IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

RODNEY D. PIERCE and MOSES MATTHEWS, Plaintiffs, *v.* THE NORTH CAROLINA STATE BOARD OF ELECTIONS, ALAN HIRSCH, in his official capacity as Chair of the North Carolina State Board of Elections, JEFF CARMON III in his official capacity as Secretary of the North Carolina State Board of Elections, STACY "FOUR" EGGERS IV in his official capacity as a member of the North Carolina State Board of Elections, KEVIN N. LEWIS in his official capacity as a member of the North Carolina State Board of Elections, SIOBHAN O'DUFFY MILLEN in her official capacity as a member of the North Carolina State Board of Elections, PHILIP E. BERGER in his official capacity as president pro tem of the North Carolina Senate, and TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives, Defendants.	Case No. 4:23-cv-193-D

REPLY IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUCTION

TABLE OF CONTENTS

Page

INTRODUCTION

On its face, the 2023 enacted Senate map egregiously cracks Black voters in northeastern North Carolina's Black Belt counties between Districts 1 and 2, ensuring that Black voters there will never be able to elect their preferred candidates. Legislative Defendants' grab-bag of meritless responses only illustrates how plainly the map violates Section 2 of the VRA. They do not dispute that it is easy to draw a compact demonstrative district in which Black voters constitute a majority (*Gingles* One). They instead argue that demonstrative districts cannot alter county clusters—which is nonsensical under federal law and in light of the North Carolina Supreme Court's express holding that VRA districts must be drawn *before* county clusters. They concede that *Gingles* Two is satisfied. And their suggestion that *Gingles* Three's white-bloc-voting requirement is not satisfied here—apparently on the theory that enacted Senate Districts 1 and 2 can elect Black-preferred candidates—flies in the face of unrebutted expert evidence and common sense.

Nor does *Purcell* bar relief in time for the 2024 elections. The State Board's submission confirms that it is still possible to implement a remedial map without moving the March primaries, or alternatively, that it would be feasible to hold the primaries for two remedial districts in May, when there will be runoff primaries anyway. *Purcell* poses no obstacle here to a remedy that only alters a single boundary between two districts, leaving wholly untouched the other 48 districts.

Because the VRA violation here is so extreme and obvious, and the remedy so simple, there is no justifiable basis for denying a preliminary injunction. Black voters in the Black Belt counties should not be forced to vote in another election that denies them the opportunity to elected their preferred Senate candidates. In light of the Board's submission, Plaintiffs request that this Court issue its decision by December 28 to facilitate relief without any need to move the March primary.

ARGUMENT

I. Plaintiffs Are Likely To Prevail on the Merits

Plaintiffs satisfy all three *Gingles* preconditions, the totality of the circumstances supports their claim, and private plaintiffs can sue to enforce Section 2.

A. The First *Gingles* Precondition Is Satisfied

The first *Gingles* precondition is satisfied because it is indisputably feasible to draw a reasonably configured majority-Black district containing the Black Belt counties at issue. Plaintiffs' Demonstration District A has a BVAP of 51.47%, a Black CVAP of 53.12%, and is made up of whole counties. Mot. 9-10. Plaintiffs' Demonstration District B has a Black CVAP of 50.19%, splits only one county, and changes only the boundary between enacted Districts 1 and 2, leaving untouched the other 48 enacted districts. *Id.* at 10-11. Both demonstration districts are more compact than enacted Districts 1 and 2 and otherwise adhere to traditional redistricting criteria. *Id.* at 9-11. Legislative Defendants do not dispute any of this, and their arguments that Plaintiffs nonetheless failed to satisfy the first *Gingles* precondition are meritless.

Demonstration District A. Legislative Defendants argue that Demonstration District A "is not 'reasonably configured'" because it "contravenes" the North Carolina Constitution's Whole County Provisions. Opp. 14 (quoting *Allen v. Milligan*, 599 U.S. 1, 20 (2023)). That is wrong.

For starters, Demonstration District A is made up entirely of whole counties—it does not split a single county. This district is therefore fully consistent with a requirement to "respect county lines" in drawing VRA districts. *Allen*, 599 U.S. at 44 n.2 (Kavanaugh, J., concurring).

It makes no difference that "[a]dopting" Demonstration District A would "break" county groupings otherwise required by North Carolina's Whole County Provisions. Opp. 3, 15. As Legislative Defendants acknowledge, the VRA trumps those state-law provisions. *Id.* at 3-4, 15. Moreover, the North Carolina Supreme Court construed the Whole County Provisions "to forbid

county lines from being transgressed 'for reasons *unrelated* to compliance with federal law.'" *Id.* at 4 (quoting *Stephenson v. Bartlett*, 355 N.C. 354, 371 (2002)) (emphasis added). "The court therefore directed that 'legislative districts required by the VRA' be 'formed prior to creation of non-VRA districts.'" *Id.* (quoting *Stephenson*, 355 N.C. at 383). Legislative Defendants' theory seems to be that VRA districts, which must be drawn before county groupings, cannot break county groupings. That is not only circular but flatly contrary to both *Stephenson* and federal law.

Regardless, Plaintiffs are not urging adoption of Demonstration District A for use in any election—it is presented *solely* for illustrative purposes to satisfy *Gingles* One.

Allen v. Milligan disposes of Legislative Defendants' argument that Demonstration District A is an unconstitutional "racial gerrymander" because it was drawn to "achieve a majority Black District." Opp. 16. As *Allen* explained, "Section 2 itself 'demands consideration of race," in part because "[t]he question whether additional majority-minority districts can be drawn … involves a quintessentially race-conscious calculus." 599 U.S. at 30-31 (cleaned up). *Allen* rejected the argument that this constitutes unconstitutional racial gerrymandering. *Id.* at 41-42.[1]

Demonstration District B-1. Legislative Defendants argue that Plaintiffs' Demonstration District B-1 "does not satisfy the numerosity requirement" because its BVAP is slightly under 50%. Opp. 13. That is both incorrect and irrelevant.

Demonstration District B-1 is a majority-Black district because its Black CVAP is over 50%, and Black CVAP is a proper statistic in this context. To satisfy *Gingles* One, "a plaintiff

[1] Legislative Defendants cite no case supporting their argument that Plaintiffs were obligated to draw a statewide plan including Demonstration District A. Opp. 16-17. Nor would adoption of Demonstration District A risk destroying enacted Senate District 5. *Id.* at 17-18. Plaintiffs agree that District 5 should not be altered, and unrebutted expert evidence establishes that "Plaintiffs' demonstration maps both create State Senate districts in which Black voters can elect their candidates of choice, *while not disturbing the existing Black influence district in Pitt and Edgecombe counties (District 5 in the 2023 enacted map)*." Barreto Rep. ¶ 35 (emphasis added).

must show that it is possible to draw an election district of an appropriate size and shape where the *Citizen* Voting Age Population ('CVAP') of the minority group exceeds 50% of the relevant population in the illustrative district." *Holloway v. City of Virginia Beach*, 531 F. Supp. 3d 1015 (E.D. Va. 2021), *vacated and remanded on other grounds*, 42 F.4th 266 (4th Cir. 2022) (emphasis added); *see also Holloway*, 42 F.4th at 285 (Gregory, J., dissenting) (explaining that "the dictates of *Gingles*" require that "the minority citizen voting age population compose[] a majority in" the relevant districts) (cleaned up)). In other words, a "§ 2 vote dilution claim cannot succeed when a protected group fails to comprise a majority of the *citizen* voting-age population." *Hall v. Virginia*, 276 F. Supp. 2d 528, 536 (E.D. Va. 2003), *aff'd*, 385 F.3d 421 (4th Cir. 2004) (emphasis added).

Legislative Defendants suggest that Black CVAP can only be used "in cases involving Hispanic populations." Opp. 14. That is incorrect. In *Pender County v. Bartlett*, a case involving a Black opportunity district under VRA Section 2, the North Carolina Supreme Court recognized that Black CVAP was a proper statistic for purposes of *Gingles* One. "Because only voting age *citizens* of the United States possess the ability to elect candidates, … the 'proper statistic' for deciding whether a minority group can meet the first *Gingles* precondition is 'voting age population as refined by citizenship.'" 649 S.E.2d 364, 371 (N.C. 2007), *aff'd*, *Bartlett v. Strickland*, 556 U.S. 1 (2009) (quoting *Negron v. City of Miami Beach*, 113 F.3d 1563, 1569 (11th Cir. 1997)). The Fifth Circuit agrees: "[t]he focus is usually on those eligible to vote, thus the typical requirement in our circuit that the percentage focus on those of voting age who are citizens." *Thomas v. Bryant*, 919 F.3d 298, 302 n.1 (5th Cir. 2019) (case involving Black opportunity district).

Anyway, it does not matter whether Demonstration District B-1 is majority Black. Demonstration District A indisputably has a BVAP over 50%, and Plaintiffs need only provide "one illustrative map … to satisfy the first step of *Gingles*." *Allen*, 599 U.S. at 33. Plaintiffs have re-

quested adoption of Demonstration District B-1 (and B-2) as the remedy here, but a remedial district need not be majority Black; it must only "guarantee Black voters an equal opportunity to achieve electoral success." *Singleton v. Allen*, --- F. Supp. 3d ---, 2023 WL 5691156, at *50 (N.D. Ala. Sept. 5, 2023). That is, Black voters must "either comprise a voting-age majority or otherwise have an opportunity to elect a representative of their choice." *Id.* Here, Legislative Defendants do not dispute that Demonstration District B-1 gives Black voters an opportunity to elect their preferred candidate. Barreto Rep. ¶¶ 35-36. "In stark contrast, both District 1 and District 2 in the 2023 enacted plan result in Black candidates of choice losing every single election." *Id.*

B. The Second *Gingles* Precondition Is Satisfied

Legislative Defendants do not dispute that the second Gingles precondition is satisfied, and it plainly is. *See* Mot. 11-12.

C. The Third *Gingles* Precondition Is Satisfied

The third *Gingles* precondition is satisfied because white voters regularly vote as a bloc to defeat Black-preferred candidates in the relevant region of northeastern North Carolina. As Dr. Barreto explained, white voters in this area vote against Black voters' candidates of choice at rates as high as 85 percent, voting in the exact opposite pattern as Black voters. Barreto Rep. ¶¶ 24-26. Legislative Defendants do not dispute these findings by Dr. Barreto, arguing only that this extreme racial polarization "lacks legal significance." Opp. 18. That is incorrect.

As Legislative Defendants explain, "[t]he key inquiry … is whether racial bloc voting is operating at such a level that it would actually minimize or cancel minority voters' ability to elect representatives of their choice, if no remedial district were drawn." *Covington v. North Carolina*, 316 F.R.D. 117, 168 (M.D.N.C. 2016), *aff'd*, 581 U.S. 1015 (2017) (quoted in Opp. 18-19) (cleaned up). In other words, courts evaluate whether there is "racial bloc voting that, absent some remedy, would enable the majority usually to defeat the minority group's candidate of choice" in

the challenged districts. *Id.* at 167. If there is, then the racial polarization is "legally significant." *Id.* at 170. Dr. Barreto analyzed this question and found that "[u]nder the newly enacted 2023 map, Black candidates of choice *cannot win office in either Senate District 1 or 2*, where the large Black population has been cracked between the two districts, rendering it too small to be influential." Barreto Rep. ¶ 33 (emphasis added). Specifically, "both District 1 and District 2 in the 2023 enacted plan result in Black candidates of choice losing every single election" that Dr. Barreto analyzed from 2020 and 2022. *Id.* ¶¶ 35-36. Given these findings, Legislative Defendants err in asserting that Dr. Barreto did not conduct the requisite analysis. Opp. 20.

The analysis of Legislative Defendants' expert, Dr. Alford, is irrelevant. Dr. Alford finds "that Black voters cohesively support Democratic candidates, and that the majority of White voters support Republican candidates." Alford Rep. (Opp., Ex. 7) at 13. But this is obviously consistent with Dr. Barreto's findings (and extremely common in successful VRA Section 2 cases). Dr. Alford also conducted some analysis concerning the race of the *candidates* in the elections that Dr. Barreto studied. *See id.* at 13-14. But Section 2 protects minority *voters*, not minority *candidates*. *Lewis v. Alamance County*, 99 F.3d 600, 606-07 (4th Cir. 1996); *see Ruiz v. City of Santa Maria*, 160 F.3d 543, 551 (9th Cir. 1998). Legislative Defendants do not argue otherwise. Finally, *Gingles* Three does not ask whether the challenged districts "need a 50% BVAP for a Black candidate of choice to prevail," as Legislative Defendants suggest. Opp. 20.

Legislative Defendants attach a report that Dr. Jeffrey Lewis offered in a 2021 redistricting case relating to the 2021 Senate plan, but that report is not cognizable evidence in *this case*. In any event, that report—which does not of course analyze the 2022 elections—only confirms that white bloc voting prevents Black-preferred candidates from winning under the 2023 enacted map. Districts 1 and 2 in the enacted plan have lower BVAPs than Lewis's tables said would be necessary to enable the 2021 versions of those districts to perform. Lewis Rep. Table 1 at p.10.

Legislative Defendants also err in relying on a report from Dr. Lisa Handley, a plaintiffs' expert in the 2019 *Common Cause v. Lewis* case; they now concede her report "did not explicitly address elections in the counties at issue here." *Id.* Nor did it do so implicitly: she specifically cautioned that her "analysis cannot be extrapolated to other counties and districts not analyzed in this report." 2019 Handley Report at 3-4 (Pls.' Reply in Supp. of Mot. to Expedite, Ex. A).

D. The Totality of the Circumstances Supports Plaintiffs' Claim

Legislative Defendants do not dispute that "[i]t will be only 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 circumstances." *Harris v. McCrory*, 159 F. Supp. 3d 600, 623 (M.D.N.C. 2016) (quoting *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993)), *aff'd sub nom. Cooper v. Harris*, 581 U.S. 285 (2017). This is not a very unusual case; it is the common case where the totality of the circumstances shows the violation. And Black-preferred candidates have routinely been defeated in this area of the state, including Valerie Jordan and Toby Fitch in 2022.

Legislative Defendants do not meaningfully contest *any* of Dr. Burch's analysis and findings on the Senate factors. Opp. 24-25. Their sole criticism is that certain ads attacking Justice Beasley did not mention race, Opp. 25, which Dr. Burch expressly acknowledged in explaining why they nonetheless were racial appeals, Burch Rep. 19. Legislative Defendants also fail to answer Plaintiffs' evidence of historical voting discrimination and socioeconomic disparities, wrongly claiming that only certain Senate factors are "germane." Opp. 23. Self-evidently, the "totality of the circumstances" inquiry looks at *any* factor that contributes to "unequal access to the electoral process." *Gingles*, 478 U.S. at 46. Legislative Defendants also rely on supposed limitations that are unsupported by Fourth Circuit precedent and incorrect on their own terms. Opp. 24-25. For example, *Wright v. Sumter County Board of Elections & Registration*, 979 F.3d

1282 (11th Cir. 2020), affirmed post-trial findings of a Section 2 violation and said nothing about the scope of Senate Factor 3. *Cf.* Opp. 24 (claiming *Wright* limited Factor 3). Finally, Legislative Defendants repeat their claims that the Whole County Provisions trump the VRA and that voting in the Black Belt counties is not racially polarized enough, both of which are wrong. Opp. 23; *see supra*. The totality of the circumstances plainly shows the Section 2 violation here.

E. Plaintiffs Have a Right of Action Under Both Section 2 and Section 1983

Plaintiffs' Amended Complaint states viable claims under both VRA Section 2 itself and 42 U.S.C. § 1983. Legislative Defendants' undeveloped argument to the contrary fails. Opp. 12.

First, Section 2 contains an implied private right of action. The Supreme Court has held that this is so. *See Morse v. Republican Party of Va.*, 517 U.S. 186, 289 (1996) (opinion of Stevens, J., joined by Ginsburg, J.) (holding that § 10 of the VRA contains an implied private right of action because "[i]t would be anomalous, to say the least, to hold that both § 2 and § 5 are enforceable by private action but § 10 is not"); *id.* at 240 (Breyer, J., concurring in the judgment, joined by O'Connor & Souter, JJ.) (similar). The Supreme Court, the Fourth Circuit, and other courts around the country have heard hundreds of private Section 2 lawsuits. *Coca v. City of Dodge City*, 2023 WL 2987708, at *3 (D. Kan. Apr. 18, 2023) (collecting cases). Until the Eighth Circuit's recent decision, every court of appeals to consider the question had held that private plaintiffs can enforce Section 2. *See Robinson v. Ardoin*, 86 F.4th 574, 587-91 (5th Cir. 2023); *Ala. State Conf. of NAACP v. Alabama*, 949 F.3d 647, 651-54 (11th Cir. 2020), *rev'd and vacated as moot by* 141 S. Ct. 2618 (2021); *Mixon v. Ohio*, 193 F.3d 389, 406 (6th Cir. 1999). Those decisions are correct.

Second, Section 2 is privately enforceable under Section 1983, which creates an express private right of action for "the deprivation of any rights, privileges, or immunities secured by the Constitution *and laws*[.]" 42 U.S.C. § 1983; *see* Am. Compl. Count 2 (asserting § 1983 claim based on VRA violation). Under settled Supreme Court precedent, private plaintiffs can sue under

Section 1983 for violations of their rights under federal statutes. *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166 (2023) (citing *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980)). And Section 2 of the VRA explicitly protects the "right" of "any citizen" to vote free from racial discrimination, "unambiguously creat[ing] §1983-enforceable rights." *Id.* at 172. The Attorney General's VRA enforcement authority is not "incompatible" with private enforcement, *id.* at 188, as the last six decades of private enforcement have shown. *Id.* at 181-82, 188-89 (government's ability to enforce rights-creating statute not incompatible with private enforcement under § 1983).

II. *Purcell* Does Not Counsel Against a Preliminary Injunction Here

Legislative Defendants do not dispute that the equities and public interest are served by safeguarding federally protected voting rights. Mot. 21. And *Purcell* does not bar relief here.

The State Board's submission shows that a remedial map can be implemented without moving the March primaries, if the new map is in place by January 4, such that candidate filing in the two new districts can begin on January 5. SBE Resp. 3 (referring to first week of January). Thus, if the Court issues its decision by December 28, the General Assembly can have until January 3 to enact a remedial map, and this Court could either approve that map or adopt Plaintiffs' proposed remedy on January 4. Alternatively, primaries in the two remedial districts can be moved to May 14, the date of the runoff primary, as the State Board "recommend[s]." SBE Resp. 4.

Legislative Defendants note that candidate filing has already happened, Opp. 26, but the State Board's submission makes clear that candidate filing can be redone quickly in a pair of remedial districts without moving the primaries. This Court previously acknowledged, correctly, that it could still grant a preliminary injunction after candidate filing. Order at 2-3 (Nov. 27, 2023).

Legislative Defendants are wrong that Plaintiffs' proposed remedy—changing a single boundary between two districts with altering any other district—would cause a "total meltdown." Opp. 28. The State Board confirms that Plaintiffs' proposed remedy is "administratively feasible."

SBE Resp. 5. And voters have never voted in the challenged districts, so changing those districts now to remedy the illegal dilution of Black voting power would not "confuse voters." Opp. 28.

Legislative Defendants point to experiences in other States, but they ignore North Carolina's consistent practice of adopting remedial maps in the context of litigation, without undermining the orderly administration of the elections in this State. As explained in the affidavit of Senator Dan Blue, as a consequence of litigation, "[a]t least once over each of the [last] five decades … , the General Assembly has redrawn one or more redistricting maps during the period between February and May of the election years for legislative and congressional elections and held primaries for those officials between May and September of those years." Blue Aff. ¶ 2 (attached as Ex. 1). All of these cases involved far more districts than the two districts at issue here. Nor can Legislative Defendants contend that it is infeasible to hold primaries for only two Senate districts in May, when that is when the primaries have happened in 12 of the last 17 cycles. *Id.* ¶ 3.

Furthermore, as Justices Kavanaugh and Alito explained in *Merrill v. Milligan*, 142 S. Ct. 879 (2022), even where *Purcell* applies, it "might be overcome even with respect to an injunction issued close to an election if a plaintiff establishes at least the following: (i) the underlying merits are entirely clearcut in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship." *Id.* at 881 (Kavanaugh, J., concurring). Here, the merits are clearcut under *Allen*. Plaintiffs conducted the requisite expert analysis, brought this lawsuit, and sought a preliminary injunction within weeks of the map's passage. And changing two districts is not hard.

CONCLUSION

The Court should issue its decision by December 28, grant a preliminary injunction, and adopt a remedial map in time for the 2024 elections.

Dated: December 26, 2023

Respectfully submitted,

ARNOLD & PORTER KAYE SCHOLER LLP

By: /s/ R. Stanton Jones
R. Stanton Jones*
Stanton.Jones@arnoldporter.com
Elisabeth S. Theodore**
Elisabeth.Theodore@arnoldporter.com
Samuel I. Ferenc*
Sam.Ferenc@arnoldporter.com
601 Massachusetts Ave. NW
Washington, DC 20001-3743
202.942.5000

POYNER SPRUILL LLP

By: /s/ Edwin M. Speas, Jr.
Edwin M. Speas, Jr.
N.C. State Bar No. 4112
espeas@poynerspruill.com
P.O. Box 1801
Raleigh, NC 27602-1801
919.783.6400

Attorneys for Plaintiffs
**Special Appearance*
***Notice of Special Appearance forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel and parties registered in said system.

Dated: December 26, 2023

/s/ R. Stanton Jones
R. Stanton Jones

Exhibit 1

Affidavit of Senator Dan Blue

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

RODNEY D. PIERCE and MOSES MATTHEWS, Plaintiffs, v. THE NORTH CAROLINA STATE BOARD OF ELECTIONS, ALAN HIRSCH, in his official capacity as Chair of the North Carolina State Board of Elections, JEFF CARMON III in his official capacity as Secretary of the North Carolina State Board of Elections, STACY "FOUR" EGGERS IV in his official capacity as a member of the North Carolina State Board of Elections, KEVIN N. LEWIS in his official capacity as a member of the North Carolina State Board of Elections, SIOBHAN O'DUFFY MILLEN in her official capacity as a member of the North Carolina State Board of Elections, PHILIP E. BERGER in his official capacity as President Pro Tem of the North Carolina Senate, and TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives, Defendants.	Case No. 4:23-cv-193-D

AFFIDAVIT OF DAN BLUE

Dan Blue, being first duly sworn, deposes and says:

1. I have served as a member of the North Carolina General Assembly for more than 38 years. From 1980 to 2002 and from 2006 to 2009, I served as a member of the House of Representatives; since 2009 I have served as a member of the Senate. From 1991 to 1994 I served two terms as Speaker of the House, and at present I am Minority Leader of the Senate. This year I celebrated my 50th year practicing law.

2. During my legislative tenure, the General Assembly has enacted 13 House redistricting maps[1], 12 Senate redistricting maps[2] and 10 congressional maps[3]. I have participated in the enactment of each of those 35 maps as an appointed member of one or more redistricting committees and in other leadership roles. Many of these maps were drawn or redrawn in the context of litigation and in response to orders of the state or federal courts. At least once over each of the five decades I served in the General Assembly, the General Assembly has redrawn one or more redistricting maps during the period between February and May of the election years for legislative and congressional elections and held primaries for those offices between May and September of those years.

a. On March 8,1984, the General Assembly adopted four acts redrawing the legislative districts invalidated by the Gingles district court. 1983 SL 1es, 2es, 3es and 4es. On that same day, the General Assembly bifurcated the 1984 election schedules for the Senate and House districts covered by these four acts from the election schedules for all other Senate and House districts. The elements of this bifurcation included: voiding the filing period already completed in the revised districts; establishing new filing periods for election in those districts for April and May; and rescheduling primaries in those districts for June and July. 1983 SL 2es2.

b. On May 21, 1998, in the context of the Shaw litigation the General Assembly redrew the State's congressional map for the 2008

[1] 1981 SL 5es2; 1984 SL 6; 1991 SL 5es; 2001 SL 458; 2002 SL 1; 2003 SL 434 2009 SL 78; 2011 SL 402; 2017 SL 207; 2019 SL 219; 2021 SL 173; 2022 SL 2; 2023 SL 146.
[2] 1981 SL --; 1984 SL 4 and 5; 1991 SL 5es; 2001 SL 458; 2002 SL 1; 2003 SL 434; 2011 SL 404; 2017 SL 208; 2019 SL 220; 2021 SL 175; 2022 SL 4; 2023 SL 149.
[3] 1981 SL 7es2; 1992 SL 7; 1997 SL 11; 1998 SL 2; 2001 SL 479; 2016 SL 1; 2019 SL 249; 2021 SL 174; 2022 SL 3; 2023 SL 145.

elections. 1998 SL 2. The1998 primary elections for the 1998 congressional elections were held on September 15.

c. On May 20, 2002, in the context of the Stephenson litigation, the General Assembly redrew the House and Senate maps for the 2002 elections. 2002 SL 1. The primary elections for the General Assembly in 2002 were held on September 10.

d. On February 19, 2016, in the context of the Harris v. Cooper litigation, the General Assembly redrew the State's congressional map for the 2016 elections. 2016 SL 1. The 2016 primary elections for Congress were held on June 9, 2016.

e. On February 17, 2022, in the context of the Harris v. Hall litigation, the General Assembly redrew the State Senate map, 2022 SL 2, and the State House map, 2022 SL 4, and the primary elections were held on May 17, 2022.

3. The 2024 primary elections for the State Senate and House are scheduled for March, but March is an atypical time for primaries in recent years. Since 1990, there have been 17 primary elections for the State Senate and House. Twelve of those primaries (2022, 2018, 2014, 2012, 2010, 2008, 2006, 2000, 1996, 1994, 1992 and 1990) were held in May. Only two were held in March (2020 and 2016); one was held in July (2004); and two in September (1998 and 2002).

4. The General Assembly has expressly anticipated the need to revise the 2023 Senate districts and alter the 2024 election schedule. On the same day the General Assembly enacted the 2023 Senate map, it also enacted an adjournment resolution. That resolution provides that the General Assembly will reconvene on December 20, 2023, January 17, 2024, February 14, 2024, March 13, 2024, April 4, 2024, and April 10, 2024 and

that on each of those days it may consider "bills responding to actions related to litigation challenging the legality of legislative enactments" and "bills relating to elections laws including bills concerning the districts for Congressional, State House and State Senate." Resolution 2023-11.

5. North Carolina's courts have also redrawn districts on occasion over my years of service in the General Assembly. Most notably, on April 30, 2002, the North Carolina Supreme Court in Stephenson invalidated the House and Senate redistricting plans enacted by the General Assembly in November 1991 following the 2000 census. 1991 SL 451 and 458. Two weeks later on May 17, 2002, the General Assembly enacted new maps (2002 SL 1), but those maps were invalidated by the trial court, and the 2002 House and Senate elections were held under maps drawn by the trial judge. The trial judge's legislative maps were precleared on July 12, 2002 by the United States Department of Justice for use for the 2002 elections; the primaries were held on September 15; and the general elections were held in November. See Stephenson v. Bartlett, 357 N.C. 301 (2003).

6. During the 2023 session of the General Assembly, I served as Minority Leader in the Senate. On April 28, 2023, the North Carolina Supreme Court reversed and voided earlier Supreme Court decisions which had invalidated the House and Senate maps enacted in 2021. Harper v. Hall. ---NC---. Following that decision, the General Assembly could have simply readopted the 2021 House and Senate maps for this decade, but it instead choose to draw new House and Senate maps. These newly redrawn maps were first made public on October 18, 2023. I and other Democratic legislators saw the new maps for the first time on October 18 at the same time they were released to the public. One week later on October 25 those redrawn maps were adopted for the decade on a straight party-line vote. 2023 SL 146 and 149. During the almost six-month interim between April 28 and October 25 the General Assembly enacted more than 120 new laws. In May and June, the

Senate Redistricting and Elections Committee met five times and considered bills but not any redistricting bill.

7. There is no legitimate basis for the General Assembly's almost 6-month delay in adopting new maps. Time and time again the General Assembly, even in the days before high-speed computers and fancy algorithms, has demonstrated the ability to redraw maps in short order. Indeed, there was a wide-spread belief among members of the General Assembly in the Spring of 2023 that the Senate and House maps were revised soon after the April 28, 2023 North Carolina Supreme Court decision in Harper v. Hall allowing revision. The more-than-five month-delay-month delay in presenting revised maps for adoption was a political ploy designed by the Republican super-majority in the General Assembly to corral the ability of the courts to order new maps prior to the 2024 elections. In conversations in May with Senator Berger and members of his team, I was informed that they were awaiting the decision of the U. S. Supreme Court in Allen v. Milligan before adopting new maps. Allen v. Milligan came down on June 8. Maps did not come for another 18 ½ weeks.

This the 20th of December, 2023.

Dan Blue

Sworn to and Subscribed Before
me this 20th day of December, 2023

Notary Public

My Commission Expires:
12-4-2025

SANDRA J. CHRISAWN NOTARY PUBLIC WAKE COUNTY, NC