county grouping:



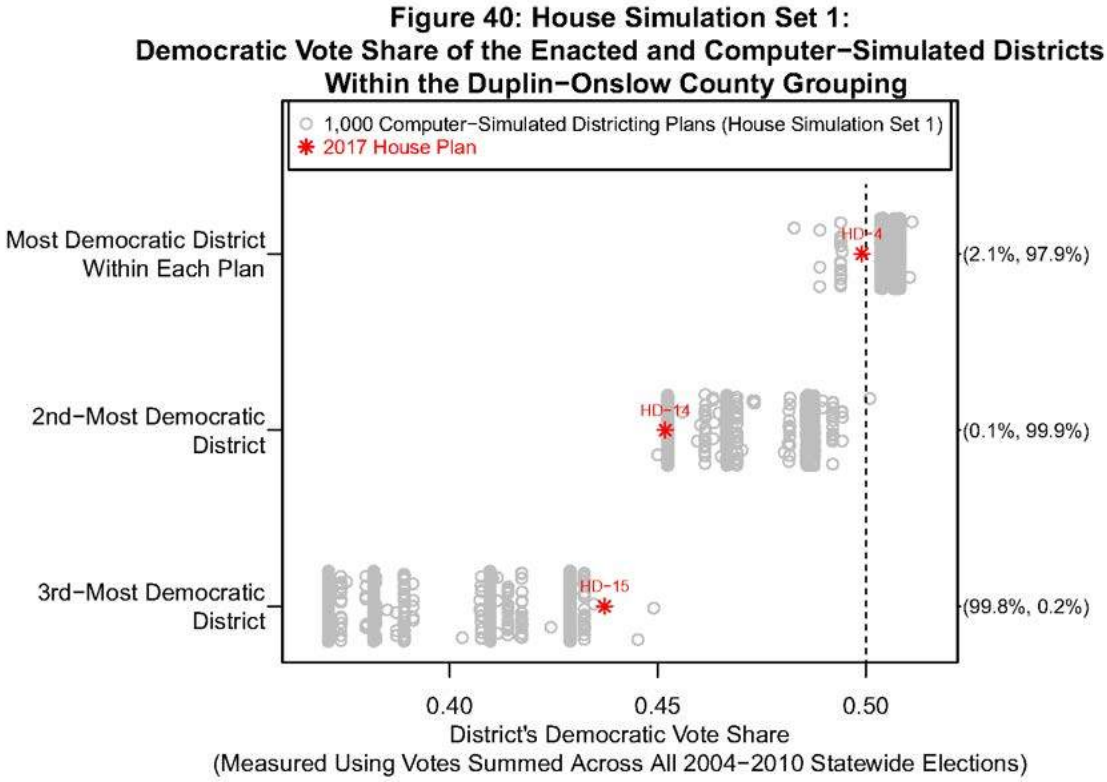
452. Legislative Defendants split Jacksonville across House Districts 14 and 15, pairing the Democratic-leaning "shark's tooth" in Jacksonville with heavily Republican-leaning VTDs in House District 15. Tr. 906:10-23; PX253 at 53-57 (Cooper Report). The map also ensures that none of Jacksonville's voters are joined with the Democratic-leaning and moderate VTDs in Duplin County, in House District 4. *Id.* The map cracks Democratic

voters across all three districts in this grouping, ensuring that House District 14 "becomes Republican and [House District 4] also stays safely Republican." *Id.*

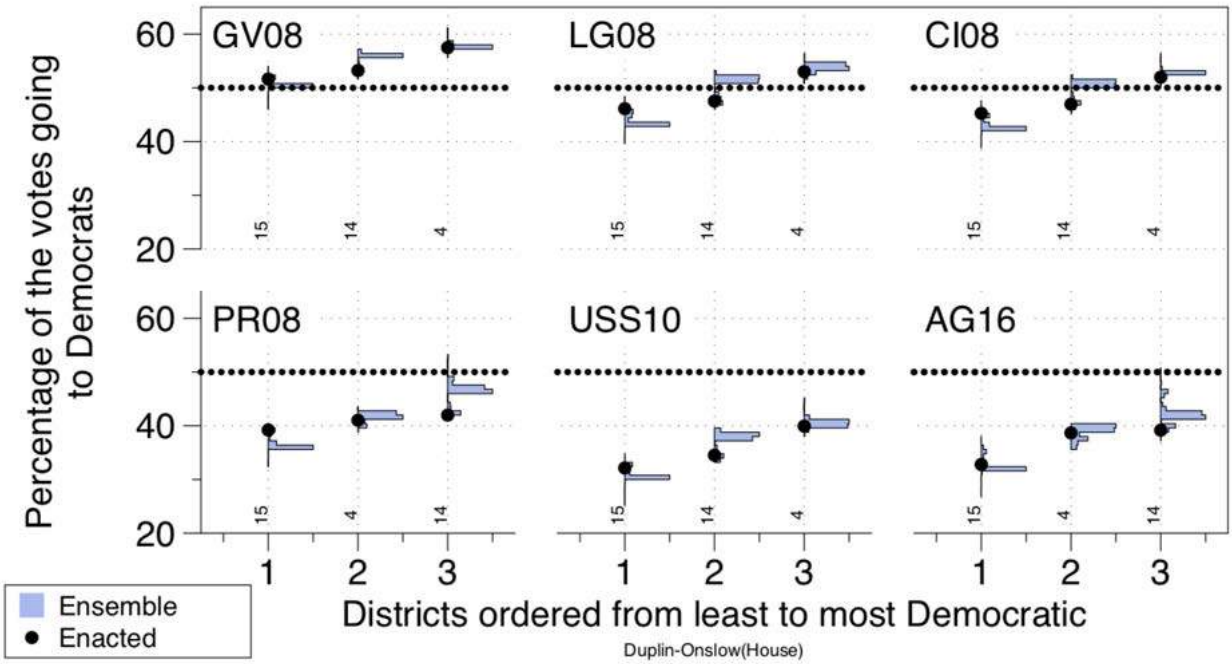
453. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of these districts.

454. The simulations of Plaintiffs' other experts independently establish that the Duplin-Onslow county grouping is an extreme partisan gerrymander.

455. Dr. Chen found that all three districts in this grouping are extreme partisan outliers. Tr. 370:16-371:1. House Districts 4 and 14 have lower Democratic vote shares than their corresponding districts in nearly all the simulations, while House District 15 has a higher Democratic vote share than its corresponding district in nearly all the simulations. PX60. Dr. Chen's findings demonstrate the cracking of Democratic voters across the three districts. The vast majority of Dr. Chen's simulations would produce two districts that are more competitive using the 2004-2010 statewide elections compared to the enacted plan. PX60. The Court gives weight to Dr. Chen's analysis and findings for this county grouping, reflected in Plaintiffs' Exhibit 60:



456. Plaintiffs' Exhibit 394 shows Dr. Mattingly's analysis of this grouping:



457. This grouping is another example of what Dr. Mattingly called "squeezing" or "flattening," where Democrats are cracked across all of the districts in the grouping. *See*

Tr. 1149:19-1150:2; Tr. 1150:22-1151:2. Dr. Mattingly's analysis showed that the two most Democratic districts in the enacted plan had fewer Democratic voters than 92.4% of the comparable districts in the nonpartisan ensemble, meaning that the Duplin-Onslow House grouping showed clear cracking of Democratic voters. PX778 at 30; PX359 at 31. As the figure above shows, the gerrymander could cause the Democrats to lose at least one seat in certain electoral environments. Dr. Mattingly concluded that this grouping reflects a clear pro-Republican partisan gerrymander, Tr. 1155:17-21, PX778 at 30, and the Court gives weight to Dr. Mattingly's conclusion.

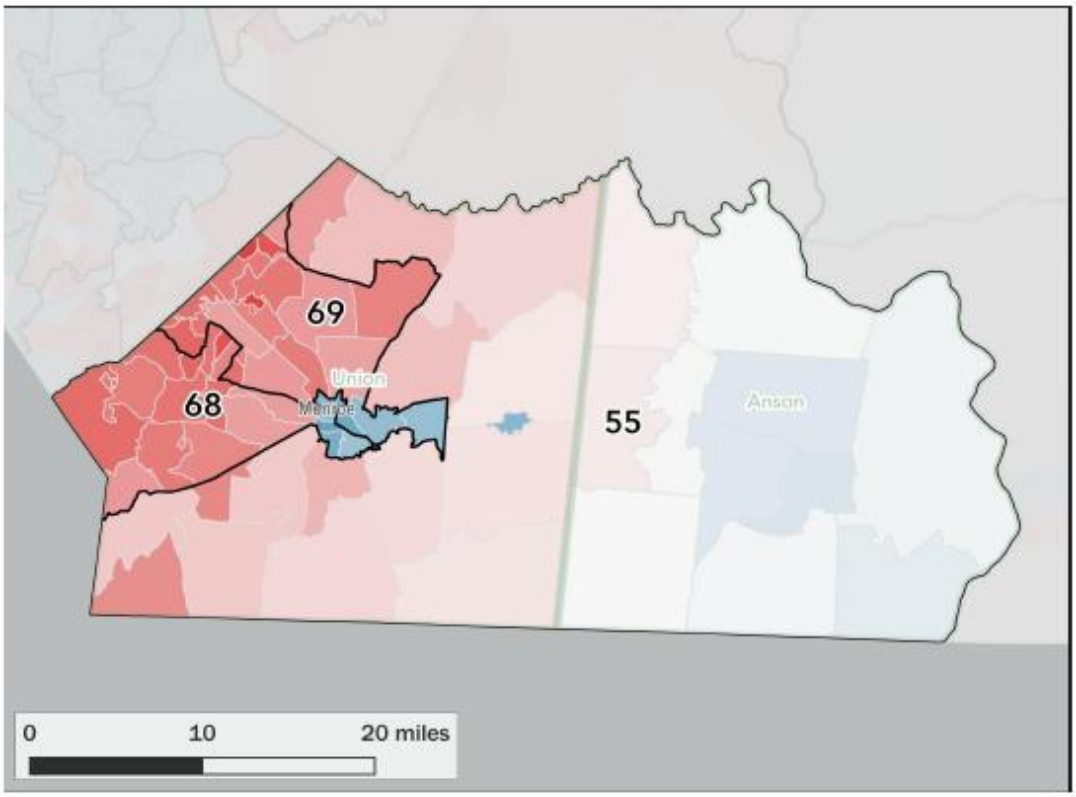
458. Dr. Pegden found that this grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version of this grouping is more favorable to Republicans than 98% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 94% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. Tr. 1351:9; PX528. The Court gives weight to Dr. Pegden's analysis and conclusions.

459. The Court finds that the analyses of all Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

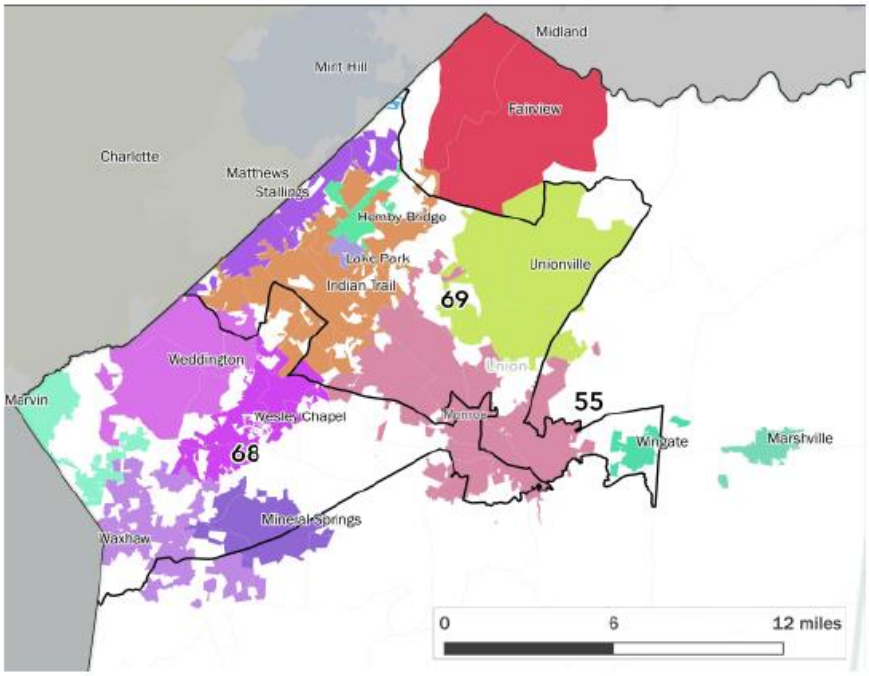
m. Anson-Union

460. The Anson-Union county grouping, drawn in 2011 and left unchanged in 2017, contains House Districts 55, 68, and 69. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

461. Plaintiffs' Exhibit 307 is Dr. Cooper's map for this county grouping:



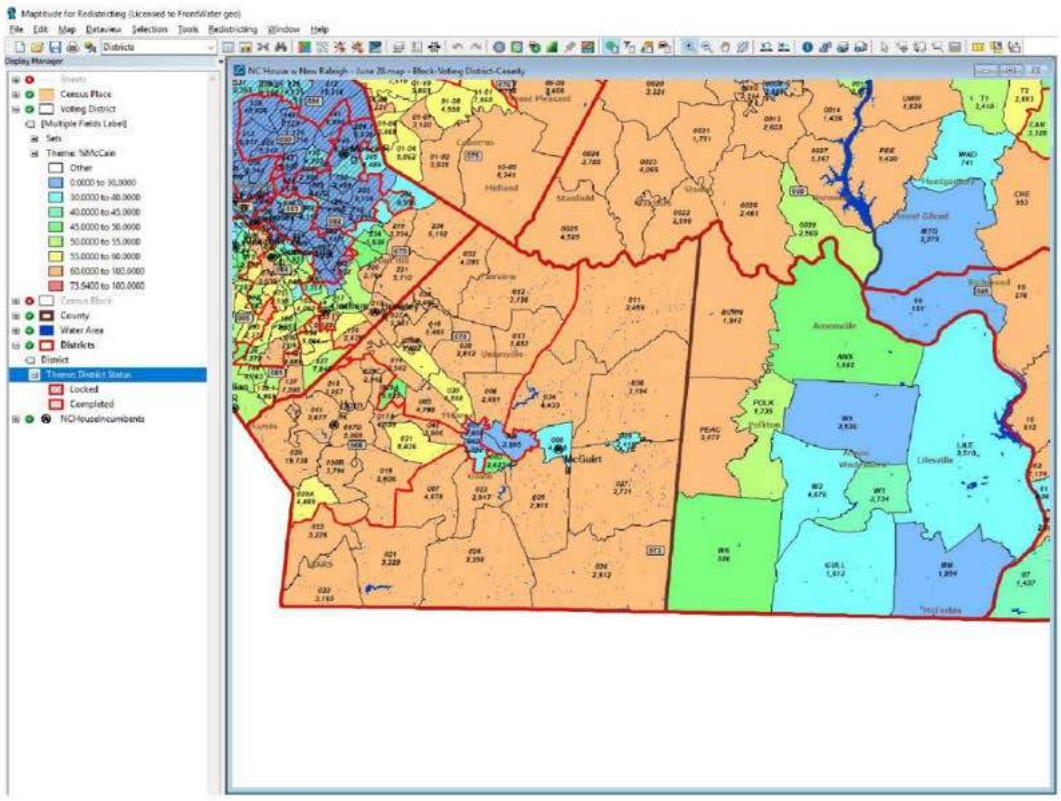
462. Dr. Cooper detailed how this county grouping cracks the Democratic voters in Monroe between two districts (House Districts 68 and 69), and then ensures that none of these voters are joined with the Democratic voters in Anson County (in House District 55). The map thus dilutes the voting power of the Democratic voters in this grouping, ensuring that House Districts 68 and 69 are reliable Republican districts. Tr. 919:3-16; PX253 at 79-80 (Cooper Report). Plaintiffs' Exhibit 308 illustrates the cracking of Monroe (which is colored pink).



463. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of these districts.

464. Dr. Hofeller's Maptitude files confirm his intentional use of partisanship data to crack Democratic voters. The relevant Maptitude file, which was last modified in June 2011 and is depicted in Plaintiffs' Exhibit 353 below, shows Dr. Hofeller's use of the 2008 Presidential election results to separate Democratic VTDs across the three districts in this grouping. Tr. 995:20-998:7; PX329 at 31 (Cooper Rebuttal Report).

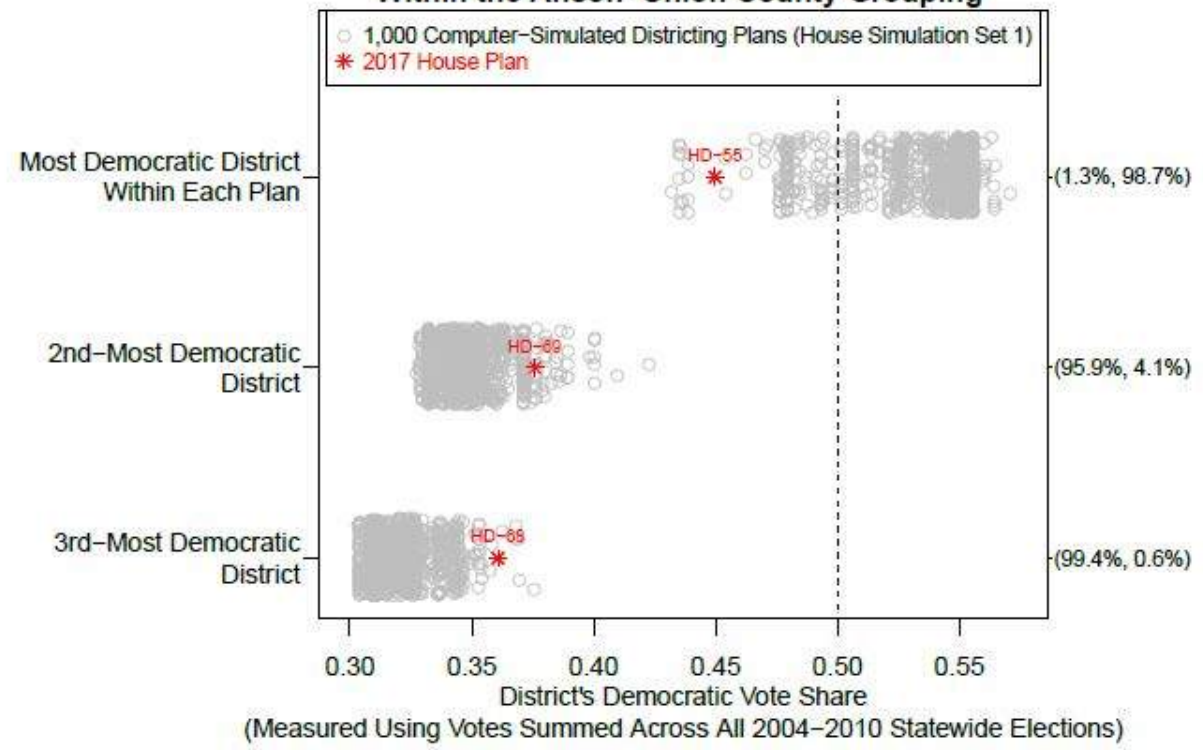
Figure 25: Partisan Targeting in House Districts 55, 68, and 69



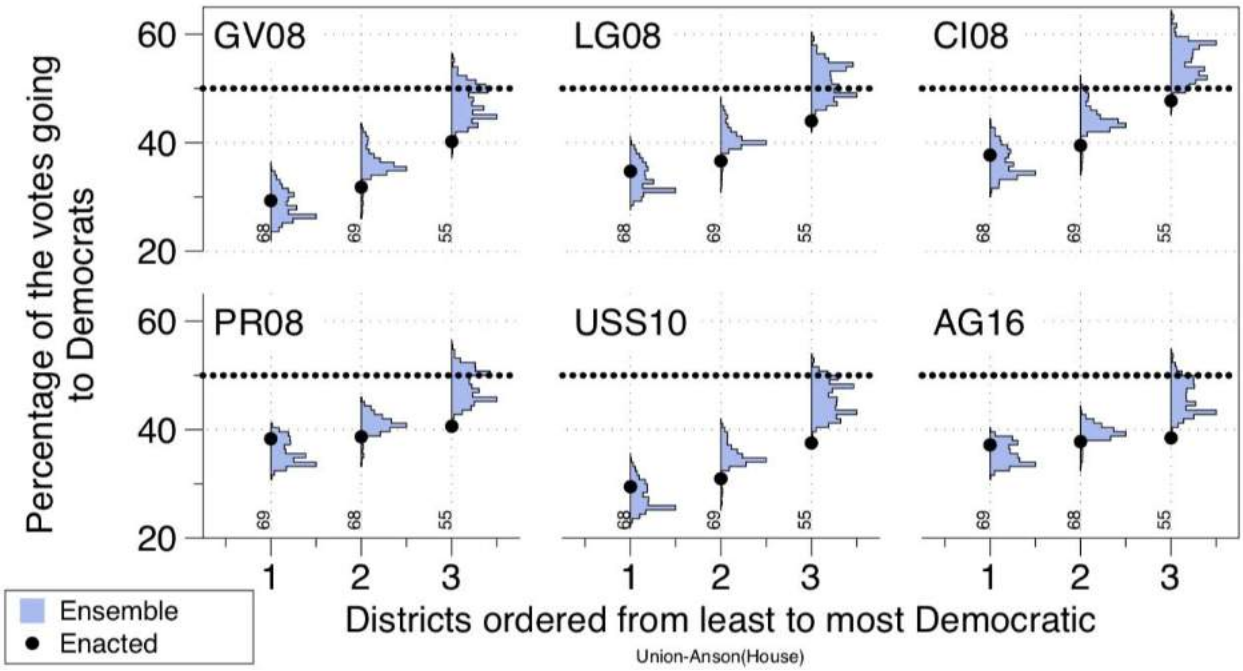
465. The simulations of Plaintiffs' other experts independently establish that this county grouping is an extreme partisan gerrymander.

466. Dr. Chen found that all three districts in this county grouping are extreme partisan outliers. Tr. 368:7-15. House District 55 has a lower Democratic vote share than its corresponding district in nearly all of the simulations, while House Districts 68 and 69 have higher Democratic vote shares than their corresponding districts in nearly all of the simulations. Dr. Chen's findings demonstrate the cracking of Democratic voters across the three districts in this grouping. In the vast majority of Dr. Chen's simulations, this county grouping would produce a district that is Democratic-leaning using the 2004-2010 statewide elections. PX56. The Court gives weight to Dr. Chen's analysis and findings for this county grouping, which are reflected in Plaintiffs' Exhibit 56 below:

Figure 36: House Simulation Set 1:
Democratic Vote Share of the Enacted and Computer−Simulated Districts
Within the Anson−Union County Grouping



467. Plaintiffs' Exhibit 410 shows Dr. Mattingly's analysis of this grouping:



468. This grouping is another example of what Dr. Mattingly called "squeezing" or "flattening," where the Democrats are cracked across all of the districts in the grouping. *See* Tr. 1149:19-1150:2; Tr. 1150:22-1151:2. Dr. Mattingly's analysis showed that the two most Democratic districts in the enacted plan had fewer Democratic voters than 100% of the comparable districts in the nonpartisan ensemble, meaning that not a single plan in his nonpartisan ensemble showed as much cracking of Democratic voters in this grouping as the enacted plan. PX778 at 30; PX359 at 42. As the figure above shows, the gerrymander causes the Democrats to lose one seat in certain electoral environment, as the black dot for House District 55 is always below the dotted line but the blue histogram often rises above it. Dr. Mattingly concluded that the Anson-Union House grouping reflected an extreme pro-Republican partisan gerrymander, Tr. 1155:8-16, PX778 at 30, and the Court gives weight to his conclusion.

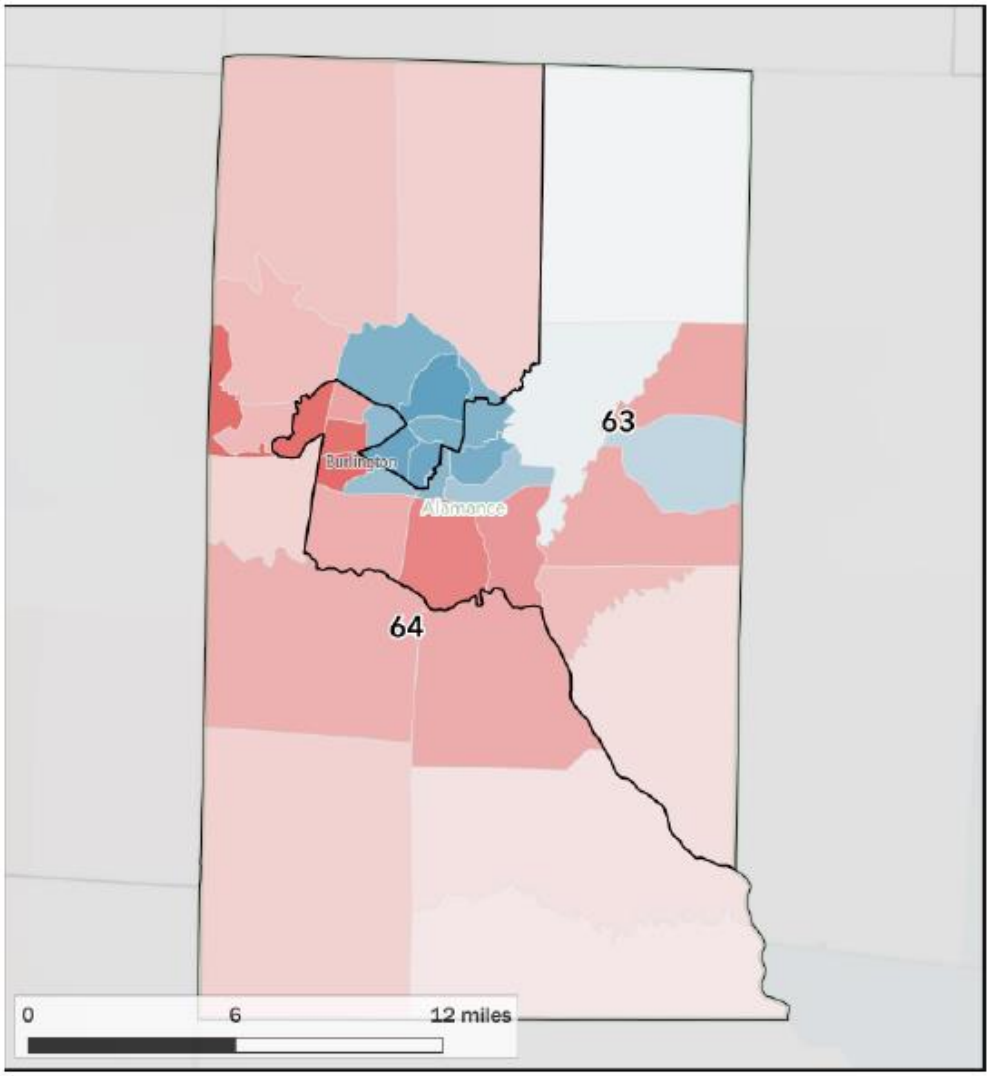
469. Dr. Pegden found that this grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version of this grouping is more favorable to Republicans than 98.5% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 95.5% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. Tr. 1351:8-9; PX523. The Court gives weight to Dr. Pegden's analysis and conclusions.

470. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

n. Alamance

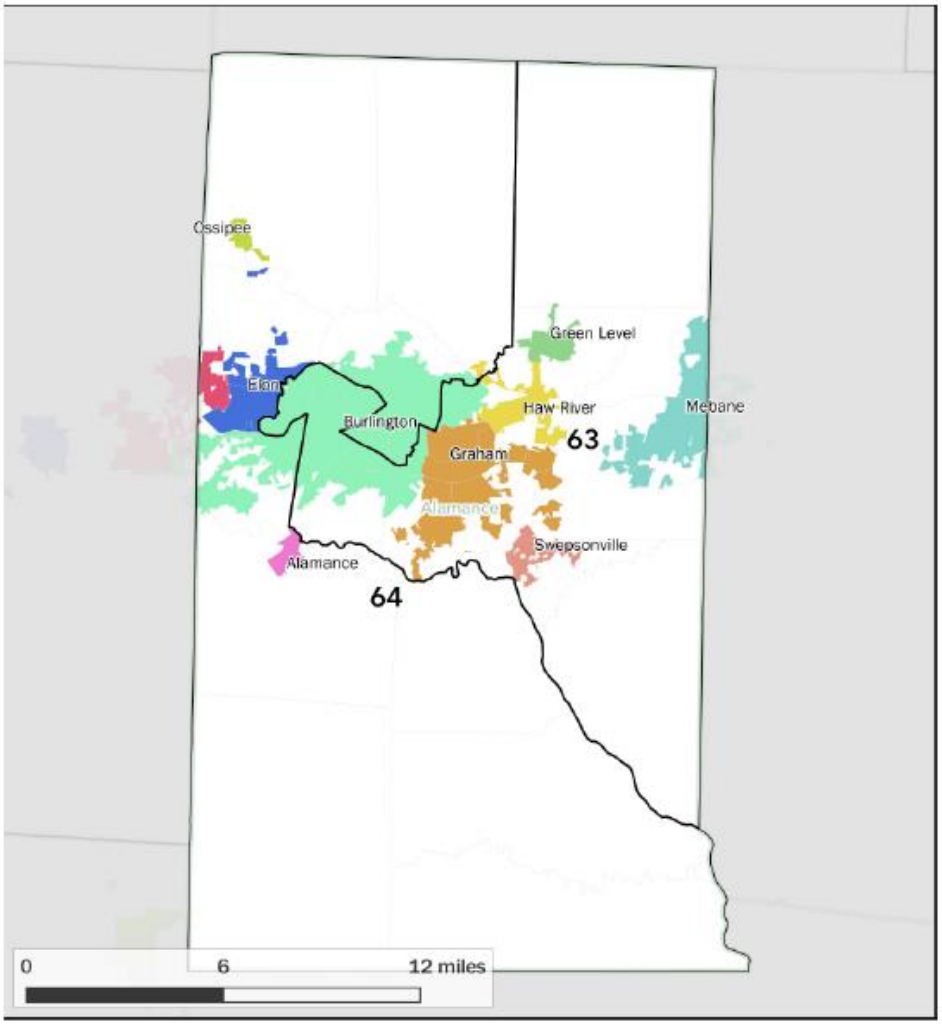
471. The Alamance House county grouping, drawn in 2011 and left unchanged in 2017, contains House Districts 63 and 64. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

472. Plaintiffs' Exhibit 311 is Dr. Cooper's map for this county grouping:



473. Dr. Cooper described how House District 63 takes the shape of a "duck's head" in the Burlington area, cracking the Democratic voters in and around Burlington between House Districts 63 and 64 to reduce those voters' influence. Tr. 924:3-25; PX253 at 84 (Cooper Report). And the map carefully places Burlington's Republican-leaning-VTDs

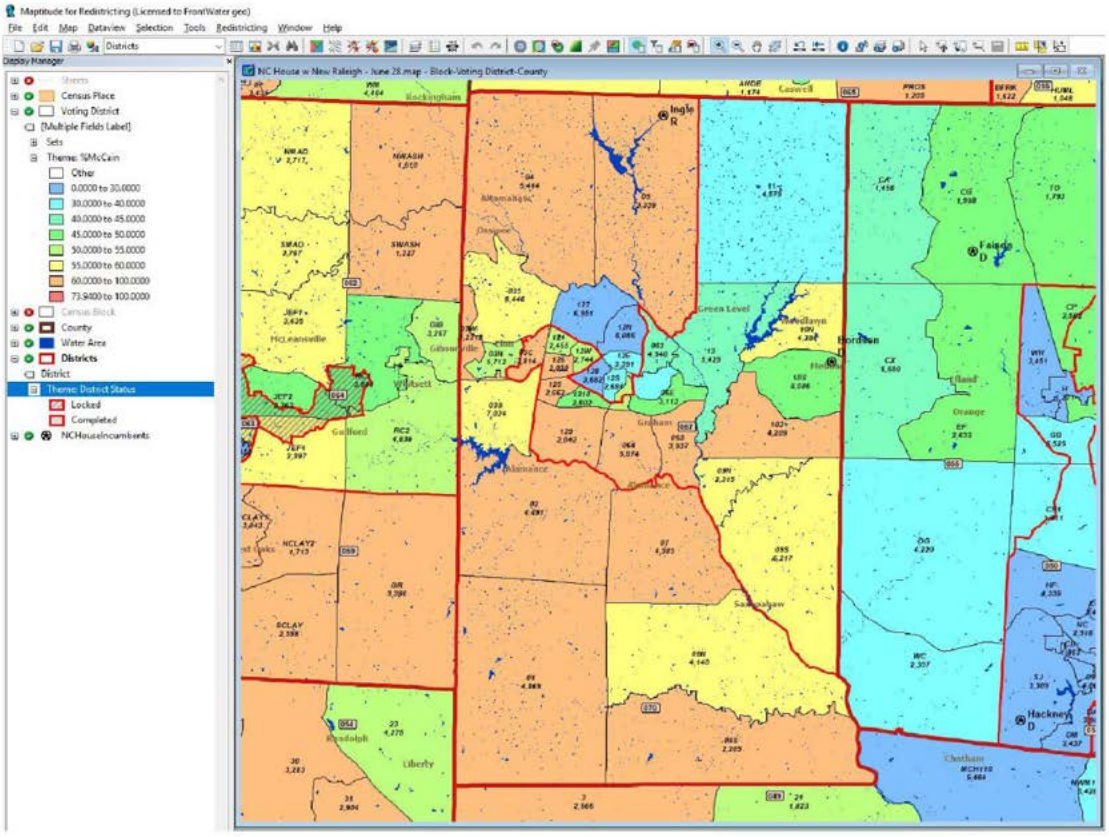
(in the "duck's head") in House Districts 63, helping to ensure that House District 63 will consistently elect a Republicans. Plaintiffs' Exhibit 312 depicts the division of Burlington (shaded green):



474. Dr. Hofeller's Maptitude files confirm the partisan intent and "partisan consequences" of cracking Democratic voters in this grouping. Tr. 998:18-19. In particular, Dr. Hofeller's draft map for House Districts 63 and 64 (which was last modified in June 2011 while this district was being drawn) demonstrates how the "duck's head" portion put Burlington's most moderate and Republican-leaning VTDs (shaded tan and light green) in House District 63, while Burlington's bluest VTDs were grouped with heavily Republican

areas in northern and southern Alamance County. Tr. 998:9-25; PX354; PX329 at 32 (Cooper Rebuttal Report). Plaintiffs' Exhibit 354 shows Dr. Hofeller's Maptitude file containing the Alamance grouping.

Figure 26: Partisan Targeting in House Districts 63 and 64



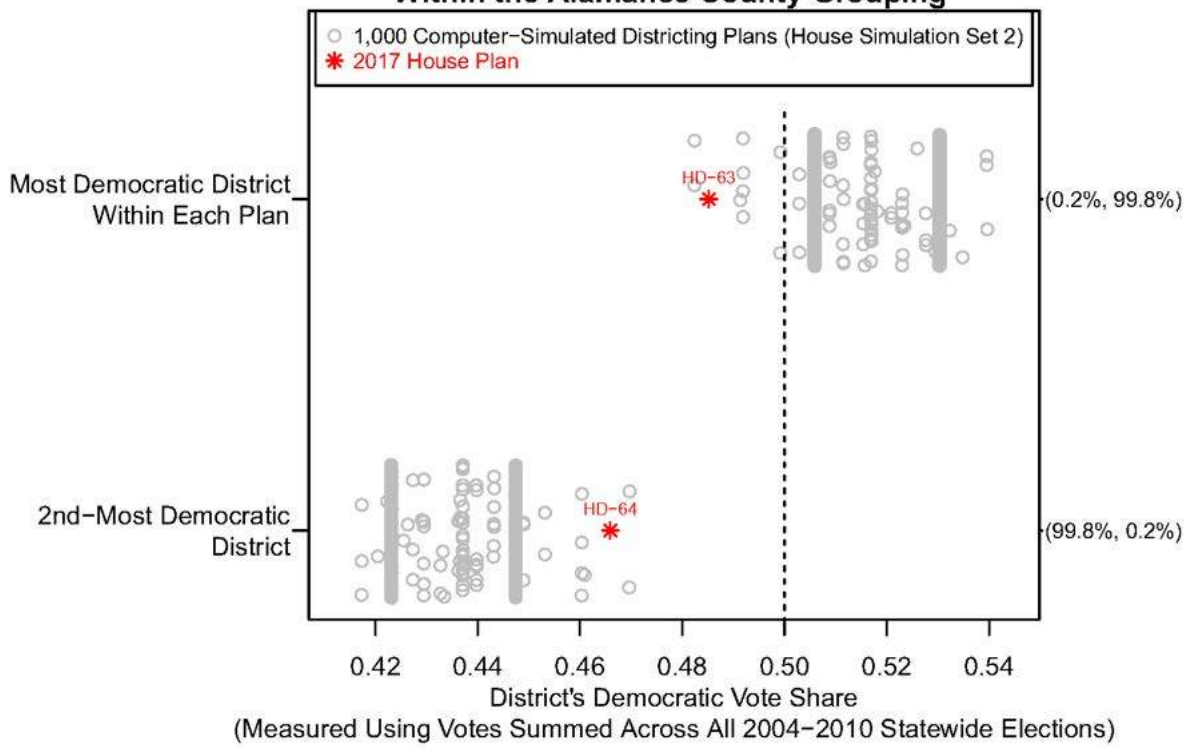
475. Election results demonstrate that the gerrymandering of this grouping has been highly effective. Although Intervenor Defendants presented testimony claiming that "candidate quality" resulted in the Democratic loss in one of the districts in 2018 (Tr. 2245:9-2246:25), in fact, Republicans have won both districts in this grouping in all four elections since the districts were drawn in 2011, across a range of candidates. JSF at Ex. 2; Tr. 2253:15-2256:10.

476. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of the districts in this county groupings.

477. The simulations of Plaintiffs' other experts independently establish that the Alamance county grouping is an extreme partisan gerrymander.

478. In his House Simulation Set 1, Dr. Chen found that House District 63 has a lower Democratic vote than its corresponding district in over 77% of the simulations while House District 64 has a higher Democratic vote share than its corresponding district in over 74.5% of the simulations. Tr. 371:10-372:6; PX55. More importantly, Dr. Chen found that both districts in this county grouping are extreme partisan outliers in House Simulation Set 2 that avoids pairing the incumbents in office at the time this grouping was drawn. Tr. 372:8-373:5; PX76. Dr. Chen thus concluded with over 99% statistical certainty that the districts in this grouping are extreme partisan outliers if the mapmaker was trying to protect incumbents in drawing the districts in the grouping. Tr. 372:23-373:5. Indeed, across the vast majority of 2,000 simulations in House Simulation Sets 1 and 2, this county grouping would produce a Democratic-leaning district in the simulations, whereas it does not in the enacted plan. PX55; PX76. The Court gives weight to Dr. Chen's analysis and findings for this county grouping, which are reflected in Plaintiffs' Exhibit 76 below:

Figure 56: House Simulation Set 2:
Democratic Vote Share of the Enacted and Computer−Simulated Districts
Within the Alamance County Grouping



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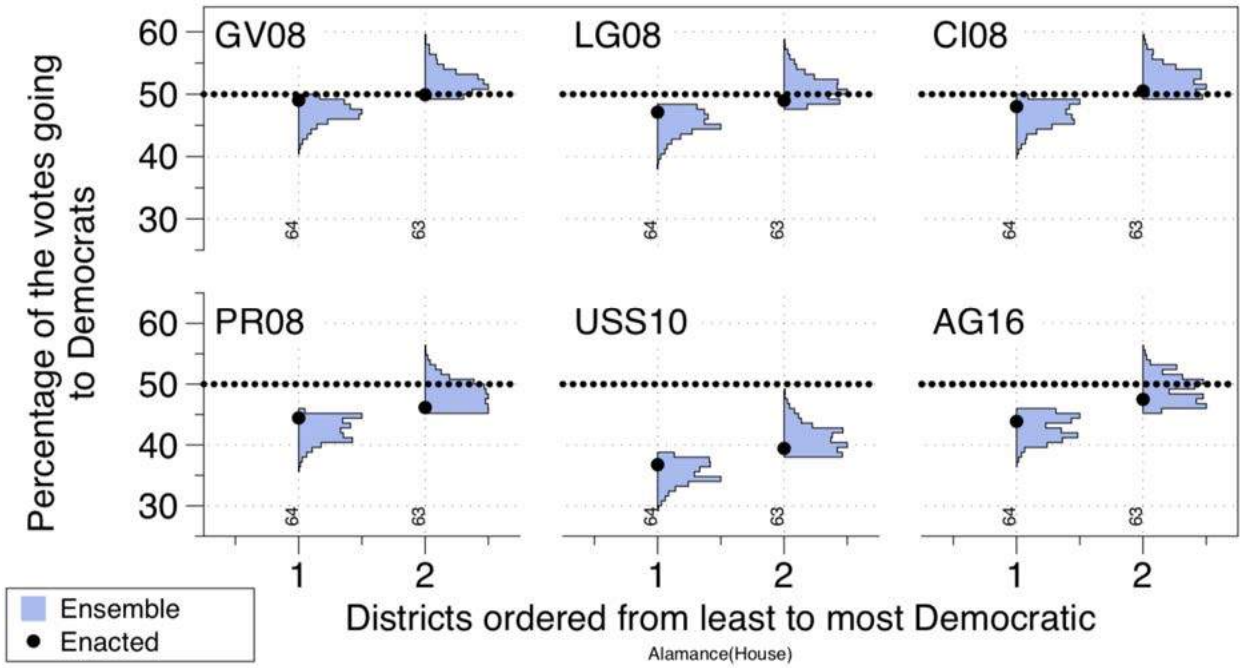
479. Plaintiffs' Exhibit 384 shows Dr. Mattingly's analysis of this grouping:



480. This grouping reflects what Dr. Mattingly called "squeezing" or "flattening," where Democratic districts are cracked across all of the districts. Tr. 1149:19-1151:2. Dr. Mattingly found that this grouping reflected more cracking of Democratic voters than 77% of the comparable districts in the nonpartisan ensemble. Tr. 1151:10-17; PX778 at 30; PX359 at 26. Although Dr. Mattingly did not label this grouping an "outlier" because he used a 90% threshold, he testified that the pro-Republican bias in the grouping still contributed to the extreme pro-Republican bias he found statewide. Tr. 1151:21-1153:2, Tr. 1154:23-1155:1. What's more, the pro-Republican tilt has a significant effect; as the figure above shows, the gerrymander causes the Democrats to lose one seat in this grouping in many electoral environments. Tr. 1151:3-9. Dr. Mattingly concluded that the Alamance House grouping reflected a clear pro-Republican partisan tilt, Tr. 1151:24-1153:2; PX778 at 30, and the Court gives weight to his conclusion.

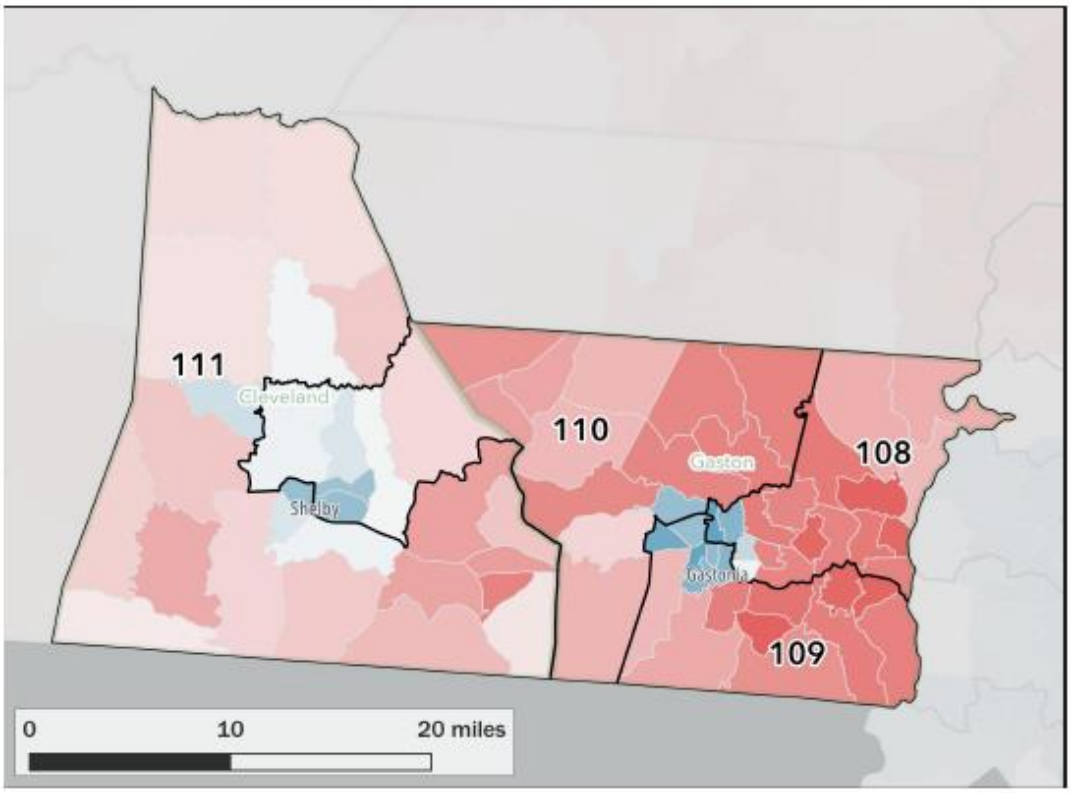
481. Dr. Pegden found that this grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version of this grouping is more favorable to Republicans than 99.9998% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.996% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. Tr. 1351:5; PX522. The Court gives weight to Dr. Pegden's analysis and conclusions.

482. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

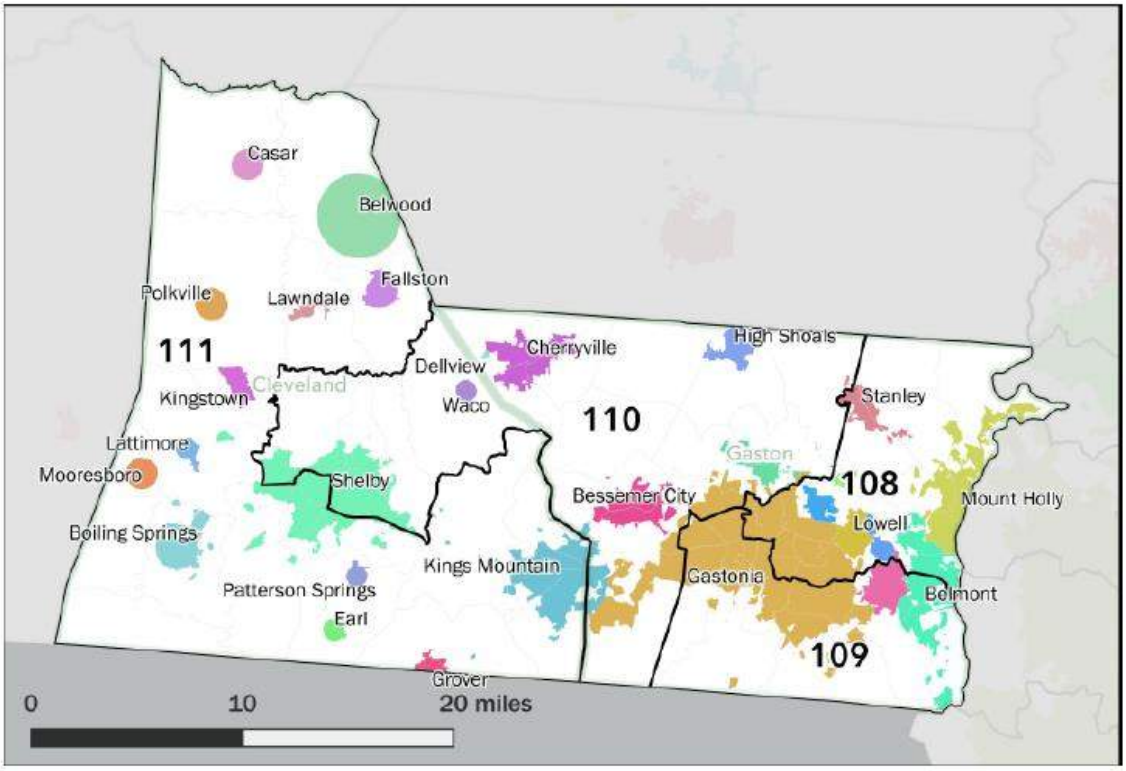
o. Cleveland-Gaston

483. The Cleveland-Gaston House county grouping, drawn in 2011 and left unchanged in 2017, contains House Districts 108, 109, 110, and 111. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

484. Plaintiffs' Exhibit 323 is Dr. Cooper's map for this county grouping:



485. As Dr. Cooper testified, this grouping is a textbook example of cracking. The Democratic voters in Gastonia are cracked across House Districts 108, 109, and 110, and the Democratic voters in Shelby across House Districts 110 and 111. Tr. 932:23-934:10; PX253 at 97-98 (Cooper Report). Plaintiffs' Exhibit 325 illustrates the splitting of these municipalities:

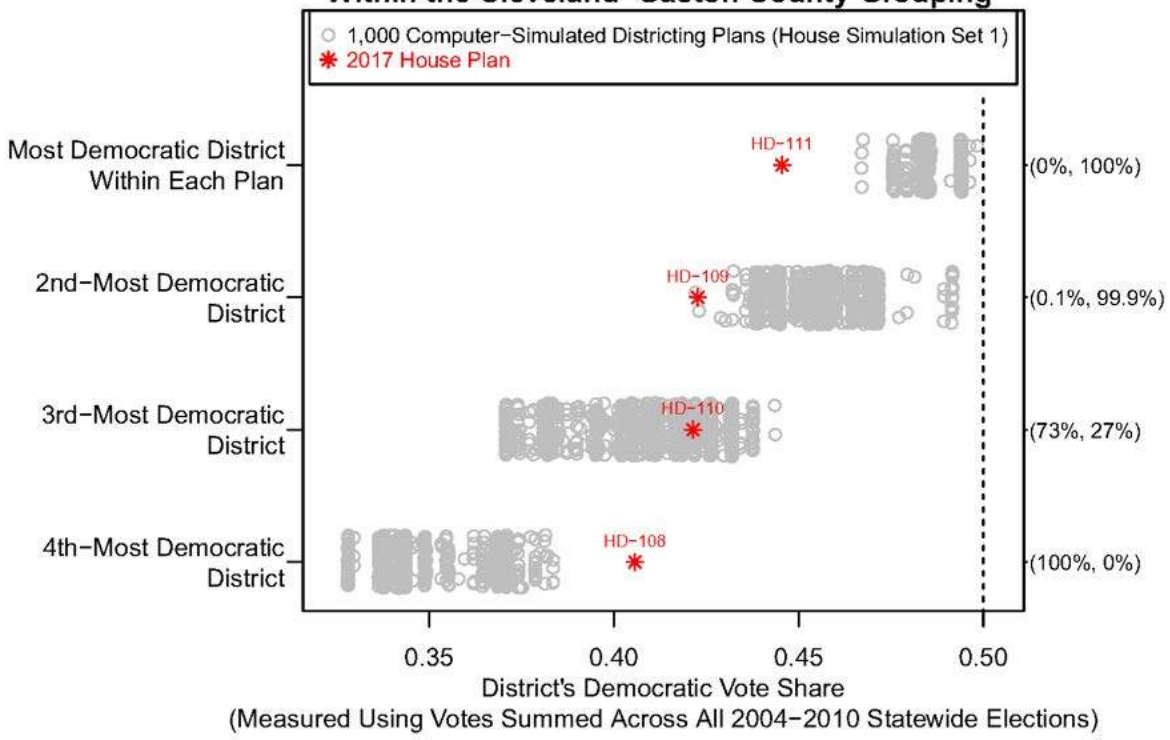


486. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of these districts.

487. The simulations of Plaintiffs' other experts independently establish that the Cleveland-Gaston county grouping is an extreme partisan gerrymander.

488. Dr. Chen found that this county grouping contains three districts that are extreme partisan outliers. Tr. 370:5-13. House Districts 109 and 111 have lower Democratic vote shares than their corresponding district in all or nearly all of the simulations, while House District 108 has a higher Democratic vote shares than its corresponding district in all of the simulations. PX59. Dr. Chen's findings demonstrate the cracking of Democratic voters across the districts in this county grouping. The Court gives weight to Dr. Chen's analysis and findings for this county grouping, which are reflected in Plaintiffs' Exhibit 59 below.

Figure 39: House Simulation Set 1:
Democratic Vote Share of the Enacted and Computer-Simulated Districts
Within the Cleveland-Gaston County Grouping



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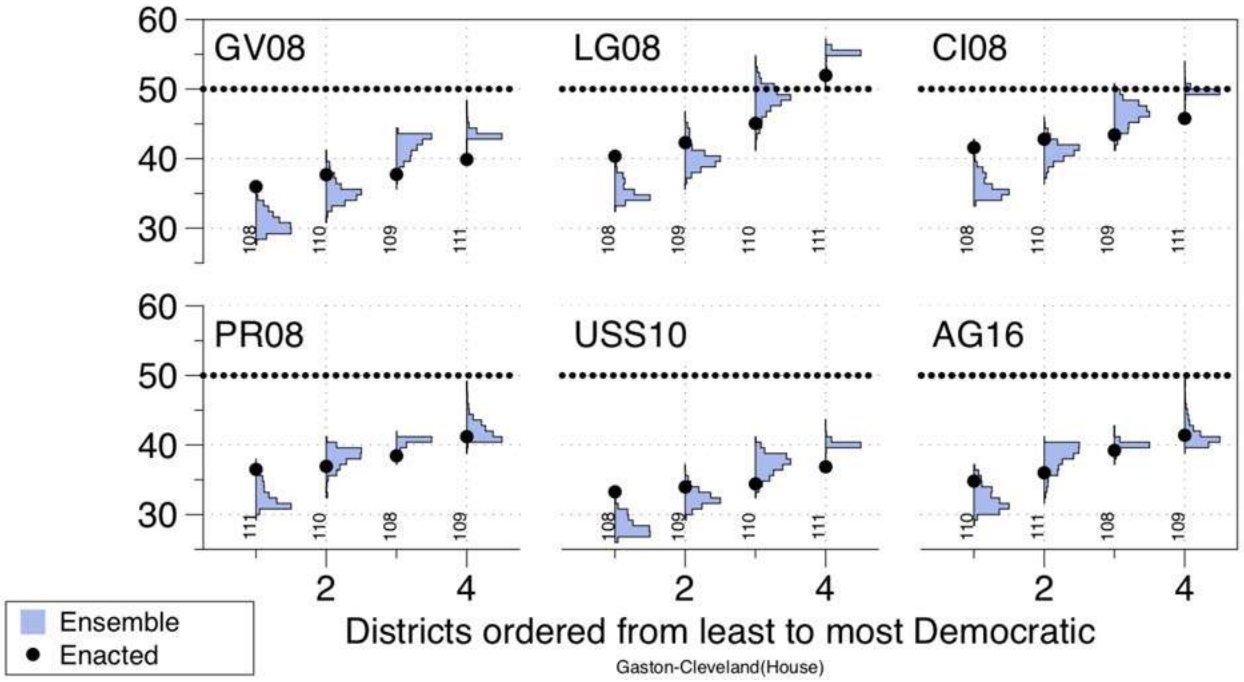
489. Plaintiffs' Exhibit 396 shows Dr. Mattingly's analysis of this grouping:



490. This grouping reflects what Dr. Mattingly called "squeezing" or "flattening," where Democratic voters are cracked across all of the districts. *See* Tr. 1149:19-1150:2; Tr. 1150:22-1151:2. Dr. Mattingly found that this grouping reflected more cracking of Democratic voters than 82.86% of the comparable districts in the nonpartisan ensemble. PX778 at 30; PX359 at 32. Although he did not label this grouping an "outlier" because he used a 90% threshold, he testified that the pro-Republican bias in the Gaston-Cleveland still contributed to the extreme pro-Republican bias he found statewide. *See* Tr. 1151:21-1156:21. Moreover, as the figure above shows, the gerrymander could cause Democrats to lose at least one seat in certain electoral environments. Dr. Mattingly concluded that the Gaston-Cleveland grouping reflects a clear pro-Republican partisan tilt that can contribute to the extreme pro-Republican bias statewide, Tr. 1156:17-24, PX778 at 30, and the Court gives weight to his conclusion.

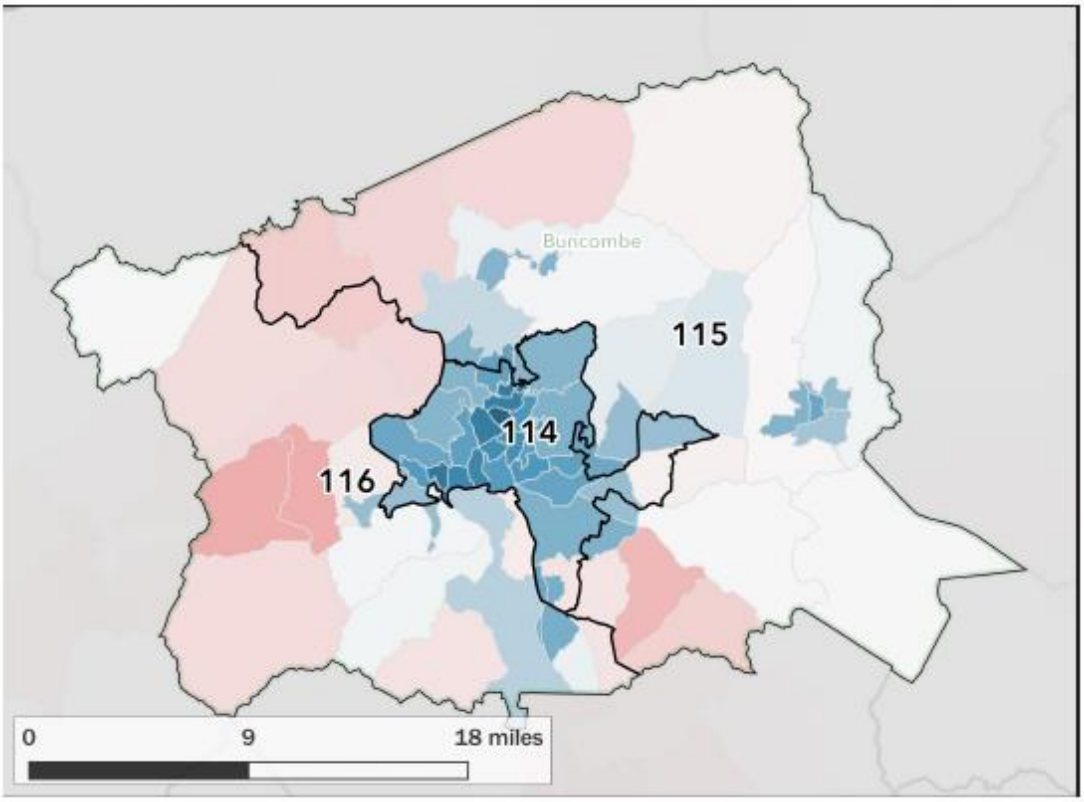
491. Dr. Pegden's conservative methodology resulted in comparison maps that are very similar to the enacted plan for this grouping. Tr. 1351:17-1352:10.

492. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

p. Buncombe

493. The Buncombe House county grouping, drawn in 2011 and left unchanged in 2017, contains House Districts 114, 115, and 116. The Court gives weight to the analysis of Plaintiffs' experts and finds that this county grouping is an extreme partisan gerrymander.

494. Plaintiffs' Exhibit 326 is Dr. Cooper's map for this county grouping:



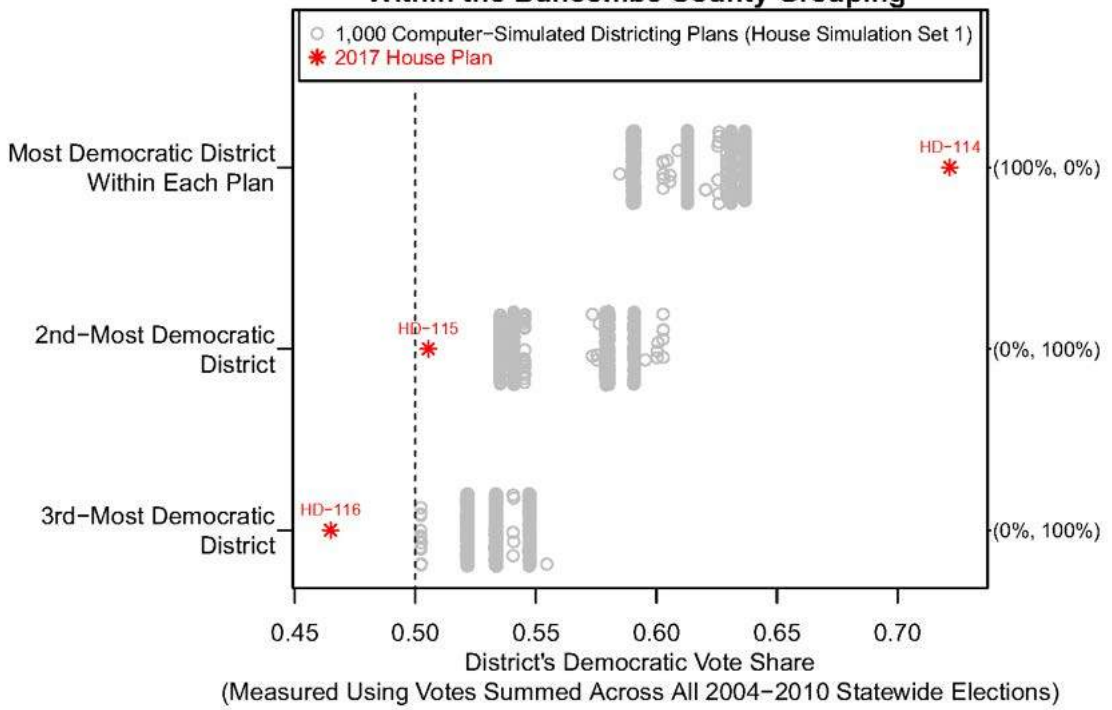
495. The mapmaker packed the most Democratic VTDs in and around Asheville into House District 114, in an effort to make House Districts 115 and 116 as competitive for Republicans as possible. Tr. 934:17-935:1; PX253 at 100 (Cooper Report).

496. The Court does not give weight to any nonpartisan explanation Legislative Defendants offered with respect to the boundaries of these districts.

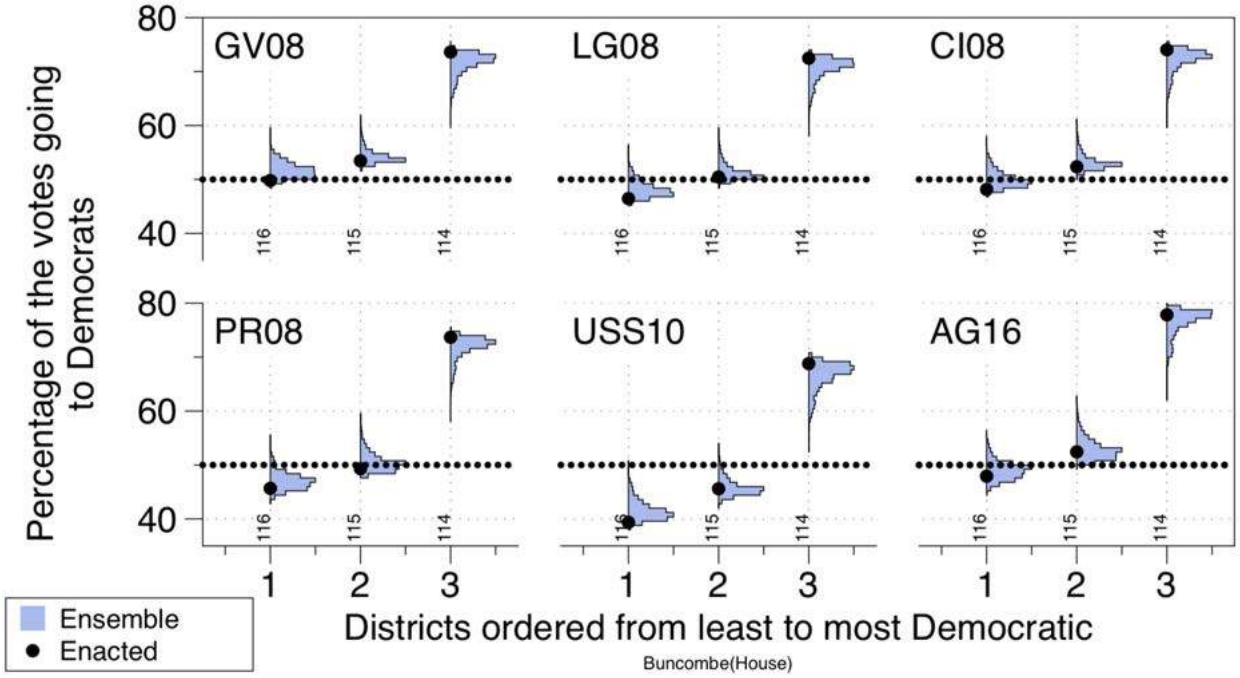
497. The simulations of Plaintiffs' other experts independently establish that the Buncombe county grouping is an extreme partisan gerrymander.

498. Dr. Chen found that all three districts in this county grouping are extreme partisan outliers. Tr. 369:22-370:1. House District 114 has a higher Democratic vote share than its corresponding district in all the simulations, while House Districts 115 and 116 have lower Democratic vote shares than their corresponding districts in all the simulations. Dr. Chen's findings demonstrate the packing of Democratic voters into House District 114 to make House Districts 115 and 116 as competitive for Republicans as possible. PX58. The Court gives weight to Dr. Chen's analysis and findings for this grouping, which are reflected in Plaintiffs' Exhibit 58:

Figure 38: House Simulation Set 1:
Democratic Vote Share of the Enacted and Computer-Simulated Districts Within the Buncombe County Grouping



499. Plaintiffs' Exhibit 386 shows Dr. Mattingly's analysis of this grouping:



500. Dr. Mattingly's analysis shows that Democrats were cracked out of the two least Democratic districts in this grouping and packed into the most Democratic district. PX778 at 30; PX359 at 27; PX386. The two least Democratic districts in the enacted plan had fewer Democratic voters than 85.45% of the comparable districts in the nonpartisan ensemble. PX778 at 30; PX359 at 27; PX386. Although Dr. Mattingly did not label this grouping an "outlier" because he used a 90% threshold, he explained that the pro-Republican bias still contributed to the extreme pro-Republican bias he found statewide. *See* Tr. 1151:21-1156:24. As the figure above shows, the gerrymandering could cause Democrats to lose one or two districts in certain electoral environments. Dr. Mattingly concluded that the Buncombe House grouping reflected a pro-Republican partisan bias, Tr. 1156:17-21, and the Court gives weight to his conclusion.

501. Dr. Pegden found that this grouping constitutes an extreme partisan gerrymander. In his first level analysis, Dr. Pegden found that the enacted plan's version

of this grouping is more favorable to Republicans than 99.9997% of the maps that his algorithm encountered by making small changes to the district boundaries. In his second level analysis, Dr. Pegden found that this grouping is more carefully crafted to favor Republicans than at least 99.999% of all possible districtings of this county grouping that satisfy the criteria Dr. Pegden used. Tr. 1351:4-5; PX525. The Court gives weight to Dr. Pegden's analysis and conclusions.

502. The Court finds that the analyses of Plaintiffs' experts independently and together demonstrate that this county grouping is an extreme partisan gerrymander.

D. The 2017 Plans Protected the Republican Majorities in the 2018 Elections

503. In the 2018 House elections, Republican candidates won a minority—48.8%—of the two-party statewide vote, but still won 65 of 120 seats (54%). JSF ¶¶ 68-69. Democrats thus broke the Republican supermajority, but not the majority. *Id.*; Tr. 163:21-164:19 (Rep. Meyer).

504. In the 2018 Senate elections, Republican candidates won a minority—49.5%—of the two-party statewide vote, but still won 29 of 50 seats (58%). JSF ¶¶ 142-43; Tr. 117:5-19 (Sen. Blue). Democrats broke the Republican supermajority by a single seat, after narrowly prevailing in Senate Districts 9 and 27 by margins of 0.1% and 0.5%. *Id.*

505. Democrats were unable to win majorities in either chamber despite strong efforts to fuel voter enthusiasm, recruit candidates, and fundraise, and despite favorable political conditions nationally and in North Carolina. Tr. 76:5-11 (Phillips); Tr. 118:19-21, 124:9-13 (Sen. Blue); Tr. 163:21-164:5 (Rep. Meyer); Tr. 1269:4-14, 1283:15-1284:1 (Goodwin). Democrats raised and spent more money than Republicans in the 2018 cycle, running the most well-funded campaign operation in the history of North Carolina. Tr.

117:20-117:25, 124:20-24 (Sen. Blue); Tr. 163:21-164:5, 171:3-6 (Rep. Meyer); Tr. 1284:11-17 (Goodwin).

506. Consistent with the findings of Drs. Chen and Mattingly, Senator Blue testified that, under the current Senate plan, Democrats would have needed to win over 55% of the statewide vote to win a majority of seats in the Senate. Tr. 119:19-120:4.

E. The 2017 Plans Harm the Organizational and Individual Plaintiffs

1. The 2017 Plans Harm the North Carolina Democratic Party

507. Elections, voting, and redistricting are central to the mission and purposes of Plaintiff the North Carolina Democratic Party (the "NCDP"). The NCDP is "an association of like-minded individuals"—"predominantly registered Democrats"—"who support and also help develop policies that they agree on." Tr. 1264:1-6 (Goodwin). As the NCDP's chair, Mr. Goodwin testified, the "basic purpose" of the NCDP is to "encourage like-minded folks to come together, to help recruit candidates and to support candidates who favor those policies and favor the development of policies that Democrats support." Tr. 1265:2-5. The NCDP "persuade[s] voters to support the nominees of the Democratic Party during the general election." Tr. 1265:7-9. The Court gives weight to Mr. Goodwin's testimony regarding the NCDP's mission and purposes.

508. The Court gives further weight to Mr. Goodwin's testimony that district lines significantly affect the NCDP's ability to fulfill its mission and purposes. To achieve its purposes, the NCDP must "have good candidates that we recruit and that we support"; it needs "enthusiasm for the party and its candidates and its message and mission"; and it needs "the appropriate financial resources to get a message [out]" and to fund all "the things that are involved with elections." Tr. 1264:15-21. All of those things are affected by district boundaries. Tr. 1265:22-24. For that reason, to "accomplish [NCDP's] mission," it is

"vital" that the NCDP have "fair, nondiscriminatory district lines for the candidates that run in districts across the State." *Id.*

509. The current district lines have harmed the NCDP and will continue to do so. The lines drawn in 2011 "had a tremendously negative impact on the ability of the North Carolina Democratic Party to achieve the purposes for which it exists." Tr. 1266:9-16. Under the 2011 districts, "it was more difficult to recruit candidates, it was more difficult to raise the funds necessar[]y, [and] enthusiasm was down tremendously because of . . . unfair []districts." *Id.*

510. Upon enactment of the 2017 Plans, the NCDP "knew it was still going to be a difficult, difficult race because of . . . [the] district lines." Tr. 1267:11-13. Because of the 2017 Plans, the NCDP "had to expend extraordinary amounts of time and resources and the like in a way that, in a set of fair maps across the State, [it] wouldn't have had to do." Tr. 1270:10-14; *see* Tr. 1284:18-22. The NCDP had to spend more money than it would have under nonpartisan maps, both statewide and in individual districts. For example, in House District 103 in Mecklenburg County, "to make that election competitive," Democrats had to recruit the daughter of former Governor Jim Hunt and "her election had to be financed at a level that no previous House election had ever been financed in the history of state elections," with Democrats spending over a million dollars in support of Ms. Hunt. Tr. 189:17-190:23 (Rep. Meyer). Even then, Ms. Hunt won the election by fewer than 100 votes. *Id.* The simulations of Drs. Chen and Mattingly each establish that, under nonpartisan maps, House District 103 in Mecklenburg County would be more favorable for Democrats than it is under the current House plan, FOF § C.2.*i.*, meaning that Democrats would not need to devote as many resources to this district and would be able to spend those resources in other districts across the State instead. The Court finds that the NCDP has established that the current districts have injured the NCDP as an organization by

requiring it to spend and divert more financial resources than it would have under nonpartisan maps, both statewide and in individual districts

511. The Court finds that the current districts have injured the NCDP in other ways. As Mr. Goodwin testified, "notwithstanding the tremendous[,] palpable level of enthusiasm" for Democratic candidates nationwide and in North Carolina in 2018, "notwithstanding raising the most funds ever raised for a mid-term election for the [D]emocratic [P]arty," and "notwithstanding the fact that . . . there was a [D]emocratic [G]overnor and [a] unique partnership" with the Governor, the NCDP's "efforts and enthusiasm and . . . money did not translate into seats." Tr. 1268:16-1269:3. "[D]espite everyone going [the NCDP's] way, the lines were drawn in such a way that [the NCDP] could not breach that seawall that protected the [R]epublican majority." Tr. 1268:13-15.

512. The Court finds that the current districts will also continue to injure the NCDP in the 2020 elections absent judicial relief. The NCDP will continue to need to spend and divert financial resources as a result of the gerrymanders, and it will continue to be extremely unlikely that Democratic candidates will be able to win majorities in either chamber of the General Assembly under the current districts. Moreover, although the NCDP was able to recruit a candidate in every district the favorable national environment that existed for Democrats in 2018 recruitment is more difficult under partisan plans. As Mr. Goodwin explained, unfair districts make it "more difficult to recruit candidates." Tr. 1266:12-13.

513. In addition to harming the NCDP itself, the enacted plans also have harmed the NCDP's members, and continue to do so. The NCDP's members include every registered Democratic voter in North Carolina. Tr. 1269:8-17. There are "well over two million registered Democrats in North Carolina." Tr. 1269:10-11. "There are registered Democrats in every precinct in the State, every House District, [and] every Senate District."

Tr. 1269:15-20. The NCDP thus has members in every House and Senate district at issue in this case, and those members are harmed by the enacted plans. The gerrymanders dilute the voting power of the NCDP's members by intentionally making it more difficult for some Democratic voters to elect candidates of their choice and making it extremely difficult for Democratic voters statewide to obtain Democratic majorities in the General Assembly. *See* FOF § E.3.

514. The NCDP's "support scores" do not undermine the harms that the 2017 Plans cause the NCDP and its members. As Democratic Representative Graig Meyer testified, "support scores" are purchased scores that are assigned to all registered voters based on "a combination of consumer data as well as geographic and other factors that give you a sense of the likelihood someone is going to support a Democratic candidate." Tr. 164:22-165:12. These scores are made available by the NCDP to Democratic candidates' campaigns, Tr. 1270:24-1271:19 (Goodwin), which then, in their discretion, may use them "to determine which voters [they] should target for paid communications, such as digital or mail, or for individual communications, such as canvassing and knocking on voters' doors," Tr. 164:23-165:2 (Rep. Meyer). Even then, Democratic campaigns "almost always use [support scores] in conjunction with other measures, such as a turnout score, which tells you how likely someone is to actually vote." Tr. 165:13-15.

515. Several of Legislative Defendants' Exhibits purportedly show—based on support scores that are aggregated on a district-by-district basis—that Democratic candidates should be competitive, and in fact could win, in a comfortable majority of House and Senate districts under the 2017 Plans. *See* LDTX 145-147, 278; *see* Tr. 2072:21-2074:22 (Dr. Hood).

516. The Court gives little weight to Defendants' arguments related to aggregated district-level support scores. Neither the NCDP nor any Democratic campaign or candidate

"ever use[s] . . . aggregated support scores for any purpose," Tr. 1271:20-24 (Goodwin), and they do not use them "to determine the electability of a district," Tr. 194:1-2 (Rep. Meyer). Support scores are "not reliable in the aggregate," Tr. 167:5-6 (Rep. Meyer), and "[a]ggregated support scores wouldn't be all that helpful because individual support scores can be misleading," Tr. 165:24-166:1 (Rep. Meyer). "They're imprecise measures, and then if you aggregate imprecise measures like that they tend to get less and less precise in the aggregate." Tr. 166:7-9 (Rep. Meyer). Moreover, the aggregated support scores include all *registered* voters in a district, not likely or actual voters, which tends to overstate Democratic support. Tr. 2091:6-2092:14 (Dr. Hood). Rather than use aggregated support scores, the NCDP uses other metrics to assess a district's competitiveness, such as the "Democratic Performance Index" (DPI) or the results of specific recent statewide elections. Tr. 1272:3-11 (Goodwin); Tr. 177:3-11 (Rep. Meyer).

517. Additionally, Legislative Defendants' expert Dr. Hood, who presented an analysis based on the aggregated support scores, conceded that he is not aware of anyone who has ever "used those scores to make predictions" of how a district will perform in an election. Tr. 2092:3-24. Nor did Dr. Hood present any analysis to substantiate any claim that aggregated support scores are accurate predictors of a district's competitiveness, and Representative Meyer credibly explained that they are not. Representative Meyer gave several examples where the district-level aggregated support scores differ considerably from actual election results, demonstrating why the NCDP and Democratic campaigns "don't use support scores to determine electability of a district." Tr. 194:1-2; *see* Tr. 193:17-196:12.

518. Defendants presented no persuasive evidence that Democrats have a realistic possibility of winning majorities in the General Assembly under the metrics that are used

to assess a district's likely performance, such as the DPI and prior statewide elections results.

519. The total number of registered Democrats in particular districts likewise does not undermine the harm the enacted plans cause the NCDP and its members. Legislative Defendants' Exhibit 280 purportedly indicates that Democrats and unaffiliated voters, when combined together, hold a registration advantage over Republicans in all Senate districts and all House districts but one. *See* Tr. 1279:25-1281:15 (Goodwin). The Court gives little weight to Legislative Defendants' arguments based on statewide party registration numbers.

520. As Mr. Goodwin explained, Legislative Defendants' Exhibit 280 presents "an extreme hypothetical assuming that everyone who's registered for his or her respective party actually vote and vote only based on their party registration, and assuming that unaffiliateds all vote for the Democratic candidate. That is not going to happen." Tr. 1281:21:25. The notion that Democrats could win 169 of 170 total seats in the General Assembly is not credible.

521. As Dr. Chen further explained, party registration has been "studied in the academic literature[,] and it's well known that in a lot of different Southern states, including in some parts of North Carolina, party registration is not necessarily a reliable indicator of one's actual partisan voting habits." Tr. 277:22-278:1. For example, "there are conservative Democrats, or what we call blue dog democrats sometimes, who in the past used to vote Democratic and have, for the last couple of decades, switched over to voting Republican, but their party registration may still remain as Democrats." Tr. 278:3-10.

522. The Court finds that party registration is not a reliable indicator of the competitiveness of any individual district or of the enacted plans as a whole.

2. The 2017 Plans Harm Common Cause

523. Redistricting is central to the mission and purposes of Plaintiff Common Cause. Bob Phillips—Executive Director of Common Cause's local chapter, Common Cause North Carolina—testified that Common Cause advocates for "[s]trengthening democracy" and "for more open, honest and accountable government." Tr. 40:23-41:1, 41:10-16, 42:13-17. And "there is nothing . . . that's really more significant, consequential in a legislative session than redistricting." Tr. 42:23-25. Redistricting "really locks in . . . everything" "for the next decade," including "who gets elected and what the power share will be" and "[u]ltimately what kind of laws and policies are going to be emphasized and then [] will not be, what will be ignored." Tr. 42:25-43:4. The Court gives weight to Mr. Phillips's testimony.

524. Common Cause has long advocated to end partisan gerrymandering in North Carolina. Tr. 43:10-52:20. The 2017 Plans harm Common Cause as an organization by substantially impeding this longtime goal because, as Mr. Phillips testified, majorities in the General Assembly, as the beneficiaries of gerrymandered plans, are unlikely to adopt meaningful redistricting reform. Tr. 52:1-20.

525. The enacted plans also harm Common Cause by impeding its mission and objectives in other ways. As Mr. Phillips explained, "[o]ne of the central missions to Common Cause is to help citizens understand that they do have an obligation and that they can hold their elects accountable. How do you do that when so many—90 percent of our legislative seats are preordained . . . ?" Tr. 48:8-12. When "we already know [on] the filing date, basically, who is going to win," it is "hard to get citizens, voters[,] to participate, to think that their vote really matters." Tr. 48:25-49:3.

526. In addition to Common Cause itself, the enacted plans also harm Common Cause's members. Common Cause has 25,000 members across North Carolina, including in the districts at issue here. *See* Tr. 41:17-42:12; PX644 (listing Common Cause members by

district). The enacted plans harm Common Cause's members in the same ways they harm the NCDP's members and the individual voter-plaintiffs in this case.

3. The 2017 Plans Harm the Individual Plaintiffs

527. The Individual Plaintiffs are thirty-seven individual North Carolina voters who prefer Democratic candidates and have consistently voted for Democratic candidates running for the North Carolina General Assembly. *See* PX678-714.

528. The evidence demonstrates that the 2017 Plans disadvantage the Individual Plaintiffs and other Democratic voters across North Carolina. Two of the Individual Plaintiffs testified live at trial, and the remaining 35 testified through affidavits. PX678-714.[12]

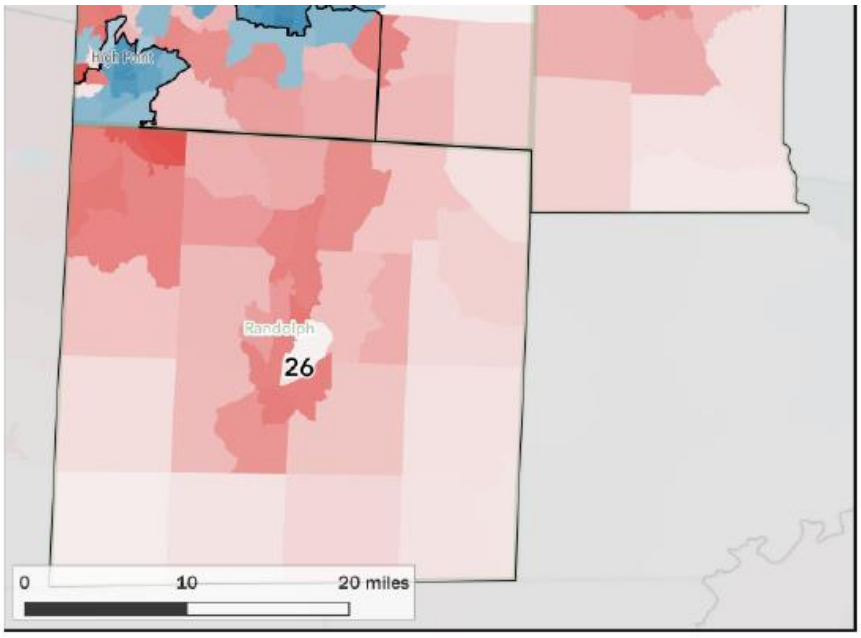
529. Plaintiff Derrick Miller testified live at trial. Dr. Miller, a professor of German at the University of North Carolina Wilmington, resides in Senate District 8 in the "Wilmington Notch." Tr. 202:11-14. Dr. Miller testified that by splitting off this small portion of Wilmington where he lives, the General Assembly has "made it impossible for [him] and [his] Democratic neighbors to elect a Democrat, a candidate of our choice, in Senate District 8." Tr. 205:9-19. In 2018, the Republican candidate won Senate District 8 with around 60% of the vote. Tr. 204:3-4. As a fifth-generation North Carolinian, Dr. Miller cares deeply about issues such as public education and preserving North Carolina's natural resources, and he believes that "Democrats much more reliably and [a] Democratic majority much more reliably would protect those resources, the educational resources and the natural resources of our state." Tr. 206:8-12.

530. Dr. Miller also lives in House District 18, Tr. 204:5-7, where the General Assembly packed Democrats in Wilmington and Leland into a single, reliably Democratic

[12] *See, however,* COL § I.C., wherein the Court concludes that nine Individual Plaintiffs lack sufficient standing.

district, PX302. Dr. Miller testified that while such packing does assure him a Democratic representative in House District 18, "it does so at the expense of multiple safe districts for Republicans along the . . . neighboring districts," Tr. 205:9-19, making it more likely that the Republicans would gain control of the General Assembly.

531. The other Individual Plaintiff who testified at trial, Joshua Brown, is a locksmith apprentice from High Point who resides in Senate District 26. Tr. 830:7-12. As shown in Plaintiffs' Exhibit 281, the General Assembly split off the most heavily Democratic area of Guilford County where Mr. Brown lives and appended it to conservative Randolph County:



532. Mr. Brown testified that by drawing his Senate District in this manner, the General Assembly "clearly dilute[d] the ability of Democrats to even attempt to run a fair race." Tr. 833:19-21. Like Dr. Miller, Mr. Brown cares about a number of issues before the General Assembly, including a living wage, the environment, and Medicaid expansion. Tr. 834:5-6. Mr. Brown's mother was recently hospitalized, and he believes that she would not be facing certain health issues if North Carolina had approved the Medicaid expansion. Tr.

834:15-835:3. He believes that the Republican Party in the General Assembly today has "opposing" stances on these issues that he cares about. Tr. 835:4-7.

533. Mr. Brown also lives in House District 60, where Democrats such as Mr. Brown are packed to create an overwhelmingly Democratic district. *See* Tr. 833:25-834:2; PX310. Mr. Brown testified that by packing Democrats in this manner, the General Assembly "reduced the odds of surrounding districts electing a Democrat," Tr. 833:25-834:2, making it more difficult for Democrats to gain control of the General Assembly.

534. The affidavits submitted by the remaining thirty-five Individual Plaintiffs establish that each of these Individual Plaintiffs (i) has voted for the Democratic candidate running for the North Carolina General Assembly in each year that such an election was held since at least 2011, (ii) has a preference for electing Democratic legislators and a majority-Democratic General Assembly, and (iii) believes that if the Democratic Party made up a majority of the members in the General Assembly, the policies proposed and enacted would more closely represent the Plaintiff's personal and political views. PX678-713.

535. Plaintiffs' expert Dr. Chen quantified the effects of the gerrymander on the partisan composition of the districts in which each Individual Plaintiffs resides. For each of his 4,000 simulations (2,000 in the House and 2,000 in the Senate), Dr. Chen determined the House or Senate district in which each Individual Plaintiff would live based on that Plaintiff's residential address. Tr. 387:14-388:6; PX1 at 167-68 (Chen Report). Dr. Chen then compared the Democratic vote share of the districts in which a particular Plaintiff would live under his simulations to the Democratic vote share of the Plaintiff's districts under the enacted plans. *Id.*

536. Plaintiffs' Exhibit 238 (reproduced below) shows Dr. Chen's results for his House Simulation Set 1. In each row, the red star represents the Democratic vote share in the Individual Plaintiff's House district under the enacted plan using the ten 2010-2016

statewide elections, while the gray circles represent the Democratic vote share of that Plaintiff's district under each of the 1,000 simulated plans in House Simulation Set 1. Tr. 388:14-389:12. For instance, the figure shows that Rebecca Johnson's House district in the enacted plan has a roughly 40% Democratic vote share using the 2010-2016 statewide elections, but Ms. Johnson would live in a House district with a higher Democratic vote share in 99% of the simulations, with most of the simulations putting her in a district with an over 50% Democratic vote share. Tr. 390:6-391:20.

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537. Dr. Chen found that the following Plaintiffs live in House districts that are extreme partisan outliers compared to their districts in House Simulation Set 1: Vinod

Thomas, Paula Ann Chapman, Kristin Parker, Julie Ann Frey, Jackson Thomas Dunn Jr., Rebecca Johnson, Lily Nicole Quick, Joshua Perry Brown, Dwight Jordan, David Dwight Brown, Electa E. Person, Donald Allan Rumph, Amy Claire Oseroff, Lesley Brook Wischmann, Derrick Miller, Carlton E. Campbell Sr., Rosalyn Sloan, Mark S. Peters, Joseph Thomas Gates, Stephen Douglas McGrigor, and Rebecca Harper. Tr. 393:9-17. Dr. Chen further found that Plaintiff Leon Schaller lives in a district that is a 68.1% outlier in House Simulation Set 1, but a 100% outlier in House Simulation Set 2. Tr. 394:2-10; *see* PX239.

538. Plaintiffs' Exhibit 117 shows the same analysis for the Senate, comparing the Democratic vote share in certain Individual Plaintiffs' districts under the enacted Senate plan to their districts under Dr. Chen's Senate Simulation Set 1.

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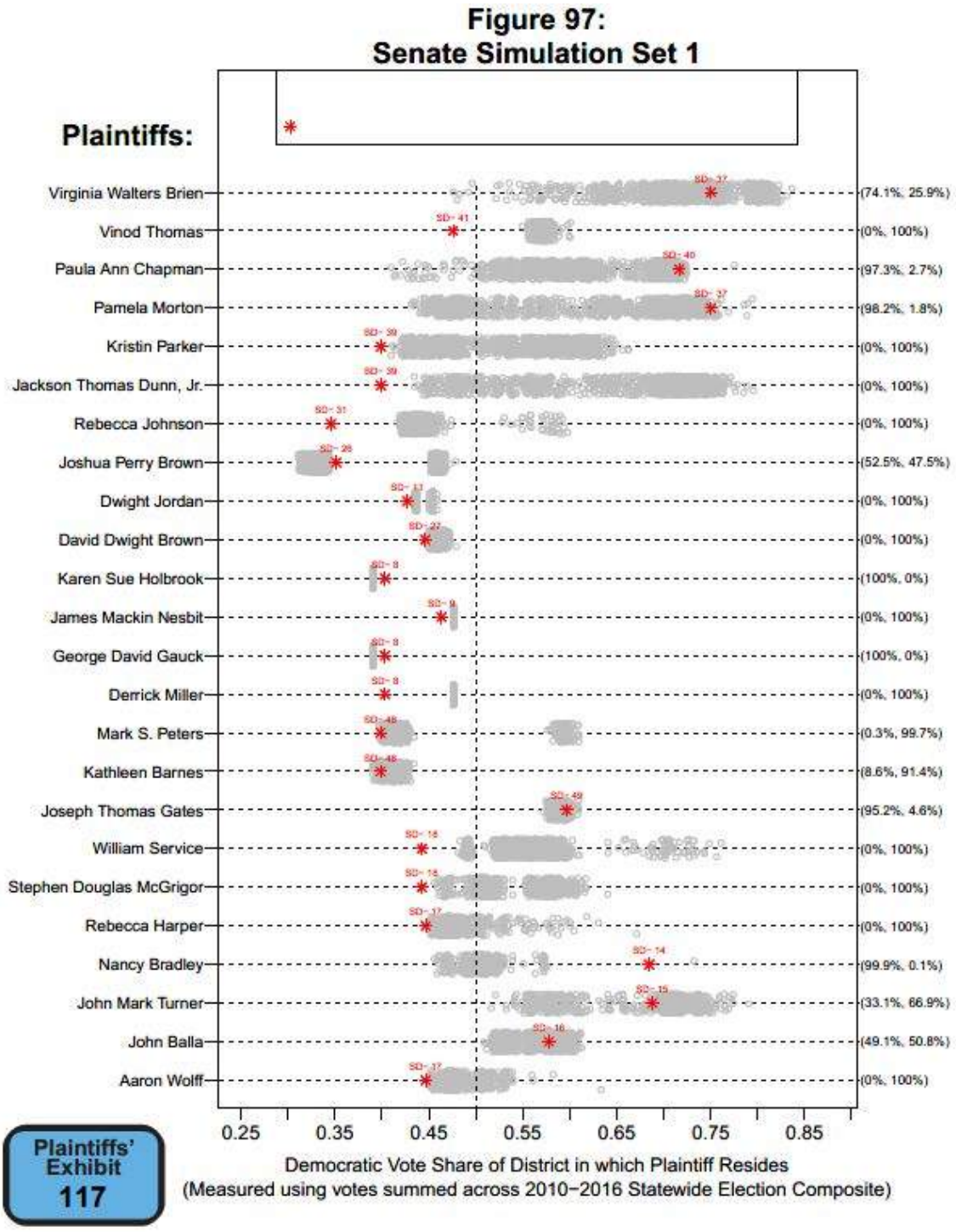


539. Dr. Chen found that the following Plaintiffs live in Senate districts that are outliers or extreme partisan outliers compared to their districts in his Senate simulations: Vinod Thomas, Paula Anna Chapman, Pamela Morton, Kristin Parker, Jackson Tomas

Dunn, Jr., Rebecca Johnson, Dwight Jordan, David Dwight Brown, Karen Sue Holbrook, James Mackin Nesbit, George David Gauck, Derrick Miller, Mark S. Peters, Joseph Thomas Gates, William Service, Stephen Douglas McGrigor, Rebecca Harper, Nancy Bradley, Aaron Wolff, and Kathleen Barnes. Tr. 395:7-22. Dr. Chen found that the same Plaintiffs lived in districts that are outliers under his Senate Simulation Set 2. Tr. 396:1-7; PX118.

540. Plaintiffs' expert Dr. Cooper further demonstrated how the 2017 Plans, as a whole, disadvantage the Individual Plaintiffs. As Dr. Cooper explained, under the 2017 Plans, Democrats cannot translate their votes into seats as efficiently as Republicans. Tr. 870:11-14.

541. One of Legislative Defendants' experts, Dr. Brunell, also testified about the ways in which partisan gerrymandering harms individual voters. Dr. Brunell testified that "the responsiveness of a legislator to the voters in the voter's district is critical to democratic representation." Tr. 23531:3-6. He testified that a change in the party representing a given district generates "a huge difference" in the policies for which the representative will vote. Tr. 2354:20-23. He also testified that partisan gerrymandering is a problem in modern redistricting because it "can distort how voter preferences get translated into public policy." Tr. 2355:7-9.

F. Defendants Offered No Meaningful Defense of the 2017 Plans

1. No Witness Denied That the Plans Are Intentional and Effective Partisan Gerrymanders

542. Defendants did not persuasively rebut Plaintiffs' extensive direct evidence that the 2017 Plans were drawn with the predominant purpose of maximizing Republican advantage.

543. Defendants presented unpersuasive evidence to rebut evidence that the Hofeller files show that Dr. Hofeller primarily focused on maximizing partisan advantage. Defendants did not identify any file showing that Dr. Hofeller was motivated by anything other than partisanship in drawing the enacted House and Senate plans. Defendants identified no file, for example, showing that Dr. Hofeller at any point during the 2011 and 2017 redistricting processes considered "communities of interest," *cf.* Tr. 1059:3-1060:5, or sought to preserve the "cores" of existing districts, *cf.* Tr. 1212:20-24, or drew or altered any district to avoid splitting a municipality or VTD or to make the district more compact, or constructed any district as a "product of the nuance of legislative negotiation," *cf.* Tr. 1204:2-1206:4.

544. Defendants' experts did not persuasively contest that the plans sought to ensure Republican control of the legislature. Defendants' experts offered no methodology to attempt to evaluate whether the enacted plans were (or were not) extreme partisan gerrymanders. None offered an opinion on that question. Rather, as explained below, Defendants' experts offered theories of why the analyses by Plaintiffs' experts was somehow incomplete or unreliable. The Court gives little weight to these criticisms.

2. Defendants' Criticisms of Plaintiffs' Experts Were Not Persuasive

a. Dr. Thornton

545. Legislative Defendants offered expert testimony from Dr. Janet Thornton to criticize the analyses and conclusions of Plaintiffs' simulation experts, Drs. Chen, Mattingly, and Pegden. Tr. 1618:10-13; LDTX 286 at 4 (Thornton report). Dr. Thornton offered three main critiques of Plaintiffs' experts: (a) Dr. Pegden's and Dr. Mattingly's conclusions supposedly were skewed by the particular statewide elections they used to measure the partisan lean of their simulated plans versus the enacted plans, LDTX 286 at

6-10; (b) their simulations purportedly deviated in various ways from the 2017 Adopted Criteria, *id.* at 10-19; and (c) their simulations supposedly are not statistically significantly different from the enacted plans in terms of the number of Democratic-leaning districts, *id.* at 20-29. *See* Tr. 1622:5-1623:11. But Dr. Thornton's testimony was not persuasive, her analysis is unreliable, and her opinions are given little weight.

546. Dr. Thornton has a masters and a doctorate in economics from Florida State University. Tr. 1571:6-11. She has a bachelor's degree in economic and political science from the University of Central Florida. *Id.*

547. Dr. Thornton is currently a managing director at Berkeley Research Group and has worked as an economist and applied statistician for 35 years. Tr. 1571:15-1572:3. Dr. Thornton has prepared statistical analysis in voting cases, limited, however, to analysis of statistical differences in voter participation rates by race and minority status. Tr. 1574:3-21.

548. Dr. Thornton has taught statistics and quantitative methods for the business school at Florida State University. Tr. 1573:12-15; LDTX 286 at 39.

549. Dr. Thornton is a member of the American Economic Association and the National Association of Forensic Economists. She has published in peer-reviewed publications including the Journal of Forensic Economics and the Journal of Legal Economics. Tr. 1573:16-1574:2.

550. Dr. Thornton was accepted by the Court as an expert in the fields of economic and applied statistical analysis. Tr. 1578:7-17. She has been qualified as an expert in other cases regarding these subjects. Tr. 1576:12-1577:13. Dr. Thornton has never been excluded from testifying. *Id.*

551. Dr. Thornton has no academic experience involving gerrymandering and instead specializes in expert witness testimony and other consulting-type work in various

areas, including employment, insurance, and credit decisions. Tr. 1619:19-1620:20, 1621:2-17; LDTX 286 at App'x A (Thornton CV). Dr. Thornton has no degree in mathematics, no degree in statistics, and only an undergraduate degree in political science. Tr. 1620:21-1621:1. She purported to critique the work of Plaintiffs' simulations experts, each of whom is a full-time academic with years of academic experience in using computer simulations to evaluate partisan gerrymandering. Tr. 1618:14-1619:18.

552. In her report and testimony in this case, Dr. Thornton offered no methodology for determining whether a particular redistricting plan is or is not a partisan gerrymander, or whether a particular plan is or is not the product of extreme partisan considerations. Tr. 1621:18-25. Nor did Dr. Thornton offer any opinion as to whether the enacted plans were drawn as partisan gerrymanders to benefit Republicans. When asked whether she was offering such an opinion, Dr. Thornton responded, "I have no way of knowing." Tr. 1622:1-4.

(i) Criticisms Concerning Choice of Statewide Elections

553. Dr. Thornton's criticisms of the specific statewide elections used by Drs. Pegden and Mattingly suffered from critical flaws.

554. Dr. Thornton stated in her report that Dr. Pegden "considered" only "two elections" in his analysis. LDTX 286 at 10; *see id.* 8-11; Tr. 1626:9-16. However, Dr. Pegden used six prior election results—two discussed in the body of his report, and four more summarized in an appendix. PX508 at 11, 34-37 (Pegden Report). Dr. Thornton corrected this mistake only after Dr. Pegden's rebuttal report pointed it out and she was confronted with it at deposition. Tr. 1627:22-1628:4. At trial, Dr. Thornton presented a revised version of a table from her report, in which she (without acknowledging the change during her direct testimony) had added asterisks showing that Dr. Pegden in fact used six prior elections. Tr. 1626:17-1627:3; *compare* LDTX 286 at 7 (tbl. 1) *with* LDTX 302 (Thornton

Demonstrative 1). Dr. Thornton's apparent oversight of the number of elections used in Dr. Pegden's analysis led to her to conclude that "Dr. Pegden's choice of elections influence[d] his conclusions." Tr. 1604:21-1605:7; *see* Tr. 1591:20-1592:10 (presenting LDTX 91, a chart purported to show the average Democratic vote share of the elections "included by each expert," but using just the 2016 Attorney General and 2008 Commissioner of Insurance for Dr. Pegden).

555. On cross examination, Dr. Thornton did not dispute that, when Dr. Pegden tested his results using the four additional elections summarized in his appendix, he found that it did not change his results. Tr. 1628:17-1629:4. Dr. Thornton did not test Dr. Pegden's results using other prior elections. Tr. 1629:7-25.

556. Dr. Thornton criticized Dr. Mattingly for using a different and broader set of statewide elections than the 10 elections identified by Representative Lewis, and she specifically criticized Dr. Mattingly's use of several 2008 elections. Tr. 1686:10-22; LDTX 286 at 8. However, Dr. Hofeller likewise used 2008 elections—including many of the same ones as Dr. Mattingly—in the partisanship formula Dr. Hofeller used to draw the 2017 Plans. *Compare* PX153 (Hofeller partisanship formula) *with* PX359 at 4 (Mattingly Report). When asked whether she knew this fact, Dr. Thornton responded that she "do[es]n't know one way or the other," is "not aware of anything regarding Dr. Hofeller," and did not investigate what elections the mapmaker himself used in drawing the 2017 Plans. Tr. 1686:23-1689:5.

557. In any event, Dr. Thornton's critique of Dr. Mattingly's use of election results, and her analysis of various "averages" across the different elections he used, misses the point of his analysis. Dr. Mattingly analyzed, on an election-by-election basis, how the partisan bias of the enacted plan relative to the ensemble varies in different electoral environments.

(ii) Criticisms Concerning Use of the Adopted Criteria

558. Dr. Thornton's assertion that Plaintiffs' simulation experts deviated from the Adopted Criteria also suffers from critical flaws. Additionally, Dr. Thornton failed to show that any of her criticisms would have made any difference to Plaintiffs' experts' conclusions.

559. Dr. Thornton stated in her report that "[a] review of Dr. Pegden's simulation code suggests that in reality, he did not actually apply a compactness criterion." LDTX 286 at 33. However, Dr. Pegden did apply a compactness criterion. PX508 at 8, 34 (Pegden Report); Tr. 1358:11-24 (Dr. Pegden). As Dr. Pegden explained in his rebuttal report, if he had not applied a compactness criterion, his simulated plans would have looked completely different—dramatically less compact. PX551 at 17-19 (Pegden Rebuttal Report); Tr. 1358:25-1360:1 (Dr. Pegden). When asked about this mistake on cross examination, Dr. Thornton testified that "in retrospect" she "should have written it in a different way." Tr. 1623:12-25.

560. While Dr. Thornton criticized Dr. Pegden for not specifically applying a Reock compactness threshold, she did no work to assess whether adding such a threshold would change Dr. Pegden's simulations or results. Tr. 1624:23-1626:3. Nor did she do any work to test whether adding a Reock threshold would change Dr. Pegden's conclusion that the enacted plans are extreme outliers carefully crafted to favor Republicans. Tr. 1626:4-8. The Adopted Criteria state that the 2017 Plans should "improve the compactness" over the 2011 Plans, and when asked whether Dr. Pegden's simulated plans "are, in fact, an improvement in terms of compactness over the districting in the 2011 map," Dr. Thornton responded, "I don't know." Tr. 1625:13-18. Dr. Thornton did no work to figure it out. Tr. 1625:19-1626:3.

561. Dr. Thornton testified that Dr. Pegden did not "make any adjustment for incumbency." Tr. 1604:8-9. This is incorrect. Dr. Pegden included as a criterion in all of his

simulations avoiding pairing the incumbents who were in office at the time the districts were drawn. PX508 at 8 (listing "Incumbency protection" as criterion).

562. Dr. Thornton also suggested that Dr. Pegden could not draw valid conclusions about the 2017 Plans without reaching "equilibrium" in his Markov Chain—without comparing the 2017 Plans to the entire universe of potential House and Senate districtings. Tr. 1631:2-11. In this regard, Dr. Thornton analogized Dr. Pegden's analysis to looking for a lost key in a bedroom without considering that the key might be somewhere else in the house. But as Dr. Pegden explained, the purpose of his approach and the accompanying mathematical theorems he has proved is that they allow for drawing statistically significant conclusions about how the enacted plans compare to the universe of all possible plans meeting the relevant criteria without achieving "equilibrium," *i.e.*, without needing to generate a representative sample of the universe of possible maps. PX551 at 2 (Pegden Rebuttal Report); Tr. 1360:2-1361:21. Dr. Thornton acknowledged that she has no expertise in proving mathematical theorems, nor did she offer any opinion that Dr. Pegden's theorems are wrong. Tr. 1631:12-1632:9.

563. Dr. Thornton stated in her report that Dr. Mattingly "did not consider incumbency protection as defined in the 2017 enacted map criteria." LDTX 286 at 19. Dr. Thornton repeated this assertion in her direct testimony, stating that Dr. Mattingly did not "control, in any respect, for incumbency protection." Tr. 1610:20-22. This is false. Dr. Mattingly added incumbency protection as a criterion in checking the robustness of his results, and he concluded that it did not change his results. PX359 at 81-85; Tr. 1093:15-1094:4.

564. On cross examination, Dr. Thornton said that Dr. Mattingly may not have considered incumbency protection "simultaneously" "[w]ith respect to all the other factors, as I recall." Tr. 1633:14-24. This too is incorrect. Dr. Mattingly added incumbency

protection as a criterion in conjunction with the criteria used to generate his primary ensemble, and he ran a separate analysis that "consider[ed] the joint effect of both ensuring incumbents are preserved and requiring more stringent redistricting criteria" with respect to the traditional districting criteria. PX359 at 81-82.

565. Dr. Thornton criticized Dr. Mattingly for using only Polsby-Popper compactness scores, and not Reock scores. Tr. 1633:25-1634:3. But she did no work to determine whether the Reock scores for his simulated plans were too low, or whether applying a Reock threshold would change his results. Tr. 1634:4-21. In his rebuttal report, Dr. Mattingly calculated Reock scores for all of his simulated districts, and he reported that there was not a single district in any of his simulated Senate plans with a Reock score less than or equal to 0.15—the threshold referenced in the Adopted Criteria. PX487 at 8-9. There were very few such districts in his simulated House plans—only 1 out of 550,000 simulated Wake districts, and 7 out of 486,588 Mecklenburg districts. PX487 at 8; Tr. 1634:22-161635:14. Dr. Mattingly concluded that removing those districts would not change his results, *id.*, and Dr. Thornton did no work of her own to determine whether he was wrong, Tr. 1635:15-25.

566. Dr. Thornton criticized Dr. Pegden's and Dr. Mattingly's weighting of the various criteria they applied to create their simulated plans. LDTX 286 at 17-18; Tr. 1636:13-24. But Dr. Thornton acknowledged that she did not know whether the legislature "did weighting" at all, or how it may have done so. Tr. 1636:25-1637:13. She did not suggest any better way than Dr. Mattingly's approach to weighting the various criteria. Tr. 1637:14-25. She did not rerun Dr. Mattingly's computer code using any different weighting system to determine if using a different weighting system could have affected Dr. Mattingly's conclusions. Tr. 1638:1-6. In his rebuttal report, Dr. Mattingly tried six different ways of weighting the various criteria, and he concluded that none changed his

results. PX487 at 10-11. When asked about this analysis on cross examination, Dr. Thornton merely said, "I don't recall." Tr. 1638:7-14.

567. Dr. Thornton testified that Dr. Chen's use of a "T score" meant that his simulations did not follow the Adopted Criteria regarding compactness, avoiding splitting municipalities, and avoiding splitting VTDs. Tr. 1599:18-1600:3. Dr. Thornton suggested that Dr. Chen restricted his algorithm to only accept plans below a particular T Score, Tr. 1597:25-1598:19, and she asserted in her report that "[a] t-score evaluation was not among the actual criteria" in the Adopted Criteria, LDTX286 at 15. Dr. Thornton testified that, if Dr. Chen "changed the value of the T scores," used a "value other than 1.75" in the T score, or "added a random element," his results would have been entirely different. Tr. 1597:25-1598:19.

568. Dr. Thornton's testimony misapprehends Dr. Chen's algorithm. Dr. Chen's "T score" does not impose a numerical threshold that restricts the maps the algorithm generates. Rather, the T score is just a way of equally weighting and jointly tracking the three traditional districting criteria of compactness, avoiding municipal splits, and avoiding VTD splits. For any given county grouping, the algorithm randomly draws an initial set of districts, and then proposes a random change to the border between a random pair of adjoining districts. Tr. 261:23-262:16. If the border change would, on net, improve the districting of the grouping across the three criteria of compactness, avoiding municipal splits, and avoiding VTD splits, the algorithm accepts the change. *Id.* But if the change would make the districting worse off, on net, with respect to these criteria, the algorithm rejects the change. *Id.* The T score is merely a way of giving the three criteria equal weight and then tracking whether a proposed random change improves the districting across these criteria. Tr. 263:4-8 The algorithm considers thousands of these random changes, one at a time in an iterative fashion, in drawing districts within a given grouping. Tr. 261:18-262:23.

569. Dr. Thornton is thus incorrect that Dr. Chen's algorithm lacks a "random element." Tr. 1598:7-8. She misapprehends the T score's function in suggesting that raising or lowering the "T score value" would be less "restrictive." Tr. 1598:5-10. The T score's sole purpose is to equally weight the three criteria of compactness, avoiding split municipalities, and avoiding split VTDs. Dr. Thornton does not dispute that Dr. Chen's T score accurately gives equal weight to these three criteria.

570. Moreover, while Dr. Thornton asserted that Dr. Chen may not have found the enacted plans to be statistical outliers if he had used "different T scores," Tr. 1598:20-1599:13, Dr. Thornton offered no proof or analysis to substantiate this claim, Tr. 1645:14-1647:15.

571. Dr. Thornton also criticized Dr. Chen's approach to incumbency protection in his Simulation Set 2. Tr. 1638:15-1639:8. She acknowledged that Dr. Chen's Simulation Set 2 successfully avoided pairing incumbents, but she asserted that Dr. Chen failed to comply with the second sentence of the Adopted Criteria's incumbency protection criterion, which provided that "the committees may make reasonable efforts to ensure voters have a reasonable opportunity to elect non-paired incumbents." Tr. 1610:23-1611:3. Dr. Thornton claimed that this sentence meant the Committees should make efforts "to allow for incumbents to win" by placing them in politically favorable districts, LDTX286 at 16, and that "it would have been interesting" if Dr. Chen had applied "some sort of weighting" to carry this out, Tr. 1639:12-1640:3. Dr. Thornton's interpretation is contrary to the contemporaneous explanation of this sentence by Representative Lewis, who stated at an August 10, 2017 hearing that the sentence "is simply saying that mapmakers may take reasonable efforts to not pair incumbents unduly." PX603 at 122:4-18; Tr. 1640:16-1641:12. That direction matches Dr. Chen's approach to incumbency protection.

572. Dr. Thornton did not analyze whether any of the supposed deviations made any difference to the experts' conclusions. On cross examination, Dr. Thornton was asked whether, "for every single criticism you've leveled, there's no instance in which you took any of plaintiffs' experts' code, substituted whatever you thought was an improved criteria, ran the code with the improved criteria and showed us that it made a difference to their work; isn't it true in your report there's no place that you did that?" Tr. 1647:3-13. Dr. Thornton responded that, "given the time, [she] did not have sufficient time to do so." Tr. 1647:14-15.

(iii) Criticisms Concerning Statistical Significance

573. Dr. Thornton opined that the enacted plans are "not statistically significantly different from the simulated maps with respect to the number of Democratic districts." LDTX286 at 21 (capitalization omitted). Dr. Thornton wrote in her report that she compared "the enacted plan's number of Democratic districts and the number predicted by the simulated maps," and "determined the number of standard deviations associated with the difference between the enacted plan and simulated number of Democratic districts." LDTX286 at 24. However, Dr. Thornton did not use the actual results of Plaintiffs' experts' "simulated plans," or the actual "standard deviation" of the simulated plans.

574. Instead, Dr. Thornton created her own distribution of the predicted number of Democratic seats won under a nonpartisan plan, using a "binomial distribution." She then calculated the "standard deviation" of her own distribution, and used that standard deviation to assess statistical significance. *See* PX551 at 10 (Pegden Rebuttal Report). Dr. Thornton used this binomial distribution methodology as the foundation for her criticisms of all three of Plaintiffs' simulation experts. LDTX286 at 22; Tr. 1685:9-22.

575. Contrary to Dr. Thornton's approach, the distribution of districting maps is not a binomial distribution, and thus it is inappropriate to use a binomial distribution in the redistricting context. When confronted with the flaws in using a binomial distribution

in the redistricting context, Dr. Thornton's responses were not persuasive. The Court gives her testimony concerning statistical significance little weight.

576. It is undisputed that a binomial distribution applies only when two conditions are met: (1) each trial (in this case, each House or Senate district) is independent of one another; (2) each trial has the exact same percentage chance of producing a particular outcome (in this case, that a Democrat wins the district). Tr. 1669:4-8, 1676:1-5 (Dr. Thornton); Tr. 1378:24-1382:2 (Dr. Pegden); PX551 at 10 (Pegden Rebuttal Report); PX487 at 11-12 (Mattingly Rebuttal Report); PX123 at 171-72 (Chen Rebuttal Report). Thus, the classic example of the binomial distribution is a coin flip, because the likelihood of landing on heads on any flip of a coin is independent of the result of every other flip, and the percent chance of landing on heads is the same in each flip (50%). Tr. 1669:11-1670:5.

577. By applying a binomial-distribution methodology, Dr. Thornton assumed that district elections, like coin flips, are independent of each other, and also that Democrats have the same chance—specifically, a roughly 40% chance—of winning each and every district House or Senate district, no matter where in North Carolina the district is located. Tr. 1670:6-1671:2 (Dr. Thornton); *see* Tr. 1381:15-1382:2 (Dr. Pegden); PX551 at 10 (Pegden Rebuttal Report); PX487 at 11-12 (Mattingly Rebuttal Report); PX123 at 171-72 (Chen Rebuttal Report).

578. Both assumptions are incorrect in the redistricting context. First, unlike a coin flip, each House (or Senate) district is not independent of one another. Tr. 1379:22-1381:10 (Dr. Pegden); PX551 at 10 (Pegden Rebuttal Report). In a given county grouping, if a particular set of Democratic voters is placed in one district, then those voters cannot be put in any other district in the grouping. *Id.* The partisan makeup of the districts are thus intertwined and not independent of one another; increasing the number of Democratic

voters in a particular district necessarily decreases the number of Democratic voters in neighboring districts. *Id.*

579. The second assumption underlying Dr. Thornton's binomial distribution—that Democrats have the exact same percentage chance of winning each House (or Senate) seat—is contrary to reality. Dr. Thornton assumes, for example, that Democrats have the same percentage chance of winning a House district in Wake County as in Caldwell County. Tr. 1381:15-1382:2 (Dr. Pegden); *see* PX487 at 11-12 (Mattingly Rebuttal Report); *see* PX123 at 171-72 (Chen Rebuttal Report). This is not the case.

580. The following example illustrates these flaws in Dr. Thornton's analysis. In the Alamance County House grouping, there are two districts of roughly equal population. Assuming, as a hypothetical, that Republicans will win 60% of the total vote across the County in a particular election, it is mathematically impossible for Democrats to win *both* districts in the election. Tr. 1673:14-19. But under Dr. Thornton's binomial-distribution methodology, Democrats will win both districts 16% of the time—because she assumes that Democrats have an equal and independent 40% of winning each of the two districts. Tr. 1671:10-17; *see also* Tr. 1379:1-1381:10 (Dr. Pegden). When asked about this on cross examination, Dr. Thornton repeatedly asserted that she did not "understand" the illustration. Tr. 1671:3-1673:13.

581. Dr. Thornton's binomial-distribution methodology was recently rejected by a federal court in a partisan gerrymandering case in Ohio. There, as here, Dr. Thornton used a binomial distribution in her expert analysis on behalf of the Republican legislative defendants, and the three-judge federal district court rejected her analysis. The court stated: "Dr. Thornton also performed her own analysis using a binomial distribution, but we do not give any weight to that analysis." *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 1056 (S.D. Ohio 2019); *see* Tr. 1673:20-1674:20. The court explained

that Dr. Thornton's binomial-distribution analysis "incorporates yet another faulty assumption that each district has a 51% chance of being won by a Republican because Republicans won 51% of the congressional vote across the State; this assumption does not comport with basic understandings of congressional elections, i.e., that although some districts may be competitive (a 51% Republican to 49% Democrat district), other districts lean heavily in favor of one party or the other." *Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d at 1056; *see* Tr. 1677:23-1678:15.

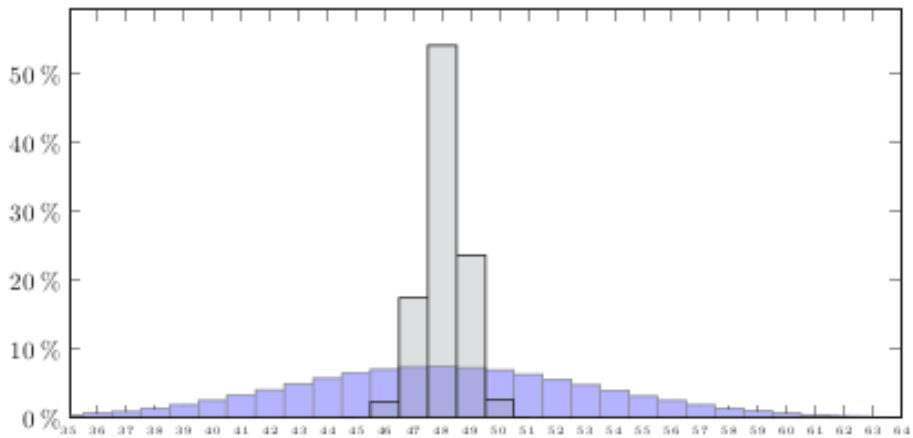
582. While Dr. Thornton claimed that her use of a binomial distribution here is different from the Ohio case, Tr. 1677:19-22, the Court disagrees and finds that Dr. Thornton's methodology here suffers from the same flaws identified by the federal court in the Ohio case. Assuming that districts are independent, and that Democrats have a roughly 40% chance of winning every House and Senate district, does not comport with basic understandings and reality of North Carolina House and Senate elections. Dr. Thornton could not identify literature or precedent supporting the use of a binomial distribution in a redistricting context. Tr. 1680:6-14.

583. Dr. Thornton's use of a binomial distribution skewed her statistical significance analysis. Due to the independence and equal probability assumptions, the binomial produces a much wider distribution of the number of possible districts Democrats could win in the House or the Senate than the actual distribution produced by each expert's simulations. That wider distribution in turn results in Dr. Thornton estimating much larger standard deviations than the actual standard deviations of each expert's simulated plans, allowing Dr. Thornton to claim that the enacted plan is less than two standard deviations from each expert's average simulation and therefore purportedly not a statistically significant outlier. LDTX286 at 9-13. For instance, in Dr. Chen's House Simulation Set 1, his simulated maps produce a range of results from 43 Democratic

districts to 51 Democratic districts, with 90 percent of those results between 45 and 48 Democratic districts, whereas the enacted 2017 House plan produces only 42 Democratic districts—an extreme outlier, completely off the distribution. PX234; Tr. 1647:16-1648:16. The actual standard deviation of Dr. Chen's House Simulation Set 1 is 1.36 seats, and the enacted plan is more than three standard deviations from the average simulated plan. *Id.* But Dr. Thornton's unsubstantiated binomial distribution suggests that Democrats could win as few as 30 districts and as many as 63, and has a standard deviation of 5.34 seats. PX123 at 170-76.

584. Similarly, Dr. Thornton's binomial distribution is completely different from the actual distribution of simulated plans she created using a modification of Dr. Pegden's computer code. For the House, while the simulations generated between 46 and 50 Democratic seats, Dr. Thornton's binomial distribution generated between 35 and 60 Democratic seats and a much larger standard deviation. Plaintiffs' Exhibit 554, a figure from Dr. Pegden's rebuttal report, depicts these dramatic differences:

Figure 1.3: The binomial distribution is not a reasonable approximation of the map distribution (House)



The gray bars again show the distribution of Dr. Thorton's simulated House plans, with respect to seat counts using the 2016 AG race. Dr. Thornton's statistical significance analysis based on the binomial test would require random House maps to be distributed instead as the blue bars, which plot the binomial distribution used by Dr. Thornton's test.

585. Dr. Thornton's binomial distribution likewise is completely different from the actual distribution of simulated plans created by Dr. Mattingly. PX495. When Dr. Mattingly used the "actual distribution" of his results to calculate statistical significance as opposed to Dr. Thornton's "grossly inaccurate seat distribution," he found that the enacted maps are "well outside two or three standard deviations" and are "extreme outliers." PX487 at 11-12.

586. Dr. Thornton made other significant methodological errors in her analysis of statistical significance. For instance, in modifying Dr. Pegden's computer code to generate simulated plans of her own, Dr. Thornton used the wrong command and froze every single district drawn in 2011 and left unchanged in 2017. Tr. 1363:7-1364:8 (Dr. Pegden); PX551 at 6 (Pegden Rebuttal Report). Dr. Thornton's suggestion that she intended to freeze the 2011 districts, Tr. 1666:16-21, is not credible, given that her report nowhere mentions this decision and in fact claims that it is analyzing the entire enacted map—all 120 House districts and all 50 Senate districts. LDTX286 at 75 (tbl. 3).

587. Dr. Thornton's freezing errors ran in both directions. In her report, Dr. Thornton presented a graph purporting to show differences in Democratic vote share between the enacted plans' districts and the districts she drew using her modified version of Dr. Pegden's code. The evident goal of these charts—titled "Comparison of the Enacted Plan and the Average Across Dr. Pegden's Simulations for Each *Non-Frozen* House [and Senate] District"—was to suggest that the vote shares in the enacted districts were not markedly different from those in the nonpartisan simulations. LDTX286 at 28-29 (emphasis added). But Dr. Thornton's charts included many districts that *were* frozen on account of the Whole County Provision, which misleadingly suggested a high degree of similarity between the enacted plan and the simulations. Tr. 1680:24-1684:9. Dr. Pegden pointed out a number of other problems with this chart—*e.g.*, using thick lines, stretching the data out

over an unnecessarily long vertical axis, and needlessly connecting the data points using lines, all which served to obscure the significant gaps in vote share between the enacted and simulated districts. Tr. 1391:6-1395:19.

588. Setting aside the flaws in her analysis, Dr. Thornton's results show a statistically significant difference between the enacted 2017 Plans and the simulated plans she created using a modification of Dr. Pegden's code. As shown in Dr. Pegden's rebuttal report, only 0.001% of Dr. Thornton's simulated plans are as Republican-favorable as the enacted House plan, and only 0.182% of Dr. Thornton's simulated plans are as Republican-favorable as the enacted Senate plan. PX551 at 8-9 (Pegden Rebuttal Report); Tr. 1369:4-1371:18.

589. Thus, even including errors, Dr. Thornton's results were still consistent with the conclusions of Plaintiffs' experts. Tr. 1400:10-21 (Dr. Pegden).

b. Dr. Brunell

590. Legislative Defendants offered expert testimony from Dr. Thomas Brunell, who was asked to read and respond to the reports of Drs. Pegden, Cooper, Mattingly and Chen. Tr. 2276:19-20. Dr. Brunell is a tenured political science professor at the University of Texas, Dallas. For over 20 years, Dr. Brunell has taught, lectured and published on representational and redistricting issues. LDTX292. Dr. Brunell was accepted by the Court as an expert on redistricting and political science. Tr. 2275:4-12. Dr. Brunell offered no opinion on whether the 2017 Plans are partisan gerrymanders. Tr. 2316:10-12.

591. The Court finds Dr. Brunell's opinions were unpersuasive, sometimes inconsistent with prior testimony he has given, and gives them little weight.

592. Dr. Brunell testified that Plaintiffs' experts have not shown "what is too much politics in this political process." Tr. 2306:24-2307:2. However, this critique contradicts Dr. Brunell's own expert analysis and conclusions in a prior case. In 2011, Dr.

Brunell opined as an expert witness for the Nevada Republican Party that state legislative maps were excessive partisan gerrymanders—based on an analysis less robust than the analyses of Plaintiffs' experts here. Tr. 2337:5-2338:23. Using two statewide elections, Dr. Brunell conducted a uniform swing analysis and concluded that the maps at issue gave Democrats 60% of the seats when Democrats won only 50% of the votes statewide. Tr. 2340:16-2345:5. Dr. Brunell concluded exclusively on the basis of that analysis that the maps were "unfair" and showed "heavy pro-Democratic bias"—"clearly a pattern of partisan bias, i.e., gerrymandering." Tr. 2342:4-2345:11. Dr. Brunell further opined, based solely on his uniform swing analysis and the disconnect between Democrats winning 60% of the seats with only 50% of the statewide vote, that he could be "absolutely conclusive" that the maps were not just partisan gerrymanders, but a "leading candidate for gerrymander of the decade." Tr. 2345:12-2346:15.

593. In this case, Dr. Brunell conceded that Plaintiffs' experts' analyses—using both uniform swing analysis and actual results of prior statewide elections—demonstrated that when Republicans get 50% of the votes in either chamber of the General Assembly, they win at least 60% of the seats. Tr. 2346:16-2350:2. Thus, under Dr. Brunell's own approach, the Court could find, in his own words, a "heavy pro-[Republican] bias" and "clearly a pattern of partisan bias *i.e.*, gerrymandering." Tr. 2350:3-8.

594. The Court also rejects Dr. Brunell's testimony that simulation methods for evaluating partisan gerrymandering have not been sufficiently vetted by academics and courts. Tr. 2292:15-2293:23. Dr. Brunell testified on direct examination that he was unaware of any peer-reviewed political science papers that provide a "basis" for "using [simulations] as an evaluation for partisanship." Tr. 2293:11-17. He testified that a 2013 paper by Dr. Chen and Dr. Jonathan Rodden "uses simulations, I think," "[b]ut in terms of using it as an evaluation for partisanship, I don't think there have been any such

publications yet." Tr. 2293:11-17. Dr. Brunell later acknowledged that the 2013 Chen and Rodden paper was in fact a peer-reviewed political science paper that "uses simulation techniques to measure partisanship." Tr. 2307:19-2308:5; *see* PX1 at 179. He also acknowledged that he was unfamiliar with three other peer-reviewed political science papers by Dr. Chen published between 2015 and 2017 that use computer simulations to evaluate partisan gerrymandering. Tr. 2308:10-2309:9; PX1 at 180. Dr. Brunell was also unaware that Dr. Pegden's paper on using simulations to measure gerrymandering, published in the Proceedings of the National Academy of Sciences, was peer reviewed by a political scientist. Tr. 2309:12-22; *see* Tr. 1413:7-16.

595. Dr. Brunell was also unfamiliar with court decisions approving the use of simulations to measure partisanship. He testified on direct that "we've only just started to see [simulations] used in law suits," Tr. 2292:24-2293:1, that simulations therefore "may not be ready for prime time yet," Tr. 2292:22-24, and that he himself did not learn about the simulation method until 2017 or 2018, Tr. 2293:7-10. However, as he acknowledged, multiple courts have credited simulations by Drs. Chen, Mattingly, and Pegden as a method of establishing whether a particular map is a partisan gerrymander. Tr. 2310:8-2312:1. Dr. Brunell was "unaware" that the Fourth Circuit credited Dr. Chen's simulations in a 2016 decision, in a gerrymandering case filed in 2013. Tr. 2311:4-2312:1; *see Raleigh Wake Citizens Ass'n v. Wake Cty. Bd. of Elections*, 827 F.3d 333 (4th Cir. 2016). The court rejected the criticism Dr. Brunell makes here, namely that Dr. Chen's simulations "ignor[ed] partisanship." Tr. 2311:17-20; *see Raleigh Wake*, 827 F.3d at 344.

596. The Court rejects Dr. Brunell's testimony that simulated maps are only useful if the algorithm draws "partisan districts" as opposed to "nonpartisan districts." Tr. 2277:13-20; 2280:4-16. Dr. Brunell acknowledged that the 2017 Plans were drawn for partisan gain, but argued that simulations can tell if an enacted map is an "extreme

partisan outlier" only if the simulations include some level of partisanship. LDTX291 at 3; Tr. 2277:13-20; 2280:4-16. Dr. Brunell's criticisms miss the point. Dr. Mattingly's and Dr. Chen's simulations quantify the effects of the gerrymandering and how extreme it is. Both find that the enacted plans are outside the entire distribution of their simulated plans—sometimes by many seats. For instance, Dr. Chen found in his uniform swing analysis that, in electoral environments corresponding to a 52.42% statewide Democratic vote share, Democrats win 11 to 12 fewer seats in the House and 3 to 4 fewer seats in the Senate than they would typically win under the simulated plans. *See* PX1 at 34, 65 (Chen Report). Dr. Mattingly found similar results. *See* PX359 at 12 (Mattingly Report); PX487 at 25 (Mattingly Rebuttal Report).

597. Additionally, Dr. Pegden's analysis demonstrates that the 2017 Plans are extreme partisan outliers even in comparison to other *partisan* maps. Although Dr. Brunell criticized "all three of" Plaintiffs' simulation experts for using "nonpartisan districts" as the point of comparison, Tr. 2277:13-20, this misunderstands Dr. Pegden's methodology. Dr. Pegden started with the enacted plan and made a sequence of small random changes, observing how those changes affected the partisan characteristics of the plan. Tr. 1304:3-1305:7; PX515; PX519. Dr. Pegden's comparison maps thus "are not supposed to be neutral comparison maps drawn from scratch of North Carolina," and "even against a set of extremely similar maps which were generated from the enacted map and which share all sorts of qualities with the enacted map, the enacted map is still an extreme outlier." Tr. 1304:14-1305:7. Dr. Pegden's comparison maps are "tied strongly to the enacted map" and "baked in" intentional partisan choices by the mapmaker. Tr. 1405:1-13, 1406:2-19. This makes it all the more remarkable that the enacted plans are such outliers in his analysis, even against this very similar comparison set. Tr. 1315:22-1316:2.

598. The Court gives no weight to Dr. Brunell's criticisms of uniform swing analysis. Dr. Brunell stated in his report that uniform swing analysis is "not reliable," LDTX291 at 4, and he testified that the assumption of uniform swing analysis was "clearly wrong," Tr. 2289:14-22. But again, when Dr. Brunell was evaluating partisan bias in the Nevada case in 2011, he testified that uniform swing analysis allowed him to be "absolutely conclusive" in finding legislative maps to be heavily biased and gerrymandered. Tr. 2351:19-2352:7.

599. Dr. Brunell's report and testimony contained numerous statements that were erroneous and reflect a failure to understand the work of Plaintiffs' experts. Dr. Brunell's report asserts that Dr. Pegden "use[d] the results of just two elections for his simulations" and that "both of them have Democratic winners." LDTX291 at 15. In fact, Dr. Pegden used six elections, two of which—2012 Lieutenant Governor and 2014 U.S. Senate—had Republican winners. PX508 at 34-37 (Pegden Report). On the stand, Dr. Brunell explained his assertion by stating that Dr. Pegden "does some quick checks with other elections in his appendix, but he only uses [] two elections for his full simulation," that he "uses one particular metric . . . but not all of it," and that he did not use "the four additional elections in his appendix to perform his entire statewide analysis." Tr. 2323:1-15. In fact, Dr. Pegden re-ran his entire statewide analysis using all six elections. PX508 at 34-37 (Pegden Report).

600. Dr. Brunell wrote in his report that he was "confused" by aspects of Dr. Pegden's analysis, Tr. 2318:19-22, that were clearly explained in Dr. Pegden's initial report. Tr. 2318:23-2319:24. Dr. Brunell criticized Dr. Pegden for failing to explain how many changes he made to the enacted map before comparing the simulated maps to the enacted map, LDTX291 at 13, but Dr. Pegden's report made clear that he evaluated the partisanship of the new map after every step, meaning every swap, PX508 at 5. Dr. Brunell also criticized Dr. Pegden for purportedly failing to explain terms like "fragility" and

"carefully crafted," Tr. 2320:8-18, but Dr. Pegden's report specifically defined those terms. Tr. 2321:15-2322:2.

601. In criticizing Dr. Chen's application of the Adopted Criteria, Dr. Brunell testified that Dr. Chen's "programmatic algorithm . . . maximizes geographic compactness," Tr. 2295:10-16, but Dr. Brunell had not reviewed Dr. Chen's code, Tr. 2333:23-25, and he got it wrong, Tr. 262:24-263:12. When confronted with his error at trial, Dr. Brunell testified that whether Dr. Chen maximized compactness did not matter because Dr. Chen's "algorithm" was "different from the legislative criteria" in unspecified other ways relating to splitting VTDs. Tr. 2334:6-13. However, Dr. Brunell "didn't know" how Dr. Chen's algorithm "worked" with respect to other issues, Tr. 2297:9-14, and he did no work to determine whether a different weighting would have affected Dr. Chen's conclusions, Tr. 2334:18-21.

602. Dr. Brunell's report inaccurately criticized Dr. Mattingly and Dr. Pegden for failing to preserve incumbents, when both ran simulations that avoided pairing incumbents. LDTX291 at 3; Tr. 2326:13-25; Tr. 2329:2-5.

603. The Court rejects Dr. Brunell's testimony that the simulated maps are not proper comparisons to the enacted map to the extent they do not preserve the "core" of an incumbent's district. Tr. 2283:21-2284:19. Dr. Brunell acknowledged that he had "no idea if and to what extent core preservation was used" in the enacted map, Tr. 2329:21-2330:1, and no other witness testified that the 2017 Plans preserved district cores. Neither Dr. Brunell nor any other witness for Legislative Defendants analyzed whether a hypothetical effort to preserve district cores could explain the extreme partisan bias in the 2017 Plans. As Representative Lewis explained, the Adopted Criteria's incumbency protection provision referred only to "not pair[ing] incumbents unduly"—not core preservation. PX603 at 122. As Dr. Brunell acknowledged, core preservation also can be a partisan criterion, Tr.

2332:12-25, and that, when, as here, the prior plan was an unlawful racial gerrymander, preserving cores might also preserve racial gerrymanders, Tr. 2333:1-12.

604. Additionally, Plaintiffs proved that a hypothetical effort to preserve the "cores" of an incumbent's district could not explain the enacted plans' extreme partisan bias. Dr. Pegden's simulations preserved the "cores" of each incumbent's prior district. Tr. 1316:24-1317:10 (Dr. Pegden); *see* Tr. 2330:16-19.

605. The Court gives little weight to Dr. Brunell's testimony that Figure 8 and Figure 20 of Dr. Chen's report do not show that the enacted plan is an "outlier." Tr. 2302:12-2303:15. Figure 8 of Dr. Chen's report shows at least a five-seat difference between the bulk of his House simulations and the enacted plan, and shows that the enacted plan is off the distribution entirely—it elects fewer Democrats than 100% of his simulated plans. PX1 at 48 (Chen Report). The Court rejects Dr. Brunell's testimony that a five-seat difference is only a "slight[]" difference. Tr. 2302:24-2303:2. Likewise, Figure 20 of Dr. Chen's report shows a two-seat difference between the typical result of his Senate simulations and the enacted plan, and again shows that the enacted plan is off the distribution entirely—it elects fewer Democrats than 100% of his simulated plans. PX1 at 48 (Chen Report). Dr. Brunell also speculated that changing Dr. Chen's criteria "could shift this over and then this wouldn't be an outlier at all," Tr. 2303:4-9, but the Court gives no weight to Dr. Brunell's untested conjecture. The Court likewise rejects Dr. Brunell's testimony about Plaintiffs' Exhibit 48, which is Figure 28 of Dr. Chen's report and shows cracking and packing in the Cumberland House grouping. PX1 at 93. Dr. Brunell testified that this figure did not show the enacted plan to be an "outlier" because "the enacted districts are in the gray clouds," Tr. 2303:16-21, but in fact the figure demonstrates that two districts (HD-45 and HD-43) are entirely outside the "gray clouds" and show more

cracking (HD-45) and packing (HD-43) of Democrats that 100% of the districts in Dr. Chen's simulations. PX1 at 93.

c. Dr. Hood

606. Legislative Defendants offered the testimony of Dr. M.V. (Trey) Hood III to respond to Plaintiffs' experts Dr. Cooper and Dr. Chen. LDTX 284; Tr. 2037:21-2038:3.

607. Dr. Hood is a tenured professor of political science at the University of Georgia, a position he has held for 20 years. Tr. 2032:19-2033:5. He holds three degrees in political science: a Ph.D. from Texas Tech University; a Master of Arts degree from Baylor University, and a Bachelor of Science degree from Texas A&M University. Tr. 2032:14-18.

608. Dr. Hood is also the director of the School of Public and International Affairs' Survey Research Center which performs public opinion research and polling for entities including the Atlanta Journal-Constitution. Tr. 2033:6-19.

609. Dr. Hood teaches courses in American politics and policy, Southern politics, research methods and election administration, including redistricting. Tr. 2033:20-2034:9.

610. Dr. Hood also conducts research on redistricting and has published articles in peer-reviewed journals on topics that include redistricting. Tr. 2034:10-18. Dr. Hood's work has appeared in peer-reviewed journals approximately 50 times. Tr. 2034:13-21. He currently serves on the editorial boards of Social Science Quarterly and Election Law Journal, with the latter journal dealing with issues of election administration, including redistricting. Tr. 2034:22-2035:2.

611. Dr. Hood was accepted by the Court as an expert in American politics and policy, Southern politics, quantitative political analysis, and election administration, including redistricting. Tr. 2037:13-20.

612. Dr. Hood testified about the role of the Whole County Provision and 2017 Adopted Criteria in limiting the mapmaker's discretion in drawing the 2017 Plans, the results of the 2018 elections, and North Carolina's political geography.

613. Dr. Hood's testimony was not persuasive, and the Court gives it little weight.

614. Dr. Hood's expert testimony has been rejected by courts in numerous prior redistricting and other voting rights cases. *See, e.g.*, Tr. 2095:6-2096:9 (in recent Ohio partisan gerrymandering case, stating that Dr. Hood drew "some inapt comparisons"); Tr. 2096:14-24 (in Texas voter ID case, stating that Dr. Hood's testimony and analysis was "unconvincing" and given "little weight"); Tr. 2096:25-2097:19 (in Arizona voting rights case, "afford[ing] little weight to Dr. Hood's opinions" "[f]or a number of reasons"); Tr. 2097:22-2098:6 (in Georgia voter ID case, finding that "Dr. Hood's absentee voting analysis is unreliable or not relevant to the questions the court must resolve"); Tr. 2098:9-16 (in Ohio case involving absentee ballots, affording Dr. Hood's opinions "little weight"); Tr. 2098:22-2099:6 (in recent Virginia racial gerrymandering case, stating: "We do not credit Dr. Hood's testimony for several reasons."); Tr. 2099:9-2100:1 (in Ohio voting rights case, finding Dr. Hood's views "of little value," and explaining that "Dr. Hood's testimony and report are in large part irrelevant to the issues before the court and also reflected methodological errors that undermine his conclusions").

615. Dr. Hood did not offer—and does not have—any methodology for determining whether or not a map was drawn to create a partisan lean or bias. Tr. 2078:1-2079:3.

616. Dr. Hood's testimony supports the view that the enacted plans were drawn intentionally to favor Republicans. Dr. Hood generally agreed that "the party that controls the legislative process is going to make the maps in their favor," and that the enacted plans "were drawn to favor Republicans" using prior election results. Tr. 2079:4-2081:2.

(i) Dr. Hood's testimony about the redistricting process in North Carolina was unpersuasive

617. Dr. Hood testified that the 2017 redistricting was a "fairly formulaic process" because the Whole County Provision and 2017 Adopted Criteria "really limits the discretion, to a large extent, of the map drawers." Tr. 2038:4-2039:12; LDTX284 at 9-10 ("[T]he process is quite constrained, which greatly limits the ability of map drawers to create districts where partisan motives predominate."). However, Dr. Hood did no work to determine whether any of those criteria actually prevented the mapmaker from gerrymandering the enacted plans to advantage Republicans. Tr. 2077:10-15.

618. Dr. Hood's assertion that the Adopted Criteria "constrained" the "map drawer" is incorrect. The Adopted Criteria were not passed by the House and Senate Redistricting Committees until August 10, 2017. As discussed below, Dr. Hofeller had completed much of the General Assembly's eventually enacted House and Senate districts by June 2017, a month and a half before the Adopted Criteria were passed. FOF § F.7. Logically, Dr. Hofeller could not have been following the Adopted Criteria when he was drafting these districts by June 2017.

619. Dr. Hofeller's files further refute Dr. Hood's assertions that the 2017 redistricting process was "quite constrained" and that it is difficult to prove the partisan intent behind the 2017 Plans. PX123 at 48-49 (Chen Response Report). Those files show Dr. Hofeller's continuous efforts and exercise of his discretion to draw the district lines to maximize Republican advantage within the confines of the Whole County Provision, including various drafts that considered alternative possible districtings. FOF § B.2.b.

(ii) Dr. Hood's testimony about the 2018 elections was unpersuasive

620. For his analysis of the 2018 election results, Dr. Hood compared the number of seats Democrats actually won in 2018 to the number districts in Dr. Chen's simulated

plans that lean Democratic using the 2010-2016 composite statewide election results. Tr. 2083:14-25. But that is an apples-to-oranges comparison, because the 2018 elections were different than the 2010-2016 composite statewide election results. Tr. 2084:1-5. In the 2010-2016 composite statewide election results, the Democratic vote share is 47.9%, whereas 2018 was a far more favorable environment for Democrats. Tr. 2084:12-24.

621. Dr. Hood made no attempt to perform an apples-to-apples comparison by comparing the actual 2018 election results under the enacted 2017 Plans to the performance of alternative nonpartisan plans under the 2018 election results. Tr. 2084:25-2087:19.

(iii) Dr. Hood's testimony about North Carolina's political geography was unpersuasive

622. Dr. Hood's analysis of North Carolina's political geography is unpersuasive because Dr. Hood did not attempt to determine whether the Republican lean in the enacted 2017 Plans can be explained by political geography. Tr. 2094:18-21. By contrast, Dr. Hood agreed that the work of Drs. Chen, Mattingly, and Pegden does address whether political geography could explain the extreme partisan lean of the 2017 Plans. Tr. 2094:22-2095:2.

623. For his analysis of political geography, Dr. Hood analyzed how the partisan makeup of the State of North Carolina would change if its six largest counties were removed. Tr. 2089:14-17; LDTX140. But it is not possible to remove any counties from North Carolina, much less the six largest counties. Of course, hypothetically removing North Carolina's six largest counties would make the state "[m]uch more rural," Tr. 2089:18-22, and much more Republican-leaning, just as would removing New York City from the State of New York.

d. Dr. Barber

624. Intervenor Defendants' expert, Dr. Michael Barber, received his Bachelor of Arts degree in International Relations with an emphasis in Political Economy from Brigham Young University in 2008, his Masters in Political Science from Princeton University in 2011, and his Ph.D. in 2014. Tr. 2106:7–22, 2107:4–13, ID Ex. 98 p. 1.

625. Dr. Barber is currently an Assistant Professor at Brigham Young University and an affiliated faculty member with the Center for the Study of Elections and Democracy. Tr. 2109:9–18.

626. Dr. Barber teaches classes on Congress and the legislative process (which includes state-level legislative research), statistical analysis, and a seminar course on contemporary research in American politics. Tr. 2110:14–2111:13.

627. Dr. Barber recently testified as an expert witness in an election law case involving a dispute over ballot order in Federal Court in Florida. Tr. 2113:10–2114:6.

628. Dr. Barber has published 11 peer-reviewed articles involving American Politics, and an additional 5 articles that have been accepted for upcoming publication. Tr. 2111:22–2112:4, 2113:6–9; ID Ex. 98 pp.1–2. Many of these articles involve political ideology, issues of campaign finance, electoral politics, survey research methodologies, [and] political polarization. Tr. 2111:24–2112:4.

629. Dr. Barber was admitted by the Court as an expert in American politics, specifically on the topics of ideology and partisanship, geography of voters, and the analysis of elections results. Tr. 2118:2–13.

630. Dr. Barber offered no opinion as to whether North Carolina's state legislative district maps were gerrymandered.

631. The Court finds that Dr. Barber's criticisms of Dr. Cooper's analysis unpersuasive and gives them little weight.

632. At the outset, the Court notes that none of Dr. Barber's academic research or published articles concern redistricting or North Carolina, nor was redistricting in North Carolina "something [he] had given a lot of thought to" before being retained by Intervenor Defendants in this case. Tr. 2169:19-2170:19. Dr. Barber admitted that he was not an expert on North Carolina's political geography, nor had he spent time in North Carolina other than two vacations in the Outer Banks and one visit to Duke's campus. Tr. 2168:12-2169:13, 2216:4-8. Most importantly, Dr. Barber did not analyze the specific district boundaries or county groupings the Court is reviewing and he could not comment on any of Dr. Cooper's extended analysis of the packing and cracking of Democratic voters in those districts and county groupings. Tr. 2117:24-2118:12, 2213:25-2214:15

633. The majority of Dr. Barber's testimony concerned the opinions Dr. Cooper offered regarding the aggregate political ideology of the North Carolina electorate and that of the General Assembly, including Dr. Cooper's comparison between the two. The Court finds it unnecessary to determine whether the General Assembly is "out of step" with the electorate and therefore, makes no findings regarding Dr. Cooper's testimony, or Dr. Barber's criticism of that testimony, relating thereto.

634. Dr. Barber also sought to rebut opinions Dr. Cooper offered regarding the disproportionality between Democratic seat share and the Democrats' statewide vote share in the General Assembly after the 2011 redistricting. Dr. Barber observed that "it's actually not as rare as you might think" that a party wins a majority of votes for the North Carolina House or Senate statewide, but only a minority of seats. Tr. 2149:21-2150:2. But since Dr. Barber did not analyze the extent to which any of these instances of disproportionality between votes and seats were attributable to gerrymandered district boundaries, his analysis is less useful to the Court. Dr. Barber admitted that it was "very possible" that those instances from 2002-2006 where the Democrats won a minority of the

statewide vote and yet a majority of seats in a chamber of the General Assembly "could have been because the Democrats did a good job of gerrymandering the maps that were in place during those elections." Tr. 2203:12-16.

635. In support of his opinion regarding the translation of seats from votes, Dr. Barber created a chart providing the "absolute difference" in percentage between the vote share and seat share for each party in House and Senate elections since 1994. IDTX23. But as Dr. Barber acknowledged, the greatest difference between the percentage of Republican vote share and seat share in the House occurred in the 2012 election, just after the 2011 redistricting. Tr. 2207:3-12. The difference in the Senate between the percentage of Republican votes received and seats won was also relatively large in 2012, and represented a significant increase from the 2010 election, just before redistricting. Tr. 2207:13-22. If anything, Dr. Barber's analysis suggests that the 2011 redistricting led to more disproportionality between votes cast and seats won, as Dr. Cooper observed. *See* Tr. 2207:23-2212:16.

636. Finally, Dr. Barber noted that there is "academic research that points to political party geography as an important factor in representation and legislatures," suggesting that the geographic distribution of voters "is something that should be investigated" in this case. Tr. 2152:10-14. Specifically, Dr. Barber referenced a 2013 article co-authored by Plaintiffs' expert, Dr. Chen, focused on the political geography of Florida and Florida's congressional districts, an article in which Dr. Chen used simulations to measure whether political geography created a natural advantage for Republicans in redistricting in Florida. Tr. 2153:2-24. Despite acknowledging that Dr. Chen's co-authored 2013 article did not include any analysis of North Carolina, Tr. 2153:25-2154:2, Dr. Barber testified that the article "invites the question as to what it would look like if we looked to see if this relationship also existed in North Carolina," Tr. 2154:5-7.

637. Dr. Chen performed that analysis in this case and concluded that North Carolina's political geography does not account for the extreme partisan bias of the enacted plans. Tr. 2216:11-2220:21. Similarly, at the time he conducted his analysis and arrived at the opinions he offered regarding the potential partisan bias of North Carolina's political geography, Dr. Barber was unaware that Dr. Chen's co-author in the same 2013 paper, Dr. Jonathan Rodden, had come to the conclusion that North Carolina's Democratic voters were relatively efficiently distributed throughout the State. Tr. 2222:9-2223:4, 2224:6-2225:8.

638. Dr. Barber did not engage in the type of analysis that Dr. Chen performed to account for and measure the extent to which "natural" partisan bias in North Carolina's political geography could account for electoral outcomes favoring Republicans, but the analysis that Dr. Barber did conduct of the distribution of North Carolina's Democratic voters actually supports Plaintiffs' claims. Dr. Barber observed a positive correlation between the population density of North Carolina's VTDs and their support for Democratic candidates, but he acknowledged that there were "a lot of other Democratic-leaning VTDs" spread across the state, even outside the urban centers of Raleigh and Charlotte. Tr. 2216:11-16. Dr. Barber's analysis fails to offer the Court any information about how the many Democratic-leaning VTDs across North Carolina fit into specific county groupings and specific districts and therefore, his analysis is not directly relevant to the questions the Court faces. Unlike Dr. Cooper, who performed an extensive analysis of North Carolina's House and Senate Districts at the county grouping level, Dr. Barber admitted that he could not offer any opinion to rebut Plaintiffs' evidence regarding gerrymandering within those county groupings. Tr. 2217:8-2218:12.

639. In light of the above shortcomings in Dr. Barber's analysis, the Court gives little weight to his testimony.

e. Dr. Johnson

640. Legislative Defendants' expert Dr. Douglas Johnson has a Bachelor of Arts in Government from Claremont McKenna College, a Master of Business Administration from the Anderson School at UCLA, and a Ph.D. in Political Science from Claremont Graduate University. Tr. 1812:15-21; LDTX288. The focus of Dr. Johnson's graduate studies in Political Science was American politics, and he wrote his dissertation on redistricting. Tr. 1812:22-25.

641. Dr. Johnson is a fellow at the Rose Institute of State and Local Government at Claremont McKenna College. Tr. 1813:1-6. In that role, he leads the Institute's research into census and redistricting issues. Tr. 1813:1-6.

642. Dr. Johnson is also the President of National Demographics Corporation ("NDC"), where he has been employed full-time since 2001. Tr. 1814:7-19. NDC is engaged in redistricting work, including liability analyses, polarized voting studies, and other related redistricting issues. Tr. 1814:20-25.

643. Dr. Johnson has used Maptitude for Redistricting software ("Maptitude") for his work for 20 to 30 hours a week since 2001. Tr. 1816:16-23.

644. Dr. Johnson has served as an expert witness in redistricting litigation numerous times; specifically, he has been involved in hundreds of challenges to at-large elections for city councils, school boards, counties, etc. Tr. 1817:5-7; 1817:14-21. Dr. Johnson has also served as an expert witness in challenges to state redistricting plans. Tr. 1817:22-24. Dr. Johnson has never been excluded as an expert witness by any court. Tr. 1817:8-10.

645. Dr. Johnson was accepted by the Court as an expert in the fields of political science, political geography, redistricting, and Maptitude for Redistricting software. Tr. 1818:11-20.

646. Dr. Johnson offered primarily two sets of opinions in this case. First, Dr. Johnson purported to show that one could draw a Senate map even more favorable to

Republicans if one ignored the North Carolina Constitution's Whole County Provision. Second, Dr. Johnson attempted to critique Dr. Chen's analysis of Dr. Hofeller's files.

647. The Court finds Dr. Johnson's analysis unpersuasive and gives his opinions little weight.

648. Dr. Johnson has testified as a live expert witness in four cases previously, and the courts in all four cases have rejected his analysis. Tr. 1886:21-1891:14; *see Covington*, 283 F. Supp. 3d at 450 (finding "Dr. Johnson's analysis and opinion . . . unreliable and not persuasive"); *Luna v. Cnty. of Kern*, 291 F. Supp. 3d 1088, 1137 (E.D. Cal. 2018) (holding that defendants' argument based on Dr. Johnson's analysis "lacks merits"); *Garrett v City of Highland*, 2016 WL 3693498, at *2 (Cal. Super. Apr. 06, 2016) (finding Dr. Johnson's methodology "inappropriate"); *Jauregui v City of Palmdale*, No. BC483039, 2013 WL 7018375, at *2 (Cal. Super. Dec. 23, 2013) (describing Dr. Johnson's work in the case was "unsuitable" and "troubling"). This Court joins these other courts in rejecting Dr. Johnson's methodologies, analyses, and conclusions.

649. Dr. Johnson created a "test map" for the North Carolina Senate that ignored the Whole County Provision entirely. Tr. 1892:21-1893:4. Based on this test map, Dr. Johnson purported to find that one could draw a Senate map even more favorable for Republicans than the enacted Senate plan if one were to ignore the county groupings and traversal rules. Tr. 1893:17-22. The Court finds Dr. Johnson's analysis using his test map to be of little probative value to the legal and factual issues in this case.

650. Dr. Johnson performed no statewide analysis of the House or the Senate to determine the extent to which, *within* the confines of the Whole County Provision, the enacted House and Senate plans constitute the most favorable maps for Republicans possible. Tr. 1894:13-1896:7. The only individual county groupings for which Dr. Johnson performed partisanship analysis within the confines of the Whole County Provision were

Mecklenburg County in the Senate, *id.,* and Wake County in the House, and Dr. Johnson's partisanship analysis of the Mecklenburg Senate districts was erroneous and not credible for the reasons already explained. *See supra,* para 251. Dr. Johnson did not analyze any other individual House or Senate county grouping to determine whether the enacted plans' version of that grouping is the most favorable configuration of the grouping possible for Republicans. *Id.* Dr. Johnson thus offered no rebuttal to the testimony of Plaintiffs' experts demonstrating that the enacted plans constitute extreme partisan gerrymanders of specific county groupings.

651. Dr. Johnson instead ignored the Whole County Provision in creating his Senate test map, but as he acknowledged, the Whole County Provision is a state constitutional requirement. Tr. 1896:8-10. The General Assembly lacks authority to ignore the state constitutional county groupings and traversals requirements in creating redistricting plans. Dr. Johnson's test map analysis is thus no more relevant or helpful than would be a test map that ignores other constitutional requirements, such as the equal population requirement for districts. One could draw a map ignoring the equal population requirement that is even more favorable for Republicans than Dr. Johnson's test map, and certainly more favorable for Republicans than the enacted plan. Tr. 1896:11-1900:21. But the fact that one could draw such a hypothetical map in no way sheds light on whether the enacted plan is an extreme partisan gerrymander. *See id.* It provides no information as to whether the General Assembly acted within extreme partisan intent in drawing districts within the confines of the accepted constitutional requirements, and it provides no information as to the effects of the gerrymander on the number of Republican and Democratic-leaning districts relative to a nonpartisan plan. *See id.* Dr. Johnson's test map analysis is of little probative value to the legal or factual issues in this case.

652. With respect to Dr. Johnson's testimony regarding Dr. Hofeller's files, as described above, the Court struck all of Dr. Johnson's affirmative analysis of Dr. Hofeller's 2017 draft House and Senate plans and the extent to which they overlap with other plans including the final enacted plans. Tr. 1988:11-1990:4. The Court struck this testimony and all related portions of Dr. Johnson's rebuttal report under Rule 702 and Rule 403 after it was uncovered on cross-examination that Dr. Johnson had made a series of significant errors. *Id.*

3. Dr. Karen Owen's Testimony on "Representation" and "Competitive Elections" and Representative John Bell's Testimony on Competitive Districts Was Unpersuasive

a. Dr. Karen Owen

653. Legislative Defendants offered expert testimony of Dr. Karen Owen on the issues of "representation" and "competitive elections" in North Carolina. Tr. 1488:6-22; LDTX 293 (Owen report).

654. Dr. Owen is an assistant professor of political science at West Georgia University, and focuses on southern politics, political representation, legislative politics, campaigns and elections and research methodology, and developed her expertise through both academic and professional work. Tr. 1481:18-22, 1483:16-24, 1484:2-1485:24, 1486:4-11; LDTX293 at 1-2, 28-34.

655. Dr. Owen has particular expertise in the area of southern politics; she has presented papers and been a lead discussant at the Citadel's Symposium on Southern Politics for over 10 years, she has taught and studied courses in southern politics. Tr. 1480:15-1481:4.

656. Dr. Owen's work in southern politics has included writing and presenting a paper in 2016 titled "Growth and Geography in the South: Representation in the North Carolina and Texas State Legislatures." Tr. 1481:5-11; LDTX293 at 31.

657. The Court admitted Dr. Owen as an expert. Tr. 1487:24-1488:1.

658. Dr. Owen has very little experience or expertise with politics, elections, or representation in North Carolina specifically. Dr. Owen has never lived or worked in North Carolina. LDTX 293 at 28-29. With the exception of the aforementioned paper, she has never written or published about North Carolina politics, elections, or representation. Tr. 1555:19-1557:25. She has never participated in or spoken at any conference about North Carolina politics, elections, or representation. Tr. 1558:1-1559:16. She has never been interviewed by any media outlet about North Carolina politics, elections, or representation. Tr. 1559:17-25. She has never taught a class focused on North Carolina politics, elections, or representation—the closest she came was teaching a single course in "Southern Politics" three years ago. LDTX 293 at 32; Tr. 1560:11-24.

659. The methodologies Dr. Owen employed to evaluate "representation" and "competitive elections" in North Carolina were unpersuasive. In conducting her research and analysis for this case, Dr. Owen did not speak to any current or former North Carolina legislator, or any winning or losing North Carolina candidate, or any North Carolina voter. Tr. 1561:7-1564:14. Nor did she consult any North Carolina polling data or survey data. Tr. 1564:15-19. Instead, Dr. Owen's analysis of representation in North Carolina was based on her conversations with several staff members in the General Assembly's Legislative Services Commission. Tr. 1561:7-1562:1. Her analysis of competitive elections in North Carolina was based on her reading of newspaper articles and a website called "Real Facts North Carolina." Tr. 1566:5-13.

660. Based on her lack of relevant expertise and the inadequate methodologies she employed in this case, the Court gives little weight to Dr. Owen's opinions about "representation" and "competitive elections" in North Carolina.

661. In addition, as described below, Dr. Owen's analysis and opinions are unhelpful in resolving the issues in this case.

i. Dr. Owen's analysis of "representation" was unpersuasive

662. In support of her opinion that Republican members of the General Assembly meaningfully "represent" their Democratic constituents, Dr. Owen emphasized that the members "are noticeably involved in more than producing and passing laws," LDTX 293 at 22, and that they provide "constituent services" to Republican and Democratic voters alike, regardless of their political beliefs, party affiliation, or past votes. Tr. 1567:15-1568:18; *see also* Tr. 1801:17-1803:2 (similar testimony by Rep. Bell); Tr. 2000:21-2001:6 (Sen. Brown).

663. The Court finds, however, that the mere provision of constituent services does not mean that voters of one particularly party are meaningfully "represented" by a member of the other party political and does not mean the voter receives the same "representation" that the voter would if he or she could elect the candidate of that voter's choice. Constituent services are only one part of a legislator's responsibilities. In addition to providing constituent services, members of the North Carolina House and Senate participate in enacting the State's laws and policies. Tr. 1803:3-9 (Rep. Bell). Legislative Defendants' own expert, Dr. Brunell, testified that, among the ways in which a legislator "represents" his or her constituents, providing constituent services may be "an important part, but if you are sort of, you know, worried about the hierarchy of the things that they do, I think that how they vote on the major issues of the day is more important." Tr. 2353:11-2354:4. Dr. Brunell agreed that "policy responsiveness" is a "higher form of representation" and "more critical to the notion of representing someone." Tr. 2354:5-10; *see* Tr. 2353:3-6 (agreeing that "the responsiveness of a legislator to the voters on questions on policy in particular is critical to Democratic representation"). As "just one example of the many issues from which policy responsiveness is the more central form of representing

the people in the legislature," Dr. Brunell agreed that if a legislator casts a vote for gun control, the legislator is "not giving good representation to the voters in [his or her] district who don't want gun control." Tr. 2354:11-19. Thus, as Dr. Brunell agreed, "a change in the party that represents a given district generates a huge difference in the policies for which the representative of that district will vote." Tr. 2354:20-23. Another witness for Legislative Defendants, Senator Harry Brown, also testified that "in order to push legislation that we thought was important to this state," a political party must "be in the majority." Tr. 2023:20-22.

664. Other purported indicia of "representation" discussed by Dr. Owen likewise were unhelpful. For example. Dr. Owen pointed to a form "welcome letter" that members of the General Assembly can send to new voters in their districts. LDTX 293 at 22; Tr. 1514:4-1516:23. But sending a form letter does not signify meaningful representation.

ii. Dr. Owen's analysis of "competitive elections" was unpersuasive

665. In her analysis of "competitive elections," Dr. Owen suggested that Democrats' failure to win certain House and Senate races in 2018 was the result of poor "candidate quality," rather than the district boundaries. Tr. 1540:13-1542:9; LDTX 293 at 6-7. Dr. Owen's methodology was unreliable, and her conclusions were unpersuasive.

666. The sole criterion that Dr. Owen applied for assessing candidate quality turns on whether the candidate "had held prior elected office." Tr. 1533:5-21. Under this "dichotomous measure," any person who has previously held elective office is a "quality" candidate, and any person without prior experience holding elective office is not "quality." LDTX 293 at 10. This approach ignores other important factors and is an unreliable measure of whether a person is a quality candidate.

667. For instance, Dr. Owen classified a Democratic candidate who is a U.S. Army Colonel as a "nonquality" candidate. Tr. 1566:18-25; LDTX 293 at 12. She classified

another Democratic candidate who is a "small business owner" and "community leader" as a "nonquality" candidate. Tr. 1567:1-7; LDTX 293 at 12. And she classified a "young Air Force veteran and attorney" as a non-quality candidate. LDTX 293 at 16. These examples illustrate the shortcomings in Dr. Owen's methodologies.

b. Representative John Bell

668. Legislative Defendants also offered the testimony of Representative John Bell, IV, who testified about the competitiveness of various House districts.

669. Representative Bell is the majority leader for the North Carolina House of Representatives and represents House District 10. Tr. 1739:16-22.

670. As Majority Leader, Representative Bell assists the Conference chair to achieve two goals: 1) recruit candidates and 2) win elections. Tr. 1740:5-6.

671. Representative Bell also pointed to candidate quality as a purported factor in House districts he claimed might be "competitive" in 2020. Tr. 1752:13-1754:18. But Representative Bell's claim that certain House districts could be "competitive" in 2020, and only were not close in 2018 due to purported candidate quality issues is not persuasive. Representative Bell included on his list of purportedly competitive districts numerous districts that were not only extremely lopsided in the 2018 state House elections, but that feature similarly lopsided vote shares under the results of prior statewide elections, including the 2012 Presidential election, the 2016 Presidential election, and the 2016 Governor election. Tr. 1788:5-1801:16. Representative Bell included on his list of purportedly competitive districts a handful of districts in which the Republican candidate won over 60% of the vote share in the district across all of these various elections. *Id.* Moreover, for many of the districts he identified, Representative Bell testified that the race could be competitive only if it was an "open seat"—that is, if the incumbent Republican member either retires or does not run again in 2020. Tr. 1767:3-23, 1772:16-20, 1773:24-

1774:2. However, there is no evidence that any of those Republicans members will not run in 2020. Tr. 1786:4-10. The Court finds that Representative Bell's testimony does not provide a reliable basis for assessing the competitiveness of current House districts.

4. The Whole County Provision Did Not Prevent Systematic Gerrymandering of the Plans for Partisan Gain

672. Throughout trial, Legislative Defendants and their experts emphasized the existence of the North Carolina Constitution's Whole County Provision, which the North Carolina Supreme Court has held requires dividing the State into discrete county groupings and restricting the traversal of county lines for districts within a county grouping. Tr. 252:17-257:10. The Court finds that Legislative Defendants overstate the constraints imposed by the Whole County Provision, and that Legislative Defendants intentionally and effectively gerrymandered the enacted plans for partisan gain within the confines of the Whole County Provision.

673. Legislative Defendants overstate the impact of the Whole County Provision. Dr. Chen explained in unrebutted testimony that the Whole County Provision dictates the contours of only 13 of 120 House districts and 17 of 50 Senate districts. Tr. 782:2-783:1. Legislative Defendants thus had discretion in drawing 107 of 120 House districts and 33 of 50 Senate districts—constituting over 82% of all districts across both enacted plans. *Id.*

674. As detailed above, the evidence establishes that Legislative Defendants engaged in systematic gerrymandering for partisan gain in the districts in which they did have discretion. All four of Plaintiffs' experts concluded that Legislative Defendants acted with extreme partisan intent within the confines of the Whole County Provision. Plaintiffs' simulations experts—Drs. Chen, Mattingly, and Pegden—simulated plans that adhered to the existing House and Senate county groupings, and all three experts found that the enacted plans are extreme outliers compared to nonpartisan plans that follow the same

county groupings. And all three experts found that specific county groupings are extreme outliers compared to other, simulated versions of the same county grouping that contain the same number of traversals as the enacted plan in that grouping. Dr. Cooper independently established—in unrebutted testimony—that the enacted plans pack and crack Democratic voters within specific county groupings.

5. Plaintiffs Do Not Seek Proportional Representation

675. Contrary to Legislative Defendants' claim, Plaintiffs do not seek proportional representation. As described in more detail below, Plaintiffs assert that the General Assembly may not intentionally discriminate against voters and may not attempt to predetermine election outcomes and control of the General Assembly. Dr. Chen and Dr. Mattingly established through their simulations that nonpartisan plans that do not intentionally discriminate against Democratic voters may well *not* provide for proportional representation. Under Dr. Chen's and Dr. Mattingly's simulations, there are scenarios where Democrats would win 50% of the statewide vote but less than 50% of the seats in either chamber. Tr. 306:16-307:2 (Dr. Chen); Tr. 1103:24-1104:5, 1132:6-1133:13 (Dr. Mattingly). Dr. Pegden's simulations also did not rely on any notion of proportional representation. Tr. 1306:22-24.

676. Legislative Defendants' presentation regarding the proportionality of seats to votes in specific county groupings like Wake and Mecklenburg Counties, Tr. 2068:10-2069:13, was not persuasive. As Dr. Pegden explained, analyzing proportionality at the local level of a county grouping is "completely useless" and can be misleading in the context of a gerrymandered map. Tr. 1452:17-1454:18. In a county grouping that contains a small number of districts and in which one party wins an overwhelming share of the vote across the grouping, one would expect that party to win a disproportionate share of the seats under a nonpartisan map, and likely all of the seats. Tr. 1452:23-1453:12. Under a

Republican gerrymander, however, Republican mapmakers will allow that natural outcome to occur in county groupings that strongly favor Republicans but will gerrymander the more Democratic county groupings in a way that may result in proportional outcomes just in those Democratic county groupings—*e.g.*, by gerrymandering the grouping to elect one or two Republican seats. Tr. 1452:17:22-1454:18. Thus, the fact that the enacted plans may have resulted in proportional seats-to-votes outcomes in individual county groupings that are heavily Democratic is not evidence of a lack of gerrymandering.

6. Legislative Defendants Did Not Seek to Comply with the VRA and Did Not Show Nonpartisan Plans Would Violate the VRA

677. Defendants did not present persuasive evidence at trial to substantiate any federal defense under the Voting Rights Act or Fourteenth or Fifteenth Amendments. Defendants did not introduce persuasive evidence at trial to establish any of the prerequisites to application of the Voting Rights Act under *Thornburg v. Gingles*, 478 U.S. 30 (1986). For example, Defendants presented no expert testimony or any other evidence to establish the existence of legally sufficient racially polarized voting in any area of North Carolina, or any particular state House or state Senate district. Nor did Defendants introduce any evidence to establish the minimum African-American percentage of the voting age population ("BVAP") needed in any particular area of the State for the African American community to be able to elect the candidate of its choice.

678. Notably, Legislative Defendants retained Dr. Jeffrey Lewis, a political scientist from UCLA, who analyzed and provided estimates of the minimum BVAP needed in certain county groupings for African-American-preferred candidates to win. *See* PX773 (Amended Table 4 from Lewis Report). But Legislative Defendants chose not to have Dr. Lewis testify at trial. At the conclusion of trial, Legislative Defendants attempted to introduce expert reports that a different political scientist (Dr. Alan Lichtman) had

prepared on behalf of different parties in previous lawsuits in North Carolina years ago, but the Court sustained Plaintiffs' objections to the admission of these reports. Tr. 2376:2-3. The Court excluded these reports as inadmissible hearsay and undisclosed expert work, particularly given that Plaintiffs dispute Legislative Defendants' characterization of those reports. Tr. 2363:16-2364:25.

679. Defendants did not demonstrate that the relief Plaintiffs seek would violate the VRA or federal equal protection requirements. Plaintiffs established that it would not. Using Dr. Lewis's estimates of the minimum BVAP needed in certain county groupings for an African-American-preferred candidate to win a state House or Senate election, Dr. Chen determined how many of his simulations of those county groupings contained districts exceeding Dr. Lewis's BVAP-threshold estimates. Tr. 512:15-517:6. Dr. Chen determined that for every county grouping that Dr. Lewis analyzed except one in the House and one in the Senate, all of Dr. Chen's simulations produce at least as many districts above Dr. Lewis's BVAP-threshold estimate as does the enacted House or Senate plan. *Id.*; *see* PX775; PX776. For the two remaining county groupings, which are Forsyth-Yadkin in the House and Davie-Forsyth in the Senate, a majority of Dr. Chen's simulations of each grouping produce at least as many districts above Dr. Lewis's BVAP-threshold estimate as the enacted plan. *Id.*; *see* PX775; PX776. The evidence at trial thus demonstrated that, based on the BVAP-threshold estimates of Legislative Defendants' own expert, adopting nonpartisan House and Senate plans would not diminish the ability of African Americans to elect the candidate of their choice.

680. While Defendants' failure to introduce any evidence at trial necessary to the legal elements of a racial vote dilution defense is dispositive of any such defense, the Court further finds that—as a factual matter—Legislative Defendants did not draw or adopt any district under the 2017 Plans in an effort to comply with the VRA.

681. One of the Adopted Criteria, titled "No Consideration of Racial Data," stated that "[d]ata identifying the race of individuals or voters shall not be used in the drawing of legislative districts in the 2017 House and Senate plans." LDTX155. When submitting the plans to the *Covington* court for approval, Legislative Defendants stated that "[d]ata regarding race was not used in the drawing of districts for the 2017 House and Senate redistricting plans." PX629 at 10.

682. Legislative Defendants have claimed in this case that, even though they did not use racial data in drawing the districts, they purportedly checked the racial demographics of the districts on the "back end" to ensure that "the VRA was satisfied." *See, e.g.*, Leg. Defs.' Pre-Trial Brief at 44. Legislative Defendants presented no testimony at trial to substantiate this assertion, and the Court finds the assertion not credible for multiple reasons.

683. Throughout the 2017 redistricting process, Legislative Defendants asserted that the reason they were ignoring racial considerations entirely in drawing the new districts was because they had concluded that the "third *Gingles* factor" was not "present" anywhere in the State of North Carolina. PX593 at 52 (statement of Sen. Berger); *see also id.* ("we cannot prove the third *Gingles* factor") (statement of Sen. Berger). Legislative Defendants repeatedly told the *Covington* court that they could not "justify the use of race in drawing districts" in the 2017 Plans—and thus could not seek to hit a "racial numerical quota" for any district—because they had insufficient evidence of "legally sufficient racially polarized voting." *Covington*, No. 15-cv-399, ECF No. 184 at 10; ECF No. 192 at 12; *see also* ECF No. 184-17 at 12.

684. The existence of legally sufficient racially polarized voting is a "prerequisite[]" to VRA liability; if any *Gingles* factor is not met, "§ 2 simply does not

apply." *Cooper v. Harris*, 137 S. Ct. 1455, 1472 (2017). Hence, when Legislative Defendants concluded that the third *Gingles* factor was not met, they necessarily concluded that the VRA did not impose requirements for the racial composition of any state House or state Senate district. Any assertion by Legislative Defendants now that they sought to "satisfy" the VRA in adopting the 2017 Plans does not make sense as a legal or factual matter given their assertions at the time.

685. Moreover, the mere timing of when Legislative Defendants learned of the racial composition of the new districts belies their claim that they reviewed the data to ensure VRA compliance. The Stat Packs that Legislative Defendants produced when they released the initial drafts of the House and Senate plans did not include racial data on any of the draft districts.[13] At the August 24, 2017 hearing at which the Senate Redistricting Committee passed the Senate plan out of committee, Senator Hise insisted, "I have not seen any racial data for these districts." PX606 at 46:2-3. Representative Lewis said the same the next day at the hearing at which the House plan was passed out of the House Redistricting Committee. PX605 at 20:11-21:18. Only after this point did legislative staff produce racial data on the districts—at the request of Democratic legislators over Legislative Defendants' objections. PX600 at 11. Even then, Legislative Defendants claimed to have remained unaware of the racial composition of the districts. Representative Lewis asserted that he did not "see" any data on the racial composition of the House districts until *after* the House plan was passed by the full House chamber. *Id.* at 12. Legislative Defendants clearly did not have assure themselves that the plans satisfied

[13] *See* https://bit.ly/2YJnaRP (Stat Pack for Senate draft plan released on August 21, 2017); https://bit.ly/2YPch0L (Stat Pack for House draft plan released on August 20, 2017).

the VRA by meeting particular racial thresholds when they purportedly had no knowledge of the racial composition of the districts.

686. Legislative Defendants have pointed to a single floor statement by Senator Berger near the end of the legislative process that mentioned the VRA, but that statement does not establish that Senator Berger, let alone any other Legislative Defendant, actually undertook efforts to comply with the VRA. Senator Berger made that statement immediately after declaring that the third *Gingles* factor was not met, which if true would preclude VRA application as a matter of law. PX593 at 52-54. And neither Senator Berger nor anyone else has pointed to any change that was made to any House or Senate district to ensure VRA compliance.

687. The Court finds that the General Assembly did not enact any House or Senate district under the 2017 Plans with the specific intent of complying with the VRA, and that Defendants have not established that the VRA requires maintaining any of the districts that Plaintiffs challenge in its current form.

688. Indeed, the Court finds that Legislative Defendants' stated concern that "unpacking" heavily-Democratic districts could dilute the voting power of African-Americans to be a pretext for partisan gerrymandering. Unrebutted evidence presented at trial established that Legislative Defendants themselves created districts with artificially low BVAPs when it was politically advantageous. In particular, while Legislative Defendants now accuse Plaintiffs of seeking to "crack" African American voters, the unrebutted evidence established that Legislative Defendants cracked African American voters in rural and semi-rural parts of the state where cracking Democratic voters would maximize Republican victories.

689. Dr. Chen demonstrated that, for several rural and semi-rural House county groupings, all or nearly all of his simulated plans (which ignored racial data in drawing the

districts) produced a district in the grouping with a higher or much higher BVAP than any districts in that grouping under the enacted plan. Tr. 519:6-523:9. These county groupings include the Anson-Union, Cleveland-Gaston, Columbus-Pender-Robeson, and Duplin-Onslow county groupings, all of which are county groupings in which Legislative Defendants cracked Democratic voters to dilute their political power. *Id.*; *see* PX225; PX226; PX227; PX228. Dr. Chen's findings significantly undermine Legislative Defendants' claims that they seek to create higher-BVAP districts to promote the political power of African-American communities. *Id.*

7. Legislative Defendants, through Dr. Hofeller, substantially completed drafting the Enacted Maps in June 2017

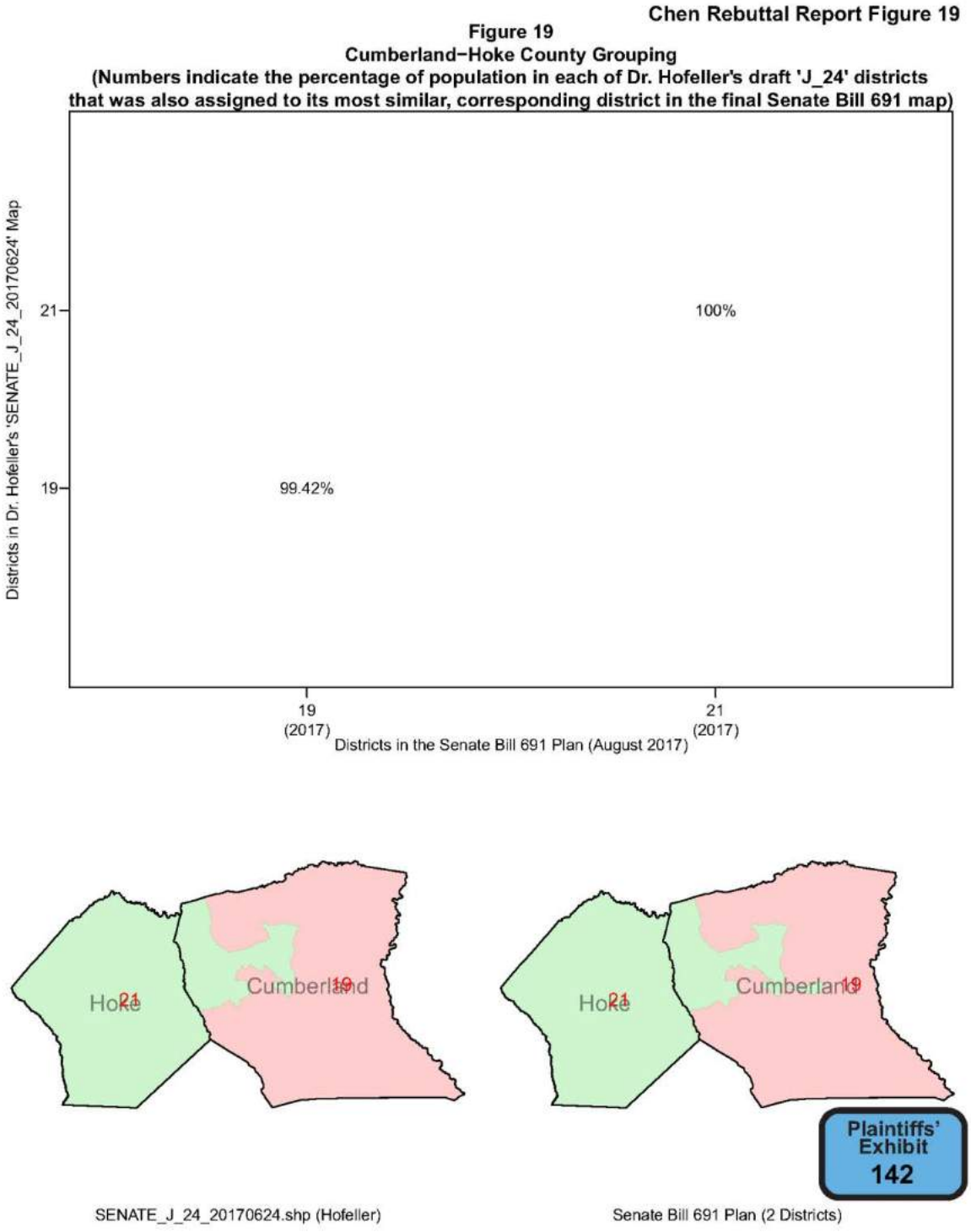
690. Based on an analysis of draft maps from June 2017 found on Dr. Hofeller's storage devices, see FOF § B.2., Plaintiffs' expert Dr. Jowei Chen demonstrated that Dr. Hofeller had begun drawing the 2017 Plans prior to July 2017, and that he had already substantially completed them by that point. Dr. Chen's analysis compared the draft maps found on Dr. Hofeller's hard drive, each of which is dated by the metadata, with the Enacted 2017 House and Senate maps to determine the degree of similarity between the drafts and the Enacted Plans.

691. For the Senate, Dr. Chen analyzed a draft map that Dr. Hofeller last modified on June 24, 2017. Tr. 400:7-10, 402:5-403:8; *see also* PX572 (showing "last modified" date); PX123 at 25 (Chen Rebuttal Report). Dr. Chen found that Dr. Hofeller had already finished assigning 97.6% of the State's census blocks and 95.6% of the State's population to their final Senate districts in this June 24, 2017, draft map. Tr. 400:6-25.

692. To show the extent to which Dr. Hofeller had already completed drawing the new Senate plan, Dr. Chen compared individual Senate county groupings in the June 24, 2017, draft map to the final version of the same grouping in the enacted Senate plan. The

figure below, PX142 [Chen rebuttal report, Figure 19], shows one such comparison for a Senate county grouping containing multiple districts that was redrawn in 2017. Tr. 416:15-20; PX123 at 27-38 (Chen Rebuttal Report). Dr. Chen repeated this analysis for every Senate county grouping containing multiple districts that was redrawn in 2017, and the Court adopts, by reference to Dr. Chen's trial testimony and as illustrated in his Rebuttal Report, each of those illustrations as if fully set forth herein. Tr. 404:19-417:13; PX140; PX141; PX142; PX143; PX144; PX145; PX146; PX147 [Chen rebuttal report, Figures 17-24].

693. In Dr. Chen's illustrations, as shown by the example below, the map on the bottom left is Dr. Hofeller's June 24, 2017, draft, the map on the bottom right is the final enacted plan, and the top half of the figure reports the percentage of the population in each district in Dr. Hofeller's draft (on the vertical axis) that were assigned to the corresponding district in the final enacted plan (on the horizontal axis). Tr. 405:5-407:18. For instance, the figure included below shows that 99.42% of the population assigned to Senate District 19 in Dr. Hofeller's June 24, 2017 draft was also assigned to Senate District 19 in the enacted Senate plan, while 100% of the population in Dr. Hofeller's draft Senate District 21 was assigned to Senate District 21 in the enacted plan. *Id.*



694. Based on Dr. Chen's analysis of each Senate county grouping containing multiple districts that was redrawn in 2017, the Court finds that by June 24, 2017—nearly seven weeks before the Adopted Criteria were passed on August 10, 2017—Dr. Hofeller had

fully or at least substantially completed drawing every Senate county grouping redrawn in 2017. Tr. 404:23-417:13. The only Senate districts that were not an over-90% match to their final corresponding districts were a few heavily Democratic districts in Wake and Mecklenburg Counties. Tr. 412:5-414:12; *see* PX146; PX147.

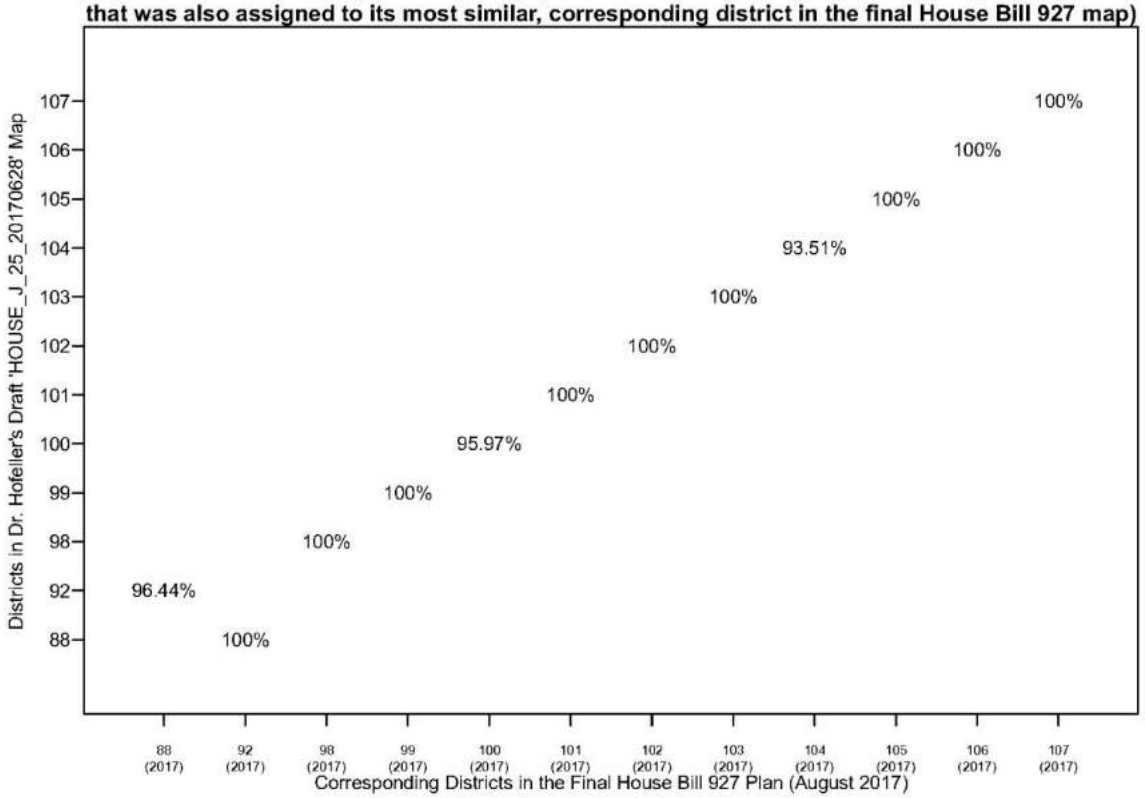
695. Contrary to Legislative Defendants' contention, the North Carolina Constitution's Whole County Provision is not responsible for the high degree of overlap between Dr. Hofeller's draft Senate plan and the final enacted plan. As Dr. Chen testified, the Whole County Provision did not dictate the contours of Senate districts in counties such as Cumberland, Forsyth, Johnston, Durham, Wake, Mecklenburg, and Guilford Counties, and Dr. Hofeller's June 24, 2017 draft districts in these counties distinctly match the final versions. Tr. 408:13-416:1.

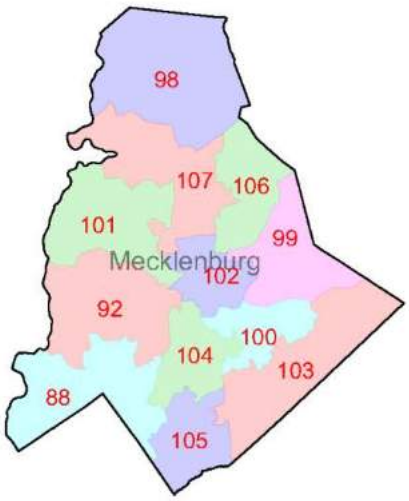
696. As with the Senate, Dr. Chen found that Dr. Hofeller had substantially completed drawing the new House plan by June 2017. Analyzing a draft House plan that Dr. Hofeller last modified on June 28, 2017, *see* PX569, Dr. Chen found that Dr. Hofeller had already finished assigning 90.9% of North Carolina's census blocks and 88.2% of the State's population into their final House districts in the June 28, 2017 draft plan. Tr. 401:15-23, 417:14-418:2, PX123 at 2-3 (Chen Rebuttal Report).

697. The figure below, PX124 [Chen rebuttal report, Figure 1], shows Dr. Chen's analysis comparing Dr. Hofeller's June 28, 2017, draft House map to the final enacted House map for a single House county grouping, in this instance, Mecklenburg County. Dr. Chen repeated this analysis for every House county grouping containing multiple districts that was redrawn in 2017, and the Court adopts, by reference to Dr. Chen's trial testimony and as illustrated in his Rebuttal Report, each of those illustrations as if fully set forth herein. Tr. 417:14-427:15; PX124; PX125; PX126; PX127; PX128; PX129; PX131; PX132; PX133 [Chen rebuttal report, Figures 1 – 6, 8-10]

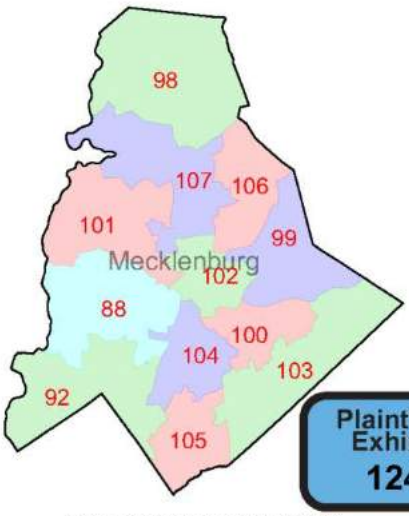
Chen Rebuttal Report Figure 1

Figure 1:
Mecklenburg County Grouping
(Numbers indicate the percentage of population in each of Dr. Hofeller's draft 'J_25' districts that was also assigned to its most similar, corresponding district in the final House Bill 927 map)





HOUSE_J_25_20170628.shp (Hofeller)



House Bill 927 Plan (12 Districts)

Plaintiffs' Exhibit 124

698. Based on Dr. Chen's analysis, the Court finds that by June 28, 2017—over six weeks before the Adopted Criteria were passed—Dr. Hofeller had fully or at least

substantially completed drawing numerous House county groupings redrawn in 2017. Tr. 419:12-427:1.

699. Contrary to Legislative Defendants' contention, the Whole County Provision is not responsible for the high degree of overlap between Dr. Hofeller's June 28, 2017 draft House plan and the final enacted House plan. Tr. 419:12-427:1. The Whole County Provision does not dictate the contours of House districts in counties such as Mecklenburg, Harnett, Wayne, Sampson, Orange, Durham, Pitt, Robeson, Granville, Forsyth, and Rockingham Counties, and Dr. Hofeller's June 28, 2017, draft House districts in these counties were near-exact matches to the final districts. *Id.*

700. The Court finds Dr. Chen's comparisons of Dr. Hofeller's June 2017 draft plans to the enacted plans to be highly credible and persuasive. Notably, Dr. Chen's analysis stands unrebutted. Legislative Defendants presented testimony from Dr. Douglas Johnson in an attempt to rebut Dr. Chen's analysis. However, the Court struck all of Dr. Johnson's analysis comparing Dr. Hofeller's draft districts and the final enacted districts after Plaintiffs' cross-examination exposed a series of significant errors and unreliable methodology. Tr. 1988:11-1990:4.

701. As for Dr. Johnson's remaining criticisms of Dr. Chen's methodology for calculating the overlap between Dr. Hofeller's June 2017 draft plans and the final enacted plans, the Court assigns them no weight. The Court finds that Dr. Chen employed a reasonable methodology to estimate the degree of similarity between the draft and final plans, by simply calculating the percentage of census blocks and population in each draft district that was also assigned to the most closely corresponding district in the final enacted House or Senate plan. *See* Tr. 398:3-399:15. Dr. Chen's methodology and findings also accord with a visual comparison of the draft House and Senate districts to the corresponding final versions. No party has disputed that the maps presented in Plaintiffs'

Exhibits 124-129, 131-133, and 140-147 accurately reflect the district boundaries in Dr. Hofeller's June 2017 draft plans and the final enacted plans.

702. The Court concludes from this showing, and therefore finds, that Dr. Hofeller, and consequently the Legislative Defendants who retained him, by having largely completed the drafting of House and Senate maps by June, 2017, did so with little regard for the Adopted Criteria, or the neutral, non-partisan criteria contained therein, which were not adopted by the Senate Redistricting Committee and House Select Committee on Redistricting until August 10, 2017, and provided to Dr. Hofeller on August 11, 2017. PX 603 at 4:23-5:5; PX629. The Court finds that this is further compelling evidence of the intent of Legislative Defendants to create legislative districts by subordinating Democratic voters for partisan gain and to entrench the power of the Republican majority.

703. Since Dr. Hofeller's files came to light, Legislative Defendants have asserted that they did not know at the time that Dr. Hofeller was developing draft maps prior to August 2017 or that Plaintiffs cannot "connect" Dr. Hofeller's draft maps to the General Assembly. *See, e.g.,* Leg. Defs'. Pre-trial Brief, p. 36. The Court finds this argument unpersuasive. Dr. Hofeller was retained by the General Assembly on June 27, 2017, for the purposes of drawing the 2017 House and Senate maps. PX641. The Court finds it highly improbable that in the days leading up to his engagement, or in the nearly six weeks following, Dr. Hofeller never mentioned his draft maps to anyone connected with Legislative Defendants until after he received the Adopted Criteria on August 11, 2017—especially since, merely eight or nine days later, Legislative Defendants were able to reveal final drafts of his House and Senate maps. PX605 at 16:2-17:16; PX629 at 7.

704. The Court is troubled by representations made by Legislative Defendants, or attorneys working on their behalf, in briefs and arguments to the *Covington* Court and to General Assembly colleagues at committee meetings that affirmatively stated that no draft

maps had been prepared even as late as August 4, 2017. *See, e.g., Covington*, ECF No. 161 at 2, 4, 13, and 28-29; PX601 at 11-12; PX602 at 72-73; and PX629 at 3, 4, 6 and 10 (*Covington*, ECF No. 184). For the purposes of determining liability for the claims asserted in this litigation,[14] the Court finds it unnecessary to delve further into these concerns, other than to note that the Court, as previously stated, is persuaded, and specifically finds, that Dr. Hofeller's intent and actions, as evidenced throughout his map-drawing process from at least early June 2017, are attributable in full to Legislative Defendants.

[14] In considering the appropriate remedy, the Court does take this finding into account, among others, when mandating that the remedial process be more transparent to the Court, the public, and the entire General Assembly.

CONCLUSIONS OF LAW

I. THE STANDING OF PLAINTIFFS

1. The North Carolina Constitution provides: "All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay." N.C. Const. art. I, § 18.

2. "[B]ecause North Carolina courts are not constrained by the 'case or controversy' requirement of Article III of the United States Constitution, our State's standing jurisprudence is broader than federal law." *Davis v. New Zion Baptist Church*, 811 S.E.2d 725, 727 (N.C. Ct. App. 2018) (quotation marks omitted); *accord Goldston v. State*, 361 N.C. 26, 35, 637 S.E.2d 876, 882 (2006) ("While federal standing doctrine can be instructive as to general principles . . . and for comparative analysis, the nuts and bolts of North Carolina standing doctrine are not coincident with federal standing doctrine."). At a minimum, a plaintiff in a North Carolina court has standing to sue when it would have standing to sue in federal court.

3. The North Carolina Supreme Court has broadly interpreted Article I, § 18 to mean that "[a]s a general matter, the North Carolina Constitution confers standing on those who suffer harm." *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 642, 669 S.E.2d 279, 281 (2008). The "gist of the question of standing" under North Carolina law is whether the party seeking relief has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Goldston*, 361 N.C. at 30, 637 S.E.2d at 879 (quoting *Stanley v. Dep't of Conservation & Dev.*, 284 N.C. 15, 28, 199 S.E.2d 641, 650 (1973)). Although the North Carolina Supreme Court "has declined to set out specific criteria necessary to show

standing in every case, [it] has emphasized two factors in its cases examining standing: (1) the presence of a legally cognizable injury; and (2) a means by which the courts can remedy that injury." *Davis*, 811 S.E.2d at 727-28.

A. The North Carolina Democratic Party Has Standing

4. The Court determines that the North Carolina Democratic Party (NCDP) has standing, both to sue on its own behalf as an organization and to sue on behalf of its members.

5. "An association may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy." *River Birch Assoc. v. Raleigh*, 326 N.C. 100, 129, 388 S.E.2d 538, 555 (1990) (quoting *Warth v. Seldin*, 422 U.S. 490, 511, 95 S. Ct. 2197, 2211 (1975)). The Court finds instructive the United States Supreme Court holdings under federal standing principles that state political parties and organizations similar to the NCDP have standing to bring voting-rights challenges on their own behalf. *See, e.g., Crawford v. Marion County Election Bd.*, 553 U.S. 181, 189 n.7 (2008); *id.* at 204-09 (Scalia, J., concurring); *id.* at 209 n.2 (Souter, J., dissenting); *Gill v. Whitford*, 138 S. Ct. 1916, 1938 (2018) (Kagan, J., concurring) (explaining how these standards can apply to political parties and similar organizations in a partisan gerrymandering case); *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 1076 (S.D. Ohio 2019); *League of Women Voters of Mich. v. Johnson*, 352 F. Supp. 3d 777, 801 (E.D. Mich. 2018). Indeed, the federal court in *Common Cause v. Rucho* held that the NCDP had standing to bring a partisan gerrymandering challenge on its own behalf—based in part on the testimony of Mr. Goodwin. *See*, *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 830 (M.D.N.C. 2018), *vacated on other grounds*, 139 S. Ct. 2484 (2019).

6. The NCDP has standing in its own right to seek judicial relief in this case because the NCDP has sufficiently demonstrated the presence of a legally cognizable injury to NCDP and a means by which the courts of our State can remedy that injury.[15]

7. An association also "has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *River Birch Assoc.*, 326 N.C. at 130, 388 S.E.2d at 555 (quoting *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441 (1977)). An associational plaintiff need not show that *all* of its members would have standing to sue in their own right when seeking declaratory or injunctive relief; rather, it is sufficient if any "one" member would have individual standing. *Id.*; *see also State Employees Ass'n of N.C., Inc. v. State*, 357 N.C. 239, 580 S.E.2d 693 (2003) (reversing lower court decision that had required every member of association or organization to have standing). The Court finds instructive federal court holdings that organizations similar to the NCDP have standing to bring partisan gerrymandering challenges on behalf of their members. *See, e.g., League of Women Voters of Mich.*, 373 F. Supp. 3d at 933, 937-38; *Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d at 1072-73; *Rucho,* 318 F. Supp. 3d at 827, 835-36 (holding that the NCDP had standing to bring a partisan gerrymandering claim on behalf of its members).

8. The NCDP has standing to sue on behalf of its members in this case because its members—registered Democratic voters located in every state House and state Senate District across our State—otherwise have standing to sue in their own right, the interests

[15] Furthermore, even under the federal standing requirements of (1) injury, (2) causation, and (3) redressability, *see Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018), the NCDP has such a personal stake in the outcome of the controversy that it has standing under this more stringent standard.

that the NCDP seeks to protect are germane to the NCDP's purpose, and neither the claims asserted nor the declaratory and injunctive relief requested requires the participation of individual NCDP members in this lawsuit.

B. Common Cause Has Standing

9. The Court further holds that Common Cause has standing, both to sue on its own behalf as an organization and to sue on behalf of its members.

10. The Court finds instructive federal court holdings that organizations similar to Common Cause have standing to bring partisan gerrymandering challenges on their own behalves and on behalf of their members. *See, e.g., League of Women Voters of Mich.*, 373 F. Supp. 3d at 933, 937-38; *Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d at 1072-75; *Rucho* 318 F. Supp. 3d at 830-31 (holding that Common Cause had standing to bring a partisan gerrymandering challenge).

11. Like the NCDP, Common Cause has standing in its own right to seek judicial relief in this case because Common Cause has sufficiently demonstrated the presence of a legally cognizable injury to Common Cause and a means by which the courts of our State can remedy that injury.[16]

12. Common Cause also has standing to sue on behalf of its members in this case because at least one of its individual members has standing to sue in his or her own right, the interests Common Cause seeks to protect in this case are germane to Common Cause's purposes, and neither the claims asserted nor the declaratory and injunctive relief requested requires the participation of individual Common Cause members in this lawsuit.

[16] Furthermore, even under the federal standing requirements of (1) injury, (2) causation, and (3) redressability, *see Gill*, 138 S. Ct. at 1929, Common Cause has such a personal stake in the outcome of the controversy that it has standing under this more stringent standard.

C. The Standing of Individual Plaintiffs

13. Individual Plaintiffs also have standing to challenge each of their individual districts as well as their county groupings. All of the Individual Plaintiffs detailed below have shown "a personal stake in the outcome of the controversy," *Goldston*, 361 N.C. at 30, 637 S.E.2d at 879, and that the 2017 Plans cause them to "suffer harm," *Mangum*, 362 N.C. at 642, 669 S.E.2d at 281.

14. Certain Individual Plaintiffs have standing to challenge their own districts. Plaintiffs introduced extensive district-specific evidence demonstrating how, through cracking and packing, the 2017 Plans dilute the voting power of Individual Plaintiffs and other Democratic voters. Plaintiffs also introduced unrebutted, district-specific evidence demonstrating that twenty-two Individual Plaintiffs live in House districts that are outliers in partisan composition relative to the districts in which they live under Dr. Chen's nonpartisan simulated plans and that twenty Individual Plaintiffs live in Senate districts that are outliers in the same manner. FOF § E.3. Each of these Individual Plaintiffs thus established a personal stake in the outcome of the controversy and a specific harm directly attributable to the partisan gerrymandering of the district in which they reside. *Goldston*, 361 N.C. at 30, 637 S.E.2d at 879; *Mangum*, 362 N.C. at 642, 669 S.E.2d at 281; *see, e.g.*, *Rucho*, 318 F. Supp. 3d at 817; *Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d at 1063; *League of Women Voters of Mich.*, 373 F. Supp. 3d at 916; *Benisek*, 348 F. Supp. 3d 493, 517 (D. Md. 2018), *vacated on other grounds*, 139 S. Ct. 2484 (2019). Moreover, these Individual Plaintiffs have demonstrated, through extensive district-specific evidence, the presence of a legally cognizable injury and, as discussed in great detail below, a means by which the courts of our State can remedy that injury.

15. These Individual Plaintiffs challenge not only the individual districts in which they reside, but also the county groupings as a whole in which they reside. The

United States Supreme Court has held that individual voters have standing under the federal Constitution to challenge only their own districts on partisan gerrymandering grounds, *Gill*, 138 S. Ct. at 1930-31; however, in light of the less stringent standing requirements in our State, and because the manner in which one district is drawn in a county grouping necessarily is tied to the drawing of some, and possibly all, of the other districts within that same grouping, a challenge to the entire county grouping by these Individual Plaintiffs constitutes the necessary "personal stake in the outcome of the controversy" for a plaintiff to have standing in this case. *Goldston*, 361 N.C. at 30, 637 S.E.2d at 879; *see Erfer v. Commonwealth*, 794 A.2d 325, 330 (Pa. 2002) (recognizing that a "reapportionment plan acts as an interlocking jigsaw puzzle, each piece reliant upon its neighbors to establish a picture of the whole" and that an "allegation that a litigant's district was improperly gerrymandered necessarily involves a critique of the plan beyond the borders of his district"), *abrogated on other grounds by League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737 (Pa. 2018).

16. On the other hand, several named Individual Plaintiffs do not have standing to challenge either the individual House or Senate District in which they reside because, under Dr. Chen's analysis, the district in which they would reside is not an outlier—based upon the location of that Individual Plaintiff's residence—when compared to all of Dr. Chen's nonpartisan simulated House or Senate maps.[17] Therefore, these Individual Plaintiffs have not demonstrated a cognizable injury and a means by which the Court could remedy that injury; however, with respect to the challenged districts in which these

[17] These Individual Plaintiffs without standing to challenge either their individual House or Senate district are: Virginia Walters Brien, Leon Charles Schaller, Howard Du Bose, Jr., Deborah Anderson Smith, Alyce Machak, John Balla, John Mark Turner, Ann McCracken, and Mary Ann Peden-Coviello. FOF § E.3.; PX238; PX117. The Court notes that although some Individual Plaintiffs may not have standing to challenge *both* of their House and Senate districts, they do have standing to challenge at least *a* district in which they reside.

Individual Plaintiffs reside, because the NCDP has standing to bring partisan gerrymandering claims on behalf of its members, the Court concludes that Plaintiffs' challenges to these districts do not fail for lack of standing.

II. THE 2017 PLANS VIOLATE THE NORTH CAROLINA CONSTITUTION'S FREE ELECTIONS CLAUSE

17. Two months ago, in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), the United States Supreme Court considered constitutional challenges to political gerrymandering of Congressional districts in North Carolina and Maryland.

18. The North Carolina Congressional map under consideration by the Supreme Court, adopted by the General Assembly on February 19, 2016, arose in remarkably similar circumstances as the maps under consideration by this trial court, which were adopted August 31, 2017: both the 2016 Congressional map and the 2017 legislative maps were required after a federal court declared existing maps unconstitutional; both were drawn under the direction of many of the same actors working on behalf of the Republican-controlled General Assembly; both were drawn by Dr. Thomas Hofeller; both were drawn in large part before the General Assembly's redistricting committee met and approved redistricting criteria; and both, as has been found above with respect to the 2017 legislative maps, were drawn with the intent to maximize partisan advantage and, in fact, achieved their intended partisan effects.

19. In the majority opinion of the *Rucho* Court, the Justices found the Congressional maps before them to be "highly partisan, by any measure," *id.* at 2491, and "blatant examples of partisanship driving districting decisions," *id.* at 2505. The majority further reaffirmed that "partisan gerrymanders are incompatible with democratic principles." *Id.* at 2506 (citing *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2658 (U.S. 2016)).

20. Nonetheless, the Supreme Court concluded, in the majority opinion, that "partisan gerrymandering claims present political questions beyond the reach of the *federal* courts." *Rucho*, 139 S. Ct. at 2506-07 (emphasis added). The Court held that the *federal* courts "have no commission to allocate political power and influence in the absence of a constitutional directive or legal standards to guide us in the exercise of such authority," *id.* at 2508, and that the United States Constitution "confines the *federal* courts to a properly judicial role," because there is no "no plausible grant of authority in the [United States] Constitution, and no legal standards to limit and direct their decisions," *id.* at 2507 (emphasis added).

21. The Supreme Court hastened to add, however, that "our conclusion does not condone excessive partisan gerrymandering" and nor does its conclusion "condemn complaints about districting to echo into a void." *Id.*

22. Rather, the Supreme Court held, "[t]he States . . . are actively addressing the issue on a number of fronts," and "[p]rovisions in state statutes and *state constitutions* can provide standards and guidance for state courts to apply." *Id.* (emphasis added).

23. The North Carolina Constitution, in the Declaration of Rights, Article I, § 10, declares that "[a]ll elections shall be free."

24. The Free Elections Clause, Article I, § 10, is one of the clauses that makes the North Carolina Constitution more detailed and specific than the federal Constitution in the protection of the rights of its citizens. *Corum v. Univ. of N.C. ex rel. Bd. of Gov'rs*, 330 N.C. 761, 783, 413 S.E.2d 276, 290 (1992). The federal Constitution contains no similar counterpart to this declaration, although several other states' constitutions do.

25. The broad language of the Free Elections Clause has not heretofore been extensively interpreted by our appellate courts. However, "it is emphatically the province

and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

26. The North Carolina Supreme Court has long recognized the fundamental role of the will of the people in our democratic government. "Our government is founded on the will of the people. Their will is expressed by the ballot." *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875).

27. In particular, the North Carolina Supreme Court has directed that in construing provisions of the Constitution, "we should keep in mind that this is a government of the people, in which the will of the people--the majority--legally expressed, must govern." *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 428, 26 S.E. 638, 638 (1897) (citing N.C. Const. art. I, § 2).

28. Therefore, our Supreme Court continued, because elections should express the will of the people, it follows that "all acts providing for elections, should be liberally construed, that tend to promote a fair election or expression of this popular will." *Id.* "[F]air and honest elections are to prevail in this state." *McDonald v. Morrow*, 119 N.C. 666, 673, 26 S.E. 132, 134 (1896).

29. Our Supreme Court has elevated this principle to the highest legal standard, noting that it is a "compelling interest" of the State "in having fair, honest elections." *State v. Petersilie*, 334 N.C. 169, 184, 432 S.E.2d 832, 840 (1993). As to this there is little room for debate; the Court has recognized that "there is also agreement as to the compelling government interest in ensuring honest and fair elections." *Id.* (citing *Burson v. Freeman*, 504 U.S. 191, 198-99, 112 S. Ct. 1846, 1851-52 (1992)).

30. In giving meaning to the Free Elections Clause, this Court's construction of the words contained therein must therefore be broad to comport with the following

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

31. As such, the Court concludes that the meaning of the Free Elections Clause is that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. This, the Court concludes, is a fundamental right of the citizens enshrined in our Constitution's Declaration of Rights, a compelling governmental interest, and a cornerstone of our democratic form of government.

32. The Court now turns to the issue of whether extreme partisan gerrymandering of legislative districts run afoul of the mandate of the Free Elections Clause by depriving citizens of elections that are conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.

33. At its most basic level, partisan gerrymandering is defined as: "the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power." *Ariz. State Legislature,* 135 S. Ct. at 2658.

34. The danger of partisan gerrymandering is that it has the potential to violate "the core principle of republican government . . . that the voters should choose their representatives, not the other way around." *Id.* at 2677; *see* also *Powell v. McCormack*, 395 U.S. 486, 540-41, 89 S. Ct. 1944, 1974 (1969) ("[T]he true principle of a republic is, that the people should choose whom they please to govern them." (quoting Alexander Hamilton in 2 Debates of the Federal Constitution 257 (J. Elliott ed. 1876))). Moreover, it can represent "an abuse of power that, at its core, evinces a fundamental distrust of voters, serving the self-interest of the political parties at the expense of the public good." *LULAC v. Perry,* 548

U.S. 399, 456, 126 S. Ct. 2594, 2631 (2006) (Steven, J., concurring in part and dissenting in part) (quotation and citation omitted).

35. Partisan gerrymandering operates through vote dilution—the devaluation of one citizen's vote as compared to others. A mapmaker draws district lines to "pack" and "crack" voters likely to support the disfavored party. *See generally Gill*, 138 S. Ct. 1916. The mapmaker packs supermajorities of those voters into a relatively few districts, in numbers far greater than needed for their preferred candidates to prevail. Then the mapmaker cracks the rest across many more districts, spreading them so thin that their candidates will not be able to win. Whether the person is packed or cracked, his vote carries less weight—has less consequence—than it would under a neutrally drawn (non-partisan) map. *See id.,* 138 S. Ct. at 1935-36 (Kagan, J., concurring). In short, the mapmaker has made some votes count for less, because they are likely to go for the other party. *Rucho*, 2513-14 (Kagan, J., dissenting).

36. Seen in this light, it is clear to the Court that extreme partisan gerrymandering—namely redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others—is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.

37. Extreme partisan gerrymandering does not fairly and truthfully ascertain the will of the people. Voters are not freely choosing their representatives. Rather, representatives are choosing their voters. It is not the will of the people that is fairly ascertained through extreme partisan gerrymandering. Rather, it is the will of the map drawers that prevails.

38. The Court is further persuaded that the history of the Free Elections Clause comports with the interpretation applied in this case.

39. The Free Elections Clause dates back to the North Carolina Declaration of Rights of 1776. The framers of the North Carolina Declaration of Rights based the Free Elections Clause on a provision of the 1689 English Bill of Rights providing that "election of members of parliament ought to be free." Bill of Rights 1689, 1 W. & M. c. 2 (Eng.); *see* John V. Orth, *North Carolina Constitutional History*, 70 N.C. L. Rev. 1759, 1797-98 (1992).

40. This provision of the 1689 English Bill of Rights grew out of the king's efforts to manipulate parliamentary elections, including by changing the electorate in different areas to achieve "electoral advantage." J.R. Jones, *The Revolution of 1688 in England* 148 (1972). The king's attempt to maintain control of parliament by manipulating elections led to a revolution, and after dethroning the king, the revolutionaries called for a "free and lawful parliament" as a critical reform. Grey S. De Krey, *Restoration and Revolution in Britain: A Political History of the Era of Charles II and the Glorious Revolution* 241, 247-48, 250 (2007).

41. A number of states included versions of a free election clause in their early Declarations of Rights, all drawing inspiration from the 1689 English Bill of Rights. The Framers of North Carolina's Declaration of Rights in turn drew inspiration for North Carolina's Free Elections Clause from these other states, which included Pennsylvania, Maryland, and Virginia. *See* Orth, 70 N.C. L. Rev. at 1797-98.

42. Like the 1689 English Bill of Rights, North Carolina's Free Elections Clause, in conjunction with the companion provision of the State Constitution now found in Article I, § 9 concerning redress of grievances, mandates that elections in North Carolina must be "free from interference or intimidation" by the government, so that all North Carolinians are freely able, through the electoral process, to pursue a "redress of grievances and for

amending and strengthening the laws." John V. Orth & Paul M. Newby, *The North Carolina State Constitution* 55-57 (2d ed. 2013) (hereinafter "Orth & Newby"). "[T]his pair of sections concerns the application of the principle of popular sovereignty." *Id.* at 55. As the North Carolina Supreme Court explained nearly a century ago, the Free Elections Clause reflects that "[o]ur government is founded on the consent of the governed," and the right to free elections "must be held inviolable to preserve our democracy." *Swaringen v. Poplin*, 211 N.C. 700, 191 S.E. 746, 747 (1937).

43. North Carolina has broadened and strengthened the Free Elections Clause since its adoption in 1776 to make these purposes clear. The original clause stated that "elections of members, to serve as Representatives in the General Assembly, ought to be free." N.C. Declaration of Rights, VI (1776). The next version of the State's Constitution, adopted in 1868, declared that "[a]ll elections ought to be free," expanding the principle to include all elections in North Carolina. N.C. Const. art. I, § 10 (1868). In the current State Constitution, adopted in 1971, the Free Elections Clause now mandates that "[a]ll elections *shall* be free." N.C. Const. art. I, § 10 (emphasis added). This change was intended to "make [it] clear" that the Free Elections Clause and the other rights secured to the people by the Declaration of Rights "are commands and not mere admonitions" to proper conduct on the part of the government. *N.C. State Bar v. DuMont*, 304 N.C. 627, 635, 639, 286 S.E.2d 89, 94, 97 (1982) (quoting Report of the N.C. State Constitution Study Comm'n to the N.C. State Bar and the N.C. Bar Ass'n, 75 (1968)).

44. The North Carolina Supreme Court has enforced the Free Elections Clause to invalidate laws that interfere with voters' ability to freely choose their representatives. In *Clark v. Meyland*, the North Carolina Supreme Court struck down a law that required voters seeking to change their party affiliation to take an oath supporting the party's

nominees "in the next election and . . . thereafter." 261 N.C. 140, 141, 134 S.E.2d 168, 169 (1964). The Court held that this attempt to manipulate the outcome of future elections "violate[d] the constitutional provision that elections shall be free." *Id.* at 143, 134 S.E.2d at 170.

45. The partisan gerrymandering of the 2017 Plans strikes at the heart of the Free Elections Clause. Using their control of the General Assembly, Legislative Defendants manipulated district boundaries, to the greatest extent possible, to control the outcomes of individual races so as to best ensure their continued control of the legislature.

46. Plaintiffs' experts demonstrated that the 2017 Plans were designed, specifically and systematically, to maintain Republican majorities in the state House and Senate. Drs. Chen and Mattingly each independently established that the 2017 Plans were gerrymandered to be most resilient in electoral environments where Democrats could win majorities in either chamber under nonpartisan plans. FOF § B.3.a, b. Their analyses establish that it is nearly impossible for Democrats to win majorities in either chamber in any reasonably foreseeable electoral environment. *Id.* Elections are not free when partisan actors have tainted future elections by specifically and systematically designing the contours of the election districts for partisan purposes and a desire to preserve power. In doing so, partisan actors ensure from the outset that it is nearly impossible for the will of the people—should that will be contrary to the will of the partisan actors drawing the maps—to be expressed through their votes for State legislators.

47. The 2017 Plans also unlawfully seek to predetermine election outcomes in specific districts and county groupings. Drs. Chen and Mattingly each found numerous districts and county groupings that result in safe or relatively safe Republican seats under the enacted plans but would be far more competitive or even Democratic-leaning under nonpartisan plans. In the remaining county groupings, Drs. Chen and Mattingly similarly

found that Legislative Defendants placed their thumbs heavily on the scale to favor Republicans. *See* FOF § C.

48. The harm caused by this manipulation of election outcomes subverts another key purpose of the Free Elections Clause, which, in conjunction with Article I, § 9, is to facilitate the ability of North Carolina citizens to seek a "redress of grievances and for amending and strengthening the law." Orth & Newby, at 56. Democratic voters in North Carolina cannot meaningfully seek to redress their grievances or amend the laws consistent with their policy preferences when they cannot obtain a majority of the General Assembly.

49. For the foregoing reasons, the Court concludes that Plaintiffs have met their burden of showing, plainly and clearly without any reasonable doubt, that the enacted plans violate the North Carolina Constitution's guarantee of free elections in Article I, Section 10 of the North Carolina Constitution by demonstrating that Legislative Defendants, with the predominant intent to control and predetermine the outcome of legislative elections for the purpose of retaining partisan power in the General Assembly, manipulated the current district boundaries. And Plaintiffs have met their burden to establish that the manipulation of district boundaries by Legislative Defendants resulted in extreme partisan gerrymandering, subordinating traditional redistricting criteria, so that the resulting maps cracked and packed voters to achieve these partisan objectives. The 2017 Plans, individually and collectively, deprive North Carolina citizens of the right to vote for General Assembly members in elections that are conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.

III. THE 2017 PLANS VIOLATE THE NORTH CAROLINA CONSTITUTION'S EQUAL PROTECTION CLAUSE

50. The Equal Protection Clause of the North Carolina Constitution guarantees to all North Carolinians that "[n]o person shall be denied the equal protection of the laws." N.C. Const., art. I, § 19.

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

A. North Carolina's Equal Protection Clause Provides Greater Protection for Voting Rights Than its Federal Counterpart

52. North Carolina's Equal Protection Clause provides greater protection for voting rights than federal equal protection provisions. *Stephenson v. Bartlett*, 355 N.C. 354, 377-81 & n.6, 562 S.E.2d 377, 393-96 & n.6 (2002); *Blankenship v. Bartlett*, 363 N.C. 518, 522-28, 681 S.E.2d 759, 763-66 (2009). "It is beyond dispute that [North Carolina courts] ha[ve] the authority to construe [the North Carolina Constitution] differently from the construction by the United States Supreme Court of the Federal Constitution, as long as our citizens are thereby accorded no lesser rights than they are guaranteed by the parallel federal provision." *Stephenson*, 355 N.C. at 381 n.6, 562 S.E.2d at 395 n.6. North Carolina courts can and do interpret even "identical term[s]" in the State's Constitution more broadly than their federal counterparts. *Northampton Cnty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 749, 392 S.E.2d 352, 357 (1990).

53. The North Carolina Supreme Court has held that North Carolina's Equal Protection Clause protects "the fundamental right of each North Carolinian to *substantially equal voting power*." *Stephenson*, 355 N.C. at 379, 562 S.E.2d at 394 (emphasis added). "It is well settled in this State that 'the right to vote *on equal terms* is a fundamental right.'" *Id.* at 378, 562 S.E.2d at 393 (quoting *Northampton Cnty.*, 326 N.C. at 747, 392 S.E.2d at 356) (emphasis added). These principles apply with full force in the redistricting context, and because a fundamental right is implicated, strict scrutiny applies. *See id.* at 377-78, 562 S.E.2d at 393-94.

54. The North Carolina Supreme Court has applied this broader state constitutional protection to invalidate redistricting schemes and other elections laws under Article I, § 19, irrespective of whether they violated federal equal protection guarantees. In *Stephenson*, the Court held that use of single-member and multi-member districts in a redistricting plan violated Article I, § 19. *Id.* at 377-81 & n.6, 562 S.E.2d at 393-95 & n.6. The Court explained that, although such a redistricting scheme did not violate the United States Constitution, it restricted the "fundamental right under the State Constitution" to "substantially equal voting power and substantially equal legislative representation." *Id.* at 382, 562 S.E.2d at 396. Because the "classification of voters" between single-member and multi-member districts created an "impermissible distinction among similarly situated citizens," it "necessarily implicate[d] the fundamental right to vote on equal terms," triggering "strict scrutiny." *Id.* at 377-78, 562 S.E.2d at 393-94.

55. In *Blankenship*, the Court held that Article I, § 19 mandates one-person, one-vote in judicial elections, even though the United States Constitution does not. 363 N.C. at 522-24, 681 S.E.2d at 762-64. The Court stressed that "[t]he right to vote on equal terms in

representative elections . . . is a fundamental right" and therefore "triggers heightened scrutiny." *Id*.

56. And in *Northampton County*, the Court applied strict scrutiny to invalidate certain rules related to voting for drainage districts, holding that the rules at issue deprived one county's residents of the "fundamental right" to "vote on equal terms" with residents of a neighboring county. 326 N.C. at 747, 392 S.E.2d at 356.

57. Although the North Carolina Constitution provides greater protection for voting rights than the federal Equal Protection Clause, our courts use the same test as federal courts in evaluating the constitutionality of challenged classifications under an equal protection analysis. *Duggins v. N.C. State Bd. of Certified Pub. Accountant Exam'rs*, 294 N.C. 120, 131, 240 S.E.2d 406, 413 (1978); *Richardson v. N.C. Dep't of Corr.,* 345 N.C. 128, 134, 478 S.E.2d 501, 505 (1996).

58. Generally, this test has three parts: (1) intent, (2) effects, and (3) causation. First, the plaintiffs challenging a districting plan must prove that state officials' "predominant purpose" in drawing district lines was to "entrench [their party] in power" by diluting the votes of citizens favoring their rival. *Ariz. State Legis.*, 135 S. Ct. at 2658. Second, the plaintiffs must establish that the lines drawn in fact have the intended effect by "substantially" diluting their votes. *Rucho*, 318 F. Supp. 3d at 861. Finally, if the plaintiffs make those showings, the State must provide a legitimate, non-partisan justification (*i.e.*, that the impermissible intent did not cause the effect) to preserve its map. *Rucho,* 139 S. Ct. at 2516 (Kagan, J., dissenting).

B. The 2017 Plans Were Created with the Intent to Discriminate Against Plaintiffs and Other Democratic Voters

59. To establish a discriminatory purpose or intent, a plaintiff need not show that the discriminatory purpose is "express or appear[s] on the face of the statute."

Washington v. Davis, 426 U.S. 229, 241, 96 S. Ct. 2040, 2048 (1976). Rather, "an invidious discriminatory purpose may often be inferred from the totality of the relevant facts." *Id.* at 242, 96 S. Ct. at 2048.

60. The United States Supreme Court has recognized that there are certain purposes for which a state redistricting body may take into account political data or partisan considerations in drawing district lines. For example, a legislature may, under appropriate circumstances, draw district lines to avoid the pairing of incumbents. *Karcher v. Daggett*, 462 U.S. 725, 740, 103 S. Ct. 2653, 2663 (1983). Likewise, a state redistricting body does not violate the United States Constitution by seeking "to create a districting plan that would achieve a rough approximation of the statewide political strengths of the Democratic and Republican Parties." *Gaffney v. Cummings*, 412 U.S. 735, 752, 93 S. Ct. 2321, 2331 (1973). And a redistricting body may draw district lines to respect municipal boundaries or maintain communities of interest. *Abrams v. Johnson*, 521 U.S. 74, 100, 117 S. Ct. 1925, 1940 (1997). Accordingly, a plaintiff in a partisan gerrymandering case cannot satisfy the discriminatory intent requirement simply by proving that the redistricting body intended to rely on political data or to take into account political or partisan considerations. Rather, the plaintiff must show that the redistricting body intended to apply partisan classifications or deprive citizens of the right to vote on equal terms "in an invidious manner or in a way unrelated to any legitimate legislative objective." *Vieth*, 541 U.S. at 307, 124 S. Ct. at 1793 (Kennedy, J., concurring in the judgment).

61. "Blatant examples of partisanship driving districting decisions," *Rucho*, 139 S. Ct. at 2505, are unrelated to any legitimate legislative objective. Indeed, partisan gerrymanders are incompatible with democratic principles. *Vieth*, 541 U.S. at 292, 124 S.

Ct. at 1785 (plurality opinion); *id.*, at 316, 124 S. Ct. at 1798 (Kennedy, J., concurring in judgment); *Ariz. State Legislature*, 135 S. Ct. at 2658.

62. Partisan gerrymanders are also contrary to the compelling governmental interests established by the North Carolina Constitution "in having fair, honest elections," *see Petersilie*, 334 N.C. at 182, 432 S.E.2d at 840, where the "will of the people" is ascertained "fairly and truthfully," *Skinner*, 169 N.C. at 415, 86 S.E. at 356. Partisan gerrymandering contravenes the legitimate purposes of redistricting because it is intended to hamper, rather than to "achiev[e,] . . . fair and effective representation for all citizens." *Reynolds v. Sims*, 377 U.S. 533, 565-66, 84 S. Ct. 1362, 1383 (1964).

63. Moreover, the intentional "classification of voters" based on partisanship in order to pack and crack them into districts is an "impermissible distinction among similarly situated citizens" aimed at denying equal voting power. *See Stephenson*, 355 N.C. at 377-78, 562 S.E.2d at 393-94 ("The classification of voters into both single-member and multi-member districts within plaintiffs' proposed remedial plans necessarily implicates the fundamental right to vote on equal terms . . . These classifications, as used within plaintiffs' proposed remedial plans, create an impermissible distinction among similarly situated citizens based upon the population density of the area in which they reside."). "A state may not dilute the strength of a person's vote to give weight to other interests." *Texfi Indus., Inc. v. Fayetteville*, 301 N.C. 1, 13, 269 S.E.2d 142, 150 (1980) (citing *Evans v. Cornman*, 398 U.S. 419, 90 S. Ct. 1752 (1970)).

64. Legislative Defendants openly admitted that they used prior election results to draw districts to benefit Republicans in both 2011 and 2017. FOF § B.1. Dr. Hofeller's own files provide even more direct evidence that the predominant goal of the 2017 Plans was to maximize Republicans' political advantage by drawing Democratic voters into

districts where their votes would be diluted, and in many cases where their votes would not matter. FOF § B.2.

65. The analysis and conclusions of Plaintiffs' experts confirm the point. Dr. Chen's analysis confirms that the General Assembly intentionally subordinated traditional districting principles to maximize Republican advantage. FOF § B.3.a. Dr. Mattingly's analysis confirms that the enacted plans' extreme partisan bias could only have been intentional. FOF § B.3.b. Dr. Pegden's sensitivity analysis shows that the enacted plans are more carefully crafted to favor Republicans than 99.999% of all possible plans of North Carolina meeting the same nonpartisan criteria laid out in the Adopted Criteria. FOF § B.3.c. And Dr. Cooper demonstrated, by analyzing the district boundaries within each relevant county grouping, that the enacted plans intentionally and systematically pack and crack Democratic voters. FOF § C.

66. As such, the Court concludes that, in drawing the 2017 House and Senate Maps, Legislative Defendants acted with the intent, unrelated to any legitimate legislative objective, to classify voters and deprive citizens of the right to vote on equal terms. Legislative Defendants did so by subordinating Democratic voters to Legislative Defendants' partisan goals—in other words, by devaluing their vote as compared to the votes of Republican voters with the aim of entrenching the Republican Party in power—and the Court concludes that this intent was the predominant purpose of drawing the district lines in individual districts and statewide.

C. The 2017 Plans Deprive Plaintiffs and Other Democratic Voters of Substantially Equal Voting Power and the Right to Vote on Equal Terms

67. The United States Supreme Court has recognized that the injury associated with partisan gerrymandering "arises from the particular composition of the voter's own district, which causes his vote – having been packed or cracked – to carry less weight than

it would carry in another hypothetical district." *Gill*, 138 S. Ct. at 1931. It is the "voter's placement in a 'cracked' or 'packed' district" that causes injury. *Id.*

68. Therefore, to prevail, Plaintiffs must also establish that the enacted legislative districts actually had the effect of discriminating against—or subordinating—voters who support candidates of the Democratic Party by virtue of district lines that crack or pack those voters, thereby depriving them of substantially equal voting power in an effort to entrench the Republican Party in power, in violation of Article I, § 19.

69. The manipulation of district boundaries in the enacted plans prevents Democratic voters from obtaining a majority in the House or the Senate even in election environments where Democrats would obtain a majority under virtually any nonpartisan map. Dr. Chen and Dr. Mattingly each independently found that the effects of the gerrymanders are most extreme in circumstances where Democrats could win majorities in one or both chambers under nonpartisan plans. FOF § B.3.a, b. There is nothing "equal" about the "voting power" of Democratic voters when they have a vastly less realistic chance of winning a majority in either chamber under the enacted plans. "The right to vote is the right to participate in the decision-making process of government." *Texfi Indus.,* 301 N.C. at 13, 269 S.E.2d at 150. Democratic voters are significantly hindered from meaningfully participating in the decision-making process of government when the maps are drawn to systematically prevent Democrats from obtaining a majority in either chamber of the General Assembly.

70. Beyond the issue of majority control, Dr. Chen and Dr. Mattingly also concluded that the gerrymanders deprive Democratic voters of multiple seats in the House and the Senate across a variety of electoral environments. FOF § B.3.a, b. The 2017 Plans achieve these effects by cracking and packing Democratic voters in districts contained within county grouping after county grouping. FOF § C. This packing and cracking

diminishes the "voting power" of Democratic voters in these districts and groupings; packing dilutes the votes of Democratic voters such that their votes, when compared to the votes of Republican voters, are substantially less likely to ultimately matter in deciding the election results, and the entire purpose of cracking likeminded voters across multiple districts is so they do not have sufficient "voting power" to join together and elect a candidate of their choice.

71. Moreover, although not necessary to establish Plaintiffs' equal protection claim, the Court similarly concludes that the 2017 Plans not only deprive Democratic voters of equal voting power in terms of electoral outcomes, but also deprive them of substantially equal legislative representation. *See Stephenson*, 355 N.C. at 379, 562 S.E.2d at 394. Partisan gerrymandering insulates legislators from popular will and renders them unresponsive to portions of their constituencies. *See Reynolds*, 377 U.S. at 565 ("Since legislatures are responsible for enacting laws by which all citizens are to be governed, they should be bodies which are collectively responsible to the popular will."). When a district is created solely to effectuate the interests of one group, the elected official from that district is "more likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole." *See Shaw I*, 509 U.S. at 648 (in the context of racial gerrymandering).

72. Just as the "political reality" is that "legislators are much more inclined to listen to and support a constituent than an outsider," *Stephenson*, 355 N.C. at 380, 562 S.E.2d at 395, the reality is that legislators are far more likely to represent the interests and policy preferences of voters of the same party. Legislative Defendants' own expert, Dr. Brunell, agreed that "a voter whose candidate of choice loses will on average be less well-represented than a voter who voted for the winning candidate." Tr. 2370:22-2371:2.

D. The 2017 Plans Cannot be Justified by any Legitimate Governmental Interest

73. Once a plaintiff establishes a *prima facia* case that boundaries of legislative districts violate the Equal Protection Clause of the North Carolina Constitution, which Plaintiffs have done in this case by establishing a discriminatory intent and a discriminatory effect, the burden shifts to Legislative Defendants to prove that a legitimate state interest or other neutral factor justified such discrimination.

74. Legislative Defendants offer limited neutral justifications for the enacted maps. They contend that the plans "satisfy the equal-population rule and the strict county-grouping and transversal rules of Article II of the State Constitution" and that "[t]he districts were far more compact than in 2011 or prior years; they split fewer VTDs than in 2011 or prior years; they . . . minimized incumbency pairings; and they preserved core constituency-incumbent relations." Leg. Defs.' Post-Trial Brief at p. 28.

75. While all of this may be true, these neutral justifications do not provide a sufficient justification for the substantial evidence, proffered by Plaintiffs and given substantial weight by this Court, showing that Legislative Defendants' predominant intent was to classify voters and deprive citizens of the right to vote on equal terms and substantially equally voting power. Legislative Defendants did so by subordinating Democratic voters to Legislative Defendants' partisan goals—in other words, by devaluing their vote as compared to the votes of Republican voters with the aim of entrenching the Republican Party in power—and the Court concludes that this intent was the predominant purpose of drawing the district lines in individual districts and statewide.

76. Nor do these justifications address the substantial evidence that the neutral criteria offered by Legislative Defendants, and indeed all other neutral objectives of the Adopted Criteria, were subordinated by Legislative Defendants in the map drawing process

in order to attain the discriminatory effects of the resulting extreme partisan gerrymandering.

77. Because the 2017 Plans impermissibly interfere with the exercise of the fundamental right to vote, strict scrutiny applies. *See Stephenson*, 355 N.C. at 377-78, 562 S.E.2d at 393. Legislative Defendants have not established that the 2017 Plans are narrowly tailored to advance a compelling governmental interest. *See Id*. Advantaging a particular political party or discriminating against voters based on how they vote for the purposes of entrenching a political party's power is not a compelling government interest.

78. For the foregoing reasons, the Court concludes that Plaintiffs have met their burden of showing, plainly and clearly without any reasonable doubt, that the enacted plans violate the North Carolina Constitution's guarantee of equal protection in Article I, Section 19 of the North Carolina Constitution by demonstrating that (1) Legislative Defendants acted with the intent, unrelated to any legitimate legislative objective, to classify voters and deprive citizens of the right to vote on equal terms by subordinating Democratic voters to Legislative Defendants' partisan goals—in other words, by devaluing their vote as compared to the votes of Republican voters with the aim of entrenching the Republican Party in power—and this intent was the predominant purpose of drawing the district lines in individual districts and statewide; (2) that the legislative maps drawn by Legislative Defendants with this intent had the effect of depriving disfavored voters in North Carolina of substantially equal voting power and the right to vote on equal terms, as well as substantially equal legislative representation; and (3) Legislative Defendants have not provided a neutral justification or a compelling governmental rationale for their actions.

79. Specifically, voters in specific districts in the following county groupings are unlawfully deprived of equal protection under the law in violation of the North Carolina Constitution. In these districts, Plaintiffs have demonstrated through Dr. Chen, Dr.

Mattingly, and Dr. Cooper, whose expert testimony has been given substantial weight by the Court, that Democratic voters were packed or cracked into extreme gerrymandered districts so that the effect upon these voters was to deprive them of substantially equal voting power and the right to vote on equal terms, as well as substantially equal legislative representation. County groupings including these districts are as follows:

Senate Districts: FOF § C.1.a (Mecklenburg); C.1.b (Franklin-Wake); C.1.c (Nash-Johnston-Harnett-Lee-Sampson-Duplin); C.1.d. (Guilford-Alamance-Randolph); C.1.e (Davie-Forsyth); C.1.g (Buncombe-Henderson-Transylvania);

House Districts: FOF § C.2.a (Robeson-Columbus-Pender); C.2.b (Cumberland); C.2.d (Franklin-Nash); C.2.e (Pitt-Lenoir); C.2.f (Guilford); C.2.g (Davie-Rowan-Cabarrus-Stanly-Montgomery-Richmond); C.2.h (Yadkin-Forsyth); C.2.i (Mecklenburg); C.2.k (New Hanover-Brunswick); C.2.l (Duplin-Onslow); C.2.m (Anson-Union); C.2.n. (Alamance); C.2.o (Cleveland-Gaston); C.2.p (Buncombe).

In the remaining county groupings challenged by Plaintiffs, Drs. Chen and Mattingly similarly found that Legislative Defendants placed their thumbs heavily on the scale to favor Republicans. *See* FOF § C.

IV. THE 2017 PLANS VIOLATE THE NORTH CAROLINA CONSTITUTION'S FREEDOM OF SPEECH AND FREEDOM OF ASSEMBLY CLAUSES

80. The Freedom of Speech Clause in Article I, § 14 of the North Carolina Constitution provides that "[f]reedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained." The Freedom of Assembly Clause in Article I, § 12 provides, in relevant part, that "[t]he people have a right to

assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances."

81. The 2017 Plans violate the North Carolina Constitution's guarantees of free speech and assembly, irrespective of whether the plans violate the U.S. Constitution. *See Michigan v. Long*, 463 U.S. 1032, 103 S. Ct. 3469 (1983).

A. North Carolina's Constitution Protects the Rights of Free Speech and Assembly Independently from the Federal Constitution

82. "[I]n construing provisions of the Constitution of North Carolina," the North Carolina Supreme Court "is not bound by opinions of the Supreme Court of the United States construing even identical provisions in the Constitution of the United States." *State v. Hicks*, 333 N.C. 467, 483, 428 S.E.2d 167, 176 (1993). While the North Carolina Supreme Court gives "great weight" to decisions of the United States Supreme Court that interpret corresponding provisions in the federal constitution, *Hicks*, 333 N.C. at 484, 428 S.E.2d at 176, only North Carolina courts can "answer[] with finality" questions of North Carolina constitutional law, *State v. Arrington*, 311 N.C. 633, 643, 319 S.E.2d 254, 260 (1984). North Carolina courts thus "have the authority to construe [the State's] own constitution differently from the construction by the United States Supreme Court of the Federal Constitution, as long as [its] citizens are thereby accorded no lesser rights than they are guaranteed by the parallel federal provision." *State v. Carter*, 322 N.C. 709, 713, 370 S.E.2d 553, 555 (1988).

83. The North Carolina Supreme Court has held that the North Carolina Constitution's Free Speech Clause provides broader rights than does federal law. In particular, the Court has held that the North Carolina Constitution affords a direct cause of action for damages against government officers in their official capacity for speech violations, even though federal law does not. *Corum*, 330 N.C. at 783, 413 S.E.2d at 290.

Noting that "[o]ur Constitution is more detailed and specific than the federal Constitution in the protection of the rights of its citizens," the Court explained that the North Carolina courts "give our Constitution a liberal interpretation in favor of its citizens with respect to those provisions which were designed to safeguard the liberty and security of the citizens in regard to both person and property." *Id.* Indeed, in recognizing a direct cause of action under the State Constitution, the Court expressly relied on *the lack of* a federal remedy, which left plaintiffs with "no other remedy . . . for alleged violations of his constitutional freedom of speech rights." *Id.*

84. Similarly, in *Evans v. Cowan*, the Court of Appeals reversed a trial court that had dismissed a claim under Article I, § 14, on the erroneous ground that it was *res judicata* based on a prior dismissal of the plaintiff's claim under the federal First Amendment. 122 N.C. App. 181, 183-84, 468 S.E.2d 575, 577-78, *aff'd*, 477 S.E.2d 926 (N.C. 1996). While "both the North Carolina Constitution and the United States Constitution contain similar provisions proclaiming certain principles of liberty," North Carolina courts "are *not* bound by the opinions of the federal courts." *Id.* at 183-84, 468 S.E.2d at 577. "[A]n independent determination of plaintiff's constitutional rights under the state constitution [was] required, and the state courts reserve the right to grant relief under the state constitution in circumstances under which no relief might be granted under the federal constitution." *Id.* at 184, 468 S.E.2d at 577 (citation and internal quotations marks omitted); *see also McLaughlin v. Bailey*, 240 N.C. App. 159, 172, 771 S.E.2d 570, 579-80 (2015), *aff'd*, 781 S.E.2d 23 (N.C. 2016); *see also Lenzer v. Flaherty*, 106 N.C. App. 496, 418 S.E.2d 276 (1992).

85. In the context of partisan gerrymandering, it is especially important that North Carolina courts give independent force to North Carolina's constitutional protections.

The United States Supreme Court recently held that federal courts applying the federal constitution have no power to adjudicate claims of partisan gerrymandering. *Rucho*, 139 S. Ct. 2484. That ruling does not mean that partisan gerrymandering complies with the constitution; it means that federal courts have no power to decide *whether* the practice complies with the constitution. "Having no other remedy," the North Carolina Constitution "guarantees [P]laintiff[s] a direct action under the State Constitution for alleged violations of [their] constitutional freedom of speech rights." *Corum*, 330 N.C. at 783, 413 S.E.2d at 290.

B. Voting, Banding Together in a Political Party, and Spending on Elections Are Protected Expression and Association

86. Voting for the candidate of one's choice and associating with the political party of one's choice are core means of political expression protected by the North Carolina Constitution's Freedom of Speech and Freedom of Assembly Clauses. The 2017 Plans burden that protected expression and thus are subject to scrutiny under those clauses.

87. Voting provides citizens a direct means of expressing support for a candidate and his views. *See Buckley v. Valeo*, 424 U.S. 1, 21, 96 S. Ct. 612, 635 (1976). Indeed, if donating money to a candidate constitutes a form of protected speech, then voting for that same candidate necessarily does as well. "There is no right more basic in our democracy than the right to participate in electing our political leaders"—including, of course, the right to "vote." *McCutcheon v. FEC*, 572 U.S. 185, 191, 134 S. Ct. 1434, 1440 (2014) (plurality op.). "[P]olitical belief and association constitute the core of those activities protected by the First Amendment." *Elrod v. Burns*, 427 U.S. 347, 356, 96 S. Ct. 2673, 2681 (1976).

88. Plaintiffs' expression is no less protected "merely because it involves the 'act'" of casting a ballot. *State v. Bishop*, 368 N.C. 869, 874, 787 S.E.2d 814, 818 (2016). "[M]uch

speech requires an 'act' of some variety—whether putting ink to paper or paint to canvas, or hoisting a picket sign, or donning a message-bearing jacket." *Id.* Voting, like donating money to a candidate or signing a petition for a referendum, constitutes "expressive activity" that "express[es] [a] view" about the State's laws and policies. *Winborne v. Easley*, 136 N.C. App. 191, 198, 523 S.E.2d 149, 153 (1999); *Doe v. Reed*, 561 U.S. 186, 195, 130 S. Ct. 2811, 2817 (2010). Voting's expressive force is not diminished by the fact that it "is a legally operative legislative act." *Id.* at 195; *see also Nev. Comm'n on Ethics v. Carrigan*, 564 U.S. 117, 134, 131 S. Ct. 2343, 2355 (2011) (Alito, J., concurring) ("[T]he act of voting is not drained of its expressive content when the vote has a legal effect."). Having "cho[sen] to tap the energy and the legitimizing power of the democratic process," the government "must accord the participants in that process the First Amendment rights that attach to their roles." *Republican Party of Minn. v. White*, 536 U.S. 765, 788, 122 S. Ct. 2528, 2541 (2002) (quotation omitted). The ballots cast by Plaintiffs and other Democratic voters to elect candidates to the North Carolina General Assembly are protected by North Carolina's Freedom of Speech Clause.

89. Expression aside, the Freedom of Assembly Clause independently protects Plaintiffs' voting and their association with the Democratic Party. The Freedom of Assembly Clause—part of North Carolina's original 1776 Declaration of Rights—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." N.C. Const. art. I, § 12; *see* N.C. Const. art. I, § 18 (1776). In North Carolina, the right to assembly encompasses the right of association. *Feltman v. City of Wilson*, 238 N.C. App. 246, 253, 767 S.E.2d 615, 620 (2014).

90. Just as voting is a form of protected expression, banding together with likeminded citizens in a political party is a form of protected association. "[C]itizens form

parties to express their political beliefs and to assist others in casting votes in alignment with those beliefs." *Libertarian Party of N.C. v. State*, 365 N.C. 41, 49, 707 S.E.2d 199, 204-05 (2011). "[F]or elections to express the popular will, the right to assemble and consult for the common good must be guaranteed." John V. Orth, *The North Carolina State Constitution* 48 (1995).

91. A final form of relevant protected expression involves the expenditure of funds in support of candidates. It is now well-settled that "political contributions and expenditures" constitute "expressive activity" that are constitutionally protected. *Winborne*, 136 N.C. App. at 198, 523 S.E.2d at 153-54.

C. The 2017 Plans Burden Protected Expression and Association

92. The 2017 Plans are subject to strict scrutiny because they burden Plaintiffs' and Democratic voters' political expression and association.

1. The 2017 Plans Burden Protected Expression Based on Viewpoint by Making Democratic Votes Less Effective

93. It is "axiomatic" that the government may not infringe on protected activity based on the individual's viewpoint. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828, 115 S. Ct. 2510, 2516 (1995). "The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Id.* at 829, 115 S. Ct. at 2516. The guarantee of free expression "stands against attempts to disfavor certain subjects or viewpoints." *Citizens United v. FEC*, 558 U.S. 310, 340, 130 S. Ct. 876, 898 (2010).

94. Viewpoint discrimination is *most* insidious where the targeted speech is political. "[I]n the context of political speech, . . . [b]oth history and logic" demonstrate the perils of permitting the government to "identif[y] certain preferred speakers" while burdening the speech of "disfavored speakers." *Id.* at 340-41, 130 S. Ct. at 899. The

government may not burden the "speech of some elements of our society in order to enhance the relative voice of others" in electing officials. *McCutcheon*, 572 U.S. at 207, 134 S. Ct. at 1450; *see also Winborne*, 136 N.C. App. at 198, 523 S.E.2d at 154 ("political speech" has "such a high status" that free speech protections have their "fullest and most urgent application" in this context (quotations marks omitted)).

95. Here, Legislative Defendants "identified[] certain preferred speakers" (Republican voters), while targeting certain "disfavored speakers" (Plaintiffs and other Democratic voters) for "disfavored treatment" because of disagreement with the views they express when they vote. *Citizens United*, 558 U.S. at 340-41, 130 S. Ct. at 899; *see Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565, 131 S. Ct. 2653, 2663 (2011). Legislative Defendants analyzed the voting histories of every VTD in North Carolina, identified VTDs that favor Democratic candidates, and then singled out the voters in those VTDs for disfavored treatment by packing and cracking them into districts with the aim of diluting their votes and, in the case of cracked districts, ensuring that these voters are significantly less likely, in comparison to Republican voters, to be able to elect a candidate who shares their views.

96. The fact that Democratic voters can still cast ballots under gerrymandered maps changes nothing. The government unconstitutionally burdens speech where it renders disfavored speech *less effective*, even if it does not ban such speech outright. The government may not restrict a citizen's "ability to effectively exercise" their free speech rights. *Heritage Vill. Church & Missionary Fellowship, Inc. v. State*, 40 N.C. App. 429, 451, 253 S.E.2d 473, 486 (1979), *aff'd*, 299 N.C. 399, 263 S.E.2d 726 (1980). "It is thus no answer to say that petitioners can still be 'seen and heard'" if the burdens placed on their speech "have effectively stifled petitioners' message." *McCullen v. Coakley*, 573 U.S. 464, 489-90, 134 S. Ct. 2518, 2537 (2014).

97. In *McCullen*, for instance, the United States Supreme Court invalidated a law that imposed a buffer zone around abortion clinics because the law "compromise[d] [the] ability" of the plaintiffs to "initiate the close, personal conversations that they view as essential" to effectively communicate their message. 573 U.S. at 487, 134 S. Ct. at 2535. And in *Sorrell*, the United States Supreme Court invalidated on viewpoint discrimination grounds a state law that burdened drug manufacturers by denying them information that made their marketing more effective. 564 U.S. at 580, 131 S. Ct. at 2672. The Court stressed that "the distinction between laws burdening speech is but a matter of degree and the Government's content-based burdens must satisfy the same rigorous scrutiny as its content-based bans." *Id.* at 555-56, 131 S. Ct. at 2664 (quotation marks omitted).

98. These principles apply equally to burdens on political expression. In *Davis v. FEC*, the United States Supreme Court struck down a law that disfavored candidates who self-financed their campaigns. 554 U.S. 724, 128 S. Ct. 2759 (2008). The law in question did *not* limit how much money self-financing candidates could spend, but it still unconstitutionally "diminishe[d] the effectiveness of [their] speech." *Id.* at 736, 128 S. Ct. at 2770. The Court held the same in *Ariz. Free Enterprise Club's Freedom Club PAC v. Bennett*, where it invalidated a public-matching scheme because it rendered the money spent by privately financed candidates "less effective." 564 U.S. 721, 747, 131 S. Ct. 2806, 2824 (2011); *see also Randall v. Sorrell*, 548 U.S. 230, 248-49, 126 S. Ct. 2479, 2492 (2006) (invalidating limit on campaign donations that made such donations less "effective").

99. North Carolina courts have recognized "several paths" leading to the conclusion that laws burdening protected expression are impermissibly discriminatory and thus "subject to strict scrutiny." *State v. Bishop*, 368 N.C. 869, 875, 787 S.E.2d 814, 819 (2016). A finding of discrimination "can find support in the plain text of a statute, or the

animating impulse behind it, or the lack of any plausible explanation besides distaste for the subject matter or message." *Id.* The 2017 Plans thus need not explicitly mention any particular viewpoint to be impermissibly discriminatory. *See, e.g.*, *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015).

100. Here, all paths lead to the same conclusion: the 2017 Plans reflect viewpoint discrimination against Plaintiffs and other Democratic voters that render their protected political expression less effective.

101. Overwhelming, unrebutted evidence establishes that the 2017 Plans were laced with viewpoint-driven intent. Legislative Defendants directed Dr. Hofeller to assign voters to districts using "election data" reflecting the contents of their prior votes for Democratic or Republican candidates, and Dr. Hofeller abided, using a color-coded shading system to track voters based on their partisan preferences and voting histories. FOF § C. Within county groups, Dr. Hofeller placed Democratic voters in this district or that one based *solely* on their political views. If this direct evidence left any doubt, the expert testimony showed that the mapmaker crafted the plans with partisanship as the predominant (if not sole) focus. Dr. Cooper in particular illustrated the intentional packing and cracking of specific Democratic voters and communities. FOF § C.

102. This sorting of Plaintiffs and other Democratic voters based on disfavor for their political views has burdened their speech by making their votes less effective. Many Plaintiffs and other Democratic voters live in districts where their votes are guaranteed to be less effective—either because the districts are packed such that Democratic candidates will win by astronomical margins or because the Democratic voters are cracked into seats that are safely Republican. Plaintiff Derrick Miller testified that he is one such voter: with the Wilmington Notch having been placed in Senate District 8, it is "impossible for [he] and Democratic neighbors to elect a Democrat, a candidate of our choice." Tr. 205:13-15.

Plaintiff Joshua Brown similarly testified that the mapmaker's placing High Point's Democrats into Senate District 26 "clearly dilutes the ability of Democrats to even attempt to run a fair race." Tr. 833:20-21.

103. By packing and cracking Democratic voters to make it harder for them to translate votes into legislative seats, the 2017 Plans "single[] out a subset of messages for disfavor based on the views expressed." *Matal v. Tam*, 137 S. Ct. 1744, 1766 (2017) (Kennedy, J., concurring). "This is the essence of viewpoint discrimination." *Id.*

104. Even were Legislative Defendants permitted to *consider* voters' political beliefs when drawing district maps, the 2017 Plans would still be unlawful. In arenas where the government is allowed (or even required) to consider the content or viewpoint of expression that it regulates, it is still forbidden from intentionally elevating one viewpoint over the other. In *Board of Education v. Pico*, for example, the Supreme Court recognized that, while local school boards "possess significant discretion to determine the content of their school libraries," their discretion may "not be exercised in a narrowly partisan or political manner." 457 U.S. 853, 870, 102 S. Ct. 2799, 2810 (1982). As the Court observed, "[i]f a Democratic school board, motivated by party affiliation, ordered the removal of all books written by or in favor of Republicans, few would doubt that the order violated the constitutional rights of the students denied access to those books." *Id.* at 870-71, 102 S. Ct. at 2810. So too here. Legislative Defendants did not simply look at partisan data to satisfy their curiosity. They drew the 2017 Plans in a way that deliberately minimized the effectiveness of the votes of citizens with whom they disagree.

2. The 2017 Plans Burden Plaintiffs' Ability to Associate

105. The 2017 Plans independently violate Article I, § 12 by burdening the ability of the NCDP, Common Cause, and Democratic voters to associate effectively.

106. The 2017 Plans severely burden—if not outright preclude—the ability of the NCDP, Common Cause, and Democratic voters "to instruct their representatives, and to apply to the General Assembly for redress of grievances." N.C. Const. art. I, § 12. Democratic voters who live in cracked districts have little to no ability to instruct their representatives or obtain redress from their representatives on issues important to those voters. FOF § E.3. And as a result of the gerrymanders, Democratic voters across the state, as well as the NCDP, will be unlikely to obtain redress from "the General Assembly" on important policy issues, because they will unlikely be able to obtain Democratic majorities in the General Assembly. *Id.* Common Cause likewise cannot instruct representatives or obtain redress on the issues central to its mission due to the gerrymanders. FOF § E.2. The 2017 Plans "burden[] the ability of like-minded people across the State to affiliate in a political party and carry out [their] activities and objects." *Gill*, 138 S. Ct. at 1939 (Kagan J., concurring).

107. The 2017 Plans separately violate NCDP's associational rights by "debilitat[ing] [the] party" and "weaken[ing] its ability to carry out its core functions and purposes." *Id.* Due to the unfair playing field created by the 2017 Plans, the NCDP "face[s] difficulties fundraising, registering voters, attracting volunteers, generating support from independents, and recruiting candidates to run for office." *Id.* at 1938; *see* FOF § E.1. And, even when overcoming these difficulties through extraordinary efforts, fundraising and enthusiasm, as was evidenced in the 2018 election cycle, the 2017 Plans nonetheless debilitate the NCDP and weaken its ability to translate its effort, funds and enthusiasm into a meaningful opportunity to gain majority control of the General Assembly. FOF § E.1.

3. The 2017 Plans Burden the NCDP's Expression Through Financial Support for Candidates

108. The 2017 Plans independently violate the NCDP's free expression and assembly rights under Article I, §§ 12 and 14 by burdening their campaign donations and expenditures. The NCDP must spend more money than it would need to under nonpartisan plans, both statewide and in individual races, and the money that the NCDP spends is less effective than it would be under nondiscriminatory maps. FOF § E.1. The NCDP's political opponent, the North Carolina Republican Party, faces no such burdens.

109. The operation of the 2017 Plans is analogous to the laws struck down in *Davis* and *Bennett* in this regard. Those laws did not preclude or limit any campaign expenditures, but were still held unconstitutional because they "diminishe[d] the effectiveness" of the expenditures of some candidates. *See Bennett*, 564 U.S. at 736, 131 S. Ct. at 2818 (quoting *Davis*, 554 U.S. at 736, 128 S. Ct. at 2770). The same is true here. The 2017 Plans create "a political hydra" that forces the NCDP to drain and divert resources across the State merely to avoid being relegated to a super-minority. *Id.* at 738.

D. The 2017 Plans Fail Strict Scrutiny—and Indeed Any Scrutiny

110. Because the 2017 Plans discriminate against Plaintiffs and other Democratic voters based on their protected expression and association, the burden shifts to the Legislative Defendants to establish that the 2017 Plans were narrowly tailored to achieve a compelling government interest. *See Petersilie*, 334 N.C. at 206, 432 S.E.2d at 853-54 (Mitchell, J., dissenting).

111. As noted above, COL § III.D., Legislative Defendants have offered no credible justification for their partisan discrimination. Nor could they have. Discriminating against citizens based on their political beliefs does not serve any legitimate government interest.

E. The 2017 Plans Impermissibly Retaliate Against Voters Based on Their Exercise of Protected Speech

112. The 2017 Plans violate the Freedom of Speech and Assembly Clauses for an independent reason. In addition to forbidding discrimination, those clauses also bar *retaliation* based on protected speech and expression. *See McLaughlin*, 240 N.C. App. at 172, 771 S.E.2d at 579-80. Courts carefully guard against retaliation by the party in power. *See Elrod*, 427 U.S. at 356, 96 S. Ct. at 2681; *Branti v. Finkel*, 445 U.S. 507, 100 S. Ct. 1287 (1980); *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 110 S. Ct. 2729 (1990). When patronage or retaliation restrains citizens' freedoms of belief and association, it is "at war with the deeper traditions of democracy embodied in the First Amendment." *Elrod*, 427 U.S. at 357, 96 S. Ct. at 2682 (quotation marks omitted).

113. To establish a violation of the North Carolina Constitution under a retaliation theory, Plaintiffs must show, in addition to their engagement in protected expression or association, that (1) the 2017 Plans take adverse action against them, (2) the 2017 Plans were created with an intent to retaliate against their protected speech or conduct, and (3) the 2017 Plans would not have taken the adverse action but for that retaliatory intent. *See McLaughlin*, 240 N.C. App. at 172, 771 S.E.2d at 579-80. Plaintiffs proved all of these elements.

114. *First*, the 2017 Plans take adverse action against Plaintiffs. For the Individual Plaintiffs and the Organizational Plaintiffs' members, the plans dilute the weight of their votes. The enacted plans adversely affect the individual Plaintiffs' associational rights. In *relative* terms, Democratic voters under the 2017 Plans are far less able to succeed in electing candidates of their choice than they would be under plans that were not so carefully crafted to dilute their votes. And in *absolute* terms, Plaintiffs are

significantly foreclosed from succeeding in electing preferred candidates or a Democratic majority.

115. *Second*, the Plans were clearly crafted with an *intent* to retaliate against Plaintiffs and other Democratic voters on the basis of their voting history. Again, Dr. Hofeller's files showed that when drafting the House and Senate maps he intentionally targeted Democratic voters based on their voting histories. Legislative Defendants cannot escape a finding of retaliatory intent by re-characterizing their actions as helping Republicans rather than hurting Democrats. In two-party elections, an intent to help one party necessarily implies an intent to hurt the other party. Nor does it matter that Legislative Defendants did not target specific individual voters. Plaintiffs were targeted for disfavored treatment because of a shared marker of political belief—their status as Democratic voters. That suffices. *See Miller v. Johnson*, 515 U.S. 900, 920, 115 S. Ct. 2475, 2490 (1995) (condemning State's targeting of areas with "dense majority-black populations").

116. *Third*, Legislative Defendants' impermissible partisan intent *caused* the burden on Plaintiffs' expression and association. The adverse effects described above would not have occurred if Legislative Defendants had not cracked and packed Democratic voters and thereby diluted their votes. In particular, Dr. Chen compared the districts in which the Individual Plaintiffs currently reside under the enacted plans with districts in which they would have resided under each of his simulated plans. Many of the Individual Plaintiffs' actual districts are extreme partisan outliers when compared with their districts under the simulated plans.

117. For the foregoing reasons, the Court concludes that Plaintiffs have met their burden of showing, plainly and clearly without any reasonable doubt, that the enacted

plans violate the North Carolina Constitution's guarantees of free speech and assembly under Article I, Sections 12 and 14 of the North Carolina Constitution.

V. PARTISAN GERRYMANDERING CLAIMS ARE JUSTICIABLE UNDER THE NORTH CAROLINA CONSTITUTION

118. In all but the most exceptional circumstances, North Carolina courts are duty-bound to say what the law of this State is and to adjudicate cases on the merits.

119. In cases brought under the North Carolina Constitution, "[i]t has long been understood that it is the duty of the courts to determine the meaning of the requirements of our Constitution." *Leandro v. State*, 346 N.C. 336, 345, 488 S.E.2d 249, 253 (1997). "When a government action is challenged as unconstitutional, the courts have a duty to determine whether that action exceeds constitutional limits." *Id.* "It is the duty of this Court to ascertain and declare the intent of the framers of the Constitution and to reject any act in conflict therewith." *Maready v. City of Winston-Salem*, 342 N.C. 708, 716, 467 S.E.2d 615, 620 (1996).

120. State courts' duty to decide constitutional cases applies with full force in the redistricting context. Although the North Carolina Constitution directs the General Assembly to revise and reapportion districts after each census, "[t]he people of North Carolina chose to place several explicit limitations upon the General Assembly's execution of the legislative reapportionment process," which state courts have not hesitated to enforce. *Stephenson*, 355 N.C. at 370, 562 S.E.2d at 389. North Carolina courts have adjudicated claims that redistricting plans violated the Whole County Provision, the mid-decade redistricting bar, the Equal Protection Clause, and other provisions of the North Carolina Constitution. *See Stephenson*, 355 N.C. at 376, 380-81, 562 S.E.2d at 392, 395; *State ex rel. Martin v. Preston*, 325 N.C. 438, 385 S.E.2d 473 (1989); *NAACP v. Lewis*, 18 CVS 2322 (N.C. Super. Ct. Nov. 2, 2018). "[W]ithin the context of . . . redistricting and

reapportionment disputes, it is well within the power of the judiciary of [this] State to require valid reapportionment or to formulate a valid redistricting plan." *Stephenson*, 355 N.C. at 362, 562 S.E.2d at 384 (quotation marks omitted).

121. Courts of other states have decided constitutional challenges to redistricting plans, including partisan gerrymandering claims, on the merits. In adjudicating a recent partisan gerrymandering suit, the Pennsylvania Supreme Court held that "it is the duty of the Court, as a co-equal branch of government, to declare, when appropriate, certain acts unconstitutional." *League of Women Voters of Pa.*, 178 A.3d at 822. The Florida Supreme Court similarly held that "there can hardly be a more compelling interest than the public interest in ensuring that the Legislature does not engage in unconstitutional partisan political gerrymandering." *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 416 (Fla. 2015). And in another constitutional redistricting challenge, the Texas Supreme Court held that "[t]he judiciary . . . is both empowered and, when properly called upon, obliged to declare whether an apportionment statute enacted by the Legislature is valid." *Terrazas v. Ramirez*, 829 S.W.2d 712, 717 (Tex. 1991). "A judicial determination that an apportionment statute violates a constitutional provision is no more an encroachment on the prerogative of the Legislature than the same determination with respect to some other statute." *Id.*; *see also, e.g.*, *Johnson v. State*, 366 S.W.3d 11, 23 (Mo. 2012) (similar).

122. Indeed, state courts are particularly well-positioned to adjudicate redistricting disputes, as the public may "more readily accept state court intervention . . . than . . . federal intervention in matters of state government." *Brooks v. Hobbie*, 631 So. 2d 883, 890 (Ala. 1993). "The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by th[e United States Supreme] Court but . . . has been specifically encouraged." *Scott v.*

Germano, 381 U.S. 407, 409 (1965). In *Rucho*, the United States Supreme Court recently made clear that partisan gerrymandering claims are not "condemn[ed] . . . to echo in the void," because although the federal courthouse doors may be closed, "state constitutions can provide standards and guidance for state courts to apply." 139 S. Ct. at 2507.

123. If unconstitutional partisan gerrymandering is not checked and balanced by judicial oversight, legislators elected under one partisan gerrymander will enact new gerrymanders after each decennial census, entrenching themselves in power anew decade after decade. When the North Carolina Supreme Court first recognized the power to declare state statutes unconstitutional, it presciently noted that absent judicial review, members of the General Assembly could "render themselves the Legislators of the State for life, without any further election of the people." *Bayard v. Singleton*, 1 N.C. 5, 7 (1787). Those legislators could even "from thence transmit the dignity and authority of legislation down to their heirs male forever." *Id.* Extreme partisan gerrymandering reflects just such an effort by a legislative majority to permanently entrench themselves in power in perpetuity.

124. The fact that the process employed by the Legislative Defendant in crafting the 2017 Maps is a process that has been used in North Carolina for decades—albeit in less precise and granular detail—by Democrats and Republicans alike does render political gerrymandering nonjusticiable. Long standing, and even widespread historical practices do not immunize governmental action from constitutional scrutiny. *See e.g., Citizens United v. FEC*, 558 U.S. 310, 365 (2010); *Reynolds v. Sims*, 377 U.S. 533, 582 (1964) (holding that malapportionment of state legislative districts violates Equal Protection Clause, notwithstanding that malapportionment was widespread in the Nineteenth and early Twentieth Centuries.)

125. In rare instances, North Carolina courts have held that certain exceptional cases are non-justiciable because they present a "political question." "The political question doctrine controls, essentially, when a question becomes not justiciable because of the separation of powers provided by the Constitution." *Cooper v. Berger*, 370 N.C. 392, 407, 809 S.E.2d 98, 107 (2018) (quotation marks omitted; cleaned up). "The doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the legislative or executive branches of government." *Id.* at 408, 809 S.E.2d at 107 (quotation marks omitted; cleaned up). The "dominant considerations" in determining whether the political question doctrine applies are "the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination." *Id.* (quotation marks omitted).

126. The Court concludes that partisan gerrymandering claims are justiciable under the North Carolina Constitution. Such claims fall within the broad, default category of constitutional cases the North Carolina courts are empowered and obliged to decide on the merits, and not within the narrow category of exceptional cases covered by the political question doctrine.

127. The Court concludes that partisan gerrymandering does not "involve a textually demonstrable constitutional commitment of the issue to a coordinate political department." *Bacon v. Lee*, 353 N.C. 696, 717, 549 S.E.2d 840, 854 (2001) (quotation marks omitted).

128. Although Article II, §§ 3 and 5, of the North Carolina Constitution direct the General Assembly to revise and reapportion state House and Senate districts after each decennial census, North Carolina courts often decide constitutional challenges to state redistricting plans. COL ¶ 125 (citing cases). These cases conclusively refute any notion

that redistricting is "committed to the *sole* discretion of the General Assembly" without judicial review by the courts. *Cooper*, 370 N.C. at 409, 809 S.E.2d at 108 (emphasis added).

129. "[T]he General Assembly's authority pursuant to [Article II, §§ 3 and 5] is necessarily constrained by the limits placed upon that authority by other provisions." *Cooper*, 370 N.C. at 410, 809 S.E.2d at 109. The North Carolina Supreme Court has held that the State Constitution's Equal Protection Clause constrains the General Assembly's exercise of its redistricting authority pursuant to Article II, §§ 3 and 5. *Stephenson*, 355 N.C. at 376-82, 562 S.E.2d at 392-96. The people of North Carolina amended the Free Elections Clause to mandate that "all elections" not only "ought to be" but "*shall* be free." N.C. Const. art. I, § 10 (emphasis added). This change "ma[d]e [it] clear" that the Free Elections Clause is a "command[] and not mere[ly] [an] admonition" to proper conduct on the part of the government. *DuMont*, 304 N.C. at 639, 286 S.E.2d at 97 (quotation marks omitted). And the North Carolina Supreme Court has held that North Carolinians must have a judicial "remedy for the violation of plaintiff's constitutionally protected right of free speech." *Corum*, 330 N.C. at 784, 413 S.E.2d at 290.

130. In North Carolina, cases presenting "a conflict between . . . competing constitutional provisions" involve proper "constitutional interpretation, . . . rather than a nonjusticiable political question arising from nothing more than a policy dispute." *Cooper*, 370 N.C. at 412, 809 S.E.2d at 110. The Court held in *Cooper* that a challenge to a statute creating a new State Board of Elections and Ethics Enforcement did not present a political question, because the General Assembly's authority over the functions and powers of administrative agencies was limited by the Governor's constitutional duty to "take care that the laws be faithfully executed." *Id.* at 417-18, 809 S.E.2d at 113-14. Similarly, in *News & Observer Publ'g Co. v. Easley*, the Court held that a suit seeking public records related to

clemency applications was not a political question, because the Governor's power over clemency was limited by the General Assembly's power to enact laws "relative to the manner of applying for pardons." 182 N.C. App. 14, 16, 641 S.E.2d 698, 700 (2007). So too, partisan gerrymandering claims do not present a political question because the General Assembly's redistricting authority under Article II, §§ 3 and 5 is limited by the Equal Protection Clause, the Free Elections Clause, and the Freedom of Speech and Assembly Clauses. This Court's task is "to identify where the line should be drawn" between these provisions. *Id.* at 15-16, 641 S.E.2d at 700. "There can be no doubt that [the Court has] the power and the responsibility to do so." *Id.*

131. This case bears no resemblance to cases in which North Carolina courts have applied the political question doctrine. In *Bacon v. Lee*, for example, the North Carolina Supreme Court rejected a claim seeking a disinterested arbiter for a clemency application because the North Carolina Constitution "expressly commits the substance of the clemency power to the *sole discretion* of the Governor." 353 N.C. at 698, 717, 549 S.E.2d at 843, 854 (emphasis added). Similarly, in *Hoke Cnty. Bd. of Educ. v. State*, the Supreme Court rejected a challenge to a statute setting the proper age for children to attend public school because the Constitution placed "the determination of the proper age for school children . . . squarely . . . in the hands of the General Assembly." 358 N.C. 605, 639, 599 S.E.2d 365, 391 (2004). These cases centered on the appropriate exercise of authority under a single constitutional provision that was committed to the sole discretion of one of the political branches. Other cases cited by Legislative Defendants are similarly inapposite. *See* Leg. Defs.' Pre-Trial Brief at 17 (citing cases).

132. The Court also concludes that "satisfactory and manageable criteria [and] standards . . . exist" for adjudicating partisan gerrymandering claims under the North

Carolina Constitution. *Hoke*, 358 N.C. at 639, 599 S.E.2d at 391. Plaintiffs have articulated satisfactory, manageable standards for each of their claims for relief.

133. The standard for Plaintiffs' claim under the Free Elections Clause is based on the venerable history of that clause, as well as the commonsense insight that elections are not "free" where the partisan will of the mapmaker predominates over the ascertainment of the fair and truthful will of the voters. COL § II. The Court concludes this standard is satisfactory and manageable.

134. The standard for Plaintiffs' claim under the Equal Protection Clause is based on the fundamental right to "substantially equal voting power" and to "vote on equal terms." *Stephenson*, 355 N.C. at 378-79, 562 S.E.2d at 393-94. The North Carolina Supreme Court has previously applied this long-recognized standard, including in redistricting cases. *See id.*; *Blankenship*, 363 N.C. at 522-24, 681 S.E.2d at 762-64; *Northampton Cnty.*, 326 N.C. at 747, 392 S.E.2d at 356. This standard is not only "manageable"—the North Carolina Supreme Court has already managed to apply it to resolve actual cases. The Court concludes that this standard is satisfactory and manageable.

135. The standards for Plaintiffs' claims under the Free Speech and Free Assembly Clauses are based on longstanding doctrine, which recognizes that (1) voting is an expressive and associative act, and (2) government actions that burden or discriminate against protected expression or association, are subject to strict scrutiny. COL § IV.B-D. Plaintiffs also rely on longstanding retaliation doctrine, which prohibits the government from taking adverse actions based on protected expression or association. COL § IV.E. North Carolina courts routinely apply these standards to numerous government actions and programs in various contexts. The Court concludes that these standards are satisfactory and manageable.

136. Plaintiffs' claims are justiciable notwithstanding that they arise under broad constitutional provisions that require interpretation. Courts routinely interpret broad constitutional text, adopt legal standards to operationalize such text, and then apply those legal standards to adjudicate the constitutionality of statutes. That is exactly what the North Carolina Supreme Court did in *Stephenson*. There, the Court interpreted a broad constitutional requirement that "[n]o county shall be divided in the formation of a [district]," N.C. Const. art. II, §§ 3 and 5, to require a detailed, multi-step procedure for redistricting, 355 N.C. at 383-84, 562 S.E.2d at 396-97. In adopting this standard, the Court explained that it was "not permitted to construe the [Whole County Provision] mandate as now being in some fashion unmanageable." *Id.* at 382, 562 S.E.2d at 396. "Any attempt to do so," the Court explained, "would be an abrogation of the Court's duty to follow a reasonable, workable, and effective interpretation that maintains the people's express wishes." *Id.* So too here, it is the Court's responsibility to distill the Free Elections Clause, the Equal Protection Clause, and Free Speech and Free Assembly Clauses into a "reasonable, workable, and effective interpretation."

137. In *Stephenson*, the North Carolina Supreme Court also noted that "[p]rogress demands that government should be further refined in order to best respond to changing conditions." *Id.* (quotation marks omitted). Like the Whole County Provision, the constitutional provisions invoked by Plaintiffs in this case "provide the elasticity which ensures the responsive operation of government." *Id.* (quotation marks omitted). As the North Carolina Supreme Court asked rhetorically more than a century ago: "Is it true that we are living in a popular government, depending upon free and fair elections, and have a constitution that prohibits the legislature from authorizing a judge or a justice of the supreme court to investigate alleged irregularities of the election officers? If this were so, elections would become a farce, and free government a failure. But, fortunately for the

people and the government, in our opinion, this is not true, and fair and honest elections are to prevail in this state." *McDonald*, 119 N.C. at 666, 26 S.E. at 134.

138. Legislative Defendants, joined by the Intervening Defendants, assert that this matter is not justiciable because when a claim, like they contend Plaintiffs' to be, is that a districting plan is "somehow harmful to democracy," there is "no way for the Court to address these concerns under a neutral, manageable standard." Leg. Defs.' and Int. Defs.' Proposed Findings of Fact and Conclusions of Law at para. 800. They further suggest that judicial review of political redistricting claims will amount to "freewheeling policymaking," *id.* at 803, and that "this court is not capable of controlling the exercise of power on the part of the General Assembly," *id*. at 806 (citing *Howell v. Howell,* 66 S.E. 571, 573 (N.C. 1911)).

139. However, this is not a case where this Court is called upon to answer whether partisan gerrymandering is harmful to democracy (although the United States Supreme Court has certainly suggested that partisan gerrymandering is indeed harmful to democracy. *See, Veith v. Jubelirer,* 541 U.S. 267, 292, 124 S. Ct. 1769, 1785 (plurality opinion); *id.* at 316, 124 S. Ct. at 1798 (Kennedy, J., concurring); *Ariz. State Legislature*, 135 S. Ct. at 2658.). Nor is it a case where this Court is called upon to engage in policy-making by comparing the enacted maps with others that might be "ideally fair" under some judicially-envisioned criteria. It is not a case that threatens the General Assembly's broad discretionary powers to create legislative districts, or threatens the General Assembly's consideration of political data for legitimate purposes when crafting such districts. Rather this is a case where the Court is called upon to take the Adopted Criteria that the General Assembly itself, in its sole discretion, established, and compare the resulting maps with those criteria to see "how far the State had gone off that track because of its politicians' effort to entrench themselves in office." *Rucho*, 139 S. Ct. at 2521 (Kagan, J., dissenting).

140. Allowing the General Assembly discretion to establish its own redistricting criteria and craft maps accordingly is what the North Carolina Constitution requires; systematically packing and cracking voters to the extent that their votes are subordinated and devalued for no legitimate governmental purpose, but rather the purposes of entrenching a political party in power, is what the North Carolina Constitution forbids. When the Court is presented with evidence of the scope and quality proffered by Plaintiffs that shows widespread and extreme partisan gerrymandering—multiple districts showing a greater partisan skew than any of 3,000 randomly generated maps (all with the State's political geography and districting criteria built in)—the standard is indeed clear and manageable. Such extreme partisan gerrymanders violate the fundamental constitutional rights of free elections, equal protection, speech, assembly and association. It is the Court's duty to say so.

141. The separation of powers—which is expressly guaranteed by the North Carolina Constitution, art. I, § 6, and which underlies the political question doctrine—underscores the Court's obligation to craft manageable judicial standards to adjudicate partisan gerrymandering claims. Each of the constitutional provisions invoked by Plaintiffs in this case appears in the Declaration of Rights in Article I of the North Carolina Constitution. And "[t]he civil rights guaranteed by the Declaration of Rights in Article I of our Constitution are individual and personal rights entitled to protection against state action." *Corum*, 330 N.C. at 782, 413 S.E.2d at 289. "The very purpose of the Declaration of Rights is to ensure that the violation of these rights is never permitted by anyone who might be invested under the Constitution with the powers of the State." *Id.* at 783, 413 S.E.2d at 290. And "[i]t is the state judiciary that has the responsibility to protect the state constitutional rights of the citizens." *Id.* Indeed, "this obligation to protect the fundamental rights of individuals is as old as the State." *Id.*

142. This Court is not bound by dicta from *Stephenson* that "[t]he General Assembly may consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions." 355 N.C. at 371, 562 S.E.2d at 390. To begin with, the Supreme Court in *Stephenson* stated that any such considerations "must" be "in conformity with the State Constitution." *Id.* In this case, Plaintiffs allege that partisan gerrymandering of the 2017 Plans violates provisions of the State Constitution, and there is an extensive trial record concerning those allegations. By contrast, *Stephenson* did not involve any partisan gerrymandering claim—let alone partisan gerrymandering claims under the constitutional provisions Plaintiffs invoke here—nor was there any record concerning partisan gerrymandering. The statements in *Stephenson* were "mere obiter dictum and [are] not binding on this Court or any other." *Taylor v. J.P. Stevens & Co.*, 300 N.C. 94, 100-01, 265 S.E.2d 144, 148 (1980). In a case with such important consequences, the Court will decide Plaintiffs' claims on the basis of the record and arguments presented by the parties here, rather than follow dicta from prior cases involving different claims and evidence.

143. In order to reject Defendants' invocation of the political question doctrine, this Court need not decide that the legal standards governing Plaintiffs' claims would apply in all future cases, including a hypothetical close case. This case is not close. The extreme, intentional, and systematic gerrymandering of the 2017 Plans runs far afoul of the legal standards set forth above, or any other conceivable legal standard that could govern Plaintiffs' constitutional claims. As Dr. Pegden testified, "[t]hese maps are so gerrymandered that no matter how you do the analysis, no matter who does the analysis, no matter which side is doing the analysis, you reach the same answer." Tr. 1400:18-21.

144. The Court concludes that partisan gerrymandering claims are justiciable under the North Carolina Constitution.

VI. ANY LACHES DEFENSE LACKS MERIT

145. To the extent Defendants contend that Plaintiffs' claims are barred by laches, that defense lacks merit. North Carolina courts have recognized that laches is inapplicable to continuing obligations. *See Malinak v. Malinak*, 242 N.C. App. 609, 612-13, 775 S.E.2d 915, 917 (2015). State and federal courts alike routinely refuse to apply laches in voting-rights and other constitutional cases seeking solely prospective relief. *E.g.*, *Sprague v. Casey*, 550 A.2d 184, 188-89 (Pa. 1988); *Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 772 (9th Cir. 1990); *Am. Trucking Ass'ns, Inc. v. N.Y. State Thruway Auth.*, 199 F. Supp. 3d 855, 872 (S.D.N.Y. 2016), *vacated on other grounds*, 238 F. Supp. 3d 527 (S.D.N.Y. 2017); *Miller v. Bd. of Comm'rs of Miller Cnty.*, 45 F. Supp. 2d 1369, 1373 (M.D. Ga. 1998). Multiple federal courts have held that laches does not apply to partisan gerrymandering claims as a matter of law. *See League of Women Voters of Mich.*, 373 F. Supp. 3d at 909; *Ohio A. Philip Randolph Inst. v. Smith*, 335 F. Supp. 3d 988, 1001-02 (S.D. Ohio 2018).

146. Moreover, "laches is an affirmative defense which the pleading party bears the burden of proving." *Malinak*, 242 N.C. App. at 611, 775 S.E.2d at 916. Defendants presented no evidence at trial supporting laches.

147. Defendants offered no evidence of any "unreasonable" delay in filing this case. *Id.* at 612, 775 S.E.2d at 916. Plaintiffs commenced this case just fourteen months after the 2017 Plans were enacted.

148. Even if there had been any delay, Defendants presented no evidence that it "worked to the[ir] disadvantage, injury or prejudice." *Id.* While Defendants have suggested that the time pressures of this case prevented their experts from conducting additional or more thorough analyses, any limitation on the time for Defendants' expert reports was not the result of any delay by Plaintiffs. Rather, any such limitation resulted from Defendants' own discovery misconduct in this case, which led the Court to extend the time for Plaintiffs'

expert reports at the expense of the time for Defendants. *See* Order of Mar. 25, 2019. And the Court later granted Defendants a one-week extension to file their expert reports. Order of May 1, 2019.

VII. DEFENDANTS' FEDERAL DEFENSES LACK MERIT

149. Legislative Defendants and Intervenor Defendants raise a series of defenses under federal law, but none of these defenses has merit.

A. The *Covington* Remedial Order Does Not Bar Changes to the 2017 Plans

150. Legislative Defendants contend that the *Covington* court's remedial order in January 2018 precludes *any* changes being made to the current House and Senate plans. Legislative Defendants argue that the *Covington* remedial order contained an "express command that the 2017 plans be used in future elections," so as to purportedly immunize the 2017 Plans from any state-law challenge. Leg. Defs.' Pre-Trial Br. at 39.

151. Legislative Defendants made this same argument when they removed this case to federal court in December 2017, and the federal district court rejected it. The federal court held that the *Covington* remedial order "does not mandate the specific existing apportionment to the exclusion of no others." *Common Cause v. Lewis*, 358 F. Supp. 3d 505, 512 (E.D.N.C. 2019). That holding constitutes law-of-the-case, or at minimum is entitled to controlling deference.

152. In any event, the federal court's holding was clearly correct. In the very same remedial order that Legislative Defendants now cite, the *Covington* district court made clear that the 2017 Plans *could be* challenged on state-law grounds in state court. At Legislative Defendants' urging, the *Covington* court declined to address state-law objections that the *Covington* plaintiffs had raised to the 2017 Plans, because those objections involved "unsettled questions of state law." *Covington v. North Carolina*, 283 F. Supp. 3d

410, 428 (M.D.N.C. 2018). In declining to address such "unsettled question of state law," the *Covington* court expressly stated that its order was "without prejudice to Plaintiffs or other litigants asserting such arguments in separate proceedings, including in "state court." *Id.* at 447 n.9. The *Covington* court even noted that any "partisan gerrymandering objection" to the 2017 Plans "would demand development of significant new evidence and therefore [would] be more appropriately addressed in a separate proceeding." *Id.* at 427. These statements squarely refute Legislative Defendants' contention that the *Covington* remedial order precludes any changes to the 2017 Plans based on state-law violations that a state court may find.

153. The United States Supreme Court's holding on appeal from the *Covington* remedial order eliminates any doubt on this score. The Court held that "[t]he District Court's remedial authority was . . . limited to ensuring that the plaintiffs were relieved of the burden of voting in racially gerrymandered legislative districts." 138 S. Ct. 2548, 2554 (2018). The Court explained: "Once the District Court had ensured that the racial gerrymanders at issue in this case were remedied, its proper role in North Carolina's legislative districting process was at an end." *Id.* at 2555. The *Covington* district court thus had no authority to do anything other than ensure the curing of the prior racial gerrymandering. It did not and could not immunize the plans from future challenge.

154. The *Covington* remedial order does not preclude North Carolina courts from invalidating the 2017 Plans for violations of state law and ordering the creation of new plans.

B. There Is No Conflict with Federal Civil Rights Laws

155. The Court also rejects Legislative Defendants' arguments that affording Plaintiffs relief on their claims would necessarily violate federal civil rights laws.

156. As described, Legislative Defendants introduced no evidence at trial to establish that any of the three *Gingles* factors, including the existence of legally sufficient racially polarized voting, is present in any area of the State or any particular districts. Legislative Defendants' failure to present any evidence to establish that the *Gingles* factors are met is "is fatal to [any] Section 2 defense" under the VRA. *Covington v. North Carolina*, 316 F.R.D. 117, 169 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017).

157. Indeed, Legislative Defendants affirmatively represented throughout the 2017 redistricting process that the third *Gingles* factor was *not* met. FOF § F.6. Legislative Defendants have presented no evidentiary basis for any change in that position. The Court concludes that Legislative Defendants have not established that the VRA justifies the current House or Senate districts or precludes granting Plaintiffs relief on their claims.

158. Legislative Defendants also have not established any defense under the Fourteenth or Fifteenth Amendment. Legislative Defendants argue that affording Plaintiffs relief would require intentionally lowering the BVAP in purported "crossover" districts below the level necessary to elect candidates of choice of African Americans, but Legislative Defendants again have advanced no evidence to substantiate this claim. They provided no evidence to establish any district qualifies as a "crossover district," or that remedying the partisan gerrymander in any district or grouping would require lowering the BVAP of any crossover district below the level necessary for African Americans to elect candidates of their choice.

159. Indeed, Legislative Defendants' own expert Dr. Lewis generated estimates of the minimum BVAP needed in certain county groupings for African-American-preferred candidate to win, and Dr. Chen demonstrated that his nonpartisan simulations produce districts within each such county grouping with BVAPs above Dr. Lewis's estimates. FOF § F.6.

160. Legislative Defendants' federal equal protection defense suffers from another fatal defect—it requires a showing of an intent to discriminate against African Americans. To establish a Fourteenth or Fifteenth Amendment violation, there must be "racially discriminatory intent," *Lee v. Va. State Bd. of Elections*, 843 F.3d 592, 603 (4th Cir. 2016), which in the redistricting context means "intentional vote dilution," *i.e.*, "invidiously minimizing or canceling out the voting potential of racial or ethnic minorities," *Abbott v. Perez*, 138 S. Ct. 2305, 2314 (2018) (quotation marks and alterations omitted).

161. The Court finds without difficulty that Plaintiffs have no intent to discriminate against racial minorities in seeking remedial plans to replace the current plans that violate state constitutional provisions. Further, Plaintiffs alone cannot adopt or approve remedial plans in this case. The remedial plans approved or adopted in this case, as ordered below, will not intentionally dilute the voting power of any North Carolina citizens.

C. Granting Relief Will Not Violate the Fundamental Right to Vote

162. Finally, Legislative Defendants contend that affording Plaintiffs relief in this case will violate the "fundamental right to vote" under the Fourteenth Amendment. Legislative Defendants cite no federal precedent for this purported defense, but in any event it lacks merit.

163. Granting Plaintiffs relief will promote, not violate, the fundamental right to vote of North Carolina citizens. Legislative Defendants' defense operates from the misapprehension that voting rights must be a zero-sum game, such that curing discrimination against one set of citizens necessarily requires discriminating against another set of citizens. The right that Plaintiffs seek to vindicate is the right to be free from intentional discrimination, and vindicating that right in no way requires or will result in discriminating against others.

VIII. THE COURT WILL ENJOIN USE OF THE 2017 PLANS IN FUTURE ELECTIONS AND THE GENERAL ASSEMBLY IS TO IMMEDIATELY BEGIN THE PROCESS OF REDRAWING THE RELEVANT DISTRICTS

A. The Court Will Require the Redrawing of Specific County Groupings

164. For the reasons stated above, and as set forth in the decree below, the Court declares that there is no reasonable doubt the 2017 House and Senate Plans are unconstitutional under the North Carolina Constitution, and the Court enjoins their use in the 2020 primary and general elections. In particular, the Court enjoins use of the districts in the specific House and Senate county groupings as specified in the decree below.

165. The Court does not enjoin or order any relief with respect to the current House districts in Wake County. Shortly before the trial in this matter, those districts were redrawn pursuant to a separate litigation. *See NAACP v. Lewis*, No. 18 CVS 2322 (N.C. Super. Ct. Nov. 2, 2018); N.C. Sess. Laws 2019-46. Plaintiffs did not present evidence in this case regarding the new Wake County House districts and do not seek relief with respect to those districts.

166. The Court does not enjoin or order the redrawing of House Districts 57, 61, and 62 or Senate Districts 24 or 28, all of which were redrawn by the *Covington* Special Master. With respect to House District 59 and Senate District 27, for which small portions of the current districts were added by the Special Master in *Covington*, the Court will order that the remedial versions of these districts not alter any portions of these districts that were added by the Special Master, but any other portions of these districts may be redrawn. Neither House District 59 nor Senate District 27 were found by the *Covington* court to have been racially gerrymandered (under either the 2011 Plans or the 2017 Plans enacted by the General Assembly), and the *Covington* court did *not* direct the Special Master to redraw either of these districts. The Special Master nonetheless made small changes to these districts, principally to equalize population, in the course of constructing other districts he

was tasked with redrawing. While this Court concludes that there is no legal impediment to redrawing any portion of House District 59 and Senate District 27, including the portions that the Special Master added, the Court nonetheless imposes the limitation set forth in this paragraph out of an abundance of caution.

B. The Court Will Require the Use of the Adopted Criteria, with certain exceptions, and Prohibit the Use of Other Criteria in Redrawing the Districts

167. As set forth in the Court's decree below, the Court will require that Remedial Maps for the House and Senate legislative district maps for the 2020 election (hereinafter "Remedial Maps") be drawn, and that the Remedial Maps comply with the criteria adopted by the General Assembly's House and Senate Redistricting Committees on August 10, 2017, with several exceptions.

168. First, with respect to "Incumbency Protection," the drafters of the Remedial Maps may take reasonable efforts to not pair incumbents unduly in the same election district. Because Representative David Lewis, Chair of the House Redistricting Committee, explained at the time of the adoption of the Adopted Criteria that the "Incumbency Protection" criteria was "simply saying that mapmakers may take reasonable efforts to not pair incumbents unduly," PX603 at 122:4-18; Tr. 1640:16-1641:12, and the criteria was understood as such, *see* PX606 at 9:24-10:1 (Sen. Hise: "The Committee adopted criteria pledging to make reasonable efforts not to double-bunk incumbents"), the Remedial Maps shall comply with this explanation and understanding.

169. Second, the "Election Data" criteria shall not be permitted in the drafting of the Remedial Maps. In other words, partisan considerations and election results data shall not be used in the drawing of legislative districts in the Remedial Maps. The Court likewise will prohibit any intentional attempt to favor voters or candidates of one political party.

170. In redrawing the relevant districts in the Remedial Maps, the invalidated 2017 districts may not be used as a starting point for drawing new districts, and no effort may be made to preserve the cores of invalidated 2017 districts. *See Covington*, 283 F. Supp. 3d at 431-32 (holding that remedial plan could not seek to "preserve the 'cores' of unconstitutional districts").

171. Any Remedial Maps must comply with the VRA and other federal requirements concerning the racial composition of districts. The Court will afford all parties an opportunity to submit briefing, which may attach expert analysis, on whether the *Gingles* factors are met in particular counties and county groupings and/or the minimum BVAP needed in particular counties and county groupings for African-Americans to be able to elect candidates of their choice to the General Assembly. Any such submission by Legislative Defendants, however, is subject to two limitations set forth below.

a) First, if Legislative Defendants assert that the *Gingles* factors are met in any particular district or county grouping, they must not only provide evidentiary support for that assertion, but also must also show good cause why they did not compile such evidence during the 2017 redistricting process and must show good cause why they should not be held judicially estopped from arguing that the *Gingles* factors are met given their repeated representations to the *Covington* court in 2017 that the third *Gingles* factor was not met anywhere in the State.

b) Second, for districts in counties and county groupings for which Legislative Defendants' expert Dr. Lewis estimated the minimum BVAP needed for an African-American preferred candidate to prevail in a state legislative election, Legislative Defendants may not assert that the VRA or the United States Constitution requires or justifies making the BVAP of any such district higher than the minimum BVAP threshold estimated by Dr. Lewis in his Amended

Table 4 (which was admitted into evidence at trial) for the relevant county or county grouping. PX773. For districts in counties and county groupings that Dr. Lewis did not analyze, Legislative Defendants may not assert that the VRA or the United States Constitution requires or justifies any minimum BVAP for the districts in that county or county grouping. The Court holds that Legislative Defendants are bound by the BVAP threshold-estimates generated by the expert they retained in this case and are estopped from departing from those estimates, which were relied upon by Plaintiffs' experts, at this late stage of the litigation.

172. The Court will afford the General Assembly two weeks from the date of this Order, namely through September 18, 2019, to enact Remedial Maps in conformity with this Order. *See* N.C.G.S. § 120-2.4.

173. The Court concludes that this two week period is consistent with N.C.G.S. § 120-2.4, which states that "in no event may a court impose its own substitute plan unless the court first gives the General Assembly a period of time to remedy any defects identified by the court in its findings of fact and conclusions of law. That period of time shall not be less than two weeks." Although § 120-2.4 goes on to state that a longer period of time might be required in some instances, that longer period, the Court concludes, is applicable only if the General Assembly is not currently in session. *See* N.C. Sess. Laws 2018-146, § 4.7. The Court notes that the General Assembly, as of the date of this Order, is in session.

174. The Court will require Legislative Defendants and their agents to conduct the entire remedial process in full public view. At a minimum, that would require all map drawing to occur at public hearings, with any relevant computer screen visible to legislators and public observers. Given what transpired in 2017, the Court will prohibit Legislative Defendants and their agents from undertaking any steps to draw or revise the new districts outside of public view.

175. If Legislative Defendants wish to retain one or more individuals who are not current legislative employees to assist in the map-drawing process, the Court will require Legislative Defendants to obtain approval from the Court to engage any such individuals.

176. Notwithstanding the General Assembly having the opportunity to draw Remedial Maps in the first instance, the Court will still immediately appoint a Referee to (1) assist the Court in reviewing any Remedial Maps enacted by the General Assembly; and (2) to develop remedial maps for the Court should the General Assembly fail to enact lawful Remedial Maps within the time allowed.

C. The Court Will Not Stay the Remedial Process Pending Appeal

177. The Court orders that the remedial process commence immediately upon entry of this Order, and the Court will not grant a stay of the remedial process pending appeal.

178. The central inquiry in deciding whether to grant a stay of relief pending appeal is a balancing of the prejudice and risk of irreparable harm to the parties. *See 130 of Chatham, LLC v. Rutherford Elec. Mbrshp. Corp.*, 2014 WL 3809066, at *9 (N.C. Super. Ct. July 31, 2014).

179. Here, the balance of the equities weighs definitively against any stay. "[C]ourts evaluating redistricting challenges have generally denied motions for a stay pending appeal." *Harris v. McCrory*, 2016 WL 6920368, at *1 n.1 (M.D.N.C. Feb. 9, 2016) (citing cases and denying stay pending appeal). In such cases, a stay pending appeal could "risk that the State would not be able to implement" the remedial plans "in time for the [next] elections in the event that the [appellate courts] affirm[] this Court's judgment." *Covington*, 2018 WL 604732, at *6 (denying stay pending appeal). "The risk of harm is particularly acute where Plaintiffs and other North Carolina voters have already cast their ballots under unconstitutional district plans" in every election this decade. *Id.* The

prejudice to Plaintiffs here would be magnified because the state legislators elected in 2020 will redraw the state House and Senate districts in 2021 following the Decennial Census, substantially compounding the effects of allowing the current unconstitutional plans to be used in the 2020 elections.

180. In contrast, Legislative Defendants will suffer little if any prejudice from refusing any stay pending appeal. If Legislative Defendants ultimately prevail in an appeal, then the current districts will remain in place for the 2020 elections, and there will be no tangible harm from having allowed the remedial process to move forward while the appeal was pending. On balance, the equities and the public interest counsel strongly against a stay.

D. The Court Retains Discretion to Move the Primary Dates

181. Finally, the Court holds that the remedial schedule and process that the Court has set forth in this Order should ensure that remedial plans will be in place sufficiently in advance of the current primary date of March 3, 2020. However, the Court retains authority and discretion to move the primary date for the General Assembly elections, or all of the State's 2020 primaries, including for offices other than the General Assembly, should doing so become necessary to provide effective relief in this case.

182. While the Court concludes that moving the 2020 primaries is not needed at this date, the Court may consider doing so if necessary to grant effective relief in this case.

DECREE

Having considered all of the evidence, the memoranda and arguments of counsel, and the record proper, the Court ORDERS the following:

1. The Court declares that the 2017 House and Senate Plans are unconstitutional and invalid because there is no reasonable doubt each plan violates the rights of Plaintiffs and other Democratic voters under the North Carolina Constitution's

Equal Protection Clause, art. I, § 19; the Free Elections Clause, art. I, § 10; and the Freedom of Speech and Freedom of Assembly Clauses, art. I, §§ 12 & 14.

2. Legislative Defendants and State Defendants, and their respective agents, officers, and employees, are permanently enjoined from preparing for or administering the 2020 primary and general elections for House districts in the following House county groupings:

    a. Alamance

    b. Anson-Union

    c. Brunswick-New Hanover

    d. Buncombe

    e. Cabarrus-Davie-Montgomery-Richmond-Rowan-Stanly (except that House District 66 shall not be redrawn)

    f. Cleveland-Gaston

    g. Columbus-Pender-Robeson

    h. Cumberland

    i. Duplin-Onslow

    j. Franklin-Nash

    k. Forsyth-Yadkin

    l. Guilford (except that House Districts 57, 61, and 62 shall not be redrawn, and any portions of House District 59 added by the *Covington* Special Master shall not be altered)

    m. Lenoir-Pitt

    n. Mecklenburg

3. Legislative Defendants and State Defendants, and their respective agents, officers, and employees, are permanently enjoined from preparing for or administering the 2020 primary and general elections for Senate districts in the following Senate county groupings:

a) Alamance-Guilford-Randolph (except that Senate Districts 24 and 28 shall not be redrawn, and any portions of Senate District 27 added by the *Covington* Special Master shall not be altered)

b) Bladen-Brunswick-New Hanover-Pender

c) Buncombe-Henderson-Transylvania

d) Davie-Forsyth

e) Duplin-Harnett-Johnston-Lee-Nash-Sampson

f) Franklin-Wake

g) Mecklenburg

4. The Court will afford the General Assembly two weeks from the date of this Order, namely through September 18, 2019, to enact Remedial Maps for the House and Senate legislative districts for the 2020 election (hereinafter "Remedial Maps") in conformity with this Order.

5. Except as otherwise noted in this Order, the following criteria shall exclusively govern the redrawing of districts in the House and Senate county groupings set forth above:

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

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

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

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

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

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

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

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

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

7. Any Remedial Maps must comply with the VRA and other federal requirements concerning the racial composition of districts. Within 14 days of this Order, all parties may submit briefing, which may attach expert analysis, on whether the *Gingles* factors are met in particular counties and county groupings and/or the minimum BVAP needed in particular counties and county groupings for African Americans to be able to elect candidates of their choice to the General Assembly. Any such submission by Legislative Defendants is subject to the limitations set forth in subparagraphs (a) and (b) immediately below.

    a) If Legislative Defendants assert that the *Gingles* factors are met in any counties or county groupings, they shall not only provide evidentiary support for that assertion, but shall also show good cause why they did not compile such evidence during the 2017 redistricting process and shall show good cause why they should not be held judicially estopped from

arguing that the *Gingles* factors are met given their repeated representations to the *Covington* court in 2017 that the third *Gingles* factor was not met anywhere in the State.

b) For districts in counties and county groupings for which Legislative Defendants' expert Dr. Lewis estimated the minimum BVAP needed for an African-American preferred candidate to prevail in a state legislative election, Legislative Defendants shall not assert that the VRA or the United States Constitution requires or justifies making the BVAP of any such district higher than the minimum BVAP threshold estimated by Dr. Lewis in his Amended Table 4 (PX773) for the relevant county or county grouping. For districts in counties and county groupings that Dr. Lewis did not analyze, Legislative Defendants shall not assert that the VRA or the United States Constitution requires or justifies any minimum BVAP for the districts in that county or county grouping.

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

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

10. Notwithstanding the General Assembly having the opportunity to draw Remedial Plans in the first instance, the Court, by subsequent Court Order, shall promptly appoint a Referee to (1) assist the Court in reviewing any Remedial Maps enacted by the General Assembly; and (2) to develop remedial maps for the Court should the General Assembly fail to enact lawful Remedial Maps within the time allowed.

14. No later than September 6, 2019, the parties may submit to the Court names and qualifications of suggested referees. The Court will thereafter appoint a referee by subsequent Court Order.

15. The Court orders that the remedial process will commence immediately upon entry of this Order.

17. The Court, on its own motion, denies a stay of the remedial process pending appeal.

18. The Court retains jurisdiction to move the primary date for the General Assembly elections, or all of the State's 2020 primaries, including for offices other than the General Assembly, should doing so become necessary to provide effective relief in this case.

SO ORDERED, this the 3rd day of September, 2019.

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

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

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

2016 WL 3693498 (Cal.Super.) (Trial Order)
Superior Court of California.
San Bernardino County

Lisa GARRETT, Plaintiff,
v.
CITY OF HIGHLAND, California; and does 1-100. Inclusive, Defendants.

No. CIVDS 1410696.
April 6, 2016.

Corrected Judgment

Kevin L. Shenkman (SBN 223315), Mary R. Hughes (SBN 226622), John L. Jones II (SBN 225411), Shenkman & Hughes, 28905 Wight Road, Malibu. California 90265, Telephone: (310) 457-0970.

R. Rex Parris (SBN 96567), Ashley Parris (SBN 239537), R. Rex Parris Law Firm, 43364 10th Street West, Lancaster. California 93534, Telephone: (661) 949-2595, Facsimile: (661) 949-7524.

Milton C. Grimes (SBN 59437), Law Offices of Milton C. Grimes, 3774 West 54th Street, Los Angeles, California 90043, Telephone: (323) 295-3023, Attorneys for Plaintiff.

David S. Cohn, Judge.

***1** This cause came on for trial pursuant to notice and order of the Court on Janurary 13, 2016. in Department S-26 of the San Bernardino Superior Court, Hon. David S. Cohn, judge presiding. The trial concluded on January 19, 2016. Plaintiff Lisa Garrett appeared through her attorneys of record: Kevin Shcnkman of Shenkman & Hughes PC; R. Rex Parris and Kitty Szeto of the R. Rex Parris Law Firm; and Milton Grimes of the Law Offices of Milton C. Grimes. Defendant. City of Highland, California, appeared through its attorneys of record: Patrick Bobko and Youstina Aziz of Richards. Watson & Gershon LLP.

At the conclusion of the trial on January 19, 2016, following the closing arguments of the parties the parties did not request a written statement of decision, and so the Court issued its ruling and explained its rationale for its findings and ruling orally. The Court directed Plaintiff's counsel to prepare a proposed judgment.

After hearing and considering all of the testimony, evidence and arguments presented, the Court now enters its Judgment in the above-captioned case.

The Court finds as follows:

1. Defendant is a political subdivision as that term is defined in California flections Code Section 14026. The governing body of Defendant is the City Council of Highland, California. The City Council of Highland. California is elected by an "at large method of election" as that term is defined in California Elections Code Section 14026, as it has been since incorporation of the City of Highland.

2. Defendant admitted, and the Court agrees, that elections in Highland are characterized by "racially-polarized voting" as that term is defined in California Elections Code Section 14026. and that its at-large elections violate the California Voting Rights Act (Cal. Elec. Code § 14025. et seq., hereinafter "CVRA").

3. Though not necessary to show a CVRA violation, Plaintiff has also demonstrated that at least one majority-Latino district (by citizen-voting-age-population), out of five districts, may be drawn in a compact and contiguous fashion, with equal populations in each district, in the City of Highland. The Court has considered this in determining an appropriate remedy,

pursuant to Elections Code section 14028(c).

4. In the face of racially polarized voting patterns of the Highland electorate. Defendant has imposed an at-large method of election in a manner that impairs the ability of Latinos to elect candidates of their choice and their ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of Latino voters.

5. In July 2014, the City of Highland adopted Ordinance No. 303. Ordinance No. 393 provided for the implementation of district-based elections for the Highland City Council and included a description of the boundaries of five equal-population districts. Pursuant to the provisions of the Government Code at that time. Ordinance No. 393 was required to be approved by an at-large vote of the electorate of the City of Highland. In November 2014, the electorate of the City of Highland rejected Ordinance No. 393, though a significant majority of Latino voters, and a majority of voters in the Western portion of the City of Highland, voted in favor of the district-based elections of Ordinance No. 393.

***2** 6. The CVRA does not require the imposition of district-based elections. Rather, both the statutory language and legislative history of the CVRA support the conclusion that the Court has broad authority to implement an array of appropriate remedies. In circumstances different than those presented in this case, at-large remedies, such as cumulative voting, might be appropriate. That cumulative voting has not previously been implemented in the election of the governing board of any political subdivision of the State of California is irrelevant to the availability of cumulative voting as a remedy under the CVRA. The Court was presented with a letter from Secretary of State Alex Padilla dated September 1, 2015, directed to Hon. Terry Green, Judge of the Los Angeles Superior Court, regarding implementation of cumulative voting. In that letter, Secretary of State Padilla notes that there is no express statutory authority for cumulative voting in elections for governing boards of political subdivisions of the State of California. The Secretary of State's letter does not express a view that cumulative voting is either unlawful or unavailable as a remedy under the CVRA, and. in any event, this Court is not bound by the views of the Secretary of State. Regardless of the Secretary of Slate's letter, this Court finds that cumulative voting is a legally permissible method of electing the governing board of a political subdivision of the Suite of California, and is an available remedy under the CVRA.

7. In November 2015, the Highland City Council approved Resolution No. 2015-042. Defendant argued that this Court must defer to Defendant's selection of remedies set forth in Resolution No. 2015-042. However, this Court need not defer to Resolution No. 2015-042 for several reasons. First, the CVRA commands this Court, not Defendant, to implement appropriate remedies. Second, Resolution No. 2015-042 is not a legislative plan. Specifically, Resolution No. 2015-042 is not a legislative act at all because it does not serve to adopt any remedies; rather, it merely states that "[i]f directed by a court to implement a cumulative voting system" it will do so. The Highland City Council could have adopted cumulative voting on its own, but it chose not to actually adopt any change in its elections. Moreover, Resolution No. 2015-042 provides no details regarding the remedies referenced therein, or their implementation. For example. Resolution No.2015-042 references "changing its staggered elections so that three members of [the City] Council are elected during presidential election years and two members are elected during gubernatorial election years," but provides no specifies about that change e.g. how it is to he determined which of the three current members of the Highland City Council whose terms were set to expire only in 2018 is to be cut short. Third, as explained more fully below. Defendant's proposed remedial plan would not effectively and completely remedy the established violation of the CVRA and dilution of Latino votes in the City of Highland.

8. The "threshold of exclusion" is useful in evaluating whether cumulative voting would be an effective remedy. The threshold of exclusion is equal to 1/(1+ N). where N is the number of seats up for election at the same time. In a two-seat election, the threshold of exclusion is 33.3%. In a three-seat election, the threshold of exclusion is 25%. The parlies presented evidence of various measures of the Latino proportion of the Highland electorate for comparison to the applicable thresholds of exclusion: the Latino proportion of the citizen-voling-age-population ("LCVAP"); the Latino proportion of the registered voters; and the Latino proportion of the voters who actually cast ballots in recent elections. The Court finds that the appropriate measure for comparison to the threshold of exclusion is the Latino proportion of t he voters who actually cast ballots in recent elections. The historical evidence of the Latino proportion of the voters who actually cast ballots is the best measure of what will be the Latino proportion of the electorate in upcoming elections. To instead compare LCVAP or the Latino proportion of registered voters to the threshold of exclusion ignores the depressed voter turnout of the Latino community in Highland, which may be a symptom of the electoral futility that the C VRA is intended to remedy.

9. To estimate the Latino proportion of the voters who cast ballots in recent elections in Highland experts offered by both Plaintiff and Defendant started with matching the names of voters w ith the U.S. Census Department's list of Spanish surnames. This is an accepted method of estimating the proportion of Latinos in a large group. While the parties agree that this method of Spanish surname matching tends to underestimate the Latino proportion of a group, they disagree on the amount of that underestimation. Defendant's expert, Douglas Johnson, increased his estimates of the Latino proportion of voters by approximately 11% based on the 1990 Col by-Perkins study that investigated the error rates of Spanish surname matching in each Slate. Plaintiff's expert, David Ely, criticized that 11% adjustment because it is based on an outdated study that was not focused on the City of Highland, and the demographics of Highland in 2016 are significatly different than those of California, or any other State, in 1990, in ways that impact the accuracy of Spanish surname matching. The Court agrees with Mr. Ely, Adjusting the estimates from Spanish surname matching, for the purpose of comparing those estimates to the thresholds of exclusion is inappropriate. Nonetheless, even if the Spanish surname matching estimates of the Latino proportion of the electorate were increased as suggested by Mr. Johnson, the conclusions of this Court would be the same.

***3** 10. In the most recent four elections in the City of Highland 2008. 2010, 2012 and 2014 — the Latino proportion of the electorate varied between 20.1% and 25.2% (between 22% and 28% if adjusted, as suggested by Defendant's expert, based on the Colby-Perkins study). In each instance, the Latino proportion of the electorate was significantly less than the threshold of exclusion for a two-seal election (33.3%). In fact, in three out of the four most recent elections, the Latino proportion of the electorate in Highland was even lower than the threshold of exclusion for a three-scat election (25%). Therefore, this Court finds that cumulative voting is not likely to he an effective remedy, and thus it is not an "appropriate remedy" under the CVRA in the particular circumstances of the City of Highland. While unstaggering the elections for the Highland City Council, i.e. having all five council seats elected at the same time rather than two or three at a time every two years, would reduce the threshold of exclusion, the Court was not presented with such a proposal.

11. In contrast to cumulative voting, competent evidence demonstrates that the implementation of district-based elections, consistent with the district boundaries specified in Ordinance No. 393. will be effective at remedying Defendant's violation of the CVRA and the dilution of the Latino vote in the City of Highland. One of the five districts includes a Latino majority of eligible voters, while Latinos in another district have a strong plurality of eligible voters. Even more compelling are the results of the 2014 election in the City of Highland. In that election, the clear preference of Latinos was to implement district-based elections — "Yes" on Ballot Measure T. While Ballot Measure T did not gain a majority of votes in the city as a whole, the Latino preference in that election did receive a majority of the votes cast in two of the five districts — the districts with the highest proportion of Latinos. Defendant's argument that Latinos in the Easternmost portion of the City would be disenfranchised by district-based elections, misses the point; in any district-based election system voters are afforded a voice in the selection of the representative for the district in which they reside. The Court therefore finds that the imposition of district-based elections is an appropriate remedy to address the effects of the admitted history of racially-polarized voting.

12 Districts drawn to remedy a violation of the CVRA should be nearly equal in population, and should not be drawn in a manner that may violate the federal Voting Rights Act. Other factors may also be considered — the topography, geography and communities of interest of the city should be respected, and the districts should be cohesive, contiguous and compact. *See* Elections Code Section 21600. et seq. The Western portion of the City of Highland is less affluent and has a significantly greater proportion of Latinos than the Eastern portion of the City of Highland. The districts specified in Ordinance No, 393 are appropriately compact, cohesive and of nearly equal population. Moreover, that district plan properly takes into consideration the factors of topography, geography, cohesiveness, contiguity and compactness of territory, and community of interest of the districts.

13. The current members of the Highland City Council were elected through unlawful elections. The citizens of the City of Highland deserve to have a law fully elected city council as soon as is practical. The citizens of the City of Highland are entitled to have a council that truly represents all members of the community. Latino citizens of Highland, like all other citizens of Highland, deserve to have their voices heard in the operation of their city. This can only be accomplished if all members of the city council are lawfully elected. To permit some members of the council to remain who obtained their office through an unlawful election may be a necessary and appropriate interim remedy but will not cure the admitted violation of the CVRA.

***4 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant has violated the California Voting Rights Act (California Elections Code Sections 14025-14032).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's at-large elections for its City Council violate Elections Code Sections 14027 and 14028.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant is permanently enjoined from imposing, applying, holding, tabulating, and/or certifying any further at-large elections, and/or the results thereof, for any positions on its City Council.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant is permanently enjoined from imposing, applying, holding, tabulating, and/or certifying any elections, and/or the results thereof, for any positions on its City Council, except an election in conformity with this judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all further elections, from the date of entry of this judgment to the next decennial redistricting cycle in 2021, for any seats on the Highland City Council, shall be district-based elections, as defined by the California Voting Rights Act, in accordance with the maps attached hereto as Exhibit A. taken from Ordinance No. 393.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall hold a district-based special election, consistent with the district map described above and depicted in Exhibit A on November 8, 2016 for each of the five seats on the Highland City Council, and the results of said election shall be tabulated and certified in compliance with applicable sections of the Elections Code.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any person, other than a person who has been duly elected to the Highland City Council through a district-based election in conformity with this judgment, is prohibited from serving on the Highland City Council after December 31, 2016.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the districts used for elections of Highland's City Council shall be adjusted upon each decennial redistricting cycle beginning in 2021. in compliance with Flections Code Sections 21600, et seq., the California Voting Rights Act of 2001 and the federal Voting Rights Act,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court retains jurisdiction to interpret and enforce this judgment and to adjudicate any disputes regarding implementation or interpretation of this judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Flections Code Section 14030. Plaintiff is the prevailing and successful party and is entitled to recover reasonable attorneys fees and costs, including expert witness fees and expenses, in an amount to be determined by this Court through a post-judgment motion.

The Clerk is directed to enter this Judgment.

Dated: 4/6/14
<<signature>>

Hon. David S. Cohn

Judge of the San Bernardino Superior Court

B251793
Court of Appeal, Second District, Division 5, California.

Jauregui v. City of Palmdale

226 Cal.App.4th 781 (Cal. Ct. App. 2014) · 172 Cal. Rptr. 3d 333
Decided May 28, 2014

B251793

2014-05-28

Juan JAUREGUI et al., Plaintiffs and Respondents, v. CITY OF PALMDALE, Defendant and Appellant.

See 7 Witkin, Summary 10th (2005) Constitutional Law, § 233.APPEAL from an order of the Superior Court of Los Angeles County, Mark V. Mooney, Judge. Affirmed. (Los Angeles County Super. Ct. No. BC483039)

TURNER

Affirmed.

Mosk, J., filed concurring opinion.
See 7 Witkin, Summary 10th (2005) Constitutional Law, § 233. APPEAL from an order of the Superior Court of Los Angeles County, Mark V. Mooney, Judge. Affirmed. (Los Angeles County Super. Ct. No. BC483039)
Matthew Ditzhazy, Palmdale City Attorney, Noel Doran, Assistant City Attorney; Nielsen Merksamer Parrinello Gross & Leoni, Marguerite M. Leoni and Christopher Skinnell, Sacramento; and Richards, Watson & Gershon, Mitchell E. Abbott, Los Angeles, and Aaron C. O'Dell, Brea, for Defendant and Appellant.
Goldstein, Borgen, Dardarian & Ho, Morris J. Baller, Laura L. Ho and Katrina L. Eiland, Oakland; Law Office of Robert Rubin, Robert Rubin, San Francisco, and Milton C. Grimes; Shenkman & Hughes, Kevin I. Shenkman, Los Angeles, Mary P. Hughes and John L. Jones II; and R. Rex Parris Law Firm, R. Rex Parris and Brendan Gilbert, Lancaster, for Plaintiffs and Respondents.
TURNER, P.J.

788 *788

I. INTRODUCTION

Defendant, City of Palmdale, California, appeals from a September 30, 2013 preliminary injunction secured by plaintiffs, Juan Juaregui, Nigel Holly and V. Jesse Smith. The preliminary injunction, among other things, enjoins defendant from certifying the results of an at-large city council election which was ultimately held on November 5, 2013. Plaintiffs' sole cause of action is for a violation of the California Voting Rights Act because of the use of an at-large system for electing city council members. (Elec.[1] Code, §§ 14025–14032.)

[1] Future statutory references are to the Elections Code unless otherwise noted.

Defendant presents only two challenges to the September 30, 2013 preliminary injunction. First, defendant argues because it is a charter city, it cannot be subject to the California Voting Rights Act. Defendant relies upon California Constitution, article [2] XI, section 5. Second, defendant contends the preliminary injunction

violates statutory provisions which prohibit enjoining a public official from fulfilling a ministerial duty to act pursuant to a public statute. (Civ.Code, § 3423, subd. (d); Code Civ. Proc., § 526, subd. (b)(4).) We respectfully reject these contentions and affirm the preliminary injunction insofar as it enjoins certification of the at-large city council election results.

[2] Future references to an article are to the California Constitution.

II. VOTE DILUTION

Before discussing the present case, it is wise to describe what this case is about—vote dilution. Most local governance bodies in California are elected on an at-large basis; as in the case of defendant, a city council member runs for office city-wide rather than in a district. (Assem. Com. on Elections, Reapportionment and Constitutional Amendments, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Mar. 18, 2002,
789 p. 2; Sen. Com. on Elections and Reapportionment, Rep. on Sen. Bill No. 976 (2001–2002 *789 Reg. Sess.) as amended May 1, 2001, p. 1.) Sections 14025 through 14032 were adopted to prevent an at-large electoral system from diluting minority voting power and thereby impairing a protected class from influencing the outcome of an election. (Leg. Counsel's Dig., Sen. Bill No. 976 (Stats. 2000 (Reg.Sess.2002) ch. 129, § 1, p. 93); 2002 Summary Dig. p. 55; see *Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223, 1228–1229, 138 Cal.Rptr.3d 192.)

Our colleagues in the Fifth Appellate District succinctly described how vote dilution is proven in federal Voting Rights Act litigation: " 'First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district.... Second, the minority group must be able to show that it is politically cohesive.... Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate.' ([*Thornburg v.*] *Gingles* [(1986)] 478 U.S. [30] , 50–51 [106 S.Ct. 2752, 92 L.Ed.2d 25] (fn. omitted).)" (*Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 668, 51 Cal.Rptr.3d 821; see *Gomez v. Watsonville* (9th. Cir.1988) 863 F.2d 1407, 1414–1417.) However, our Fifth District colleagues explained the California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for *liability* purposes. (*Sanchez v. City of Modesto, supra,* 145 Cal.App.4th p. 669, 51 Cal.Rptr.3d 821.) However, even under the California Voting Rights Act, geographical compactness remains a consideration in developing a remedy. (*Ibid*.) This difference between the federal and state statutory voting rights provisions is not an issue in this appeal. With this background in mind, we turn to the case at hand.

III. THE PLEADINGS

The March 28, 2013 first amended complaint alleges that defendant's at-large election system of city council members reduces the effect of the number of votes by Latino and African–American residents. Both the mayor and the city council members are elected on an at-large basis. According to the first amended complaint, "The imposition of [defendant's] at-large method of election has resulted in vote dilution for the Latino and [African–American] residents and has denied them effective political participation in elections to the [c]ity [c]ouncil." The effect of the at-large method of election, according to the first amended complaint, prevents Latino and African–American residents from electing candidates of their choice. The first amended complaint alleges: "Despite a Latino population of approximately 54.4% and an [African–American] population of 14.8% in the City of Palmdale, no [African–American] has ever been elected to [defendant's city council], only one Latino
790 has been elected to [defendant's city council] and *790 no candidate of choice of Latino or [African–American] voters has been elected to the [defendant's city council] in the last ten years."

According to the first amended complaint, defendant's at-large electoral system has resulted in racially polarized voting: “Elections conducted within [defendant] are characterized by racially polarized voting. Racially polarized voting occurs when members of a protected class ... vote for candidates and electoral choices that are different from the rest of the electorate. Racially polarized voting exists within [defendant] because there is a difference between the choice of candidates or other electoral choices that are preferred by Latino voters, [African–American] voters, and the choice of candidates or other electoral choices that are preferred by voters in the rest of the electorate.” The first amended complaint gives specific examples of where racially polarized voting had occurred. Plaintiffs sought: a decree that defendant's at-large method of city council election violates the California Voting Rights Act; preliminary and permanent injunctive relief enjoining defendant from imposing or applying its current at-large method of election; injunctive relief requiring defendant to design and implement district-based elections or other appropriate alternative relief; and attorney's fees.

Defendant's answer denied the allegations concerning any violation of the California Voting Rights Act and contains 10 separate affirmative defenses. The ninth affirmative defense alleges defendant is a charter city. As a result, according to the answer, defendant possesses “plenary” power to determine the manner of election of city council members. (Art. XI, § 5, subd. (b).)

IV. TRIAL AND FINDINGS

On August 27, 2013, the trial court issued its final statement of decision. The trial court found: “Plaintiffs' expert and defendant's expert studied the [council] and mayoral election results for [defendant] since 2000. During that period, only one Latino candidate was elected and no African–American candidates were elected. [T]he one Latino candidate was elected in 2001, and none since. The failure of minority candidates to be elected to office does not by itself establish the presence of racially polarized voting. However, the regression analysis undertaken by both experts nevertheless established a clear history of a difference between choice of candidates preferred by the protected class in the choice of the non-protected class. [¶] Plaintiff's expert, Dr. Morgan Kousser, expressed the opinion that [defendant's] elections consistently and statistically exhibited racially polarized voting. The court finds the opinions expressed by Dr[.] Kousser to be persuasive. Although the methodology was somewhat different, the statistics compiled by defendant's expert, Douglas Johnson, likewise note the presence of racially polarized *791 voting. While Mr. Johnson described some of the results as ‘not stark,’ the existence of racially polarized voting in his statistics could not be denied.” As result, the trial court found defendant's at-large system of electing city council members violated section 14027. The trial court ruled, “Plaintiffs' evidence established that racially polarized voting occurred in the city council elections for [defendant].”

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In addition, the trial court rejected defendant's argument that as a charter city, it could not be subject to the California Voting Rights Act. The trial court reasoned that the dilution of minority voting rights is a matter of statewide concern. In addition, the trial court ruled, “To the extent a conflict exists between [defendant's] charter provisions as to the election of its council members and the California Voting Rights Act, the court finds that the city is not immune from state legislative enactments in this area of statewide concern.” And, the trial court rejected several other constitutional objections interposed by defendant which are not pertinent to this appeal. The trial court then ruled it had broad discretion to select the appropriate remedies that are tailored to remedy the statutory violation at issue. The trial court selected September 20, 2013, for the hearing on the selection of the remedy.

On August 1, 2013, plaintiffs moved for issuance of a preliminary injunction enjoining defendant from conducting an at-large election on November 5, 2013. On September 17, 2013, defendant filed its opposition to plaintiff's preliminary injunction motion. Plaintiffs' reply to the opposition reiterated their position that further at-large elections should be enjoined. On September 30, 2013, the trial court issued its preliminary injunction. The trial court found plaintiffs had demonstrated a likelihood of success on their claim the at-large city council election method violated the California Voting Rights Act. Further, the trial court found, "Absent preliminary relief, the Plaintiffs, as well as the general public, would be irreparably harmed by [d]efendant holding an at-large election on November 5, 2013, or at any time before this Court proscribes the permanent relief contemplated by this Courts Propose Statement of Decision dated July 23, 2013." Based upon those findings, the trial court issued in part the following preliminary injunction, "[D]efendant ... [is preliminarily enjoined] from holding an at-large election (as that term as defined in the [California Voting Rights Act]) for [defendant's] City Council, tabulating the results of such an at-large election, or certifying the results of such an at-large election."

On October 4, 2013, defendant filed a notice of appeal from the September 30, 2013 preliminary injunction. On October 10, 2013, defendant filed a supersedeas petition seeking to stay the September 30, 2013 preliminary injunction. Defendant argued: it is inappropriate to stay an election after the candidates have begun
792 campaigning; the preliminary injunction violated *792 section 13314; the balance of hardships weighed in favor of permitting the election to go forward; the Los Angeles County Registrar of Voters was an indispensable party who had not been served; an injunction against certification of the election results was improper and ineffective; the trial court abused its discretion by refusing a temporary stay request to permit the appeal to proceed; and the trial court's refusal to require plaintiffs to post a bond rendered the injunction illegal. Eventually after the trial court clarified its ruling on the bond issue, we denied the supersedeas petition. (*Jauregui v. City of Palmdale* (Oct. 15, 2013, B251793) [nonpub. order].) A majority of this court focused upon the disjunctive nature of the injunction and concluded the order, as drafted, created three potential acts which were subject to equitable relief: a proscription against holding an at-large election; counting the votes; or certifying the results of an at-large election. The dissenting justice ruled the preliminary injunction's text and the parties' conduct at the hearing showed the trial court plainly enjoined all aspects of the election—voting, tabulation and certification. Whether the majority or the dissenter was correct in their legal analysis in assessing the impact of the preliminary injunction is not an issue before us. The parties have not briefed that issue and it is irrelevant to the outcome of defendant's appeal. It is relevant though as to how the trial court and parties reacted to our October 15, 2013 order denying plaintiffs' supersedeas petition. The parties and the trial court acquiesced in the majority's analysis and agreed that only one act could be enjoined. Therefore, the election was held, the votes were tabulated, but the results were not certified. The trial court eventually entered its final plan which is the subject of a separate appeal in which briefing has not yet commenced. That final plan, which requires election of city council members by districts, is not before us. Nothing in this or the concurring opinion constitutes an expression of views by any justice as to how that pending appeal will be resolved.

Before addressing the parties' contentions, two points bear emphasis. To begin with, none of the trial court's findings concerning voter dilution has been challenged in defendant's briefs. Any contention that the trial court's findings are incorrect in this regard has been forfeited. (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4, 188 Cal.Rptr. 115, 655 P.2d 317; *Johnston v. Board of Supervisors* (1947) 31 Cal.2d 66, 70, 187 P.2d 686, disapproved on another point in *Bailey v. Los Angeles* (1956) 46 Cal.2d 132, 139, 293 P.2d 449.) Defendant has the burden of showing the trial court's rulings on the first amended complaint's merits, whether voter dilution is occurring, are incorrect. (*Sanchez v. State* (2009) 179 Cal.App.4th 467, 485, 101 Cal.Rptr.3d 670; *Antelope Valley Press v. Poizner* (2008) 162 Cal.App.4th 839, 849, fn. 11, 75

Cal.Rptr.3d 887.) The trial court's dilution findings are presumed to be correct. (*In re Marriage of Arceneaux*
793 (1990) 51 Cal.3d 1130, 1133, 275 Cal.Rptr. 797, 800 P.2d 1227; *793 *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564, 86 Cal.Rptr. 65, 468 P.2d 193.) Further, the parties advert to many of the events occurring after the preliminary injunction was entered. Most of these events which include the election results are post-preliminary injunction matters which are not properly before us. (*In re Zeth S.* (2003) 31 Cal.4th 396, 405–414, 2 Cal.Rptr.3d 683, 73 P.3d 541; see *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 442, 121 Cal.Rptr.3d 37, 247 P.3d 112.)

V. DISCUSSION

A. California Voting Rights Act

The California Voting Rights Act was enacted to implement the equal protection and voting guarantees of article I, section 7, subdivision (a) and article II, section 2 which we discuss later. (§ 14031.) Section 14027 sets forth the circumstances where an at-large electoral system may not be imposed to dilute or abridge a protected class's opportunity to elect candidates, "An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026." (See *Sanchez v. City of Modesto, supra,* 145 Cal.App.4th at p. 669, 51 Cal.Rptr.3d 821.) Section 14026, subdivision (d) defines the term "protected class" as follows, " 'Protected class' means a class of voters who are members of a race, color or language minority group, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec.1973 et seq.)." Section 14026, subdivision (e) defines racially polarized voting thusly, ' "Racially polarized voting' means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec.1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate...."

Proof of racially polarized voting patterns are established by examining voting results of: elections where at least one candidate is a member of a protected class; elections involving ballot measures; or other "electoral choices that affect the rights and privileges" of protected class members. (§ 14028, subd. (b).) The evidentiary effect of evidence of polarized voting patterns may depend on whether voting occurs after the filing of a lawsuit challenging an at-large electoral system. Section 14028, subdivision (a) states, "Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the
794 existence of racially polarized voting than elections conducted after the filing of the action."*794

There are a variety of factors a court may consider in determining whether an at-large electoral system impairs a protected class's ability to elect candidates or otherwise dilute their voting power. Section 14026, subdivision (e) states, "The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec.1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting." (§ 14026, subd. (e).) Section 14028, subdivisions (b), (c) and (e) identify other factors that may be considered in determining whether racially polarized voting has occurred.[3] But proof of an intent to discriminate is not an element of a violation of section 14027. (§ 14028, subd. (d).) A trial court is authorized to implement appropriate remedies including imposition of district-based elections. (§ 14029.) Prevailing plaintiffs are entitled to attorney fees. (§ 14030; see *Sanchez v. City of Modesto, supra,* 145 Cal.App.4th at p. 670, 51 Cal.Rptr.3d 821.)

3 Section 14028, subdivisions (b), (c) and (e) provide: "(b) One circumstance that may be considered in determining a violation of Section 14027 and this section is the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section. In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis. [¶] (c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy. [¶] ... (e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section."

B. Charter City Rights Over Municipal Matters

1. Organization of municipalities and the constitutional limitation on legislative enactments for charter cities

The Legislature recognizes two types of cities. The first kind, a municipality organized under a charter, is a charter city. (Gov.Code, § 34101; *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1075–1076, 63 Cal.Rptr.3d 67, 162 P.3d 583.) The second type, which is organized under the general law of the Legislature, is
795 referred to as a general law city. (Gov.Code, § 34102; *795 *People v. Chacon* (2007) 40 Cal.4th 558, 571, fn. 13, 53 Cal.Rptr.3d 876, 150 P.3d 755.) Defendant is a charter city. Defendant argues that section 14027 does not apply to its municipal elections. Defendant argues that elections are a "municipal matter." And, as a charter city, defendant contends the Legislature has no power to enact a law which permits a court to abolish an at-large election system. Defendant relies on article XI, section (5).[4]

4 Article XI, section (5) states: "(a) It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith. [¶] (b) It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees."

However, a charter city's authority to enact legislation is not unlimited. Our Supreme Court has described article XI, section (5) as granting charter cities the authority to enact laws concerning municipal matters subject to only limited exceptions, "The provision represents an 'affirmative constitutional grant to charter cities of "all powers appropriate for a municipality to possess ..." and [includes] the important corollary that "so far as 'municipal affairs' are concerned," charter cities are "supreme and beyond the reach of legislative enactment." '

" (*State Building & Construction Trades Council of Cal., AFL–CIO v. City of Vista* (2012) 54 Cal.4th 547, 555, 143 Cal.Rptr.3d 529, 279 P.3d 1022 (*State Building & Construction Trades Council*) quoting *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 12, 283 Cal.Rptr. 569, 812 P.2d 916 (*California Fed. Savings*).) According to our Supreme Court, "Charter cities are specifically authorized by our state Constitution to govern themselves, free of state legislative intrusion, as to those matters deemed municipal affairs." (*State Building & Construction Trades Council, supra,* at p. 555, 143 Cal.Rptr.3d 529, 279 P.3d 1022); *Johnson v. Bradley* (1992) 4 Cal.4th 389, 397, 14 Cal.Rptr.2d 470, 841 P.2d 990; see *Edgerly v. City of Oakland* (2012) 211 Cal.App.4th 1191, 1204, 150 Cal.Rptr.3d 425.)

Our Supreme Court has explained we engage in four steps in evaluating whether a charter city's law may contradict a state statute. First, we determine whether the city ordinance at issue regulates an activity that can be characterized as a "municipal affair." (*State Building & Construction Trades Council, supra*, 54 Cal.4th at
796 p. 556, 143 Cal.Rptr.3d 529, 279 P.3d 1022; *796 *California Fed. Savings, supra,* 54 Cal.3d p. 16, 283 Cal.Rptr. 569, 812 P.2d 916.) Second, we must determine whether the case presents an actual conflict between local and state law. (*State Building & Construction Trades Council, supra,* 54 Cal.4th at p. 556, 143 Cal.Rptr.3d 529, 279 P.3d 1022; *California Fed. Savings, supra,* 54 Cal.3d at p. 16, 283 Cal.Rptr. 569, 812 P.2d 916.) Third, we decide whether the state law, in this case section 14027, addresses a matter of " 'statewide concern.' " (*State Building & Construction Trades Council, supra,* 54 Cal.4th at p. 556, 143 Cal.Rptr.3d 529, 279 P.3d 1022; *California Fed. Savings, supra,* 54 Cal.3d at p. 17, 283 Cal.Rptr. 569, 812 P.2d 916.) Fourth, we must decide whether section 14027 is " 'reasonably related to ... resolution' " of that issue of that statewide concern. (*State Building & Construction Trades Council, supra,* 54 Cal.4th at p. 556, 143 Cal.Rptr.3d 529, 279 P.3d 1022; *California Fed. Savings, supra,* 54 Cal.3d at p. 17, 283 Cal.Rptr. 569, 812 P.2d 916.) And in connection with this fourth matter for determination, we must decide whether section 14027 is " 'narrowly tailored' " to avoid unnecessary interference in municipal governance. (*State Building & Construction Trades Council, supra,* 54 Cal.4th at p. 556, 143 Cal.Rptr.3d 529, 279 P.3d 1022; *California Fed. Savings, supra,* 54 Cal.3d at p. 24, 283 Cal.Rptr. 569, 812 P.2d 916.). After engaging in that analysis, our Supreme Court has delineated how we resolve the ultimate preemption question: " 'If ... the court is persuaded that the subject of the state statute is one of statewide concern and that the statute is reasonably related to its resolution [and not unduly broad in its sweep], then the conflicting charter city measure ceases to be a "municipal affair" pro tanto and the Legislature is not prohibited by article XI, section 5(a), from addressing the statewide dimension by its own tailored enactments.' " (*State Building & Construction Trades Council, supra,* 54 Cal.4th at p. 556, 143 Cal.Rptr.3d 529, 279 P.3d 1022; *California Fed. Savings, supra,* 54 Cal.3d at p. 17, 283 Cal.Rptr. 569, 812 P.2d 916.) We now apply these principles to our case.

2. Application of the four factors for determining whether section 14027 applies to defendant notwithstanding its status as a charter city

a. municipal elections are a municipal affair

The first issue is whether defendant's selection of city-wide elections is a municipal matter. It is. Commonsense tells us how city council members are elected is the essence of a municipal affair. Further, article XI, section 5, subdivision (b) expressly identifies the conduct of city elections as a municipal affair. (*Johnson v. Bradley, supra,* 4 Cal.4th at p. 398, 14 Cal.Rptr.2d 470, 841 P.2d 990 [elections are one of four core areas identified in art. XI, § 5 and are by definition municipal affairs]; *Cobb v. O'Connell* (2005) 134 Cal.App.4th 91, 96, 36 Cal.Rptr.3d 170 [same].)

b. existence of an actual conflict

The second issue is whether there is an actual conflict between section 14027 and defendant's city charter
797 provision. Our Supreme Court has not *797 defined actual conflict for purposes of evaluating the lawfulness of a charter city's law. But our Supreme Court has stated courts must carefully insure that the purported conflict is genuine and irresolvable short of choosing between one enactment and the other. (*Johnson v. Bradley, supra,* 4 Cal.4th at p. 399, 14 Cal.Rptr.2d 470, 841 P.2d 990; *California Fed. Savings, supra,* 54 Cal.3d p. 17, 283 Cal.Rptr. 569, 812 P.2d 916.)

In some cases, the question of whether there is a true conflict is easy to assess—the local and statewide enactment are entirely at odds. (*State Building & Construction Trades Council, supra,* 54 Cal.4th at pp. 559–560, 143 Cal.Rptr.3d 529, 279 P.3d 1022 [local provision adopted pursuant to a ballot measure prohibited compliance with state prevailing wage law except in unrelated circumstances]; *City of Watsonville v. State Dept. of Health Services* (2005) 133 Cal.App.4th 875, 883–886, 35 Cal.Rptr.3d 216 [municipal ordinance banning injecting non-federally approved substances into drinking water actually conflicts with state law requiring fluoridation of water systems with at least 10,000 hookups]; *California Apartment Assn. v. City of Stockton* (2000) 80 Cal.App.4th 699, 705, 95 Cal.Rptr.2d 605 [Pub. Util.Code, § 10009.6 prohibits recouping tenant's unpaid utility bills from land owners and subsequent renters while a local ordinance permitted it]; *Barajas v. City of Anaheim* (1993) 15 Cal.App.4th 1808, 1817, 19 Cal.Rptr.2d 764 [as construed, Veh.Code, § 22455 barred a municipality from prohibiting vending from motor vehicles parked on streets and the Anaheim Municipal Code banned all such sales]; *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137, 140–143, 17 Cal.Rptr.2d 630 [Gov.Code, § 53725, subd. (a) prohibited imposition of a specified tax on real property transfers and a local ordinance imposed a tax on instruments that conveyed realty].) Other cases easily find that no actual conflict exists. (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 365, 87 Cal.Rptr.2d 654, 981 P.2d 499 ["[Pub. Contract Code, § 20128], requiring contracts be let to the 'lowest responsible bidder,' and San Francisco Administrative Code [§ 6.1], using the formulation 'lowest reliable and responsible bidder,' do not conflict."]; *Griffith v. City of Santa Cruz* (2012) 207 Cal.App.4th 982, 990–993, 143 Cal.Rptr.3d 895 [no actual conflict between state law establishing building standards and local ordinance requiring annual inspections of residential rental properties]; *Cobb v. O'Connell, supra,* 134 Cal.App.4th at p. 97, 36 Cal.Rptr.3d 170 [no actual conflict between a state law temporarily appointing an administrator in charge of the Oakland schools and a city charter provision for election of school board members].)

Citing *Sherwin–Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897, 16 Cal.Rptr.2d 215, 844 P.2d 534, some decisions use traditional preemption jurisprudence in assessing whether an actual conflict exists. (*California Veterinary Medical Assn. v. City of West Hollywood* (2007) 152 Cal.App.4th 536, 548–562, 61 Cal.Rptr.3d 318; *City of Watsonville v. State Dept. of Health Services, supra,* 133 Cal.App.4th at pp. 883, 885–
798 886, 35 Cal.Rptr.3d 216; *798 *Barajas v. City of Anaheim, supra,* 15 Cal.App.4th at pp. 1813–1817, 19 Cal.Rptr.2d 764.) Or, a court may take into account how a local ordinance is applied by the municipality (*City of Watsonville v. State Dept. of Health Services, supra,* 133 Cal.App.4th at pp. 881–882, 35 Cal.Rptr.3d 216 [city ordinance made no reference to fluoridation but its effect was to ban any spending on systems to fluoridate water]; *California Apartment Assn. v. City of Stockton, supra,* 80 Cal.App.4th at p. 705, 95 Cal.Rptr.2d 605 ["The ordinances, as applied by the city, impose joint liability upon a person or entity, the property owner, which is not a party to the tenant's contract, for the debt of a tenant."].) Also, a local enactment may only contravene some aspects of a state law or do so only to an extent. (See *Domar Electric, Inc. v. City of Los Angeles* (1995) 41 Cal.App.4th 810, 822, 48 Cal.Rptr.2d 822 ["to the extent that [Pub.] Contract Code[, §] 2000 and the Board's outreach program are in conflict, the program must yield to the statute"].)

Section 14027 and defendant's city-wide council elections process are in actual conflict under the present circumstances. Section 14027 does not prohibit city-wide council elections. (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3.) In that sense, no actual conflict exists. City-wide elections where there is no vote dilution are not in actual conflict with section 14027. But if there is a dilution of a protected class's voting rights, then defendant's at-large electoral system actually conflicts with section 14027. Section 14027 applies only when there has been vote dilution. (*Sanchez v. City of Modesto, supra,* 145 Cal.App.4th at p. 667, 51 Cal.Rptr.3d 821.) The trial court's unquestioned findings demonstrate that defendant's at-large system dilutes the votes of Latino and African–American voters. Based on the undisputed facts, defendant's at-large method of election is in actual conflict with section 14027 when it is imposed or applied in a manner that: impairs the ability of a protected class to elect candidates of its choice; impairs the ability of a protected class to influence the outcome of an election; and this impairment results from diluting or abridging the rights of voters who are members of a protected class. When this happens, a trial court may order the implementation of authorized appropriate remedies including imposing district-based elections. (§ 14029.) To this extent, given the trial court's unchallenged findings, defendant's system of at-large elections is in actual conflict with section 14027 which squarely prohibits vote dilution under specified circumstances.

c. section 14027 addresses an issue of statewide concern

i. plaintiffs' arguments and how to evaluate whether an issue is of statewide concern

Plaintiffs contend that section 14027 addresses an issue of statewide concern. Our Supreme Court has
799 explained the proper approach in evaluating *799 whether a statewide concern is present: " '[T]he hinge of the decision is the identification of a convincing basis for legislative action originating in extramunicipal concerns, one justifying legislative supersession based on sensible, pragmatic considerations.' (*California Fed. Savings, supra,* 54 Cal.3d at p. 18 [283 Cal.Rptr. 569, 812 P.2d 916].) In other words, for state law to control there must be something more than an abstract state interest, as it is always possible to articulate some state interest in even the most local of matters. Rather, there must be 'a convincing basis' for the state's action—a basis that 'justif[ies]' the state's interference in what would otherwise be a merely local affair. (*Ibid.*)" (*State Building & Construction Trades Council, supra,* 54 Cal.4th at p. 560, 143 Cal.Rptr.3d 529, 279 P.3d 1022.) In *California Fed. Savings, supra,* 54 Cal.3d at pages 17 and 18, 283 Cal.Rptr. 569, 812 P.2d 916, our Supreme Court explained: "In performing that constitutional task, courts should avoid the error of 'compartmentalization,' that is, of cordoning off an entire area of governmental activity as either a 'municipal affair' or one of statewide concern.... When a court invalidates a charter city measure in favor of a conflicting state statute, the result does not necessarily rest on the conclusion that the subject matter of the former is not appropriate for municipal regulation. It means, rather, that under the historical circumstances presented, the state has a more substantial interest in the subject than the charter city." (See *State Building & Construction Trades Council, supra,* 54 Cal.4th at p. 557–558, 143 Cal.Rptr.3d 529, 279 P.3d 1022.) Ultimately, these are legal determinations. (*California Fed. Savings, supra,* 54 Cal.3d at p. 17, 283 Cal.Rptr. 569, 812 P.2d 916.)

Given the history of our nation and California, there is a convincing basis for the Legislature to act in what otherwise be a local affair—city council elections. Plaintiffs argue that the sections 14025 through 14032 implement the equal protection and voting rights provisions of the state Constitution. (Art. I, § 7, subd. (a), art. II, § 2.[5]) Section 14031 states the California Voting Rights Act was adopted to implement the voting and equal protections provisions article I, section 7, subdivision (a) and article II, section 2. Further, they argue integrity in the manner in which local elections are conducted is a matter of statewide concern. Plaintiffs argue these constitutional and integrity driven concerns are statewide in nature. We agree.

5 Article I, section 7, subdivision (a) states, "A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws...." Article II, section 2 states, "A United States citizen 18 years of age and resident in this state may vote."

ii. the right to vote and equal protection

The right to vote is fundamental. (*Board of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 913, 13 Cal.Rptr.2d 245, 838 P.2d 1198; *Peterson v. City of San Diego* (1983) 34 Cal.3d 225, 229, 193 Cal.Rptr. 533, 666 P.2d 975.) Typically, challenges to state restrictions on voting and the like have been brought
800 under the federal equal protection *800 clause. (See *Legal Services for Prisoners with Children v. Bowen* (2009) 170 Cal.App.4th 447, 452, 87 Cal.Rptr.3d 869.) The federal equal protection clause applies to voting rights issues. (*Calderon v. City of Los Angeles* (1971) 4 Cal.3d 251, 260–261, 93 Cal.Rptr. 361, 481 P.2d 489 [dilution of voting strength of racial minorities is constitutionally suspect].) The reaches of the state and federal equal protection clauses are not the same for all purposes. (*Butt v. State of California* (1992) 4 Cal.4th 668, 683, 685, 15 Cal.Rptr.2d 480, 842 P.2d 1240; *Sanchez v. City of Modesto, supra,* 145 Cal.App.4th at p. 678, 51 Cal.Rptr.3d 821.) But the state equal protection clause quite naturally applies to voting related issues. (*Citizens Against Forced Annexation v. Local Agency Formation Com.* (1982) 32 Cal.3d 816, 829, 187 Cal.Rptr. 423, 654 P.2d 193, overruled on other grounds in *Board of Supervisors v. Local Agency Formation Com., supra,* 3 Cal.4th at p. 921, 13 Cal.Rptr.2d 245, 838 P.2d 1198; *Hoffman v. State Bar of California* (2003) 113 Cal.App.4th 630, 640–641, 645, 6 Cal.Rptr.3d 592; see *Greene v. Marin County Flood Control & Water Conservation Dist.* (2010) 49 Cal.4th 277, 297, 109 Cal.Rptr.3d 620, 231 P.3d 350; *Neilson v. City of California City* (2005) 133 Cal.App.4th 1296, 1301, 1314 & fn. 7, 35 Cal.Rptr.3d 453.) Our Supreme Court has described the Fourteenth Amendment and article I, section 2 as providing comparable protections in voting rights cases. (*Canaan v. Abdelnour* (1985) 40 Cal.3d 703, 715, 221 Cal.Rptr. 468, 710 P.2d 268, overruled on another point in *Edelstein v. City and County of San Francisco* (2002) 29 Cal.4th 164, 183, 126 Cal.Rptr.2d 727, 56 P.3d 1029.) California decisions involving voting issues quite closely follow federal Fourteenth Amendment analysis. (*Id.* at p. 715, 221 Cal.Rptr. 468, 710 P.2d 268.) Minority vote dilution can violate the Fourteenth Amendment. (*Reno v. Bossier Parish School Bd.* (1997) 520 U.S. 471, 479–480, 117 S.Ct. 1491, 137 L.Ed.2d 730; *White v. Regester* (1973) 412 U.S. 755, 766, 93 S.Ct. 2332, 37 L.Ed.2d 314.) Thus, as in the case of the Fourteenth Amendment, article I, section 2 protects members of a protected class against dilution of their votes because of the manner in which elections are conducted.

The rights of protected classes against dilution of their votes do not arise *merely* from a municipal concern. Rather, they arise from the essence of a democratic form of government. This does not involve an abstract state interest—it is one that goes to the legitimacy of the electoral process. California has a greater interest in insuring vote dilution does not occur in any election in our state than defendant has in electing city council members city-wide. And this statewide concern applies in every council election in all California cities. The constitutionally based protection against race-based dilution of voter rights is a matter of statewide concern.

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iii. integrity in the electoral process

Even if constitutionally mandated voting and equal protection concerns do not constitute a statewide interest, our Supreme Court has explained that integrity in the municipal electoral process is. In *Johnson v. Bradley, supra,* 4 Cal.4th at pages 392–394, 14 Cal.Rptr.2d 470, 841 P.2d 990, our Supreme Court evaluated a charter city's ordinance that provided for partial funding of campaigns for local offices. The charter city's ordinance was challenged because it conflicted with Proposition 73, a statewide initiative which banned public financing

of any election campaign. The city argued the statewide limitation on public financing of campaigns did not apply to a municipal campaign. The city relied upon its status as a charter city and article XI, section 5. (*Johnson v. Bradley, supra,* 4 Cal.4th at pp. 397–411, 14 Cal.Rptr.2d 470, 841 P.2d 990.) While discussing whether a statewide concern was present, our Supreme Court explained: "[P]etitioners assert: (i) the 'integrity of the electoral process' is itself a statewide concern; (ii) section 85300's ban on public funding of election campaigns is reasonably calculated to resolve that statewide concern; and (iii) therefore section 85300 addresses a statewide concern. [¶] We have no reason to doubt petitioners' major premise; the integrity of the electoral process, at both the state and local level, is undoubtedly a statewide concern. The basis for this conclusion was well stated in an Attorney General opinion in 1960, in support of a conclusion that a charter city candidate is obligated to comply with statewide campaign financial disclosure provisions: [¶] 'Purity of all elections is a matter of statewide concern, not just a municipal affair.... The Legislature ... has found that it is in the public interest that full and detailed disclosure be made of all contributions and expenditures in election campaigns.... Elected officials of the various municipalities chartered and non-chartered throughout the state of California exercise a substantial amount of executive and legislative power over the people of the state of California, and this legislation aimed at obtaining the election of persons free from domination by self-seeking individuals or pressure groups is a matter of statewide concern.' (35 Ops.Cal.Atty.Gen. 230, 231–232 (1960).)" (*Id*. at pp. 408–409, 14 Cal.Rptr.2d 470, 841 P.2d 990.) In one respect *Johnson* involves our very issue—whether integrity of elections in a charter city is a matter of statewide concern for purposes of article XI, section 5. Based on the analysis in *Johnson* and commonsense, we conclude integrity in city council elections is a matter of statewide concern. Electoral results lack integrity where a protected class is denied equal participation in the electoral process because of vote dilution. Thus, section 14027 addresses an issue of statewide concern.

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d. sections 14025 through 14032 are narrowly drawn and reasonably related to elimination of dilution of the votes of protected classes

As noted, having concluded the voter dilution of a protected class is a statewide concern, two additional issues must be decided. Initially, we must decide whether sections 14025 through 14032 are " 'narrowly tailored' " to avoid unnecessary interference in municipal governance. (*State Building & Construction Trades Council, supra,* 54 Cal.4th at p. 556, 143 Cal.Rptr.3d 529, 279 P.3d 1022; *California Fed. Savings, supra,* 54 Cal.3d p. 24, 283 Cal.Rptr. 569, 812 P.2d 916.) They do not unnecessarily interfere in municipal governance. They have no application to a city which elects council members by district. And sections 14025 through 14032 do not apply to city-wide council elections unless vote dilution has occurred. More to the point, sections 14025 through 14032 apply *only* if there is dilution of protected classes' votes. Sections 14025 through 14032 are narrowly tailored to avoid unnecessary interference in municipal governance. Put another way, sections 14025 through 14032 can necessarily only interfere with municipal governance when vote dilution is present.

Finally, sections 14025 through 14032 are reasonably related to the resolution of the statewide concerns and not unduly broad in their sweep. (*State Building & Construction Trades Council, supra,* 54 Cal.4th at p. 556, 143 Cal.Rptr.3d 529, 279 P.3d 1022; *California Fed. Savings, supra,* 54 Cal.3d p. 24, 283 Cal.Rptr. 569, 812 P.2d 916.) Sections 14025 through 14032 are reasonably related to the right to vote, equal protection and integrity of elections statewide concerns we have discussed. Sections 14025 through 14032 allow citizens to challenge city-wide elections and, *only if there is vote dilution,* permit a court to impose reasonable remedies to alleviate the problem.

e. conclusion

To sum up, the manner of selecting city council members is a municipal affair. There is an actual conflict between sections 14025 through 14032 and defendant's mode of electing city council members. The actual conflict is demonstrated by the trial court's unquestioned vote dilution findings. The dilution of votes of a protected class is matter of statewide concern. Sections 14025 through 14032 are reasonably related to the issue of vote dilution and constitute a narrowly drawn remedy which does not unnecessarily interfere in municipal governance. Article XI, section 5 does not bar the enforcement of sections 14025 through 14032.

3. Defendant's Plenary Authority Argument

Defendant relies on language in article XI, section 5, subdivision (b) adverting to a charter city's "plenary
803 authority" over elections. The language *803 at issue, which is italicized, is as follows: "It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for ... conduct of city elections *and ... plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected* ... and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees." (Art. XI, § 5, subd. (b).) Defendant reasons this plenary authority precludes the Legislature from regulating those matters specified in article XI, section 5, subdivision (b) which includes local elections. This contention has no merit.

This very argument was rejected by our Supreme Court in *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 600, 205 Cal.Rptr. 794, 685 P.2d 1145 (*Seal Beach*). In *Seal Beach,* the issue involved public employment, not an election. Our Supreme Court described the issue thusly: "The issue is whether the city council of a charter city must comply with the Meyers–Milias–Brown Act's ... 'meet-and-confer' requirement (Gov.Code, § 3505) before it proposes an amendment to the city charter concerning the terms and conditions of public employment." (*Seal Beach, supra,* 36 Cal.3d at p. 594, 205 Cal.Rptr. 794, 685 P.2d 1145.) The defendant, the City of Seal Beach, argued the grant of plenary authority in article XI, section 5, subdivision (b) allowed it to disregard the statewide meet and confer requirement. (*Seal Beach, supra,* 36 Cal.3d at pp. 599–600, 205 Cal.Rptr. 794, 685 P.2d 1145.) As can be noted, the plenary authority language in article XI, section 5, subdivision (b) extends to charter city employee related matters. Our Supreme Court quoted the foregoing "plenary authority" language in article XI, section 5, subdivision (b) in the immediately preceding paragraph and concluded: "What grant of power could sound more absolute? Yet in an unbroken series of public employee cases, starting with *Professional Fire Fighters, Inc. v. City of Los Angeles* (1963) 60 Cal.2d 276, 289–295 [32 Cal.Rptr. 830, 384 P.2d 158] and ending for the time being with *Baggett v. Gates* (1982) 32 Cal.3d 128, 135, 140 [185 Cal.Rptr. 232, 649 P.2d 874], it has been held that a 'general law prevails over local enactments of a chartered city, even in regard to matters which would otherwise be deemed to be strictly municipal affairs, where the subject matter of the general law is of statewide concern.' (*Professional Fire Fighters, supra,* 60 Cal.2d at p. 292 [32 Cal.Rptr. 830, 384 P.2d 158].)" (*Seal Beach, supra,* 36 Cal.3d at p. 600 [205 Cal.Rptr. 794, 685 P.2d 1145], fn. omitted.) This analysis applies with equal force in the municipal election context. The plenary authority identified in article XI, section 5, subdivision (b) can be preempted by a statewide law after engaging in the four-step evaluation process specified by our Supreme
804 Court. (*804 *State Building & Construction Trades Council, supra,* 54 Cal.4th at p. 556, 143 Cal.Rptr.3d 529, 279 P.3d 1022; *California Fed. Savings, supra,* 54 Cal.3d pp. 16–17, 24, 283 Cal.Rptr. 569, 812 P.2d 916.)

C. The Trial Court Had The Authority To Enjoin The Certification Of The Election Results Pursuant To Section 14029

As our Supreme Court explained in *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1109, 60 Cal.Rptr.2d 277, 929 P.2d 596, we apply the following standards of review: "At this initial stage in the proceeding, the scope of our inquiry is narrow. We review an order granting a preliminary injunction under an abuse of discretion standard. [Citations.] Review is confined, in other words, to a consideration whether the trial court abused its discretion in ' "evaluat[ing] two interrelated factors when deciding whether or not to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm the defendant is likely to suffer if the preliminary injunction were issued." ' [Citation.]" (*People ex rel. Reisig v. Acuna* (2010) 182 Cal.App.4th 866, 872–873, 106 Cal.Rptr.3d 560.) We apply a separate standard of review, though, to legal and factual issues. (*Bullock v. City and County of San Francisco* (1990) 221 Cal.App.3d 1072, 1094, 271 Cal.Rptr. 44 ["the standard of review [for issues of pure law] is not abuse of discretion but whether statutory or constitutional law was correctly interpreted and applied by the trial court"]; see *California Assn. of Dispensing Opticians v. Pearle Vision Center, Inc.* (1983) 143 Cal.App.3d 419, 426, 191 Cal.Rptr. 762.)

The issue before us is whether the trial court could enjoin certification of the election results. Section 15400 [6] requires a governing body, in this case the city council, to declare the winner of the election. Defendant argues that the trial court did not have the jurisdiction enjoin certification of the election results. Defendant relies on Code of Civil Procedure section 526, subdivision (b)(4) and Civil Code section 3423, subdivision (d).[7] These statutes have been discussed in connection with injunctive relief claims against public officials executing laws
805 in electoral contexts. (*805 *Drumhiller v. Wright* (1923) 64 Cal.App. 498, 501, 222 P. 166; see *Kevelin v. Jordan* (1964) 62 Cal.2d 82, 83, 41 Cal.Rptr. 169, 396 P.2d 585; *Santa Clara County v. Superior Court* (1949) 33 Cal.2d 552, 554–555, 203 P.2d 1; *Wright v. Jordan* (1923) 192 Cal. 704, 710, 221 P. 915; *People v. Board of Supervisors* (1888) 75 Cal. 179, 180–182, 16 P. 776; *Martinez v. Board of Supervisors* (1972) 23 Cal.App.3d 679, 684–685, 100 Cal.Rptr. 334.)

> 6 Section 15400 states in part, "The governing body shall declare elected or nominated to each office voted on at each election under its jurisdiction the person having the highest number of votes for that office, or who was elected or nominated...."

> 7 Code of Civil Procedure section 526, subdivision (b)(4) states: "(b) An injunction cannot be granted in the following cases: [¶] ... (4) To prevent the execution of a public statute by officers of the law for the public benefit." Civil Code section 3423, subdivision (d) states: "An injunction may not be granted: [¶] ... (d) To prevent the execution of a public statute, by officers of the law, for the public benefit."

Even if the two foregoing statutes apply to this case, section 14029 is an exception to Code of Civil Procedure section 526, subdivision (b)(4) and Civil Code section 3423, subdivision (d). As noted, section 14029 states, "Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement *appropriate remedies,* including the imposition of district-based elections, that are tailored to remedy the violation." (Italics added.) What constitutes "appropriate remedies" within the meaning of section 14029 is ambiguous. This is hence an issue of statutory interpretation. We apply the following standards of statutory review described by our Supreme Court: "When interpreting a statute our primary task is to determine the Legislature's intent. [Citation.] In doing so we turn first to the statutory language, since the words the Legislature chose are the best indicators of its intent." (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826, 25 Cal.Rptr.2d 148, 863 P.2d 218; *People v. Jones* (1993) 5 Cal.4th 1142, 1146, 22

Cal.Rptr.2d 753, 857 P.2d 1163.) Further, our Supreme Court has noted: " 'If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute)....' " (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798, 268 Cal.Rptr. 753, 789 P.2d 934.) However, the literal meaning of a statute must be in accord with its purpose as our Supreme Court noted in *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 658–659, 25 Cal.Rptr.2d 109, 863 P.2d 179 as follows: "We are not prohibited 'from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. [Citation.] Literal construction should not prevail if it is contrary to the legislative intent apparent in the [statute]....' " In *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, 248 Cal.Rptr. 115, 755 P.2d 299, our Supreme Court added: "The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. [Citations.] An interpretation that renders related provisions nugatory must be avoided [citation]; each sentence must be read not in isolation but in the light of the statutory scheme [citation]...." (See *Troppman v. Valverde* (2007) 40 Cal.4th 1121, 1135, fn. 10, 57 Cal.Rptr.3d 306, 156 P.3d
806 328.) Further, a remedial *806 statute's protective purpose is to be construed liberally on behalf of the class of persons it is designed to protect. (*Pineda v. Williams–Sonoma Stores, Inc.* (2011) 51 Cal.4th 524, 530, 120 Cal.Rptr.3d 531, 246 P.3d 612 [" '[C]ivil statutes for the protection of the public are, generally, broadly construed in favor of that protective purpose.' "]; *People ex rel. Dept. of Transportation v. Muller* (1984) 36 Cal.3d 263, 269, 203 Cal.Rptr. 772, 681 P.2d 1340 [" ' "The rule of law in the construction of remedial statutes requires great liberality, and wherever the meaning is doubtful, it must be so construed as to extend the remedy." [Citation.]' "].)

To begin with, section 14029 is a later enacted and more specific injunctive relief provision than Code of Civil Procedure section 526, subdivision (b)(4) and Civil Code section 3423, subdivision (d). Under these circumstances, the more specific and later enacted statute, section 14029, ordinarily must be enforced. (*Governing Board v. Mann* (1977) 18 Cal.3d 819, 828, 135 Cal.Rptr. 526, 558 P.2d 1 ["[W]hen, as here, a subsequently enacted specific statute directly conflicts with an earlier, more general provision, it is settled that the subsequent legislation effects a limited repeal of the former statute to the extent that the two are irreconcilable."]; *Serrano v. Priest* (1971) 5 Cal.3d 584, 596, 96 Cal.Rptr. 601, 487 P.2d 1241 ["If the two provisions were found irreconcilable, [the newer statute] would prevail because it is more specific and was adopted more recently."]; *County of Placer v. Aetna Cas. etc. Co.* (1958) 50 Cal.2d 182, 189, 323 P.2d 753 [" 'Where the terms of a later specific statute apply to a situation covered by an earlier general one, the later specific statute controls....' "]; *In re Williamson* (1954) 43 Cal.2d 651, 654, 276 P.2d 593 [" 'Where the special statute is later it will be regarded as an exception to or qualification of the prior general one....' "].)

Moreover, the federal Voting Rights Act, title 42 United States Code section 1971, provides the context for the California Legislature's determination to adopt sections 14025 through 14032. (*Sanchez v. City of Modesto, supra,* 145 Cal.App.4th at p. 667, 51 Cal.Rptr.3d 821 ["Some background on federal voting rights law is helpful to provide context for the [California Voting Rights Act]."].) The Legislature intended to provide a broader basis for relief from vote dilution than available under the federal Voting Rights Act. (*Id.* at p. 669, 51 Cal.Rptr.3d 821; see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3.) Legislative committee reports liberally refer to federal Voting Rights Act and related decisional authority. (Sen. Com on Elections and Reapportionment, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) May 2, 2001, as amended May 1, 2001, pp. 1, 3, Sen. Rules Com., Office of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) May 8, 2001, as amended May 1,

2001, pp. 2, 5; Sen. Rules Com., Office of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) June 1, 2001, as amended May 1, 2001, pp. 2, 5; Sen. Rules Com., Office of Sen. Floor
807 Analyses, 3d reading analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) Jan. 8, 2002, as *807 amended May 1, 2001, pp. 2, 5; Assem. Com. on Elections, Reapportionment and Constitutional Amendments, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) Apr. 2, 2002, as amended Mar. 18, 2002, pp. 3–4; Assem. Com. on Elections, Reapportionment and Constitutional Amendments, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) Apr. 16, 2002, as amended Apr. 9, 2002, pp. 3–4; Assem. Com. on Judiciary, *op . cit.,* pp. 2–4; Sen. Third Reading Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.), as amended Jun. 11, 2002, pp. 3–4; Sen. Rules Com., Office of Sen. Floor Analyses, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) June 21, 2002, as amended Jun. 11, 2002, pp. 2, 5.)

Thus, the Legislature intended to expand the protections against vote dilution provided by the federal Voting Rights Act. It would be inconsistent with the evident legislative intent to expand protections against vote dilution to narrowly limit the scope of preliminary injunctive relief as defendant asserts. Logically, the appropriate remedies language in section 14029 extends to pre-election orders of the type approved under the federal Voting Rights Act. In cases subject to the federal Voting Rights Act, courts have upheld orders enjoining an election in preclearance cases. (*Lopez v. Monterey County* (1996) 519 U.S. 9, 21–23, 117 S.Ct. 340, 136 L.Ed.2d 273; *Clark v. Roemer* (1991) 500 U.S. 646, 654–655, 111 S.Ct. 2096, 114 L.Ed.2d 691.) The order at issue which merely limits certification is more narrow in its effect than an outright injunction of an election.

Finally, as noted, remedial legislation is to be liberally or broadly construed. Sections 14025 through 14032 in general and section 14029 specifically fall within the definition of remedial legislation. The sponsor's comments which appear in two Assembly committee report are as follows: " 'Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution.' " (Assem. Com. on Elections, Reapportionment and Constitutional Amendments, *op. cit.,* Apr. 9, 2002, p. 3; Assem. Com. on Judiciary, *op. cit.,* Jun. 4, 2002, p. 2.) Other committee reports synthesize the sponsor's views: "According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity." (Sen. Com. on Elections and
808 Reapportionment, *op. cit.,* May 2, *808 2001, p. 3; Sen. Rules Com., Office of Sen. Floor Analyses, *op. cit.,* June 1, 2001, p. 5.) Thus, section 14029 is to be broadly construed to remedy dilution of the votes of protected classes; not narrowly as asserted by defendant.

To sum up, section 14029 is an exception to the restrictions in Code of Civil Procedure section 526, subdivision (b)(4) and Civil Code section 3423, subdivision (d). Section 14029 is a later enacted more specific remedial statute. The Legislature intended to expand protections against vote dilution over those provided by the federal Voting Rights Act. It is incongruous to intend this expansion of vote dilution liability but then constrict the available remedies in the electoral context to less than those in the Voting Rights Act. The Legislature did not intend such an odd result. And, section 14029 must be broadly construed as it is a remedial statute. Collectively, these statutory construction principles lead us to resolve the ambiguity as to what is an appropriate remedy within the meaning of section 14029 in plaintiffs' favor.

Here, the upshot of the trial court's order is to defer certification of the election results while a final plan is promptly prepared. We repeat—defendant does not challenge the trial court's finding made after a full trial that the at-large system diluted the vote of Latinas, Latinos and African–Americans. That trial court's unchallenged findings are presumed to be correct. If this were a case where a trial court's findings were issued prior to full trial on the merits, the issue may be different. However, this is a case where the presumptively correct findings of the trial court were issued after a full trial. Nor do we address the issue of whether a trial court has discretion to stay certification of election results but then unreasonably delays selection of a remedy. Here, the trial was completed, the statement of decision's findings are unchallenged and presumed correct and the trial court was proceeding apace to select its final plan. It was lawful for the injunction order to issue and, given the uncontradicted evidence of vote dilution, it was prudent to do so. No abuse of discretion occurred.

VI. DISPOSITION

The preliminary injunction is affirmed insofar as it enjoins certification of the city council election results pending implementation of the trial court's final plan. Plaintiffs, Juan Juaregui, Nigel Holly and V. Jesse Smith, shall recover their costs incurred on appeal from defendant, City of Palmdale. Any attorney's fee request must be brought pursuant to California Rules of Court, rules 3.1702(c) and 8.278(c). **I concur:**
KRIEGLER, J. MOSK, J., Concurring

809 I concur.*809

Code of Civil Procedure section 526, subdivision (b) and Civil Code section 3423, subdivision (d) are not inapplicable under the theory that Election Code section 14029 is a later enacted and more specific injunctive relief provision. The provision in Election Code section 14029 that "the court shall implement appropriate remedies" is not more specific than the anti-injunction language of Code of Civil Procedure section 526, subdivision (b) and Civil Code section 3423, subdivision (d). Indeed, injunctive relief in contravention of those statutes would not be "appropriate."

Code of Civil Procedure section 526, subdivision (b) and Civil Code section 3423, subdivision (d) preclude an injunction, "To prevent the execution of a public statute, by officers of the law, for the public benefit." It is not clear if this means the execution of the statute for the public benefit or the statute itself is for the public benefit. The statute for the certification of the election, Election Code sections 10262, subdivision (b) and 10263, are for the public benefit. The execution of the statutes may not be for the public benefit because the election has been determined to contravene the California Voting Rights Act. (Elec.Code, §§ 14025–14032.) *Wright v. Jordan* (1923) 192 Cal. 704, 710, 221 P. 915 does not answer this question because in that case the election was deemed to be valid, and thus an injunction preventing certification of the election would contravene Code of Civil Procedure section 526, subdivision (b) and Civil Code section 3423, subdivision (d).

It has been said that an unconstitutional statute or a statute valid upon its face but unconstitutionally applied may be enjoined. (See *Brock v. Superior Court* (1939) 12 Cal.2d 605, 609–610, 86 P.2d 805; 6 Witkin, Cal. Procedure (5th ed. 2008) Provisional Remedies, § 331, p. 275.) Also, Code of Civil Procedure section 526, subdivision (b) and Civil Code section 3423, subdivision (d) "do not bar judicial action where the invalidity of the statute under which [the public official] is acting is shown." (*Financial Indem. Co. v. Superior Court* (1955) 45 Cal.2d 395, 402, 289 P.2d 233.) Moreover, "If law enforcement officers attempt to enforce a criminal statute arbitrarily and in a discriminatory manner, such action may be restrained by the courts." (*Downing v. Cal. State Board of Pharmacy* (1948) 85 Cal.App.2d 30, 36, 192 P.2d 39.)

Palmdale Municipal Code section 2.08.020 provides for elections of city council members on a citywide basis. That ordinance was found to be invalid as applied, based on the trial court's finding that the application of the ordinance violated the California Voting Rights Act (Elec.Code, § 14025 et seq.), which was enacted "to
810 implement the guarantees of Section *810 7 of Article I and of Section 2 of Article II of the California Constitution." (Elec.Code, § 14031.) It is arguable that enjoining the certification of an election that is tainted by the invalid application of an ordinance under the California Voting Rights Act is the equivalent of enjoining the enforcement of an ordinance unconstitutional or invalid in its application. Although not free from doubt, I conclude that the trial court could issue a preliminary injunction based on a finding that the Palmdale ordinance violated the California Voting Rights Act.

Another issue that is difficult is whether election in one municipality is a matter of statewide concern. Interestingly, California Constitution, Article XI, section 5, subdivision (b), specifies that "the conduct of city elections" is a proper subject of a city charter. *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 599–600, 205 Cal.Rptr. 794, 685 P.2d 1145 does, however, suggest that the subjects set forth in California Constitution Article XI, section 5, subdivision (b) are subject to the same analysis as applied to subdivision (a) in determining if state law supersedes a charter city provision.

I concur on the basis that the trial court did not abuse its discretion in issuing the preliminary injunction. (Robbins v. Superior Court (1985) 38 Cal.3d 199, 205–206, 211 Cal.Rptr. 398, 695 P.2d 695.)

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS

The parties to this SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS ("Agreement") are Southwest Voter Registration Education Project and Grassroots Community Group of Alhambra (referred to collectively as "Plaintiffs" herein), on the one hand, and the City of Alhambra, a California city and municipal corporation (sometimes referred to as "Defendant" or "City"), on the other. These entities are sometimes referred to as "Parties" or "each Party" herein. This Agreement is effective as of the latest date written next to the signature of a Party to this Agreement.

I. Recitals.

The purpose of this Agreement is to settle the allegations in the April 30, 2020 letter from Shenkman & Hughes PC, on behalf of Plaintiffs and their members, to Defendant ("CVRA Letter") asserting that Defendant's at-large election system violates the California Voting Rights Act ("CVRA").

The Parties desire to settle the claims asserted in the CVRA Letter and to fully and finally settle any and all matters between them arising out of, or relating to, the CVRA Letter, or any claims that could have been raised in connection with the CVRA Letter or the City's at-large electoral system occurring prior to the date of this Agreement, without any further court proceedings, trial, appeal or adjudication of any issue of fact or law, and without any admission with respect to such matters.

Prior to Defendant's receipt of the CVRA Letter, Grassroots Community Group of Alhambra secured a sufficient number of petition signatures to place a ballot measure on the November 2020 election ballot ("Grassroots Ballot Measure"). The Grassroots Ballot Measure calls for the adoption of district-based elections for Defendant's city council, as well as certain campaign finance reforms applicable to elections for Defendant's city council. In response, Defendant's city council voted to place a competing ballot measure, calling for the maintenance of Defendant's at-large election system, among other things, on the November 2020 election ballot.

Following Defendant's receipt of the CVRA Letter, representatives of Grassroots Community Group of Alhambra met with representatives of Defendant for the purpose of negotiating a potential ballot measure, addressing both district-based elections and campaign finance reforms, that all Parties could support. Those negotiations were successful, and on June 8, 2020 Defendant's city council voted to place the resulting ballot measure ("Consensus Ballot Measure") on the November 2020 election ballot.

II. Terms and Conditions of the Settlement Agreement.

In consideration of the mutual promises herein, the Parties agree:

1. Consensus Ballot Measure

Defendant shall take all necessary steps to have the Consensus Ballot Measure included on the November 2020 statewide general election ballot, allowing the voters of the City of Alhambra to change the City's electoral system with respect to City Council members from "at-large" to "district-based" elections, as those terms are defined in California Elections Code Section 14026.

Neither Defendant, nor its council members or employees acting in their official capacity, shall take any actions to oppose the Consensus Ballot Measure, including placing any competing ballot measure on the November 2020 ballot.

The Consensus Ballot Measure shall be decided by the voters of the City of Alhambra at the statewide general election in November 2020, and all actions contemplated herein by the City Council and/or others shall be performed in a timely fashion so as to permit the Consensus Ballot Measure to be decided at the November 2020 election. The City shall request consolidation of the election on the ballot measure with the November 2020 statewide election pursuant to Elections Code sections 10400, *et seq.* If the Consensus Ballot Measure is adopted by the voters, then the City Council elections thereafter will be held using the district-based electoral system no later than the next election for a City Council member. If the Consensus Ballot Measure is not adopted by the voters, then Defendant shall consider adopting district-based elections through an ordinance, adopted consistent with the Government Code and Section 10010 of the Elections Code.

2. Grassroots Ballot Measure

Grassroots Community Group of Alhambra shall take all necessary steps to withdraw the Grassroots Ballot Measure pursuant to Elections Code section 9266.5 in writing, signed by all proponents and delivered to the City Clerk, no later than 10 days after the effective date of this Agreement. Defendant shall coordinate with and assist Grassroots Community Group of Alhambra to accomplish this withdrawal of the Grassroots Ballot Measure. If the Grassroots Ballot Measure is not withdrawn, the City shall have no obligation to put the Consensus Ballot Measure on the November ballot.

3. District Map

If the Consensus Ballot Measure is approved by the voters of the City of Alhambra, or Defendant chooses to adopt district-based elections through an ordinance, the City shall develop one or more district maps that comply with state and federal law, including but

not limited to the federal Voting Rights Act and Elections Code section 21620. The Parties recognize that the City will require the services of a qualified demographer to assist that process; and that demographer will not be National Demographics Corporation or its principals, officers or employees. The development and selection of district map(s) shall be done consistent with Elections Code Section 21620 et seq. and all other applicable laws if the Consensus Ballot Measure passes and Elections Code Section 10010 and all other applicable laws if the Consensus Ballot Measure fails. Recognizing that the boundaries of election districts should generally be based on data from the most recent decennial census by the U.S. Census Department, and that data from the 2020 Census is expected to be publicly available in 2021, the process of developing district map(s) shall commence within three months of the relevant data from the 2020 Census becoming available. The process of developing and selecting a district map shall be completed by Defendant in sufficient time to be implemented in the November 2022 election for Defendant's city council.

4. Expenses and Attorney's Fees.

The City agrees that it shall pay Plaintiffs' reasonable attorneys' fees and costs incurred in connection with the CVRA Letter in the amount of $30,000, consistent with Elections Code Section 10010(f). Payment of attorneys' fees and costs shall be made within 30 days of the execution of this Agreement, to "Shenkman & Hughes PC" and delivered by check to 28905 Wight Rd., Malibu, CA 90265.

In the event the City receives a request from any other attorney or prospective plaintiff seeking reimbursement pursuant to Elections Code Section 10010(f), the City shall pay the additional sum of $1898.08 ("Additional Sum"), corresponding to the Consumer Price Index adjustment of Elections Code Section 10010(f)(3), to Plaintiffs' counsel. Plaintiffs' counsel shall then promptly donate the Additional Sum to a mutually acceptable 501(c)(3) charitable organization operating in Alhambra.

5. Stay of Proceedings.

Upon execution of this Agreement, all litigation activities relating to the CVRA Letter between the Parties to this Agreement, other than those necessary to effectuate this Agreement, shall be suspended, and the Parties shall not file any court action relating to the CVRA Letter. In the event that the Consensus Ballot Measure is not approved by the voters of the City of Alhambra, and the City does not otherwise adopt district-based elections by June 2022, this stay of proceedings will no longer have any force or effect and Plaintiffs retain all rights and remedies that they had as of the date of the execution of this Agreement.

6. Release of Claims.

In return for the mutual promises and other consideration provided in this Agreement, the Parties, for themselves and their past, present or future heirs, beneficiaries, executors, administrators, officers, employees, directors, agents, partners, successors and assigns, including past, present or future City Council members and Mayors ("Releasors"), do, upon adoption of district-based elections, either through the Consensus Ballot Measure or through an ordinance, fully release, acquit, waive and forever discharge one another, including their heirs, beneficiaries, executors, administrators, officers, employees, directors, agents, partners, successors and assigns, and their past, present or future City Council members and Mayors, ("Releasees"), from any and all claims, actions, causes of action, factual allegations, demands (including without limitation demands for equitable and injunctive relief), debts, damages, costs, expenses including expert fees, losses, or attorney's fees of whatever nature involving the City's electoral system, whether or not known, suspected or claimed (i) arising out of, based on, or in any way related to the facts alleged (or facts that could have been alleged) in the CVRA Letter or (ii) the "at-large" electoral system of Defendant, including, but not limited to Claims based upon the Constitution of the United States of America, the Constitution of the State of California, the CVRA, Section 2 of the federal Voting Rights Act, California Elections Code § 14030, or California Code of Civil Procedure § 1021.5 ("Claims"), which Claims the Releasors have or may have against the Releasees, except for rights to enforce this Agreement, or as provided herein. In this Paragraph, the conjunctive includes the disjunctive.

7. Express Waiver of All Claims Under California Civil Code Section 1542.

It is further understood and agreed that this Agreement extends to all of the above-described Claims and potential Claims, and that all rights under California Civil Code § 1542 are hereby expressly waived by the Parties for themselves and the other Releasors with respect to all such Claims. Section 1542 provides as follows:

> "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Notwithstanding these provisions of Section 1542, Plaintiffs and Defendant expressly acknowledge that this Agreement is intended to include in its effect, without limitation, all Claims as described in Paragraph 6, which they do not know or suspect to exist in their favor at the time of execution hereof and that the settlement reflected in this Agreement contemplates the extinguishment of all such Claims, except for attorney's fees

and costs referenced in Paragraph 4, above and except for rights to enforce this Agreement.

8. Non-admission of Liability.

This Agreement pertains to disputed Claims under a statute, the CVRA, and is not intended to be, and shall not be construed as an admission by any Party of any violation of any statute or law or constitution, or any other improper or wrongful conduct.

9. Interpretation.

The interpretation of this Agreement shall be governed by the laws of the State of California and any applicable laws of the United States. This Agreement shall be construed as though jointly prepared by the Parties and any uncertainty or ambiguity shall not be construed against any one Party.

10. Admissibility of this Agreement.

This Agreement constitutes a compromise of disputed claims and shall not be treated as an admission of liability, or the appropriateness of any remedy had liability been adjudicated, by any of the Parties at any time or for any reason. This Agreement shall not be admissible in any legal or administrative proceeding, including proceedings between the City and the Plaintiffs or proceedings involving the City and any other party. Notwithstanding the generality of the foregoing, the Parties agree that once it is signed by the Parties, this Agreement shall be fully binding and admissible in any judicial or administrative proceeding: (a) to enforce the terms of this Agreement pursuant to California Code of Civil Procedure § 664.6 or otherwise; (b) for breach of this Agreement's provisions; (c) and to prove the fact and terms of settlement.

11. After Execution of Agreement, Each Party to Bear Own Attorney's Fees, Costs and Expenses.

After execution of this Agreement, and subject to compliance with the provisions of this Agreement, each Party will bear its/her/his/their own costs, expenses and attorneys' fees of whatever nature or cause, except as provided in Paragraph 4. Notwithstanding the above, in the event that (1) Defendant materially breaches this agreement, e.g. by failing to pass the resolution proposing the ballot measure to adopt an ordinance agreeing to district lines, failing to timely put the measure on the ballot, etc., Plaintiff will be entitled to the amount of reasonable attorneys' fees for time spent by Plaintiff's Counsel enforcing this Agreement, and Plaintiff may seek to recover the fees and costs associated with obtaining an award for those fees and costs, consistent with the California Supreme Court's decision in *Ketchum v. Moses*. Notwithstanding anything herein to the contrary, in the event that the ballot measure is defeated or otherwise does not result in the

implementation of district elections for the Alhambra City Council for whatever reason, Plaintiff shall retain the right to recover attorneys' fees and costs, if any, pursuant to California Elections Code Section 14030, Code of Civil Procedure Section 1021.5, or any other applicable statute or doctrine, for work performed after the ballot measure election.

12. Enforcement of Agreement.

In the event that any action in law or equity is initiated by any party to enforce the provisions of this Agreement, to obtain a declaration of rights and obligations in conjunction therewith, or otherwise arising out of this Agreement, other than those referenced in paragraph 11 above, each party shall bear their own attorneys' fees in connection therewith.

13. Execution in Counterparts.

This Agreement may be executed in counterparts, and facsimile or scanned signatures will have the same force and effect as the original.

14. Entire Agreement.

The Parties acknowledge that no representations, inducements, promises or agreements, oral or otherwise, have been made by any Party or anyone acting on behalf of a Party which are not embodied herein, and that no other agreement, representation, inducement or promise not contained in this Agreement shall be valid or binding. Any modification, waiver or amendment of this Agreement will be effective only if it is in writing and signed by the Party to be charged.

15. Representation by Counsel.

Each of the Parties expressly acknowledges and represents that he/ she/ it has been represented by counsel in the negotiations culminating in this Agreement. Each of the Parties has read this Agreement, reviewed the same with counsel, and fully understands the meaning and effect of each and every provision of this Agreement, in particular the meaning and effect of the releases and the waiver of rights under California Civil Code § 1542. The signatories below also represent that they each have authority to execute this Settlement Agreement on behalf of the party for whom/which they are signing.

16. Severability.

If any term of this Agreement is declared invalid for any reason, that determination shall not affect the validity of the remainder of the Agreement. The remaining parts of this Agreement shall remain in effect as if the Agreement had been executed without the invalid term.

Dated_____, 2020

By:_____
Lydia Camarillo
On behalf of Southwest Voter Registration Education Project

Dated_____, 2020

By:_____
_____
On behalf of Grassroots Community Group of Alhambra

Dated_____, 2020

By:_____
_____, City Manager
On behalf of the City of Alhambra

Approved as to form and content:

Dated_____, 2020

By:_____
Kevin Shenkman
Counsel for Plaintiffs

Dated_____, 2020

By:_____
Joseph Montes
Counsel for Defendant City of Alhambra

Did Hofeller draw NC maps before redistricting process? Judges throw out expert testimony showing he didn't

pulse.ncpolicywatch.org/2019/07/25/did-hofeller-draw-nc-maps-before-redistricting-process-judges-throw-out-expert-testimony-claiming-he-didnt/

By Melissa Boughton July 25, 2019

A three-judge panel threw out expert testimony Thursday from Douglas Johnson, a witness for the legislative defendants in North Carolina's partisan gerrymandering trial. (Photo by Melissa Boughton)

In a bombshell decision, a three-judge panel threw out testimony Thursday from an expert witness for GOP lawmakers in North Carolina's partisan gerrymandering case, and it could have federal implications.

Douglas Johnson, a research fellow at the Rose Institute of State and Local Government in Claremont, Calif., testified that deceased GOP mapmaker Thomas Hofeller's draft 2017 legislative maps were dramatically different than the maps that lawmakers ultimately enacted.

He was trying to prove that Hofeller hadn't drawn the majority of the state's 2017 legislative maps before the public redistricting process took place, a conclusion one of the plaintiffs' experts presented to the court in the *Common Cause v. Lewis* trial.

Johnson admitted though, during cross examination, that his research was inaccurate. In the data he used to show big changes to the enacted House map from the draft Hofeller map, he omitted 11 districts in his report that showed almost 100 percent overlap between the two maps. In some instances, he would include districts with low overlap percentages in one county grouping, but not the districts in that same grouping that had a high overlap percentage.

In a similar analysis to maps produced by Common Cause North Carolina, though, Johnson included some of those high overlap districts.

When confronted with the inaccuracies during his cross examination, Johnson could not say what happened. He said he had been working late and had possibly made some coding errors.

“Sitting here today, you cannot tell the court your numbers are correct?” asked Daniel Jacobson, an attorney for the plaintiffs who cross examined Johnson.

Johnson responded, “I can tell you the idea is true.”

His inaccuracies produced overall percentages that showed Hofeller’s draft maps were more similar to the Common Cause maps than they were to the enacted maps.

That finding has been key to many of the legislative defendants’ court filings and has served as a line Republican lawmakers use when talking about the Hofeller files to the press.

Jacobson displayed during cross examination a News & Observer newspaper article quoting Pat Ryan, a spokesman for Senate President *Pro Tem* Phil Berger making the same claim. Johnson confirmed that he provided the information to Berger’s office and that it was based on his flawed analysis.

“I probably owe Ryan an apology,” he said on the stand.

Johnson also admitted during the cross examination that his findings that Hofeller moved a large percentage of people around in the enacted 2017 legislative map compared to his draft map was based on unweighted population calculations that should have been weighted. That error ultimately produced another unreliable statistic.

Daniel Jacobson, an attorney for the plaintiffs in Common Cause v. Lewis, cross examined an expert witness Thursday for the legislative defendants. (Photo by Melissa Boughton)

Jacobson asked the court to strike all of Johnson's testimony from his direct examination because of his inaccurate calculations.

"Incorrect numbers can't possibly go to weight [of this case]," he argued. "They're just wrong."

Patrick Lewis, an attorney for the legislative defendants, told the court that if there were some calculation errors, they don't require a full-scale striking of Johnson's testimony. He tried to argue for the experts' findings regarding the Senate to stay in.

The three-judge panel returned to their chambers to consider the arguments and ultimately decided to strike all of Johnson's testimony comparing Hofeller's draft 2017 legislative maps to the enacted maps. They also struck testimony comparing Hofeller's maps to the Common Cause maps.

Johnson has been the only expert the legislative defendants' have presented thus far in the *Common Cause* trial who has rebutted the findings that Hofeller drew most of the 2017 enacted maps before the redistricting process.

If that finding remains at the conclusion of the trial, it could open a pathway back to the federal court. The legislative defendants convinced the federal district court in *North Carolina v. Covington*, a racial gerrymandering case, not to order special elections under

new remedial maps in 2017.

They made repeated statements that they had not yet started drawing new districts and needed sufficient time to develop criteria, draft the plans and receive public input.

Legislative leaders didn't approve a contract with Hofeller until the very end of June 2017, and the joint redistricting committee tasked with remedially drawing new maps didn't even meet publicly for the first time until July 26 the same year. Hofeller's digital files — which were turned over by his daughter after his death to the *Common Cause* plaintiffs — show that he had substantially completed drawing the 2017 legislative plans in June 2017, according to expert testimony.

The redistricting committee met Aug. 4 to discuss potential criteria to be used in drawing the new districts and held public comment during that meeting. Criteria for the mapmaking process was not adopted until August 10 and Hofeller wasn't notified of it until the next day, according to a court filing from 2017 from the legislative defendants in *Covington*.

The *Common Cause* plaintiffs have already accused the legislative defendants of lying to the federal court. If proven, the federal court could sanction the legislative defendants in *Covington*.

The federal court in *Covington* ultimately obliged the legislature by not ordering a special election — despite noting in their ruling that they were prepared to. That meant the North Carolina Republican supermajority stayed in place for an extra year.

If the legislature is found to have lied to that court, it could also be important to a separate case in the state Court of Appeals, where the NAACP is challenging the Republican supermajority's power to two constitutional amendments, one implementing a voter ID law and another implementing a tax cap.

Senate Majority Leader Harry Brown (R-Jones, Onslow) was called to testify in a state partisan gerrymandering trial Thursday. He walked back his prior support for redistricting reform. (Photo by Melissa Boughton)

The legislative defendants in Common Cause put on two other witnesses Thursday. Senate majority leader Harry Brown (R-Jones, Onslow) testified that he represents his Democratic and Republican constituents and tries his hardest to work across party lines within the legislature.

He was questioned during cross examination about his support for redistricting reform when he was in the minority, but said he was just making a statement.

“We all knew at this point that this bill had no chance, that it would go nowhere,” he said of a 2007 redistricting reform measure.

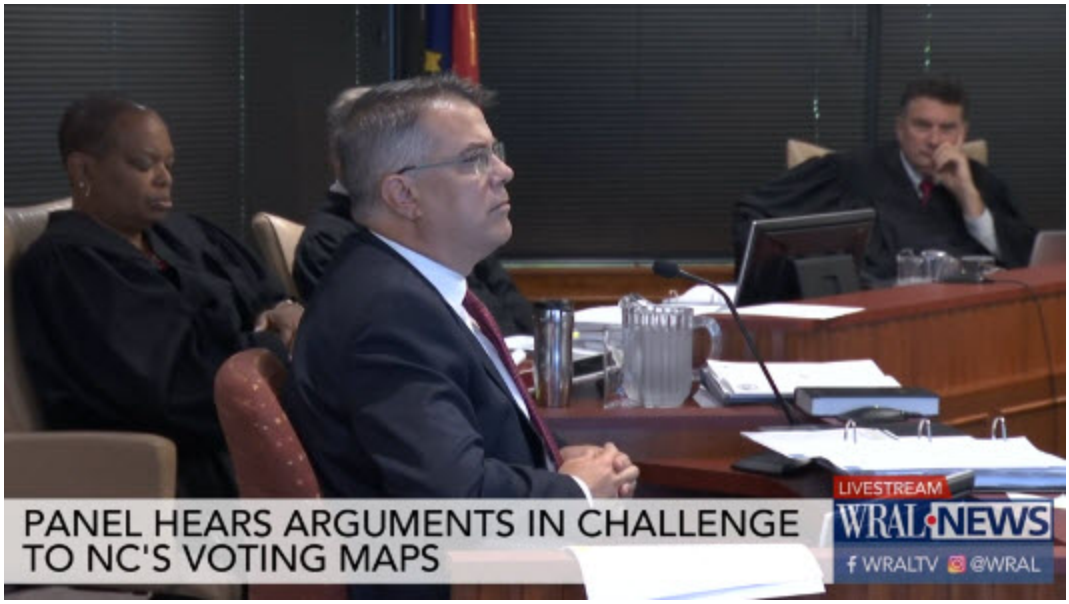
The other witness, Trey Hood, is a professor of political science at the University of Georgia. He continues to offer expert testimony rebutting plaintiff expert findings that the 2017 legislative plans were partisan outliers. It’s not clear if he will testify about the difference between Hofeller’s draft maps and the enacted ones.

The trial is expected to conclude tomorrow. For live updates, follow reporter Melissa Boughton on Twitter.

City Changes Course on Demographer Following Report

davisvanguard.org/2019/08/city-changes-course-on-demographer-following-report/

David Greenwald August 10, 2019



Douglas Johnson testifies on North Carolina's Voting Maps

Following the Vanguard's report on Friday highlighting very recent problems with the company National Demographics Corporation (NDC) in North Carolina, the city has quickly changed course. The city late on Friday sent out a "Supplemental Staff Report" in which they announced the change.

The report notes, "In reaching our recommendation on NDC, staff, in conjunction with the City Attorney, had researched and reached out to several potential demography firms and performed reference checks."

However, they now state, "In light of additional information that has come to our attention with regard to NDC since publishing the original staff report, staff and the City Attorney are currently soliciting proposals from additional firms to provide demographic services (should the City Council take actions on August 13th to pursue consideration of shifting to a district-based City Council election process)."

One source told the Vanguard that the new demographer is likely to be a more locally based company, and the source felt the local entity probably should have been the choice from the beginning.

The staff report notes: "The demographer will ensure that the proposed district maps comply with Federal Voting Rights Act and California Voting Rights Act requirements and will assist in soliciting feedback from the community."

Staff added that they anticipate presenting a recommendation regarding the choice of demographer along with a potentially revised timeline for public hearings and community forum dates at the council meeting on Tuesday.

While NDC seemed to have both extensive experience and a good reputation, a case from just two weeks prior, on July 25, presented a large red flag.

Published reports out of a trial in North Carolina – challenging the Republican gerrymandering of that state's congressional district – shined a problematic light on Douglas Johnson, founder and president of NDC.

Mr. Johnson testified that his analysis showed a 36 percent difference between the Common Cause maps and the ones adopted by lawmakers. But those numbers were challenged by the Common Cause attorney who argued that Mr. Johnson failed to include close to a dozen House districts in his analysis.

In a critical exchange, Daniel Jacobson, the Common Cause attorney, asked him, "Those numbers are completely wrong, right?"

"They apparently mismeasured the degree of the change. They don't change the fact that there is significant change between the maps," Mr. Johnson replied. "Whether it's 36 percent or, if I was off by half, it's still 18 percent. It's still one in five residents who were moved between the two maps."

Mr. Johnson later testified, "The 36 percent is the average change in each of the districts. So if there are, as you say, 10 or 12 districts added to that, those numbers are going to swing that relative to shifting the average for all of the districts. It would make it smaller, but at most, you would cut it in half, and you'd still be at one in five people moved from the Hofeller plan and the enacted plan."

But the judges were not convinced. Wake County Superior Court Judge Paul Ridgeway said that "his opinions must be the product of reliable methods and principles … and the principles used by Dr. Johnson were not reliable."

According to a story in The News and Observer from July 25, the three-judge panel agreed to strike portions of Mr. Johnson's testimony.

The newspaper reported that Mr. Johnson "admitted to several errors under cross-examination."

When challenged, however, his contention was, "It would have been a change in degrees, but not a change in conclusion."

Ultimately, however, the judge agreed with Mr. Jacobson's charges and struck all of the key testimony comparing the maps.

Lost in the reports over problems with the demographer is the staff recommendation that council approve a resolution with the intent to transition from at-large to district-based council elections.

Staff notes: "Should the City Council decide not to pursue a move to District elections, the City would be exposed to litigation and required to pay legal fees not only for the City's defense but potentially for the plaintiffs' costs as well. To date, no city has prevailed on the merits in a lawsuit challenging the California Voters Rights Act, so Davis' costs would likely exceed $1 million."

Staff maintains that "the threshold required for showing a violation of the CVRA is low."

They reiterate: "Should the City Council decide not to pursue a transition to district-based elections, the costs to defend the City in court are high, likely reaching into the millions of dollars in legal fees, and the likelihood of the City prevailing is low."

The State Elections Code spells out the process and timeline by which a City must transition to a district-based system in order not to incur additional legal costs.

If they decide to proceed, the city has 30 days to hold at least two public hearings, 45 days to pass a Resolution of Intent to Transition to District Elections and after that resolution is passed, 90 days to hold a series of five public hearings.

In the schedule mapped out by council, most of the outreaches would be on Tuesday nights during council meeting times, with a couple of outside events. The first public hearing would be August 27 and the second September 3.

The council would also need to decide how to create the districts, how they will select the mayor, the sequence of the elections and the timing of the elections.

—David M. Greenwald reporting

Sign up for

David Greenwald is the founder, editor, and executive director of the Davis Vanguard. He founded the Vanguard in 2006. David Greenwald moved to Davis in 1996 to attend Graduate School at UC Davis in Political Science. He lives in South Davis with his wife Cecilia Escamilla Greenwald and three children.

721 Capitol Mall, Suite 260 \ Sacramento, CA 95814 \ Tel 916.323.0323 \ Fax 916.323.0356

REQUEST FOR PROPOSAL
RFP No. CR20 CRC-010

Notice to Prospective Proposers for
Line Drawing Services for Redistricting

You are invited to review and respond to this Request for Proposal (RFP), Line Drawing Services for Redistricting, RFP No. CR20 CRC-010.

Prospective contractors interested in responding to this RFP are encouraged to notify the office of the Citizens Redistricting Commission (Commission) indicating their interest. This will ensure that your firm/team receives supplemental or updated information that may be released subsequent to the Commission's formal issuance of the RFP. Provide the firm's name, address, and contact information. Send by email, postcard, or letter to the attention of Raul Villanueva by January 22, 2021.

In the opinion of the Commission, this RFP is complete and without need of explanation. However, if you have questions, or should you need any clarifying information, the contact person for this RFP is:

Mr. Raul Villanueva
Citizens Redistricting Commission
721 Capitol Mall, Suite 260
Sacramento, CA 95814
Phone: 916.323.0323
E-mail: votersfirstact@crc.ca.gov

Please note that no verbal information given will be binding upon the Citizens Redistricting Commission unless such information is issued in writing as an official addendum.

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REQUEST FOR PROPOSAL
RFP No. CR20 CRC-010
LINE DRAWER SERVICES FOR REDISTRICTING

Citizens Redistricting Commission
721 Capitol Mall, Suite 260
Sacramento, CA 95814

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I. PURPOSE AND DESCRIPTION OF SERVICES

In this Request for Proposal (RFP), the Citizens Redistricting Commission (Commission), solicits qualified proposers to provide professional and technical redistricting and line drawing services. These services will be used by the Commission to develop district lines in conformity with strict, non-partisan rules designated to create districts that will provide for fair representation for all Californians.

A. Background

Once every 10 years following the federal census, in a process known as redistricting, the State adjusts the boundary lines of districts for the California Senate, Assembly, Board of Equalization districts, and Congressional districts for the U.S. House of Representatives.

1. The Voters FIRST Act, approved by voters November 2008, shifted the responsibility for redrawing the political boundaries for California Senate, Assembly, and Board of Equalization districts from the State Legislature to the Commission. The Voters FIRST Act for Congress, approved by voters November 2010, added the responsibility of drawing Congressional districts to the Commission. The California State Legislature passed Assembly Bill (AB) 420 (2011) and AB 1986 (2012) further requesting the inclusion of state adult correctional inmate information into the population data used in the line drawing process.
2. The Commission must hold public meetings and accept public comment prior to, and following, the drawing of maps for California's Congressional, State Senatorial, State Assembly, and Board of Equalization districts. Upon completion of the public meeting process, the Commission must vote on the new district maps to be used for the next decade.
3. The Commission must issue, with each of the four (4) final maps, a report that explains the basis upon which the Commission made its decisions in achieving compliance with the criteria listed in State law, and includes definitions of terms and standards used in drawing each final map. The California Constitution, Article XXI, requires the completed district maps and the accompanying reports to be submitted to the California Secretary of State's Office by August 15, 2021[1].

B. Statement of Work

The Contractor will provide professional and technical services, a census and geographic database for redistricting and line drawing services during its meetings to

[1] Because U.S. census data delivery to states will likely be delayed due to COVID-19, the Commission's deadlines for submitting the proposed and final maps may be extended to December 15, 2021. See California Supreme Court Case Number 522530.

the Commission, the Commission's attorneys, and other contractors as directed by the Commission.

The Commission seeks proposals from qualified redistricting line drawers that demonstrate their skills, experience, and qualifications as well as their approach, methods, and procedures to meet the demands of the responsibilities and deliverables in this RFP.

In the era of COVID-19, with the need to practice social distancing and uphold state and local guidelines while getting and incorporating public input, the Commission requests that Proposers, as part of responding to this RFP, prepare a Plan describing how to conduct line drawing services under these new and uncertain circumstances. The purpose of the Plan is to draw on the Proposers' expertise to identify creative solutions during a pandemic to meet the demands of this RFP as well as lessons learned from previous redistricting experience. The Plan is intended to be short, and not more than 10 (ten) pages in length. A full description of the requirements for this submission may be found at Section III.C.

1. Contractor Responsibilities
   Proposers must provide information that enables the Commission to substantiate that the Proposer has the minimum skills, experience, and resources as outlined below, to successfully accomplish the services required by this RFP.

   a. Software Capability: The software employed by the Proposer must be able to automatically show the results of any proposed change in a district by retabulating and presenting on screen the resulting map and the corresponding changes in total population and population sub-groups associated with the proposed change to a district.

      In addition to the specific line drawing software, the Proposer must have the capability of taking files as submitted by the public and other consultants, including CSV, SHP, RDP, DRF, JSON, CDF, and other common vector, raster and tabular data files, and developing shape file equivalents to incorporate into the line drawing work. The Proposer must supply all equipment necessary to complete this work.

   b. Information Security: Proposer must employ Information Security Measures compliant with industry standards (ISO/IEC 27002 and California State Administrative Manual (SAM) Chapter 5300, for example) and any security

measures being taken by the Commission, that will be maintained throughout the term of the contract, in critical areas, such as, but not limited to, the following:

i. Secure data transmission
ii. Data monitoring and verification
iii. Data storage and back-up
iv. Confidentiality practices regarding staff and data handling

c. Geographic Database for Redistricting

Redistricting Database**:** The Proposer will use certified population data from the 2020 US Census for the State of California, including the population subgroups of California as enumerated by the 2020 US Census data. The 2020 Census Data used shall be that of the California Statewide Database located at the University of California, Berkeley, School of Law.

Data Requirements**:**

The population data will consist of the certified 2020 US Census data for the State of California, including the population subgroups of California as enumerated by the 2020 US Census data. The population data will also include state adult correctional inmate information as required and specified by AB 420 (2011) and AB 1986 (2012). In addition, as referenced in this section (I.B.1.c), the Commission may also use adjusted 2020 census data.

The geographic data will include digitized maps showing the boundaries of the census geographic units for which the population statistics are available (i.e., census block through county level), as well as the physical geography and relevant built environment (city boundaries, streets and highways, or other elements as requested by the Commission, etc.) throughout California.

Voting and elections data associated with the district(s) will be included in the database so it is available, if required by the Commission, to demonstrate compliance with the Federal Voting Rights Act of 1965.

All GIS-compatible files submitted to the Community of Interest(COI) Tool as developed by the Statewide Database, and other GIS-compatible files of Communities of Interest (COIs) submitted to the Commission's office must be processed for retrieval and use in compiling maps both before and during the line drawing process.

If requested by the Commission, the Proposer will participate in the development of the data coding used to pair the public testimony with the respective geographic data (neighborhoods, economic districts, etc.) collected by the Commission's tools and/or other consultants. This data coding will be used to pair public testimony and any related maps drawn by the line drawer during the Commission's meetings.

d. Professional and Technical Services:
   i. Prior to Beginning Map Drawing
   Before the district line drawing begins, the Proposer, if requested by the Commission, may be required to create an initial visual representation for public viewing of the Communities of Interest (COI) maps (as submitted to the Statewide Database COI Tool, or otherwise as submitted to the Commission); and thereafter, an all-encompassing map that may include, but is not limited to, all COI's from public testimony or submittal, non-testimonial geographical data (such as official city-designated neighborhoods, transportation corridors, etc.), and VRA-compliant areas.

   ii. Prior to Approval of Final Maps
   At the sole discretion of the Commission, the Proposer may be required to provide technical services to Commissioners and/or the Commission's legal counsel, other contractors or staff outside of scheduled Commission meetings, as related to the maps meeting California constitutional requirements (Article XXI, Section 2(d)).

   Proposer's technical services shall include, but are not limited to, technical education and/or consultation, providing census and district information, and/or production of alternate maps or visualizations as required by the Commission or Commission's legal counsel.

   iii. After Approval of Final Maps
   Additional technical services may be required of the Proposer in the event of any legal action arising from, and/or relating to, the redistricting maps developed with Proposer's assistance. Proposer's technical support may include consultation, line drawing services, and/or testimony for any litigation resulting from this agreement in state and federal court. At the Commission's request, the Proposer and the Commission will determine the scope of services required and enter into a separate agreement for the provision and payment of these services.

e. Public Meeting Participation: The Proposer will provide line drawing services during public meetings including, but not limited to, the following:

   i. Document the Commission's instructions throughout the development of the maps sufficient to allow the Commission to identify the basis for any map, and to track changes and draw comparisons between iterations of the same location developed by the Commission during the process of line drawing.

   ii. Document the public testimony related to any map drawn as a result of the testimony, sufficient to allow the line drawer to synthesize all maps related to a given area (city, county, etc.) and for the Commission to track the comments related to the map iterations of the same location.

   iii. Produce, digitally store, project the maps and the line drawing on-screen (for in-person viewing), transmit a clear image of the maps and line drawing (for remote audience viewing) in real time, via the Commission's webcasting consultant, as requested by the Commission.

   iv. Provide the map file(s), and PDFs of the maps, and the related Commissioner instructions and/or public testimony leading to the drawing of the map, for the Commission to be able to print the map and its corresponding instructions and/or public testimony.

f. Remote Meeting Participation: Due to the COVID-19 public health pandemic and applicable California Governor's Orders, the Proposer must be prepared to remotely participate in and to provide all meeting services outlined in this RFP should any or all meetings require remote attendance.

   i. The commission may elect to conduct/hold virtual (or remote) public meetings for any reason.

   ii. The Proposer must be able to actively participate and provide all meeting services remotely, including public input meetings and Commission meetings.

   iii. The requirements include the ability to reliably hear and document the Commission's instructions and public testimony related to any resulting map, and the ability to transmit the line drawing occurring at the

Proposer's worksite with sufficient clarity to allow the Commission and the public to view the effects of changes on their personal viewing devices, in real time, via the Commission's webcasting consultant.

iv. Should the Commission desire, there may be occasions when simultaneous meetings will occur at different locations around the State. The Proposer must have the capacity to accommodate simultaneous meetings whether in person or remotely.

g. Professionalism and Collaboration: Proposer, Proposer's staff, and subcontractors (if any), must comport themselves at all times in a professional and respectful manner when interacting with the Commission (individually or collectively), their staff, the public, and the Commission's external counsel and other contractors. Proposer and Proposer's staff and subcontractors (if any) will work collaboratively with the Commission, their staff, and the Commission's other contractors.

h. Staff Support: It is the responsibility of the Proposer to ensure sufficient staffing to support the Commission's redistricting effort and to meet the objectives of the RFP.

i. Work Plans: Work plans will be required throughout the term of the contract and will be developed in collaboration between the Proposer and the Commission. The course of work and deliverables are required to be provided as mutually agreed upon in writing by the Proposer and the Commission.

j. Progress Reports: The Contractor shall provide progress reports on a scheduled or as-needed basis as determined by the Commission. This may be in the form of a progress schedule of reports, meetings on a regular basis, and/or a Final Summary Report once the project is completed. Any request for a written or verbal report must be acknowledged within twenty-four (24) hours of the request.

k. Final Map Report: As requested by the Commission, the Proposer will assist the Commission in issuing a report for each of the four (4) final maps that explains the basis for the decisions for achieving compliance with the criteria required by the voter initiatives (Proposition 11, passed in 2008 and Proposition 20 passed in 2010), and applicable state and federal laws and requirements.

i. The Proposer will provide any maps and map iterations required for the report including the Commission instructions and/or public testimony that led to the drawing of the maps developed during the Commission Meetings.

ii. Assist the Commission with the Commission instructions and/or public testimony that led to the drawing of the draft and final maps, including communicating to the Commission how these integrations can be reflected in the draft and final maps, and into the final report.

l. Timely Invoices for Services: The Proposer's staff shall include a designated accounting person, preferably with knowledge of the State's accounting and billing process and the ability to work within its requirements. Accounting staff shall be available during regular business hours to discuss the progress of invoices, assist in resolving invoice issues, and to provide documentation regarding billable services and related travel costs within 10 days after the end of the month. Refer to Section VI, Sample Standard Agreement, Exhibit B - Sample Budget Detail and Payment Provisions.

m. Proposer's Statements of Responsibilities: Proposer's responses to all items under Section I.B and shall be attached to the Agreement for public record and are made a part of the Agreement (Exhibit D Contractor Responsibilities).

2. Commission Responsibilities
   a. Commission Oversight. A Project Manager, with oversight by the commission, will be assigned to this project and, along with other key Commission personnel, will work with the Proposer as active participants to provide project continuity at the operating level.

   b. In-Process Review. The Commission may, at its sole discretion, assign an individual, individuals, or entity to provide an independent evaluation of any map and/or report being submitted by the Proposer to the Commission for its consideration and approval. The individual, individuals, or entity will be considered a separate consultant to the Commission and the Proposer must provide unfettered access to any completed map and/or report and their respective supporting documentation during any phase of the redistricting process. This includes any and all data at any level being used by Proposer to construct a district boundary.

II. QUALIFICATIONS OF PROPOSERS

Proposers must provide information that enables the Commission to substantiate that the Proposer has the minimum skills, experience and resources to successfully accomplish the services required by this RFP.

Qualifications and Experience

A. The Proposer must have demonstrated knowledge and experience:
   1. Drawing district lines for state legislative, congressional, city council, or other electoral districts.
   2. Drawing district lines during public, open meetings, taking direction from commissioners or other public officials, and responding to public testimony to draw maps.

B. Redistricting Reference Projects
   1. The Proposer should provide a list of all projects for which the Proposer, the project staff, and/or the company have drawn electoral district maps in the last 20 years. For each process, the Proposer must identify:
      - Who directed the line drawing, i.e., commission, legislative body, agency officials, etc., and if different, who authorized the project;
      - Whether the maps considered incumbency and why;
      - Whether any of the maps were challenged for failing to meet legal requirements including Voting Rights Act compliance;
      - Whether any of the maps that were subject to a legal challenge were implemented as originally drafted, or subject to changes based on the challenge; and,
      - Whether the proposer or any of the Proposer's staff provided testimony in defense of the challenged map.

   2. A list of all expert testimony relating to districting or redistricting that the Proposer has given in the last 20 years. Proposer should include:
      - The project type, location, start and end dates
      - The issues involved in the matter
      - The Proposer's role in the matter

   3. The Proposer should select three (3) of their projects from II.B (i), above, and provide further information for these three "reference" projects. For each reference project the Proposer should provide:
      - A contact name, address, and phone number for a principal member of the reference project. (The contact person must be an individual in a senior

capacity who was directly involved in drawing the lines and must be available by phone for two business days after the Proposal opening).

- How population size and racial/ethnic diversity were addressed during the line drawing and the Proposer's contribution to resolving any issues resulting from the prospective boundary lines, including whether Voting Rights Act Section 2 or 5 criteria impacted the line drawing and if so, the involvement of the Proposer in determining where the line should be drawn.
- A description of whether litigation occurred and its outcome

C. Project Personnel

1. Resumés

   A completed resumé is required for each contract participant, including subcontractors, who will exercise a major administrative role or major policy or consultant role (i.e., data analysis or interpretation of results, data security, GIS software technician, etc.), as identified by the contractor. The resumés shall be attached to the contract for public record and made a part of the contract as Exhibit E. The Commission, in its sole discretion, reserves the right to reject any individual proposed to be assigned to the engagement.

2. Relevance of Contribution

   Resumés must specify project experience illustrating that the Proposer, Proposer's staff and/or Proposer's sub-contractor (if any) have knowledge and/or expertise in the following areas:

   a. The Federal Voting Rights Act of 1965.
   b. California Constitution, Article XXI, Section 2.
   c. The geography of California as related to redistricting.
   d. The population diversity of California as related to redistricting.
   e. Census data as related to redistricting.
   f. The application of GIS-related databases to the problems of redistricting.
   g. Applicable provisions of the California Elections Code.
   h. Assigned Role of Personnel

   Include a list of all personnel and their assigned role and responsibility as related to participating in this engagement.

3. The Proposer should list any prospective subcontractors it plans to use in performing the work, including a listing of the individuals the subcontractor proposes to assign to the engagement and the location where the work will be performed. The Commission, in its sole discretion, reserves the right to reject

subcontractors proposed by the Proposer. Subcontractors, if used, shall be subject to all terms, conditions, and qualifications required by this RFP.

III. PROPOSAL REQUIREMENTS AND INFORMATION

Proposers should include any relevant information and pertinent exhibits in the proposal. Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. The Approach Plan should be creative, feasible and straightforward. Emphasis should be on conformance to the instructions and responsiveness to the requirements described herein, and on completeness and clarity of content. The Commission will have the sole discretion in determining its relevance and value to the RFP. Failure to comply with the requirements of this RFP may result in rejection.

A. Key Action Dates

Listed below are the important dates and times by which the actions must be taken or completed. If the Commission finds it necessary to change any of these dates, it will be accomplished by addendum.

Table 1. Key Action Dates

Action	Time	Date
Release of Request for Proposal		January 16, 2021
Questions Due	4:00 p.m.	January 20, 2021
Questions and Answers Posted	4:00 p.m.	January 22, 2021
Communication of Intent to Bid		January 22, 2021
Proposals Due	**5:00 p.m.**	February 19, 2021
Opening of Proposals	9:00 a.m.	February 22, 2021
Evaluation Period		February 24-25, 2021
Notice of Intent to Award Posted on Commission's Website		February 25, 2021
Contract Award and Execution		March 5, 2021
Contract Work Begins		Upon OLS Contract Approval
Contract Term Ends		June 30, 2022

B. Questions and Answers

Proposers requiring clarification or further information on the intent or content of this RFP or on procedural matters regarding the competitive bid process may request clarification by submitting questions in writing. The Commission will post question and answer sets to the Commission's website.

Proposers must clearly mark all questions with "Questions Relating to RFP No. CR20 CRC-010." Submit written questions as follows:

e-mail: VotersFirst Act@crc.ca.gov
fax: (916) 323-0356
mail: Citizens Redistricting Commission
721 Capitol Mall, Suite 260
Sacramento, CA 95814
Attention: Raul Villanueva
Questions Relating to RFP No. CR20 CRC-010

If disclosing questions regarding a proposal to other Proposers would compromise proprietary information, a prospective contractor may seek clarification or further information on the content of the RFP by marking the question packet "CONFIDENTIAL" and submitting questions as described above.

The Proposer must explain why his/her questions are sensitive in nature. If the Commission concurs that disclosure of the question or answer would expose the proprietary nature of the proposal, the question will be answered and both the question and answer will be kept in confidence. If the Commission does not concur with the proprietary aspect of a question, the question will not be answered in this manner and the Proposer will be so notified. The Commission will have the sole discretion in determining whether a question would compromise proprietary information.

C. Proposer Presentation

In the era of COVID-19, with the need to practice social distancing and uphold state and local guidelines while getting and incorporating public input, the Commission requests that Proposers, as part of responding to this RFP, prepare a Plan describing how to conduct line drawing services under these new and uncertain circumstances.

The Proposer's Plan should include the overall approach as well as the methods and procedures the Proposer would use. Plans are intended to be short, should be no more than 10 pages in length, and should include a consideration of public input, and the RFP and Bagley-Keene requirements as modified by any Governor's orders.

The Proposer's Plan should address the following areas:

1. Based on your experience, the present pandemic, and the challenges of redistricting California, what approaches would you suggest the Commission to consider in accomplishing the redistricting and why?

2. The Commission may decide to hold simultaneous, 4-6 hour, remote, public input meetings in 2-3 different parts of the state. Describe how you would approach these meetings and manage the line drawing, keeping in mind the RFP requirements for line drawing in public meetings?

3. Based on your experience, how would you recommend the Commission approach VRA compliance during the line drawing?

The Commission requires Proposers to submit their Plan and be prepared to make a public presentation of their Plan to the Commission. The presentation should reflect the Proposer's communication style, professionalism, and ability to engage with the full Commission. The date and place of the presentations will be communicated to the respective Proposers and made available to the public. Failure to submit the required information or to appear for a presentation as specified by the Commission will be grounds for rejection.

D. Independence/Conflict of Interest Disclosure

1. The Proposer must disclose and shall have a continuing duty to disclose any financial, business, or other relationship of the Proposer, subcontractor, or individual employees that may have an impact on the work to be performed, including whether the Proposer, subcontractor, or individual employees have represented a political party or an interest group funded by or working on behalf of a political party, candidate or office holder (Attachment D).

2. In this disclosure, the Proposer must include information regarding situations that might create an appearance of a lack of independence, regardless of whether the Proposer believes that the situation creates an actual conflict of interest, and how the Proposer intends to manage such situations. If the Proposer believes that there may be an appearance of a conflict of interest or lack of independence based on any previous or ongoing work the Proposer has performed, the Proposer shall specifically address how it plans to address and manage that appearance, including, but not limited to, how appropriate safeguards would be applied by the Proposer to guard against that appearance.

3. If the Proposer believes that no conflict of interest or appearance of lack of independence as described above exists, then a statement to that effect must be made in the Proposer's proposal.

4. The Commission shall have the right to disqualify or terminate a contractor if it believes that the best interests of the State require that the contractor be disqualified or terminated because the Proposer has a conflict of interest or because a situation exists that creates the appearance of a lack of independence and also to disqualify any proposed personnel on that basis.

5. A potential conflict identified pursuant to this section is not an automatic disqualification, but is information the Commission will consider in the selection process.

6. The Commission shall have the right to disqualify or terminate the selected Proposer and any subcontractor with or without cause.

E. Cost Detail Format and Requirements

The proposal shall include a detailed quotation of costs for all services that could be charged to the Commission. Note that the sealed cost proposal is submitted in a separate envelope from the narrative proposals (see ATTACHMENT E - COST PROPOSAL WORKSHEET). There is no set budget for this engagement.

The Proposer will provide services as required by the Commission during public input hearings, Commission line drawing meetings, and as directed by the Commission to provide technical services to the Commission and the Commission's attorneys and other contractors. Proposers are required to submit their costs for a fixed number of Public Input Hearings and Commission line drawing meetings as well as the costs per meeting for a specific number of optional Public Input Hearings and Commission line drawing meetings as described below:

1. Fixed Cost Public Input Hearings Prior to and During Map Drawing and Following the Release of the Maps
   a. Proposer shall work in conjunction with and at the direction of the Commission during the Public Input Hearings. These hearings are scheduled to occur before release of the census data, after the release of the census data as the maps are drawn, and following the release of the maps to the public. The Commission and Proposer will jointly facilitate interaction with the public.

   b. It is anticipated that the line drawing for the Commission's Public Input Hearings will occur remotely. Should the Commission desire, there may be occasions when simultaneous Public Input Hearings will occur at different

locations around the State. Proposer's services for the Public Input Hearings will consist of drawing maps that reflect the public testimony being provided as well as documenting the date, hearing location, and testimony that led to the map.

c. As requested by the Commission, the Proposer must be able to actively participate and provide all services remotely, as described in this RFP. The Commission will work with the Proposer in determining what level of active participation is desired for the simultaneous meetings.

d. There will be an estimated minimum of 40 Public Input Hearings as described above. Proposers should provide a total cost for providing the services as outlined in this RFP for 40 days of hearings, excluding travel (See Table 2 General Timeframes for Hearings). The total cost for these estimated 40 days of hearings will be provided as a Fixed Cost. The cost will be included in the evaluation for award.

Table 2. Anticipated Timeframes for Meetings

Event	Anticipated Time Frame	Key Activity
Public Input Hearings (pre-district maps)	Winter/Spring 2020-2021	Gathering public input throughout California; estimated 30 days of meetings
Commission Line Drawing	Spring to early Summer 2021	Deliberations for drawing preliminary district maps; estimated 20 days of meetings
Release of Initial District Maps	July 2021	Release of preliminary district maps
Public Input Hearings (post-district maps)	Summer 2021	Gathering public input about preliminary district maps; estimated 10 days of meetings
Commission Line Drawing Finalize district maps and reports	Mid-July to early August 2021*	Prepare final district maps submission by August 15, 2021* estimated 5 days of meetings

* The actual timeframe is dependent on availability of the census data and could extend to December 15, 2021

2. Optional Public Input Hearings
The Proposer is required to provide a per-meeting cost for services (excluding travel) for ten (10) optional Public Input Hearing days. These optional meetings will be scheduled at the discretion of the Commission. The cost will be included in the evaluation for award.

3. Fixed Cost for Commission Line Drawing Meetings
   The Proposer must attend and participate in an estimated minimum of twenty-five (25) days of Commission line drawing meetings. The total cost for these estimated 25 meeting days will be provided as a Fixed Cost (not including travel).
   a. It is anticipated that the line drawing for the Commission's line drawing meetings will occur remotely. The Proposer must be able to actively participate and provide all services remotely, as described in this RFP.

   b. As the Commission works on different areas of the State, the Proposer will be responsible for:
      - Presenting any related maps developed as a result of public input including a summary of the testimony that led to the development of the map iterations;
      - Providing any relevant criteria or information to be used in evaluating the maps under discussion;
      - Documenting the Commission date and instructions leading to any map drawn at the Commission's request;
      - Producing, digitally storing, projecting on screen (for audience viewing), and providing the files (ex. shp, pdf) for the printing and/or posting of all maps as requested by the Commission.

4. Optional Commission Line Drawing Meetings Cost
   The Proposer must provide a cost per meeting day for ten (10) optional Commission line drawing meetings (excluding travel). These optional meetings will be scheduled at the discretion of the Commission. This cost will be included in the evaluation for award.

5. Fixed Cost for Technical Assistance (does not include travel expenses)
   The Proposer is required to provide the total cost for 60 hours of technical assistance to Commissioners and/or the Commission's legal counsel as described in Section I.B.1.d. This cost will be included in the evaluation for award.

   The technical assistance provided by the Contractor shall consist of, but is not limited to:
   - Technical education or consultation;
   - Providing census and district information; and
   - Production of alternate maps or visualizations.

6. Optional Cost for Technical Assistance
   The Proposer must provide a total cost per hour for providing technical assistance to Commissioners and/or the Commission's legal counsel as described in Section I.B.1.d. The Optional Costs should specify the individual hourly rates for the Proposer and Proposer's staff required to provide this assistance. The cost for an optional 40 hours of technical assistance will be included in the evaluation for award.

7. Final Cost
   The Final Cost is the sum of the Total Fixed Cost and the Optional Cost, as described below.
   a. Cost Proposal Work Sheet
      The Proposer must complete the Cost Proposal Work Sheet in **Attachment E** and return it as a **separate**, **sealed**, and **clearly identified** document, in a separate envelope from the Requirements Portion of the Final Bid Submission.

   b. Total Fixed Cost
      The Total Fixed Cost is the sum of all costs associated with the provision of services as required by this RFP. For example, this may include, but is not limited to the following:
      i. Consulting services
      ii. Managerial and/or administrative support
      iii. Clerical/staff support
      iv. Materials and supplies
      v. Documents, reports, forms
      vi. Reproduction
      vii. Direct and indirect expenses
      viii. Technical support
      ix. Fixed costs as described above (F. Cost Detail and Requirements)
      x. Any other costs (Itemize)

   c. Total Optional Costs

8. Computation of Optional Costs
   For the purpose of evaluation and award, the Commission will include the Proposer's costs for ten (10) optional Public Input Hearings and the Proposer's costs for ten (10) optional Commission line drawing meetings. These services are required to be in accordance with the requirements of this RFP.

In addition, for the purpose of the evaluation and award, the Commission will include the Proposer's hourly costs for providing technical assistance to Commissioners and/or the Commission's legal counsel. A total of 40 hours of optional technical consultation services will be included. These services are required to be in accordance with the requirements of this RFP.

The Optional Costs shall be computed as follows:
(Per Meeting Day Cost for optional Public Input Hearings) x 10 = Total Cost.
(Per Meeting Day Cost for optional Commission line drawing Meetings) x 10 = Total Cost.
Total hourly costs for optional technical consultation X 40 = Total Cost.
The sum of Total Costs = Total Optional Cost.

9. Reporting Optional Costs

Table 3. Table of Optional Costs

Optional Services	Cost per Occurrence	Number of Occurrences	Cost
Public Input Hearings	$ per Hearing	10	$
Commission Line Drawing Meetings	$ per Meeting	10	$
Technical Consultation	$ per hour	40	$

Total Optional Cost $ _____

Final Cost (Total Fixed Cost + Total Optional Cost) $ _____

10. Travel Expenses
    Should in-person meetings be allowed during the course of this RFP, transportation, lodging, mileage, parking, and subsistence costs, etc., will require prior approval by the Commission or its representative in order to be reimbursed.
    a. All travel-related costs will be paid on a reimbursement basis. No travel expenses will be paid prior to the actual date and time of travel.

b. Transportation and subsistence costs shall not exceed rates authorized to be paid excluded State employees under current California Department of Human Relations rules. California Department of Human Relations rates for reimbursement can be found at: http://www.calhr.ca.gov/employees/Pages/travel-rules-excluded.aspx.

F. Submission of Proposals

1. Proposals submitted under this solicitation constitute an express acceptance of all provisions of this RFP, including all attachments and exhibits. However, the Commission, in its sole discretion, may negotiate with the Proposer on specific provisions of the final agreement.

2. Proposers should provide straightforward and concise descriptions of their ability to satisfy the requirements of this RFP. The proposal must be complete and accurate.

3. Costs incurred for developing proposals, in anticipation of award of the agreement are entirely the responsibility of the Proposer, and shall not be charged to the State.

4. The **Requirements Portion** of the bid and the **Cost Portions** of the bid must be submitted separately as follows:
   a. one (1) original and three (3) copies (hard copy) of each,

   b. one (1) electronic copy of the **Requirements Portion** of the Final Bid Submission (only) in PDF format on a flash drive, and

   c. one (1) electronic copy of the **Cost Portion** of the Final Bid Submission (only) in PDF format on a separate flash drive.

   d. The hard copies and flash drives must be clearly labeled as either “Proposal: Requirements” or “Proposal: Costs.”

5. The original and three copies of the proposal shall be printed using Arial or Times New Roman 12 point font, be double-sided to conserve paper, and should be prepared in the least expensive method.

6. Proposals shall be sent in a sealed envelope, clearly marked "**Response to RFP No. CR20 CRC-10,”** and addressed to:

Citizens Redistricting Commission
Attention: Raul Villanueva
721 Capitol Mall, Suite 260
Sacramento, CA 95814
DO NOT OPEN

7. A special majority of the Commission (three votes each from the Democrat, Republican, and not affiliated members), as specified by California Government Code Section 8253 (a)(5), is required for award. In the event no bid receives a special majority, the RFP will be cancelled

8. At the Commission's option prior to award, Proposers may be required to submit additional written clarifying information or to make a presentation to the Commission. Failure to submit the required information or to appear for a presentation as specified by the Commission, will be grounds for rejection.

9. An individual who is authorized to bind the proposing firm contractually shall sign the Bidder Certification Sheet (Attachment B). The signature must indicate the title or position that the individual holds in the firm.

10. Time is of the essence. Proposals must be received not later than **5 p.m. on February 19, 2021**. Late proposals will not be accepted.

11. More than one proposal from an individual, firm, partnership, corporation or association under the same or different names, will not be considered. The Commission, may elect to accept only the first submitted proposal.

12. If the proposal is made under a fictitious name or business title, the actual legal name of the Proposer must be provided.

13. No verbal understanding or agreement shall be binding on either party.

14. All proposals shall include the documents identified in the Required Attachment Checklist (Attachment A).

15. Modification or Withdrawal of Proposals. Any proposal that the Commission receives before the deadline to submit proposals may be withdrawn or modified by written request of the Proposer. However, to be considered, the modified proposal must be received by the deadline.

16. Modification or Amendment of this Request. This RFP may be modified at any time prior to the time set for receipt of proposals and thereafter as long as no proposal has been opened. Upon any such modification, all Proposer s will be notified, and any person or firm who has expressly requested such notice in writing will also be notified. However, persons or firms who have been invited to propose, but who have not indicated their interest in writing, may not be notified of such changes at the discretion of the Commission.

17. Proposals must be complete in all respects and submitted by dates and times shown in Section III.A Table 1, Key Action Dates.

G. Rejection of Proposals

Submitted proposals may be rejected for any of the following reasons:

1. Right to Reject Any or All Proposals. The Commission may, in its sole discretion, reject any and all proposals submitted in response to this RFP, without regard to the cost or quality of any proposal, or other considerations, upon determination that it is in the best interest of the State to do so.

2. The State does not accept alternate contract language from a prospective contractor. A proposal with such language will be considered a counter proposal and will be rejected. The State's General Terms and Conditions are not negotiable.

3. The Commission, in its sole discretion, reserves the right to reject any individual proposed to be assigned to the engagement.

4. Proposals not including the required attachments shall be deemed non-responsive and will be rejected.

5. Omissions, inaccuracies or misstatements will be sufficient cause for rejection of a proposal.

6. A proposal may be rejected if it is conditional, incomplete, or it contains any alterations of form or other irregularities.

7. Proposals that contain false or misleading statements or that provide references, that do not support an attribute or condition claimed by the bidder, will be rejected.

H. Notice of Payment Terms

The invoicing and payment terms are found in Section VI, Sample Standard Agreement, Exhibit B - Sample Budget Detail and Payment Provisions.

I. Evaluation Process

1. Proposal Opening
   The Commission will publicly open and post the Requirements Portion of the Final Bid Submissions that are received by the Submission of Final Bid due date and time as specified in Table 1, Key Action Dates. Proposers whose proposals have been timely submitted will be notified by email of the date and time of the bid opening and posting, as determined by the Commission. The Commission will also post a public notification on its website.

2. Redistricting Project References Checked
   Once the proposals are opened, the Commission will begin contacting Customer Experience References to validate compliance with the RFP requirements. The Proposer is responsible for ensuring that all reference contacts are available by phone for two business days following the opening of Proposals.

3. Proposer Presentations
   The Commission requires Proposers to be prepared to make a public presentation to the Commission of the Plan they have submitted as part of their proposal. The date and place of the presentations will be communicated to the respective Proposers and made available to the public. The Commission will hold the presentations as part of a noticed meeting. Failure to submit the required information or to appear for a presentation as specified by the Commission will be grounds for rejection.

4. Public Evaluation
   a. The Commission' will open the Requirements Portion of the Final Bid Submissions in public as specified above, and will post the Requirements Portion of the Final Bid Submissions on the Commission website within one business day of opening.

   b. Following the posting of the bids, the Commission's Evaluation Team will evaluate the presence or absence of required information in conformance with the submission requirements of this RFP. The Team will also open the Cost Portion of the proposal and compute the cost points for each submitted

proposal. The Evaluation Team will keep confidential the Costs portion of the Final Bid Submissions at this time.

The results of the evaluation will be presented to the Commission in open session and posted on the Commission website.

c. The Commission will hold the Proposer presentations as part of a noticed meeting. The Commission will score each Proposer after their presentation and the Commission's Evaluation Team will tabulate the results and add the scores to the Proposer's score sheet to compute a total score.

d. The Commission will initially review the Requirements Portion of the Final Bid Submissions submitted by each Proposer. The Commission is expected to begin discussion of the responses during a scheduled meeting, in open session. The Costs portion of the Final Bid Submissions will remain confidential until this time, but be posted to Commission's website when this discussion begins.

e. Once all eligible proposals have been reviewed and evaluated by the Commission, the Commission is expected to discuss and vote first on the submission with the highest total score. In the event the proposal with the highest total score is approved by a special majority of the Commission (three votes each from the Democrat, Republican, and not affiliated members), as required by California Government Code Section 8253 (a)(5), no further votes will be taken, and the contract will be awarded to that Proposer.

f. In the event the submission with the highest total score is not approved by a special majority, the Commission will consider submission with the next highest score, until either a special majority approves one of the submissions, or votes are taken on all submissions without a special majority being achieved. In the event no proposal receives a special majority, the Commission will hold a second round of discussions on the relative merits of the top three (3) scoring submissions. If the second round of voting does not lead to award by special majority for one of the top three submissions, the RFP will be cancelled.

g. The Costs portion of Final Bid submission will remain confidential for proposals determined to be non-responsive to the requirements of the RFP.

h. Evaluation Criteria

Table 4. Scoring Table

Scoring Criteria	Maximum Possible Points
Technical Aspects of Proposal	
Redistricting References	15
Qualifications and experience of management and lead staff to be assigned to the project	20
Quality of Proposer's Plan and methodology	20
Presentation	15
Cost	30
TOTAL	**100**

i. Scoring of Costs Portion
The proposal with the lowest cost will be awarded the maximum cost points. The remaining cost proposals will be awarded cost points as demonstrated in the following example.

EXAMPLE: Weighted Point Value = 30 Points (maximum)

	Proposal Cost	Formula
Lowest Cost	$30,000	Lowest Cost = 30 Points
Proposer A:	$37,500	$30,000/$37,500=0.8x30=24 points
Proposer B:	$42,000	$30,000/$42,000=0.71x30=21.3 points

ii. Proposals must receive a score of 65 points to be considered. Proposals with a score of 64 or lower will be eliminated from further consideration.

iii. If no proposals are received containing proposals offering a price, which in the opinion of the Commission is a reasonable price, the Commission is not required to award an agreement.

iv. During the evaluation and selection process, the Commission may request the presence of a Proposer's representative for answering specific questions, orally and/or in writing. If discrepancies between sections or other errors are found in a final proposal, the Commission may reject the proposal; however, the Commission may in its sole discretion, retain the proposal and correct any arithmetic or transposition errors in price or quantity. The Commission will notify all Proposers of its decision to award the contract.

i. Award and Protest

i. Notice of the proposed award shall be posted in a public place at the Commission's offices and on its website at least five (5) working days prior to awarding the agreement.

ii. If any Proposer prior to the award of contract files a written protest with the Department of General Services (DGS) and the Commission on the grounds that the protesting Proposer is the lowest responsive responsible bidder qualifying for award, the contract shall not be awarded until either the protest has been withdrawn or DGS has resolved the matter. The initial protest must be filed with the Department of General Services, Office of Legal Services, 707 Third Street, 7th Floor, Suite 7-330, West Sacramento, CA 95605.

iii. Within five (5) days after filing the initial protest, the protesting Proposer shall file a detailed written statement specifying the grounds for the protest with the Department of General Services (DGS) and the Commission. The written protest must be sent to the Department of General Services, Office of Legal Services, 707 Third Street, 7th Floor, Suite 7-330, West Sacramento, CA, 95605. A copy of the detailed written statement should be mailed to the Commission. It is suggested that any protest be submitted by certified or registered mail.

j. Disposition of Proposals

All proposals submitted in response to this RFP shall become the property of the Commission, will be regarded as public records under the California Public Records Act (Government Code Section 6250 et seq.), and will be subject to review by the public. Bid packages may be returned only at the bidder's expense.

k. Agreement Execution and Performance

i. Service shall start no later than 5 days, or on the express date set by the Commission and the Proposer, whichever is sooner, after all approvals have been obtained and the agreement is fully executed. Should the Proposer fail to commence work at the agreed upon time, the Commission, upon five (5) days written notice to the Proposer, reserves the right to terminate the agreement. In addition, the Proposer shall be liable to the State for the difference between Proposer's Proposal price and the actual cost of performing work by another Proposer.

ii. The term of this Agreement begins on the date as indicated on the Standard Agreement for Services (STD. 213) through April 30, 2022, with the option for the Commission to extend the term for up to one year at the contract rates. Changes to the period of performance will require a written Amendment to the Agreement should the Commission exercise its option to extend services.

iii. The Proposer shall not be authorized to deliver or commence performance of services as described in this RFP until written approval has been obtained from the Commission and related control entities. No delivery or performance of service may commence prior to the execution of the Agreement.

IV. PREFERENCE PROGRAMS

Small Business Preference Program

A. The proposal should include a statement indicating whether or not the firm claims a small business preference and bidders should certify its small business certification using the Bidder Declaration (Attachment C).

B. This RFP does not include a minimum Small Business participation preference. Bidders claiming the 5 percent preference must be certified by California as a small business or must commit to subcontract at least 25 percent of the net bid price with one or more California Certified Small Business (CCSB).

C. To claim the CCSB preference, which may not exceed 5 percent for any bid, the firm must have its principal place of business located in California, have a complete application (including proof of annual receipts) on file with the California Office of Small Business and DVBE Services by 5:00 p.m. on the bid due date and time listed Section III, Table 2. Key Action Dates and be verified by such office.

D. If the bidder receives the CCSB preference, the bid of a certified small business is reduced for evaluation purposes by 5 percent of the lowest cost offered by a noncertified small business.

V. REQUIRED ATTACHMENTS

Attachment A: Required Attachment Checklist
Attachment B: Bidder Certification Sheet
Attachment C: Bidder Declaration
Attachment D: Conflict and Impartiality Statement
Attachment E: Cost Proposal Work Sheet
Attachment F: Target Area Contract Preference Act
Attachment G: Darfur Contracting Act Certification
Attachment H: Confidentiality/Nondisclosure Statement
Attachment I: California Civil Rights Laws Certification
Attachment J: Contractor Certification Clauses
Attachment K: Payee Data Record

VI. SAMPLE STANDARD AGREEMENT (STD.213)

Exhibit A - Scope of Work and Description of Services
Exhibit B - Budget Detail and Payment Provisions
Exhibit C - General Terms and Conditions
Exhibit D – Contractor Responsibilities
Exhibit E – Contractor Resumés

ATTACHMENT A - REQUIRED ATTACHMENT CHECKLIST

For a proposal to be responsive, all required attachments must be submitted to the State Auditor's office by the proposal due date. A complete proposal package will consist of the items identified in the table below. Place a check mark or "X" next to each item to confirm the items are in your proposal.

Check	Description	Attachment
_____	One original proposal with original signatures	
_____	Three photocopies of the original proposal, printed double-sided	
_____	Required Attachment Checklist	Attachment A
_____	Bidder Certification Sheet	Attachment B
_____	Bidder Declaration	Attachment C
_____	Conflict and Impartiality Statement	Attachment D
_____	Cost Proposal Work Sheet	Attachment E
_____	Target Area Contract Preference Act	Attachment F
_____	Darfur Contracting Act Certification	Attachment G
_____	Confidentiality/Nondisclosure Statement	Attachment H
_____	California Civil Rights Laws Certification	Attachment I
_____	Contractor Certification Clauses	Attachment J
_____	Payee Data Record	Attachment K

ATTACHMENT B - BIDDER CERTIFICATION SHEET

This Bidder Certification Sheet must be signed and returned along with all the "required attachments" as an entire package in duplicate with **original signatures**. The proposal must be transmitted in a sealed envelope in accordance with RFP instructions. **An unsigned bidder certification sheet may be cause for rejection.**

A. Place all required attachments behind this certification sheet.
B. I have read and understand the DVBE Participation requirements and have included documentation demonstrating that I have met the participation goals or have made a good faith effort.
C. The signature affixed hereon and dated certifies compliance with all the requirements of this proposal document. The signature below authorizes the verification of this certification.

1. Company Name	2. Telephone Number ( )	2a. Fax Number ( )
3. Address		
Indicate your organization type: 4. ☐ Sole Proprietorship	5. ☐ Partnership	6. ☐ Corporation
Indicate the applicable employee and/or corporation number: 7. Federal Employee ID No.	8. California Corporation No.	
9. Indicate applicable license and/or certification information: 10. Bidder's Name (Print)	11. Title	
12. **Signature**	13. Date	
14. Are you certified with the Department of General Services, Office of Small Business Certification and Resources (OSBCR) as: a. California Small Business Enterprise Yes ☐ No ☐ If yes, enter certification number:	b. Disabled Veteran Business Enterprise Yes ☐ No ☐. If yes, enter your service code:	
NOTE: A copy of your Certification is required to be included if either of the above items is checked **"Yes"**.		
Date application was submitted to OSBCR, if an application is pending:		

INSTRUCTIONS FOR BIDDER CERTIFICATION SHEET

Complete the numbered items on the Bidder Certification Sheet by following the instructions below.

Item Numbers	Instructions
1, 2, 2a, 3	Must be completed. These items are self-explanatory.
4	Check if your firm is a sole proprietorship. A sole proprietorship is a form of business in which one person owns all the assets of the business in contrast to a partnership and corporation. The sole proprietor is solely liable for all the debts of the business.
5	Check if your firm is a partnership. A partnership is a voluntary agreement between two or more competent persons to place their money, effects, labor, and skill, or some or all of them in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. An association of two or more persons to carry on, as co-owners, a business for profit.
6	Check if your firm is a corporation. A corporation is an artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals.
7	Enter your federal employee tax identification number.
8	Enter your corporation number assigned by the California Secretary of State's Office. This information is used for checking if a corporation is in good standing and qualified to conduct business in California.
9	Complete, if applicable, by indicating the type of license and/or certification that your firm possesses and that is required for the type of services being procured.
10,11, 12, 13	Must be completed. These items are self-explanatory.
14	If certified as a California Small Business, place a check in the "yes" box, and enter your certification number on the line. If certified as a Disabled Veterans Business Enterprise, place a check in the "Yes" box and enter your service code on the line. If you are not certified to one or both, place a check in the "No" box. If your certification is pending, enter the date your application was submitted to the California Office of Small Business and DVBE Services.

ATTACHMENT C - BIDDER DECLARATION

State of California—Department of General Services, Procurement Division
GSPD–05–105 (REV 08/09)

Solicitation Number _____

BIDDER DECLARATION

1. Prime bidder information **(Review attached Bidder Declaration Instructions prior to completion of this form)**:

   a. Identify current California certification(s) **(MB, SB, NVSA, DVBE):** _____ **or None** ☐ (If "None", go to Item #2)

   b. Will subcontractors be used for this contract? **Yes** ☐ **No** ☐ (If yes, indicate the distinct element of work your firm will perform in this contract e.g., list the proposed products produced by your firm, state if your firm owns the transportation vehicles that will deliver the products to the State, identify which solicited services your firm will perform, etc.). Use additional sheets, as necessary.

   c. If you are a California certified DVBE: (1) Are you a broker or agent? **Yes** ☐ **No** ☐
   (2) If the contract includes equipment rental, does your company own at least 51% of the equipment provided in this contract (quantity and value)? **Yes** ☐ **No** ☐ **N/A** ☐

2. If no subcontractors will be used, skip to certification below. Otherwise, list all subcontractors for this contract. (Attach additional pages if necessary):

Subcontractor Name, Contact Person, Phone Number & Fax Number	Subcontractor Address & Email Address	CA Certification (MB, SB, NVSA, DVBE or None)	Work performed or goods provided for this contract	Corresponding % of bid price	Good Standing?	51% Rental?
					☐	☐
					☐	☐
					☐	☐

CERTIFICATION: By signing the bid response, I certify under penalty of perjury that the information provided is true and correct.

Page ____ of ____

BIDDER DECLARATION Instructions

All prime bidders (the firm submitting the bid) must complete the Bidder Declaration.

1.a. Identify all current certifications issued by the State of California. If the prime bidder has no California certification(s), check the line labeled "None" and proceed to Item #2. If the prime bidder possesses one or more of the following certifications, enter the applicable certification(s) on the line:

- Microbusiness (MB)
- Small Business (SB)
- Nonprofit Veteran Service Agency (NVSA)
- Disabled Veteran Business Enterprise (DVBE)

1.b. Mark either "Yes" or "No" to identify whether subcontractors will be used for the contract. If the response is "No", proceed to Item #1.c. If "Yes", enter on the line the distinct element of work contained in the contract to be performed or the goods to be provided by the prime bidder. Do not include goods or services to be provided by subcontractors.

Bidders certified as MB, SB, NVSA, and/or DVBE must provide a commercially useful function as defined in Military and Veterans Code Section 999 for DVBEs and Government Code Section 14837(d)(4)(A) for small/microbusinesses.

Bids must propose that certified bidders provide a commercially useful function for the resulting contract or the bid will be deemed non-responsive and rejected by the State. For questions regarding the solicitation, contact the procurement official identified in the solicitation.

Note: A subcontractor is any person, firm, corporation, or organization contracting to perform part of the prime's contract.

1.c. This item is only to be completed by businesses certified by California as a DVBE.

(1) Declare whether the prime bidder is a broker or agent by marking either "Yes" or "No". The Military and Veterans Code Section 999.2 (b) defines "broker" or "agent" as a certified DVBE contractor or subcontractor that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more of the disabled veteran owners has at least 51-percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.

(2) If bidding rental equipment, mark either "Yes" or "No" to identify if the prime bidder owns at least 51% of the equipment provided (quantity and value). If **not** bidding rental equipment, mark "N/A" for "not applicable."

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2. If no subcontractors are proposed, do not complete the table. Read the certification at the bottom of the form and complete "Page ____ of ____" on the form.

If subcontractors will be used, complete the table listing all subcontractors. If necessary, attach additional pages and complete the "Page ____ of ____" accordingly.

2. *(continued)* **Column Labels**

Subcontractor Name, Contact Person, Phone Number & Fax Number—List each element for all subcontractors.

Subcontractor Address & Email Address—Enter the address and if available, an Email address.

CA Certification (MB, SB, NVSA, DVBE or None)—If the subcontractor possesses a current State of California certification(s), verify on this website (www.eprocure.pd.dgs.ca.gov).

Work performed or goods provided for this contract—Identify the distinct element of work contained in the contract to be performed or the goods to be provided by each subcontractor. Certified subcontractors must provide a commercially useful function for the contract. (See paragraph 1.b above for code citations regarding the definition of commercially useful function.) If a certified subcontractor is further subcontracting a greater portion of the work or goods provided for the resulting contract than would be expected by normal industry practices, attach a separate sheet of paper explaining the situation.

Corresponding % of bid price—Enter the corresponding percentage of the total bid price for the goods and/or services to be provided by each subcontractor. Do not enter a dollar amount.

Good Standing?—Provide a response for each subcontractor listed. Enter either "Yes" or "No" to indicate that the prime bidder has verified that the subcontractor(s) is in good standing for all of the following:

- Possesses valid license(s) for any license(s) or permits required by the solicitation or by law
- If a corporation, the company is qualified to do business in California and designated by the State of California Secretary of State to be in good standing
- Possesses valid State of California certification(s) if claiming MB, SB, NVSA, and/or DVBE status

51% Rental?—This pertains to the applicability of rental equipment. Based on the following parameters, enter either "N/A" (not applicable), "Yes" or "No" for each subcontractor listed.

Enter "**N/A**" if the:

- Subcontractor is NOT a DVBE (regardless of whether or not rental equipment is provided by the subcontractor) or
- Subcontractor is NOT providing rental equipment (regardless of whether or not subcontractor is a DVBE)

Enter "**Yes**" if the subcontractor is a California certified DVBE providing rental equipment and the subcontractor owns at least 51% of the rental equipment (quantity and value) it will be providing for the contract.

Enter "**No**" if the subcontractor is a California certified DVBE providing rental equipment but the subcontractor does NOT own at least 51% of the rental equipment (quantity and value) it will be providing.

Read the certification at the bottom of the page and complete the "Page ____ of ____" accordingly.

ATTACHMENT D - CONFLICT AND IMPARTIALITY STATEMENT

Complete, sign (original signature) and return in the Requirements Portion of the Final Bid Submission. (For definitions to terms used in this part, Contractor should refer to California Code of Regulations, Title 2, sections 60800 – 60829).

The Conflict and Impartiality Statement is required to be completed by the Contractor and each participant who will exercise a major administrative role or major policy or consultant role, as identified by the contractor, including subcontractors, to the agreement. Government Code Section 8252 and the regulations found at CCR Title 2, Section 60800 – 60814 set forth certain conflict provisions, including individuals with a bona fide relationship to any of the above as defined in CCR Title 2, Section 60806.
Full disclosure is required; however, disclosure of a potential conflict is not an automatic disqualification. Please explain any potential conflict in the space provided below.

Within the 10 years immediately preceding the submittal of the proposal, all of the parties listed above:

- Have not been appointed to, elected to, or have been a candidate for federal or state office;
- Have not served as an officer, employee, or paid consultant of a political party or of the campaign committee of a candidate for elective federal or state office;
- Have not served as an elected or appointed member of a political party central committee;
- Have not been a registered federal, state, or local lobbyist;
- Have not served as a paid congressional, legislative, or Board of Equalization staff;
- Have not contributed two thousand, five hundred dollars ($2,500) or more to any congressional, state, or local candidate for elective public office;
- Have not been staff and consultants to, persons under a contract with, nor are persons with an immediate family relationship with the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization;
- Have no personal, family, financial relationships, commitments, or aspirations that a reasonable person would consider likely to improperly influence someone making a redistricting decision;

Explain any potential conflict below (additional pages may be attached if needed):

_____

_____

_____

_____

_____

_____

In addition, please respond to the following (additional pages may be attached if needed):

- Has the person or entity submitting this proposal, during the past 10 years, received donations or funding from any source, whether in cash or in kind, that are used to support the operations of the person or entity? If YES, please state the date, nature and amount of donation or funding, and the source of the funding.

YES _____ NO _____

_____

_____

_____

_____

- Has the person or entity submitting this proposal, during the past 10 years, performed services of any kind, whether for a fee or on a voluntary basis, for any political party, interest group or other entity that has supported, donated money to, raised money for candidate for public office, taken a position on a ballot initiative or sought to influence the redistricting process? If YES, please provide the details of the activity below.

YES _____ NO _____

_____

_____

_____

_____

- The Commission will be the sole provider of funds for the services to be provided pursuant RFP 21-01. Will contractor receive funding from any source other than the Commission, in cash or in kind, to perform services pursuant to this RFP? If YES, please provide the details of such funding.

YES _____ NO _____

_____

_____

_____

_____

- Does Contractor have any occupational, academic, volunteer, or other life experiences that show an ability to set aside personal interests, political opinions, and group allegiances to achieve a broad objective? If YES, please provide the details of the activity below.

YES _____ NO _____

_____

_____

_____

_____

Date:

Signature:

Printed Name:

Title:

Organization:

Telephone Number:

Fax Number:

ATTACHMENT E - COST PROPOSAL WORKSHEET

The Proposer's cost for provision of all services required in the RFP must be included. Travel and per diem expenses will be billed monthly in arrears. Complete and return this work sheet in the Bid Costs portion of Final Bid submission. The Bid Costs portion of Final Bid submission must be a separate, sealed, and clearly identified document.

1. Fixed Costs

Sum of all costs associated with the provision of services, including, but not limited to an estimated 40 Public Input Hearings, 25 Commission meetings, and all associated travel and per diem expenses at California State rates. The fixed costs should also include the costs related to providing 60 hours of technical assistance as specified in the RFP.

Item	Cost
Consulting services	$
Managerial and/or administrative support	
Clerical/staff support	
Materials and supplies	
Documents, reports, forms	
Reproduction	
Direct and indirect expenses	
Technical support	
40 days Public Input Hearings	
25 days Commission line drawing Meetings	
60 hours of technical assistance	
Any other costs (Itemize)	

Total Fixed Cost $ _____

2. Optional Costs

Optional Services	Cost per Occurrence	Number of Occurrences	Cost
Public Input Hearings	$ per Hearing	10	$
Commission Line Drawing Meetings	$ per Meeting	10	$
Technical Consultation	$ per hour	40	$

Total Optional Cost $ _____

Final Cost (Total Fixed Cost + Total Optional Cost) $ _____

ATTACHMENT F - TARGET AREA CONTRACT PREFERENCE ACT

Print Clear

STD. 830 (REV. 10/2019) (FRONT)

TARGET AREA CONTRACT PREFERENCE ACT
PREFERENCE REQUEST FOR GOODS AND SERVICES SOLICITATIONS

STATE OF CALIFORNIA – DEPARTMENT OF GENERAL SERVICES
DISPUTE RESOLUTION AND PREFERENCE PROGRAMS

Complete this form to request TACPA preferences for this bid.

SOLICITATION NUMBER	AGENCY/DEPT

Target Area Contract Preference Act (TACPA) preferences are available only if the lowest responsible bid and resulting contract exceeds $100,000. Your firm must be California based. You must certify, under penalty of perjury, to perform either **50%** of the labor hours required to complete a contract for GOODS, or **90%** of the labor hours required to complete a contract for SERVICES in the Target Area Contract Preference Act zone(s) you identify in Section I. The TACPA provides bid selection preferences of 5% for eligible worksites (Section I), and 1% to 4% for hiring eligible workforce employees (Section II). To identify Census Tract and Block Group numbers contact the city or county Planning and Development Commission for the intended worksite or visit the U.S. Census Bureau website (www.census.gov).

Section I. 5% WORKSITE(S) PREFERENCE ELIGIBILITY AND LABOR HOURS

To the Bidder: Preference may be denied for failure to provide the following required information:

(1) Identify each firm in the supply chain, including yours, that will perform any of the contract labor hours required to complete this contract. Identify your role in the distribution process. Transportation hours performed by each carrier must be reported separately.
(2) List complete addresses for each firm named below.
(3) Report projected number of labor hours required to perform the contract for each firm.
(4) Enter the CENSUS TRACT number.
(5) Enter the BLOCK GROUP number.
(6) Identify the California designated TACPA worksite(s) by entering the proper **Criteria** letter A, B, C, D, E, F (see reverse for instructions) in the Criteria column.

(1) FIRM NAME and CONTRACT FUNCTION: (Manufacturing, transportation, shipping, warehousing, admin., etc.) Use additional pages, as needed, to fully report worksite information.	(2) WORKSITE ADDRESS Street Address, City, County, State, Zip Code, Phone Number	(3) PROJECTED LABOR HOURS	COMPLETE FOR ALL SITES LOCATED WITHIN A TACPA PREFERENCE AREA(S)		
			(4) TRACT NUMBER	(5) BLOCK NUMBER	(6) CRITERIA (A – F)
	TOTAL PROJECTED LABOR HOURS:	0.00			

Section II. 1% TO 4% WORKFORCE PREFERENCE

Bidders must qualify their firm's work site eligibility to request an additional 1% to 4% workforce preference in Section II

- ☐ I request a 1% preference for hiring eligible persons to perform 5 to 9.99% of the total contract labor hours.
- ☐ I request a 2% preference for hiring eligible persons to perform 10 to 14.99% of the total contract labor hours.
- ☐ I request a 3% preference for hiring eligible persons to perform 15 to 19.99% of the total contract labor hours.
- ☐ I request a 4% preference for hiring eligible persons to perform 20% or more of the total contract labor hours.

Section III. CERTIFICATION FOR WORKSITE AND WORKFORCE PREFERENCES

To receive TACPA preferences, the following certification must be completed and signed by the Bidder.

I hereby certify under penalty of perjury that the bidder (1) is a California based company as defined in the TACPA regulations; (2) shall ensure that at least 50% of the labor hours required to complete a contract for Goods, or 90% of the labor hours to complete a Services contract shall be performed at the designated TACPA worksite(s) claimed in Section I; (3) shall hire persons who are TACPA eligible employees to perform the specified percent of total contract labor hours as claimed in Section II; (4) has provided accurate information on this request. I understand that any person furnishing false certification, willfully providing false information or omitting information, or failing to comply with the TACPA requirements is subject to sanctions as set forth in the statutes.

BIDDER'S NAME & TITLE	BIDDER'S SIGNATURE	PHONE NUMBER / FAX NUMBER	DATE

STD. 830 (REV. 10/2019) (REVERSE)

TARGET AREA CONTRACT PREFERENCE ACT
PREFERENCE REQUEST FOR GOODS AND SERVICES SOLICITATIONS

STATE OF CALIFORNIA – DEPARTMENT OF GENERAL SERVICES
DISPUTE RESOLUTION AND PREFERENCE PROGRAMS

Target Area Contract Preference Act References and Instructions

The Target Area Contract preference Act (TACPA), GC §4530 et seq., and 2 CCR §1896.30 et seq., promotes employment and economic development at designated distressed areas by offering 5% worksite and 1% to 4% workforce bidding preferences in specified state contracts. The TACPA preferences do not apply to contracts where the worksite is fixed by the contract terms. These preferences only apply to bidders who are California based firms, and only when the lowest responsible bid and resulting contract exceed $100,000. Bidders must certify, under penalty of perjury to perform either 50% (for GOODS contracts) or 90% (for SERVICES contracts) of the labor hours required to complete this contract in the eligible TACPA area worksite(s) identified in Section I on the reverse side of this page. TACPA preferences are limited to 9%, or a maximum of $50,000 per bid. In combination with any other preferences, the maximum limit is 15% of the lowest responsible bid; and, in no case more than $100,000 per bid.

Section I
Worksite Preference Eligibility and Labor Hours

Bidders must identify at least one eligible TACPA worksite by entering the criteria letter A, B, C, D, E or F in the "Criteria" column and enter the "Census Tract" and "Block Group" Numbers to be eligible for the preference. You must name each and every firm or site where contract labor hours will be worked. Preference requests may be denied if an eligible California TACPA worksite is not identified, or all firms performing contract labor hours are not identified. Enter one of the following "Criteria" letters to identify each TACPA worksite on the reverse page:

A. The firm is located in a California eligible distressed area(s).

B. The firm will establish a worksite(s) in a California eligible distressed area(s).

C. The firm is in a census tract with a contiguous boundary adjacent to a California eligible distressed area.

D. The firm will establish a worksite(s) located directly adjoining a valid TACPA census tract/block group that when attached to the California eligible distressed area(s) forms a contiguous boundary.

E. The bidder will purchase the contract goods from a manufacturer(s) in a California eligible distressed area(s). **This option applies to solicitations for GOODS only.**

F. The bidder will purchase contract goods from a manufacturer(s) in directly adjoining census tract blocks that when attached to the California eligible distressed area(s) forms a contiguous boundary. **This option applies to solicitations for GOODS only.**

Enter labor hours for each listed firm and site. The hours shall be reasonable and shall only include the labor hours necessary and required to complete the contract activities. Artificially increasing hours at a claimed TACPA worksite, or understating labor hours worked outside the eligible worksite may result in a denied preference request. Do not include machine time and non-labor time when projecting contract labor hours. Report all bidder work hours and those of any subcontractor performing this contract. All transportation hours must be reported for each carrier separately and must not be combined or included with hours for manufacturing, processing, or administration, or at any eligible TACPA site. Failure to list all the labor hours to be performed at the reportable sites will result in a denial of this preference request.

The bidder must explain, by activity, their firm's projected contract labor hours by completing and signing the *Bidder's Summary* form (included with this solicitation).

If supplying goods, the bidder must also provide a completed and signed *Manufacturer's Summary* form (included with this solicitation) that specifies the number of projected labor hours necessary to make the product(s).

Section II
Workforce Preference

Eligibility to request a workforce preference is based on the bidder first claiming and receiving approval of the 5% TACPA worksite preference. The workforce preferences are only awarded if the bidder hires and employs the TACPA qualified individuals. Workforce preferences will not be approved for another firm's employees. By claiming a workforce preference percentage, the bidder must have its eligible employees perform the specified percentage of the total contract workforce labor hours. See Section I, "Total Projected Labor Hours," STD. 830. To claim the workforce preferences select or check the appropriate box for percent of requested bid preferences in Section II.

Section III
Certification for Worksite and Workforce Preferences

Bidder must sign, under penalty of perjury, the certification contained in Section III to be eligible for any of the preferences requested pursuant to this form. The penalties associated with the TACPA statute are: GC §4535.1, a business which requests and is given the preference by reason of having furnished a false certification, and which by reason of that certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(a) Pay to the State any difference between the contract amount and what the State's cost would have been if the contract had been properly awarded.
(b) In addition to the amount specified in subdivision (a), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.
(c) Be ineligible to directly or indirectly transact any business with the State for a period of not less than six months and not more than 36 months.

Prior to the imposition of any sanction under this chapter, the contractor or vendor shall be entitled to a public hearing and to five days notice of the time and place thereof. The notice shall state the reasons for the hearing.

If you receive an award based on these preferences you will be required to report monthly on your contract performance, labor hours, and TACPA compliance.

For questions concerning preferences and calculations, or if a bid solicitation does not include preference request forms, please call the awarding Department's contract administrator. Only another California certified small business can use TACPA, EZA or LAMBRA preferences to displace a California certified small business bidder.

To identify TACPA distressed worksites contact the local city or county Planning/Economic Development offices of the proposed worksite, or go to http://factfinder.census.gov and click on "Enter a street address" to find a Census Tract and Block Group. Verify the Census Tract and Block numbers for TACPA sites by calling the DGS, Procurement Division preference line at (916) 375-4609.

ATTACHMENT G - DARFUR CONTRACTING ACT CERTIFICATION

Public Contract Code Sections 10475 -10481 applies to any company that currently or within the previous three years has had business activities or other operations outside of the United States. For such a company to bid on or submit a proposal for a State of California contract, the company must certify that it is either a) not a scrutinized company; or b) a scrutinized company that has been granted permission by the Department of General Services to submit a proposal.

If your company has not, within the previous three years, had any business activities or other operations outside of the United States, you do **not** need to complete this form.

OPTION #1 - CERTIFICATION

If your company, within the previous three years, has had business activities or other operations outside of the United States, in order to be eligible to submit a bid or proposal, please insert your company name and Federal ID Number and complete the certification below.

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that a) the prospective proposer/bidder named below is **not** a scrutinized company per Public Contract Code 10476; and b) I am duly authorized to legally bind the prospective proposer/bidder named below. This certification is made under the laws of the State of California.

Company/Vendor Name (Printed)	Federal ID Number
By (Authorized Signature)	Date
Printed Name and Title of Person Signing	

OPTION #2 – WRITTEN PERMISSION FROM DGS

Pursuant to Public Contract Code Section 10477(b), the Director of the Department of General Services may permit a scrutinized company, on a case-by-case basis, to bid on or submit a proposal for a contract with a state agency for goods or services, if it is in the best interests of the state. If you are a scrutinized company that has obtained written permission from the DGS to submit a bid or proposal, complete the information below. We are a scrutinized company as defined in Public Contract Code section 10476, but we have received written permission from the Department of General Services to submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of the written permission from DGS is included with our bid or proposal.

Company/Vendor Name (Printed)	Federal ID Number
By (Authorized Signature)	Date
Printed Name and Title of Person Signing	

REV 12/19

ATTACHMENT H - CONFIDENTIALITY/NONDISCLOSURE STATEMENT

CONFIDENTIALITY/NONDISCLOSURE STATEMENT

The undersigned acknowledges and agrees that the contents of any personal, technical, and other data and information relating to the Commission's operations that are made available to the Contractor in carrying out this Agreement, or that become available to the Contractor in carrying out this Agreement, are confidential and shall be protected by the Contractor from unauthorized use or disclosure, as described in this Agreement. In providing that protection, Contractor shall comply with this Agreement and any other procedural requirements of the State that are provided in writing to the Contractor. In that regard, the undersigned acknowledges and agrees to all of the following:

(a) The work products and records, documents, or information used in support of the work products that are made available to the Contractor pursuant to this Agreement, including, but not limited to all personal, technical, and other data and information used in support of, or contained in those work products, are confidential and shall be protected by the Contractor from unauthorized use or disclosure. In providing that protection, Contractor shall comply with this subdivision and any other procedural requirements of the Commission that are provided in writing to the Contractor.

(b) Contractor shall not disclose data or disseminate the contents of any preliminary or final work product or records, documents, or information used in support of the work product without the written permission of the Commission.

(c) With the exception of comments made about the work product to the Commission or its staff, Contractor shall not make comments to any individual, including, but not limited to, any member of the media regarding the work product, nor shall Contractor comment on the Commission's actions regarding the work product, without the prior written consent of the Commission.

(d) Contractor acknowledges that all work products and records, documents, or information used in developing the work products, as well as all work products themselves, remain the sole property of the Commission and may not be used by the Contractor for any purposes outside the scope of this Agreement without the prior written consent of the Commission.

2. CONFIDENTIALITY/NONDISCLOSURE ACKNOWLEDGMENT

(To be completed by each of contractor's personnel)

The undersigned Contractor acknowledges that he/she has been provided with a copy of the Confidentiality/Nondisclosure Statement between the Commission and Contractor (Agreement) and understands that any records, documents, and information, or any draft or final work product that the undersigned reviews or produces in connection with providing services to the Commission are subject to the terms of the Agreement.

Company/Firm Name

Print Name

Signature **Title** **Date**

ATTACHMENT I - CALIFORNIA CIVIL RIGHTS LAWS CERTIFICATION

Pursuant to Public Contract Code section 2010, a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a state agency with respect to any contract in the amount of $100,000 or above shall certify, under penalty of perjury, at the time the bid or proposal is submitted or the contract is renewed, all of the following:

1. CALIFORNIA CIVIL RIGHTS LAWS: For contracts executed or renewed after January 1, 2017, the contractor certifies compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code) and the Fair Employment and Housing Act (Section 12960 of the Government Code); and
2. EMPLOYER DISCRIMINATORY POLICIES: For contracts executed or renewed after January 1, 2017, if a Contractor has an internal policy against a sovereign nation or peoples recognized by the United States government, the Contractor certifies that such policies are not used in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the Fair Employment and Housing Act (Section 12960 of the Government Code).

CERTIFICATION

I, the official named below, certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Proposer/Bidder Firm Name (Print)	Federal ID Number
By (Authorized Signature)	
Print Name and Title of Person Signing	
Executed in the County of	Executed in the State of
Date Executed	

REV 01/17

ATTACHMENT J - CONTRACTOR CERTIFICATION CLAUSES
(CCC 04/2017)

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJ0URY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Contractor/Bidder Firm Name (Printed)	Federal ID Number
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	Executed in the County of

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 11102) (Not applicable to public entities.)
2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
   (a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
   (b) Establish a Drug-Free Awareness Program to inform employees about:
      1) The dangers of drug abuse in the workplace.
      2) The person's or organization's policy of maintaining a drug-free workplace.
      3) Any available counseling, rehabilitation and employee assistance programs.
      4) Penalties that may be imposed upon employees for drug abuse violations.
   (c) Every employee who works on the proposed Agreement will:
      1) Receive a copy of the company's drug-free workplace policy statement.
      2) Agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

      Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)
4. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.
5. DOMESTIC PARTNERS: For contracts of $100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.
6. GENDER IDENTITY: For contracts of $100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
   Current State Employees (Pub. Contract Code §10410):
   1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
   2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

   Former State Employees (Pub. Contract Code §10411):
   1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
   2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making

position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.
If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)
Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:
   (a) When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
   (b) "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
   (c) Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
7. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

ATTACHMENT K - PAYEE DATA RECORD

Complete, sign (original signature) and return in Requirements Portion of the Final Bid Submission. No payment can be made unless this form is completed.

A fillable form is available on the Department of General Services website at

https://www.dgs.ca.gov/PD/Forms?search=Payee%20Data&topicCategoryFilters=&audienceCategoryFilters=&sort=relevance&activeFilters=&page=1

VI. SAMPLE - STANDARD AGREEMENT (STD. 213)

Do not complete or return the sample Standard Agreement, sample Scope of Work and Description of Services, or the sample Budget Detail and Payment Provisions.

STATE OF CALIFORNIA – DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT STD 213 (Rev 03/2019)	AGREEMENT NUMBER	PURCHASING AUTHORITY NUMBER (If Applicable)
1. This Agreement is entered into between the Commission and the Contractor named below:		
STATE AGENCY'S NAME California Citizens Redistricting Commission		
CONTRACTOR'S NAME		
2. The Term of this Agreement is:		
START DATE		
THROUGH END DATE		
3. The maximum amount of this Agreement is:		
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.		

Exhibits		Title	Pages
	Exhibit A	Scope of Work	
	Exhibit B	Budget Detail and Payment Provisions	
	Exhibit C	General Terms and Conditions	

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at https://www.dgs.ca.gov/OLS/Resources

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)	
CONTRACTOR BUSINESS ADRESS	CITY
PRINTED NAME OF PERSON SIGNING	TITLE
CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED

STATE OF CALIFORNIA

CONTRACTING AGENCY'S NAME	
CONTRACTING AGENCY ADRESS	CITY
PRINTED NAME OF PERSON SIGNING	TITLE
CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED
CALIFORNIA EDPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable)

EXHIBIT A - SCOPE OF WORK AND DESCRIPTION OF SERVICES

1. PURPOSE OF THIS AGREEMENT

a. The 2020 Citizens Redistricting Commission (Commission or State) and the Contractor enter into this Agreement for the purpose of [Contractor's Name] to provide technical line drawing services as described herein:

   Article XXI of the CA Constitution requires the Citizen's Redistricting Commission (Commission) to redraw California's Congressional districts, State Senatorial, State Assembly, and Board of Equalization districts. The technical line drawer is responsible for using computerized geographical information systems (GIS) software and a redistricting database containing population data and digitized maps to assist the Commission in evaluating the movement of census geography units into and out of proposed election districts, and producing the maps that reflect proposed districts and the final districts, as determined by the Commission.

b. The services shall be performed at designated Public Input Hearings throughout the State of California (Pre- and Post-district maps), and at line drawing meetings of the Commission, as required by the Commission.

c. The services shall be provided from approval of this contract through June 30, 2022 at times and locations as provided for by the Commission in consultation with Contractor.

d. No minimum amount of work is guaranteed under this Agreement.

2. CONTRACTOR PROVIDES LINE DRAWING AND TECHNICAL CONSULTING SERVICES

In conjunction with their knowledge and expertise in redistricting, the Contractor will use computerized geographical information systems (GIS) software and a redistricting database containing population data and digitized maps to assist the Commission in the following:

a. Evaluating the movement of census geography units into and out of proposed election districts, and
b. Producing the maps that reflect proposed districts and the final districts, as determined and directed by the Commission.

The Contractor will have sole responsibility for the following:

a. Providing all necessary computerized equipment necessary to house and utilize the redistricting database;

b. Assembling the redistricting database as specified in the RFP;

c. Documenting the Commission's instructions throughout the development of the maps sufficient to allow the Commission to track changes and draw comparisons between any iteration developed by the Commission during the process of line drawing.

d. Document the public testimony related to any map drawn as a result of the testimony, sufficient to allow the line drawer to synthesize all maps related to a given area (city, county, etc.) and for the Commission to track the comments related to the map iterations of the same location.

e. Providing the map file(s), and PDFs of the maps, and the related Commissioner instructions and/or public testimony leading to the drawing of the map, for the Commission to be able to print the map and its corresponding instructions and/or public testimony.

f. Responding to Commission requests to provide services to the Commission's legal counsel or contractors as directed, including technical consultation and drawing alternate maps, and

g. Producing, digitally storing, projecting maps and the line drawing on-screen or transmitting a clear image (for audience viewing), and later printing all maps, as required by the Commission.

The Contractor's Work Plan is in Exhibit D and was submitted in response to Request for Proposal No. CR20 CRC-010 - Line Drawer for Redistricting Services.

3. ACCEPTANCE CRITERIA

It shall be the Commission's sole determination as to whether a deliverable has been successfully completed and is acceptable to the Commission.

4. PROJECT REPRESENTATIVES

2020 California Citizens Redistricting Commission	Contractor's Name
Project Coordinator: Name and Title	Name, Title:
Address:	Address:
Phone:	Phone:
Fax:	Fax:
Email:	Email:
Business Services Coordinator:	Authorized to Perform Services: List names here if not provided in Exhibit B.

EXHIBIT B - BUDGET DETAIL AND PAYMENT PROVISIONS

1. AMOUNT PAYABLE

The total amount payable under this Agreement may not exceed _____ dollars and no cents ($_____) and is payable as follows:

(a) In exchange for providing the promised services and other deliverables specified in **Exhibit A** of this Agreement, the State shall pay the Contractor at the rate(s) specified in below**:**

< Cost Proposal Work Sheet – may be inserted here or as an Exhibit >

2. PAYMENTS

a. The consideration to be paid to the Contractor, as provided herein, is in compensation for all of the Contractor's expenses incurred in performance of this Agreement, including travel and other expenses.

b. The Contractor shall arrange for any Commission approved travel required under this Agreement. The Commission shall reimburse the Contractor for documented travel and other expenses incurred by the Contractor in providing the services that are the subject of this Agreement at locations other than the Contractor's usual place or places of business.

c. Travel reimbursement shall be made in accordance with the California State Travel Reimbursements guidelines as published by the Department of Human Resources and regulations at 2 CCR 599.615 et seq. in effect for excluded employees when the expenses are incurred, if supported by a receipt.

d. Contractor shall submit invoices on a monthly basis by the tenth (10^{th}) day of each month. The invoices shall include a separate itemized accounting of all charges, including appropriate original receipts for travel and other administrative expenses. Charges for travel and administrative services submitted without receipt or approved documentation may not be paid.

e. Each invoice submitted by the Contractor shall include the following:
   1. The contract number as it appears on this Agreement.
   2. The Contractor's full name, company name (if applicable), and billing address as it appears in this Agreement.
   3. An invoice number and invoice date.
   4. A separate line item for each charge.
   5. Original receipts for all included travel and administrative charges.
   6. The signature of the Contractor or the Contractor's representative.

f. Invoices shall be submitted in duplicate and sent to:

California Citizens Redistricting Commission
Attention: Accounting
721 Capitol Mall, Suite 260
Sacramento, CA 95814

g. Progress payments to Contractor for work performed or costs incurred in the performance of the contract shall consist of payment for services provided the previous month, e.g. line drawing services and related travel for input hearings and Commission meetings held the previous month.
h. Not less than 10 percent of the contract amount shall be withheld pending final completion of the contract.
i. As a necessary precursor to receiving payment from the State, the Contractor shall maintain a completed Payee Data Record Form (STD 204) on file with the Commission.
j. The Contractor shall keep and preserve all back-up documentation to support the entries included in its invoices submitted to the Commission for a period of three (3) years after final payment is made unless a longer period of records retention is agreed upon. The Contractor agrees to allow the Commission and/or the California State Auditor access to such records during normal business hours and to allow interviews of any employees who reasonably might have information related to such records.

3. BUDGET CONTINGENCY CLAUSE

a. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
b. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

4. PROMPT PAYMENT CLAUSE

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with section 927.

EXHIBIT C - GENERAL TERMS AND CONDITIONS (GTC 04/2017)

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor

under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR*:* Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractor*s* shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provision*s* of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regulations, Tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractor*s* shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regulations, Tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
12. TIMELINESS: Time is of the essence in this Agreement.
13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

    a. The Government Code Chapter on Antitrust claims contains the following definitions:

        1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

        2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

    b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

    c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the

expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of $100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
    a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
    b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of $200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.
19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:
    a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
    b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding

department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER: If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

EXHIBIT D – CONTRACTOR RESPONSIBILITIES

Bidder's responses to all items under Section B, shall be attached to the contract for public record and are made a part of the contract as Exhibit D.

EXHIBIT E – CONTRACTOR RESUMÉS

A completed resumé is required for the Contractor and for each contract participant (including subcontractors) who will exercise a major administrative role or major policy or consultant role, as identified by the contractor. The completed resumés will be attached to the contract for public record and made a part of the contract as Exhibit E.

From:	Spencer Brandt
To:	CEO Redistricting RES
Subject:	Public comment
Date:	Tuesday, January 26, 2021 4:53:18 PM
Attachments:	Nielson conflicts of interest.docx

Hello, please include this written comment in the record regarding Legal Counsel selection for the following meeting. Thank you,

Spencer Brandt

Dear Commissioners,

I am concerned that one of the legal counsel proposals is from a firm that has demonstrable conflicts of interest.

The Commission adopted a conflict-of-interest policy that places "Independent Legal Counsel" in a disclosure category that requires designated employees to disclose "All investments; business positions, interests in real property, sources of income including receipt of loans, gifts and travel payments." In Nielsen Merksamer's proposal, the firm asks for an exemption from this conflict-of-interest policy. None of the other proposers – nor your current legal counsel – have asked for such an unusual exemption.

Additionally, the ordinance that forms your Commission states:

> *No commissioner or immediate family member may, within the last eight years preceding appointment to the commission, have been a board member, officer, paid or volunteer staff or, or had a significant influence on the actions or decisions of a political committee required to register with the California Secretary of State, which expended funds in excess of five hundred dollars in support or opposition to a candidate for any elective office of the County of Santa Barbara, including member communications.*

Hillary Gibson, a partner of the firm and one of the proposed assigned legal personnel, previously served as the Political Action Committee Treasurer for Shea Homes, real estate developers and property holders in Santa Barbara County. A review of campaign finance reports shows Shea Homes and Affiliated Entities has donated over $500 to the election committees of two sitting members of the Board of Supervisors within the past two years.

A contract for legal services for the Commission with Nielsen was brought to the County Board of Supervisors on October 20th; however, it was withdrawn after members of the public voiced similar concerns. I would be concerned that any contract or conflict of interest waiver recommended by your commission would not be approved by the Board of Supervisors.

Your Commission has three other qualified proposals to review and make a selection from. I would suggest that Nielsen's proposal be rejected because of these conflict of interest concerns.

Sincerely,

Spencer Brandt

From: Marguerite Leoni
To: CEO Redistricting RES
Subject: Correcting Public Comment Misunderstanding
Date: Wednesday, January 27, 2021 4:13:33 PM

Dear Chair Morris and Commissioners:

I am writing to correct two misunderstanding in public comment concerning potential conflicts of interest of our firm in its ability to represent the Santa Barbara County Citizens Redistricting Commission.

The comment expressed concern that the firm had requested an exemption from the Commission's adopted conflict-of-interest policy. It appears the conflict of interest code was adopted *after* our response to the RFQ was submitted. The firm personnel will obviously comply with the new code, which can be handled at the contracting phase.

The comment further inaccurately stated Ms. Gibson, one of the proposed assigned legal personnel to represent the Commission, served as the Political Action Committee Treasurer for Shea Homes. This is inaccurate. Shea Homes is a client of the firm for political reporting compliance. Ms. Gibson signed Shea Homes's Major Donor report as the company's attorney, as provided by law. (Gov. Code § 81004(b).) There is no political action committee involved; major donors do not register with the California Secretary of State; Ms. Gibson is not an officer or employee of Shea Homes; and she has no influence over any action or decisions by Shea Homes to make political contributions to any candidate.

Sincerely,
Marguerite Leoni

Marguerite Mary Leoni

NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP

2350 Kerner Boulevard, Suite 250
San Rafael, California 94901
t: 415.389.6800 • f: 415.388.6874
e: mleoni@nmgovlaw.com

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