

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

SUPERIOR COURT DIVISION

Docket No. \_\_\_\_\_

COMMON CAUSE; NORTH CAROLINA  
 DEMOCRATIC PARTY; PAULA ANN CHAPMAN;  
 HOWARD DUBOSE; GEORGE DAVID GAUCK; JAMES  
 MACKIN NESBIT; DWIGHT JORDAN; JOSEPH  
 THOMAS GATES; MARK S. PETERS; PAMELA  
 MORTON; VIRGINIA WALTERS BRIEN; JOHN MARK  
 TURNER; LEON CHARLES SCHALLER; REBECCA  
 HARPER; LESLEY BROOK WISCHMANN; DAVID  
 DWIGHT BROWN; AMY CLARE OSEROFF; KRISTIN  
 PARKER JACKSON; JOHN BALLA; REBECCA  
 JOHNSON; AARON WOLFF; MARY ANN PEDEN-  
 COVIELLO; KAREN SUE HOLBROOK; KATHLEEN  
 BARNES,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, IN HIS  
 OFFICIAL CAPACITY AS SENIOR CHAIRMAN OF  
 THE HOUSE SELECT COMMITTEE ON  
 REDISTRICTING; SENATOR RALPH E. HISE, JR., IN  
 HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE  
 SENATE COMMITTEE ON REDISTRICTING;  
 SPEAKER OF THE NORTH CAROLINA HOUSE OF  
 REPRESENTATIVES TIMOTHY K. MOORE;  
 PRESIDENT PRO TEMPORE OF THE NORTH  
 CAROLINA SENATE PHILIP E. BERGER; THE STATE  
 OF NORTH CAROLINA; THE NORTH CAROLINA  
 STATE BOARD OF ELECTIONS AND ETHICS  
 ENFORCEMENT; ANDY PENRY, CHAIRMAN OF THE  
 NORTH CAROLINA STATE BOARD OF ELECTIONS  
 AND ETHICS ENFORCEMENT; JOSHUA MALCOLM,  
 VICE-CHAIR OF THE NORTH CAROLINA STATE  
 BOARD OF ELECTIONS & ETHICS ENFORCEMENT;  
 KEN RAYMOND, SECRETARY OF THE NORTH  
 CAROLINA STATE BOARD OF ELECTIONS & ETHICS  
 ENFORCEMENT; STELLA ANDERSON, MEMBER OF  
 THE NORTH CAROLINA STATE BOARD OF  
 ELECTIONS & ETHICS ENFORCEMENT; DAMON  
 CIRCOSTA, MEMBER OF THE NORTH CAROLINA  
 STATE BOARD OF ELECTIONS & ETHICS

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 WAKE COUNTY, N.C. S.C.  
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**COMPLAINT**

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

ENFORCEMENT; STACY "FOUR" EGGERS IV,  
MEMBER OF THE NORTH CAROLINA STATE BOARD  
OF ELECTIONS & ETHICS ENFORCEMENT; JAY  
HEMPHILL, MEMBER OF THE NORTH CAROLINA  
STATE BOARD OF ELECTIONS & ETHICS  
ENFORCEMENT; VALERIE JOHNSON, MEMBER OF  
THE NORTH CAROLINA STATE BOARD OF  
ELECTIONS & ETHICS ENFORCEMENT; JOHN  
LEWIS, MEMBER OF THE NORTH CAROLINA STATE  
BOARD OF ELECTIONS & ETHICS ENFORCEMENT,

Defendants.

Plaintiffs, complaining of Defendants, say and allege:

## **INTRODUCTION**

1. Partisan gerrymandering is an existential threat to our democracy, and nowhere more so than in North Carolina. Republicans in the North Carolina General Assembly have egregiously rigged the state legislative district lines to guarantee that their party will control both chambers of the General Assembly regardless of how the people of North Carolina vote. This attack on representative democracy and North Carolinians' voting rights is wrong. It violates the North Carolina Constitution. And it needs to stop.

2. In 2011, as part of a national movement by the Republican Party to entrench itself in power through redistricting, North Carolina Republicans' mapmaker manipulated district boundaries with surgical precision to maximize the political advantage of Republican voters and minimize the representational rights of Democratic voters. And it worked. In the 2012, 2014, and 2016 elections, Republicans won veto-proof super-majorities in both chambers of the General Assembly despite winning only narrow majorities of the overall statewide vote.

3. In 2017, after federal courts struck down some of the 2011 districts as illegal racial gerrymanders, Republicans redoubled their efforts to gerrymander the district lines on partisan grounds. They instructed the same Republican mapmaker to use partisan data and prior election results in drawing new districts. The results should outrage anyone who believes in democracy. In both the state House and state Senate elections in 2018, Democratic candidates won a majority of the statewide vote, but Republicans still won a substantial majority of seats in each chamber. The maps are impervious to the will of the voters.

4. It gets worse. Because North Carolina is one of the few states in the country where the Governor lacks power to veto redistricting legislation, the General Assembly alone

will control the next round of redistricting after the 2020 census. Accordingly, as things currently stand, the Republican majorities in the General Assembly elected under the current maps will have free reign to redraw both state legislative and congressional district lines for the next decade. This perpetuates a vicious cycle in which representatives elected under one gerrymander enact new gerrymanders both to maintain their control of the state legislature and to rig congressional elections for ten more years. Only the intervention of the judiciary can break this cycle and protect the constitutional rights of millions of North Carolinians.

5. The North Carolina Constitution prohibits partisan gerrymandering. This State's equal protection guarantees provide more robust protections for voting rights than the federal constitution. Specifically, "[i]t is well settled in this State that the right to vote *on equal terms* is a fundamental right." *Stephenson v. Bartlett*, 562 S.E.2d 377, 394 (N.C. 2002). There is nothing "equal" about the "terms" on which North Carolinians vote for candidates for the General Assembly. North Carolina's Constitution also commands that "all elections shall be free"—a provision that has no counterpart in the federal constitution. Elections to the North Carolina General Assembly are not "free" when the outcomes are predetermined by partisan actors sitting behind a computer. And the North Carolina Constitution's free speech and association guarantees prohibit the General Assembly from burdening the speech and associational rights of voters and organizations because the General Assembly disfavors their political views.

6. No matter how the U.S. Supreme Court resolves longstanding questions about partisan gerrymandering under the federal constitution, North Carolina's Constitution independently secures the rights of North Carolina citizens. This State's courts should not hesitate to enforce North Carolina's unique protections here. This Court should invalidate the 2017 Plans and order that new, fair maps be used for the 2020 elections.

## **PARTIES**

### **A. Plaintiffs**

7. Common Cause brings this action on its own behalf and on behalf of its members who are registered voters in North Carolina whose votes have been diluted or nullified under the districting plans enacted by the General Assembly in 2017 for the North Carolina House of Representatives and North Carolina Senate (the “2017 Plans”). Common Cause is a non-profit corporation organized and existing under the laws of the District of Columbia. It is a nonpartisan democracy organization with over 1.2 million members and local organizations in 35 states, including North Carolina. Common Cause has members in every North Carolina House and Senate district. Since its founding by John Gardner in 1970, Common Cause has been dedicated to fair elections and making government at all levels more representative, open, and responsive to the interests of ordinary people. “For the past twenty-five years, Common Cause has been one of the leading proponents of redistricting reform.” Jonathan Winburn, *The Realities of Redistricting* p. 205 (2008). The 2017 Plans frustrate Common Cause’s mission to promote participation in democracy and to ensure open, honest, and accountable government. The 2017 Plans burden Common Cause’s ability to convince voters in gerrymandered districts to vote in state legislative elections and communicate with legislators. The 2017 Plans also burden Common Cause’s ability to communicate effectively with legislators and to influence them to enact laws that promote voting, participatory democracy, public funding of elections, and other measures that encourage accountable government.

8. The North Carolina Democratic Party (“NCDP”) brings this action on its own behalf and on behalf of its members who are registered voters in North Carolina whose votes have been diluted or nullified as a result of the gerrymandering of the 2017 Plans. The NCDP is a political party as defined in N.C. Gen. Stat. § 163-96. Its purposes are (i) to bring people

together to develop public policies and positions favorable to NCDP members and the public generally, (ii) to identify candidates who will support and defend those policies and positions, and (iii) to persuade voters to cast their ballots for those candidates. The NCDP has members in every North Carolina House and Senate district. The partisan gerrymanders under the 2017 Plans discriminate against the NCDP's members because of their past votes, their political views, and their party affiliations. The gerrymanders also discriminate against the NCDP itself on the basis of its viewpoints and affiliations, and the plans frustrate and burden NCDP's ability to achieve its essential purposes and to carry out its core functions, including registering voters, attracting volunteers, raising money in gerrymandered districts, campaigning, turning out the vote, and ultimately electing candidates who will pursue policies favorable to NCDP members and the public generally in the North Carolina General Assembly. The NCDP must expend additional funds and other resources than it would otherwise to combat the effects of the partisan gerrymanders under the 2017 Plans, and even then, the 2017 Plans make it impossible for Democrats to win a majority in either chamber of the legislature.

9. Plaintiff Paula Ann Chapman is a retired small business owner residing in Charlotte, North Carolina, within House District 100 and Senate District 40. Ms. Chapman is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly. House District 100 and Senate District 40 are both packed Democratic districts. In 2018, the Democratic candidate won these districts with over 70% and 75% of the vote.

10. Plaintiff Howard DuBose is a retired school teacher and Army veteran residing in Hurdle Mills, North Carolina, within House District 2. Mr. DuBose is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly. Democratic

voters in House District 2 are cracked from Democratic voters in House District 32. In 2018, the Republican candidate won House District 2 with roughly 55% of the vote.

11. Plaintiff George David Gauck is a retired software engineer residing in Southport, North Carolina, within House District 17 and Senate District 8. Mr. Gauck is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly. House District 17 is adjacent to the packed Democratic House District 18. In 2018, the Republican candidate won House District 17 with over 63% of the vote. A heavily Democratic area in Wilmington is extracted from Senate District 9 and placed in Senate District 8 to make Senate District 9 as competitive as possible for Republicans. As a result, in 2018, Senate District 9 was a near tie, while Republicans won Senate District 8 by a comfortable margin.

12. Plaintiff James Mackin Nesbit is a retired kindergarten teacher residing in Wilmington, North Carolina, within House District 19 and Senate District 9. Mr. Nesbit is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly. House District 19 borders the packed Democratic House District 18. The Republican candidate has won every election in House District 19 since the 2011 redistricting, running unopposed in 2014 and 2016. A heavily Democratic area in Wilmington is extracted from Senate District 9 and placed in Senate District 8 to make Senate District 9 as competitive as possible for Republicans. As a result, in 2018, the election in Senate District 9 was a near tie.

13. Plaintiff Dwight Jordan is a customer support professional residing in Nashville, North Carolina, within House District 25 and Senate District 11. Mr. Jordan is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly. House District 25 is a packed Democratic district that was constructed to ensure that neighboring House District 7 would elect a Republican, which occurred in 2018. The county cluster

encompassing Senate District 11 cracks Democratic voters across its three districts (10, 11, and 12). In 2018, the Republican candidate won Senate District 11 with roughly 56% of the vote.

14. Plaintiff Joseph Thomas Gates is a former Colonel in the Air Force and a retired information technology project manager residing in Weaverville, North Carolina, within Senate District 49. Mr. Gates is registered as unaffiliated and has consistently voted for Democratic candidates for the General Assembly. Senate District 49 is a packed Democratic district. In 2018, the Democratic candidate won Senate District 49 with over 63% of the vote.

15. Plaintiff Mark S. Peters is a retired physician assistant residing in Fletcher, North Carolina, within Senate District 48. Mr. Peters is registered as unaffiliated and has consistently voted for Democratic candidates for the General Assembly. Senate District 48 was drawn to avoid the Democratic areas in and around Asheville to ensure that the district would lean Republican. In 2018, the Republican candidate won Senate District 48 by roughly 13 points.

16. Plaintiff Pamela Morton is a retired professional in the financial industry residing in Charlotte, North Carolina, within House District 100 and Senate District 37. Ms. Morton is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly. House District 100 and Senate District 37 are both packed Democratic districts. In 2018, the Democratic candidates won these districts with over 70% and 78% of the vote.

17. Plaintiff Virginia Walters Brien is a sales manager residing in Charlotte, North Carolina, within House District 102 and Senate District 37. Ms. Brien is a registered unaffiliated who has consistently voted for Democratic candidates for the General Assembly. House District 102 and Senate District 37 are both packed Democratic districts. In 2018, the Democratic candidates won these districts with over 83% and 78% of the vote.

18. Plaintiff John Mark Turner is a Navy veteran and a system administrator residing in Raleigh, North Carolina, within House District 38 and Senate District 15. Mr. Turner is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly. House District 38 and Senate District 15 are both packed Democratic districts. In 2018, the Democratic candidates won these districts with over 81% and 73% of the vote.

19. Plaintiff Leon Charles Schaller is a retired safety and fire protection engineer residing in Burlington, North Carolina, within House District 64. Mr. Schaller is registered as an unaffiliated voter but has consistently voted for Democratic candidates for the General Assembly. The county cluster that contains House Districts 63 and 64 was not changed in the 2017 Plans and retains the same district lines enacted in 2011. In constructing the cluster, the General Assembly cracked Democratic voters in Burlington across the two districts. Republican candidates have won every election in House District 64 since the 2011 redistricting—with over 58% of the vote in 2012 and 2018, and running unopposed in 2014 and 2016.

20. Plaintiff Rebecca Harper is a real estate agent residing in Cary, North Carolina, within House District 36 and Senate District 17. Ms. Harper is registered as a Democrat and has consistently voted for Democratic candidates for the General Assembly. The General Assembly packed several districts surrounding House District 36 with Democratic voters to make House District 36 as Republican as possible. In 2018, the Democratic candidate won House District 36 with barely over 50% of the two-party vote. The General Assembly similarly packed several districts surrounding Senate District 17 to make Senate District 17 as competitive for Republicans as possible. In 2018, the Democratic candidate narrowly won Senate District 17.

21. Plaintiff Lesley Brook Wischmann is a semi-retired writer and historian residing in Holly Ridge, North Carolina, within House District 15. Ms. Wischmann is registered as a

Democrat and has consistently voted for Democratic candidates for the General Assembly. The General Assembly cracked Democratic voters across House Districts 14 and 15. In 2018, the Republican candidate won House District 15 with roughly 66% of the vote.

22. Plaintiff David Dwight Brown is a semi-retired computer systems analyst residing in Greensboro, North Carolina, within House District 58. Mr. Brown is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly. House District 58 is a packed Democratic district. In 2018, the Democratic candidate won House District 58 with over 76% of the vote.

23. Plaintiff Amy Clare Oseroff is a teacher residing in Greenville, North Carolina, within House District 8. Ms. Oseroff is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly. The General Assembly packed Greenville's most heavily Democratic areas into House District 8 to create a strongly Democratic district, ensuring that nearby House Districts 9 and 12 would favor Republicans. In 2018, the Democratic candidate won House District 8 with over 64% of the vote.

24. Plaintiff Kristin Parker Jackson is a paralegal residing in Matthews, North Carolina, within House District 103 and Senate District 39. Ms. Jackson is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly. The General Assembly packed Democrats into the districts surrounding House District 103 to make House District 103 as Republican-leaning as possible. In 2018, House District 103 was a virtual tie. Senate District 39 is a Republican-leaning district that borders packed Democratic districts. In 2018, the Republican candidate won Senate District 39 with roughly 53% of the vote.

25. Plaintiff John Balla is a digital marketing strategist residing in Raleigh, North Carolina, within House District 34 and Senate District 16. Mr. Balla is a registered Democrat

who has consistently voted for Democratic candidates for the General Assembly in every election since he moved to North Carolina. House District 34 and Senate District 16 are both packed Democratic districts. In 2018, the Democratic candidates won both districts with over 65% of the vote.

26. Plaintiff Rebecca Johnson is a retired educator residing in Winston-Salem, North Carolina, within House District 74 and Senate District 31. Ms. Johnson is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly. House District 74 adjoins two packed Democratic districts, allowing House District 74 to favor Republicans. In 2018, the Republican candidate won House District 74 with more than 54% of the vote. Senate District 31—which cradles Senate District 32, a packed Democratic district—leans Republican. In 2018, the Republican candidate won Senate District 31 with over 61% of the vote.

27. Plaintiff Aaron Wolff is a veterinarian residing in Holly Springs, North Carolina, within House District 37 and Senate District 17. Mr. Wolff is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly. The General Assembly packed as many Democrats as possible into the districts surrounding House District 37 and Senate District 17 to make these districts as favorable to Republicans as possible. In 2018, Democratic candidates won both districts with bare majorities.

28. Plaintiff Mary Ann Peden-Coviello is a writer and editor residing in Winston-Salem, North Carolina, within House District 72 and Senate District 32. Ms. Peden-Coviello is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly. House District 72 is a packed Democratic district. In 2018, the Democratic candidate won House District 72 with 79% of the vote. Senate District 32 is a packed Democratic district

that was drawn to ensure that neighboring Senate District 31 would elect a Republican. In 2018, the Democratic candidate won Senate District 32 with 72% of the vote.

29. Plaintiff Kathleen Barnes is the owner of a small publishing company who resides in Brevard, North Carolina, within House District 113 and Senate District 48. Ms. Barnes is a registered Democrat and has consistently voted for Democratic candidates for the North Carolina General Assembly. The Democrats who reside in House District 113, like Ms. Barnes, were strategically placed in a different district from the Democratic voters around Hendersonville to ensure that Republicans were favored in both districts. In the 2018 elections, the Republican candidate won the House District 113 election with over 57% of the vote. Senate District 48 was similarly cracked, splitting the Democratic voters in Brevard from the strong base of Democratic voters in nearby Asheville so that Senate District 48 was Republican-leaning. In 2018, the Republican candidate won Senate District 48 with over 56% of the vote.

30. Karen Sue Holbrook is a retired psychology professor residing in Southport, North Carolina, within House District 17 and Senate District 8. Ms. Holbrook is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly. In the county cluster containing House District 17, the General Assembly packed Democratic voters into House District 18 to make House District 17 and the other districts in the cluster lean Republican. In 2018, the Republican candidate won House District 17 with over 63% of the vote. With respect to Senate District 8, a heavily Democratic area in Wilmington is extracted from Senate District 9 and placed in Senate District 8 to make Senate District 9 as competitive as possible for Republicans. As a result, in 2018, Senate District 9 was a near tie, while Republicans won Senate District 8 with a comfortable margin.

**B. Defendants**

31. Defendant David R. Lewis is a member of the North Carolina House of Representatives who represents House District 53. In 2017, Representative Lewis served as Senior Chairman of the House Select Committee on Redistricting that oversaw the creation of 2017 Plans. Defendant Lewis is sued in his official capacity only.

32. Defendant Ralph E. Hise, Jr. is a member of the North Carolina Senate, representing Senate District 39. In 2017, Senator Hise served as Chairman of the Senate Committee on Redistricting that oversaw the creation of the 2017 Plans. Defendant Hise is sued in his official capacity only.

33. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives. Defendant Moore is sued in his official capacity only.

34. Defendant Philip E. Berger is the President Pro Tempore of the North Carolina Senate. Defendant Berger is sued in his official capacity only.

35. Defendant the State of North Carolina has its capital in Raleigh, North Carolina.

36. Defendant North Carolina State Board of Elections and Ethics Enforcement is an agency responsible for the regulation and administration of elections in North Carolina.

37. Defendant Andy Penry is the Chairman of the North Carolina State Board of Elections and Ethics Enforcement. Mr. Penry is sued in his official capacity only.

38. Defendant Joshua Malcolm is the Vice Chair of the North Carolina State Board of Elections and Ethics Enforcement. Mr. Malcolm is sued in his official capacity only.

39. Defendant Ken Raymond is the Secretary of the North Carolina State Board of Elections and Ethics Enforcement. Mr. Raymond is sued in his official capacity only.

40. Defendant Stella Anderson is a member of the North Carolina State Board of Elections and Ethics Enforcement. Ms. Anderson is sued in her official capacity only.

41. Defendant Damon Circosta is a member of the North Carolina State Board of Elections and Ethics Enforcement. Mr. Circosta is sued in his official capacity only.

42. Defendant Stacy “Four” Eggers IV is a member of the North Carolina State Board of Elections and Ethics Enforcement. Mr. Eggers is sued in his official capacity only.

43. Defendant Jay Hemphill is a member of the North Carolina State Board of Elections and Ethics Enforcement. Mr. Hemphill is sued in his official capacity only.

44. Defendant Valerie Johnson is a member of the North Carolina State Board of Elections and Ethics Enforcement. Ms. Johnson is sued in her official capacity only.

45. Defendant John Lewis is a member of the North Carolina State Board of Elections and Ethics Enforcement. Mr. Lewis is sued in his official capacity only.

### **JURISDICTION AND VENUE**

46. This Court has jurisdiction of this action pursuant to Articles 26 and 26A of Chapter 1 of the General Statutes.

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

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

### **FACTUAL ALLEGATIONS**

#### **A. National Republican Party Officials Target North Carolina For Partisan Gerrymandering Prior to the 2010 Elections**

49. In the years leading up to the 2010 decennial census, national Republican leaders undertook a sophisticated and concerted effort to gain control of state governments in critical

swing states such as North Carolina. The Republican State Leadership Committee (RSLC) codenamed the plan “the REDistricting Majority Project” or “REDMAP.” REDMAP’s goal was to “control[] the redistricting process in . . . states [that] would have the greatest impact on determining how both state legislative and congressional district boundaries would be drawn” after the 2010 census. The RSLC’s REDMAP website explained that fixing these district lines in favor of Republicans would “solidify conservative policymaking at the state level and maintain a Republican stronghold in the U.S. House of Representatives for the next decade.”

50. North Carolina was a key REDMAP “target state.” REDMAP aimed to flip both chambers of the North Carolina General Assembly from Democratic to Republican control.

51. To spearhead its efforts in North Carolina, the RSLC enlisted the most influential conservative donor in North Carolina, Art Pope. The RSLC and Pope targeted 22 races in the North Carolina House and Senate. Pope helped create a new non-profit organization called “Real Jobs NC” to finance spending on the races, and the RSLC donated \$1.25 million to this new group. Pope himself made significant contributions; in total, Pope, his family, and groups backed by him spent \$2.2 million on the 22 targeted races. This represented three-quarters of the total spending by all independent groups in North Carolina on the 2010 state legislative races.

52. The money was well spent. Republicans won 18 of the 22 races the RSLC targeted, giving Republicans control of both the House and Senate for the first time since 1870.

#### **B. Republican Mapmakers Create the 2011 Plans from Party Headquarters**

53. After taking control of both chambers of the General Assembly, Republicans set out to redraw district lines to entrench Republicans in power. The RSLC’s President and CEO, Chris Jankowski, sent a letter to officials in Republican-controlled states (including North Carolina) offering the RSLC’s assistance with the upcoming redistricting. Jankowski explained that the RSLC had “taken the initiative to retain a team of seasoned redistricting experts,” and

the RSLC would happily make this team “available to” the Republican state officials.

Jankowski noted that RSLC’s expert “redistricting team” was “led by Tom Hofeller,” who had been the principal redistricting strategist for the Republican Party for decades.

54. Republicans leaders in the North Carolina General Assembly took Jankowski up on his offer. The drawing of the new North Carolina House and Senate plans (the “2011 Plans”) was not done by any committee or subcommittee of the General Assembly. Instead, it was primarily done by four Republican Party operatives: (1) Hofeller; (2) John Morgan, another national Republican mapmaker and longtime associate of Hofeller, (3) Dale Oldham, an attorney who served as counsel to the Republican National Committee; and (4) Joel Raupe, a former aide to several Republican representatives in the North Carolina Senate. A newly created shadow organization known as “Fair and Legal Redistricting North Carolina” paid for Morgan’s and Raupe’s work, while Hofeller was paid with a combination of state funds and money from the RSLC’s non-profit arm the State Government Leadership Foundation.

55. Hofeller and his team worked out of the basement of the state Republican Party headquarters on Hillsborough Street in Raleigh. They did not use a government computer to create the new plans. Rather, they created the new plans using computers owned by the Republican National Committee and software licensed by the state Republican Party.

56. The map-making process was shielded from public view. Only a small group of individuals that included Hofeller’s team and Republican leaders in the General Assembly saw the first drafts of the maps before they were publicly released in June 2011.

57. One person who was allowed to directly participate in the map-drawing process was mega-donor Art Pope. Despite not being a practicing lawyer, Pope served as “pro bono” counsel to the state legislature and met several times with Hofeller and his team at Republican

Party headquarters while they were working on the new plans. Pope even proposed specific changes to certain districts.

58. Although Republicans drew their maps in secret, their intentions were clear as day. Their goal was to maximize the number of seats Republicans would win in the General Assembly through whatever means necessary.

59. Hofeller later admitted that, in creating the 2011 Plans, his team used past election results in North Carolina to predict the “partisan voting behavior” of the new districts. Republican leaders in the General Assembly likewise later admitted in court filings that “[p]olitical considerations played a significant role in the enacted [2011] plans,” and that the plans were “designed to ensure Republican majorities in the House and Senate.” *Dickson v. Rucho*, No. 201PA12-3, 2015 WL 4456364, at \*16, 55 (N.C. July 13, 2015). The Republican leaders asserted that they were “perfectly free” to engage in partisan gerrymandering, and that they had done just that in constructing the 2011 Plans. *Dickson v. Rucho*, No. 201PA12-2, 2013 WL 6710857, at \*60 (N.C. Dec. 9, 2013).

### **C. Republicans Enact the 2011 Plans To Entrench Their Party’s Political Power**

60. The General Assembly adopted the Hofeller-drawn plans in July 2011, designated HB 937 and SB 45 respectively. Not a single Democrat in the General Assembly voted for either plan, and only one Republican representative voted against them.

61. Shortly thereafter, legislators learned that certain census blocks were not assigned to any district in the enacted plans. In November 2011, the General Assembly passed curative House and Senate plans, designated HB 776 and SB 282 respectively, to add the previously omitted blocks. No Democrat voted for either curative plan.

**D. The 2011 Plans Gave Republicans Super-Majorities That Were Grossly Disproportionate to Republicans' Share of the Statewide Vote**

62. The 2011 Plans achieved exactly the effect that Republicans in the General Assembly intended. In the 2012 election, the parties' vote shares for the North Carolina House of Representatives were nearly evenly split across the state, with Democrats receiving 48.4% of the two-party statewide vote. But Democrats won only 43 of 120 seats (36%). In other words, Republicans 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. Further, because of the rigging of district lines, 53 of the 120 House races were uncontested.

63. In the 2012 Senate elections, Democrats won nearly half of the statewide vote (48.8%), but won only 18 of 50 seats (36%). Republicans thus won a veto-proof majority in the Senate while winning only a tiny majority of the total statewide vote.

64. 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%). Over half of the House seats, 62 of 120, went uncontested in 2014.

65. In the 2014 Senate elections, Republicans won 54.3% of statewide vote and 68% of the seats (34 of 50). There were 21 uncontested elections in the Senate in 2014, with Republicans winning 12 uncontested districts and Democrats winning 9.

66. In 2016, Republicans again won 74 of 120 House seats, or 62%, this time with 52.6% of the statewide vote. Nearly half of all of the House seats were uncontested (59 of 120).

67. In the 2016 Senate elections, Republicans won 55.9% of the statewide vote and 70% of the seats (35 of 50). Republicans held 12 uncontested seats compared to 6 for Democrats, for a total of 18 uncontested races.

68. The below charts summarizes the election results under the 2011 Plans:

Year	House		Senate	
	Republican Percentage of Statewide Vote	Republican Percentage of Seats Won	Republican Percentage of Statewide Vote	Republican Percentage of Seats Won
2012	51.6%	64.2% (77 of 120)	51.2%	64.0% (32 of 50)
2014	54.4%	61.6% (74 of 120)	54.3%	68.0% (34 of 50)
2016	52.6%	61.6% (74 of 120)	55.9%	70.0% (35 of 50)

**E. A Federal Court Strikes Down Many Districts as Racially Gerrymandered**

69. The 2011 Plans led to substantial litigation, including the federal lawsuit styled *Covington v. North Carolina*, No. 1:15-CV-00399 (M.D.N.C.). In *Covington*, the plaintiffs challenged 19 districts in the North Carolina House (5, 7, 12, 21, 24, 29, 31, 32, 33, 38, 42, 43, 48, 57, 58, 60, 99, 102, and 107) and 9 districts in the North Carolina Senate (4, 5, 14, 20, 21, 28, 32, 38, and 40). They alleged that race predominated in the drawing of these districts, in violation of the federal Equal Protection Clause. In August 2016, the federal district court found for the plaintiffs as to all of the challenged districts, but permitted the General Assembly to wait until after the November 2016 elections to enact remedial plans. *Covington v. North Carolina*, 316 F.R.D. 176, 176-78 (M.D.N.C. 2016). The U.S. Supreme Court summarily affirmed this decision. 137 S. Ct. 2211 (2017).

70. In a subsequent order, the district court gave the General Assembly a deadline of September 1, 2017 to enact new House and Senate plans remedying the racial gerrymanders the court had found. *Covington v. North Carolina*, 267 F. Supp. 3d 664 (M.D.N.C. 2017).

**F. The General Assembly Enacts the 2017 Plans To Dilute the Voting Power of Democratic Voters and Maximize the Political Advantage of Republicans**

71. The General Assembly began developing new House and Senate plans in June 2017. On June 30, 2017, Senator Berger appointed 15 senators—10 Republicans and 5 Democrats—to the Senate Committee on Redistricting. Senator Hise was appointed Chair.

72. Also on June 30, 2017, Representative Moore appointed 41 House members—28 Republicans and 13 Democrats—to the House Select Committee on Redistricting.

Representative Lewis was appointed Senior Chair.

73. At a July 26, 2017 joint meeting of the House and Senate Redistricting Committees, Representative Lewis and Senator Hise disclosed that Republican leadership would again employ Dr. Hofeller to draw the new House and Senate plans. When Democratic Senator Terry Van Duyn asked whether Hofeller would “be available to Democrats and maybe even the Black Caucus to consult,” Representative Lewis answered “no.” Joint Comm. Hr’g, July 26, 2017, at 22-23. 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 Representative Lewis and Senator Hise. *Id.* at 23.

74. In overseeing the 2016 redrawing of North Carolina’s congressional districts, Representative Lewis had previously explained that Hofeller is “very fluent in being able to help legislators translate their desires” into the district lines, and that Representative Lewis’ “desires” are to elect as many Republicans as possible. Representative Lewis said about the newly created congressional districts: “I think electing Republicans is better than electing Democrats. So I drew this map in a way to help foster what I think is better for the country.”

75. On August 4, 2017, at another joint meeting of the House and Senate 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.

76. At this meeting, the Committees allowed 31 citizens to speak for two minutes each about the manner in which the House and Senate maps should be redrawn. All speakers urged the members to adopt fair maps free of partisan bias. The Committees ignored them.

77. At another joint meeting on August 10, 2017, the House and Senate Redistricting Committees voted on criteria to purportedly govern the new plans.

78. Representative Lewis proposed as one criterion: “election data[:] political consideration and election results data may be used in drawing up legislative districts in the 2017 House and Senate plans.” Joint Comm. Hr’g, Aug. 20, 2017, at 132. Representative Lewis provided no further explanation or justification for this criterion in introducing it, stating only: “I believe this is pretty self-explanatory, and I would urge members to adopt the criteria.” *Id.*

79. Democratic members repeatedly pressed Representative Lewis for details on how Hofeller would use the elections data and for what purpose. Senator Clark asked, for instance: “You’re going to collect the political data. What specifically would the Committee do with it?” *Id.* at 135. 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.* When Senator Clark inquired why the Committees would consider election results if not to predict *future* voting behavior, Representative Lewis offered no substantive answer, stating 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.

80. The House and Senate Committees adopted the “election data” criterion on a party-line vote. *Id.* at 141-48. No Democrat on the Committees voted for the criterion, but all 32 Republican members of the Committees did. *Id.*

81. Representative Lewis disclosed that the specific election results that Hofeller would use were the U.S. Senate election in 2010, the elections for President, Governor, and Lieutenant Governor in 2012, the U.S. Senate election in 2014, and the elections for President, U.S. Senate, Governor, Lieutenant Governor, and Attorney General in 2016. *Id.* at 137-38.

82. 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. *Id.* at 166-67. Representative Lewis opposed the amendment without explanation, stating only that he “would not advocate for [its] passage.” *Id.* at 167. The Committees rejected Senator Clark’s proposal on a straight party-line vote. *Id.* at 168-74.

83. As a further criterion, Representative Lewis proposed incumbency protection. Specifically, he proposed 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.” *Id.* at 119.

84. Representative Darren Jackson objected to protecting incumbents who were elected under the unconstitutional prior maps. *Id.* at 120. Senator Van Duyn likewise stated that new districts “should represent the voters and not elected officials,” and therefore she “fundamentally believe[d] that incumbency should not be a criteria.” *Id.* at 123.

85. The House and Senate Committees adopted the incumbency-protection criterion on a straight-party line vote. *Id.* at 125-32. All 32 Republican members of the Committees voted in favor, and all 18 Democratic members voted against. *Id.*

86. The Committees also adopted as criteria, along straight party-line votes, that the Committees would make “reasonable efforts” to split fewer precincts than under the 2011 Plans,

and that the Committees “may consider municipal boundaries” in drawing the new districts. *Covington*, *id.* at 66, 79, 98-104, 112-19.

87. As a final criterion, Representative Lewis proposed that the Committees be prohibited from considering racial data in drawing the new House and Senate plans. *Covington*, ECF 184-9 at 148. Representative Lewis and other Republican leaders thus explicitly asserted that no districts would be drawn with the goal of complying with Section 2 of the Voting Rights Act. *See id.* at 157. Republican leaders added in a later court filing that, “[t]o the extent that any district in the 2017 House and Senate redistricting plans exceed 50% BVAP, such a result was naturally occurring and the General Assembly did not conclude that the Voting Rights Act obligated it to draw any such district.” *Covington*, ECF No. 184 at 10.

88. The full criteria adopted by the Committees for the 2017 Plans 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.

*Covington*, ECF No. 184-37.

89. Republican leaders in the General Assembly “did not introduce any evidence regarding what additional instructions, if any, Representative Lewis or Senator Hise provided to Dr. Hofeller about the proper use and weighting of the various criteria.” *Covington v. North Carolina*, 283 F. Supp. 3d 410, 418 (M.D.N.C. 2018). “Nor did they offer any evidence as to how Dr. Hofeller weighted or ordered the criteria in drawing the proposed remedial maps, either in general or as to any particular district.” *Id.*

90. As in 2011, no committee or subcommittee of the General Assembly participated in drawing the new maps. Instead, Hofeller again drew the maps in secret, under the direction of Representative Lewis and Senator Hise. Representative Lewis would admit that he “primarily . . . directed how the [House] map was produced,” and that he, Hofeller, and Representative Nelson

Dollar were the only “three people” who had even “seen it prior to its public publication.” N.C. House Floor Session Hr’g, Aug. 28, 2017, at 40.

91. And as in 2011, Hofeller did not use a government computer in creating the new districts. On information and belief, he used a personal computer instead.

92. Representative Lewis and Senator Hise released the proposed House and Senate plans on August 21, 2017.

93. At a Senate Redistricting Committee hearing three days later, Senate Van Duyn asked Senator Hise how the prior elections data had been used in drawing the proposed maps. Senator Hise admitted that they “did make partisan considerations when drawing particular districts.” Senate Comm. Hr’g, Aug. 24, 2017, at 26.

94. Outside expert analyses confirmed that the proposed maps were gerrymandered to favor Republicans. The Campaign Legal Center calculated the “efficiency gap” of the proposed plans. The efficiency gap measures how efficiently a party’s voters are distributed across districts. For each party, the efficiency gap calculates that party’s number of “wasted” votes, defined as the number of votes cast for losing candidates of that party (as a measure of cracked votes) plus the number of votes cast for winning candidates in excess of 50% (as a measure of packed votes). The lower each of these numbers, the fewer wasted votes and the more likely a party is to win additional seats. The efficiency gap equals the difference in the total wasted votes between the two parties, divided by the total number of votes cast in the election. Using the same elections data that the Committees used to develop the proposed maps, the Campaign Legal Center calculated that the proposed House plan had an efficiency gap of 11.98% in Republicans’ favor, and the proposed Senate plan had an efficiency gap of 11.87% in Republicans’ favor.

*Covington*, ECF No. 187-3 at 2. The Campaign Legal Center explained that, “[b]y historical standards, these are extraordinarily large figures, revealing an enormous Republican edge.” *Id.*

95. Other statistical analyses found the same. Dr. Gregory Herschlag, a professor of mathematics at Duke University, created tens of thousands of alternative, non-partisan Senate districting configurations within Wake, Mecklenburg, Cumberland, and Guilford Counties. Dr. Herschlag created these simulated districting plans using the traditional districting criteria of equal population, compactness, avoiding splitting precincts, and contiguity. *Covington*, ECF No. 187-3 at 10 ¶ 6. Dr. Herschlag then compared the expected outcomes under these simulated districts with those under the Republican leaders’ proposed districts in the same counties. Dr. Herschlag found that, using the votes cast in the 2012 and 2016 Presidential elections, the 2014 and 2016 U.S. Senate elections, the 2012 and 2014 U.S. House of Representatives elections, and the 2016 Governor election to predict partisan outcomes, the Republicans leaders’ proposed districts were more favorable to Republicans than 99.9% of the non-partisan simulations. *Id.* ¶ 12. Plaintiffs in this case will show that similar results hold across the state.

96. The extreme partisan bias of the proposed plans was also apparent from the elections data that the House and Senate Redistricting Committees themselves released with the proposals. The Committees provided data on the partisan breakdown of each proposed district using the state and federal elections that the Committees considered in drawing the districts.

97. The chart below shows the number of House districts Republicans would be expected to win under the Committees’ House plan when overlaying the results of each election the General Assembly considered. These expected seats approximate the number of seats Republicans actually won under the 2011 House plan (77 in 2012, 74 in 2014, and 74 in 2016).

<b>Election</b>	<b>Expected Republican Seats Under Committees' House Plan</b>
2010 U.S. Senate	82
2012 Lieutenant Governor	74
2012 Governor	72
2012 President	78
2014 U.S. Senate	76
2016 Attorney General	77
2016 Lieutenant Governor	79
2016 Governor	72
2016 U.S. Senate	79
2016 President	76

98. The following chart shows the number of Senate districts Republicans would be expected to win under the Committees' Senate plan when overlaying the results of each of the elections that the General Assembly considered. These expected Republican seats approximate the number of seats Republicans actually won under the 2011 Senate plan (which were 32, 34, and 35 seats in 2012, 2014, and 2016 respectively).

<b>Election</b>	<b>Expected Republican Seats Under Committees' Senate Plan</b>
2010 U.S. Senate	35
2012 Lieutenant Governor	31
2012 Governor	33
2012 President	33
2014 U.S. Senate	33
2016 Attorney General	31
2016 Lieutenant Governor	34
2016 Governor	32
2016 U.S. Senate	34
2016 President	33

99. Thus, for example, overlaying the results of the 2014 U.S. Senate election over the Committees' proposed districts, Republicans would win 76 of the 120 proposed House districts and 33 of the 50 proposed Senate districts. Republicans would win these massive landslides in both chambers even though the 2014 U.S. Senate election was nearly a tie statewide—the Republican candidate won by only 1.5 percentage points.

100. Of the roughly 4,300 public comments received by the General Assembly about the 2017 redistricting process, more than 99% reflected opposition to gerrymandering. For example, the author of the first written comment submitted to the Committees said: “I strongly encourage the North Carolina General Assembly to adopt new maps that are fair and open, that avoid racial or partisan gerrymandering, and that allow voters to pick their political representatives, not the other way around.” Other comments made the same plea.

101. But the Committees ignored the will of the people and forged ahead. On August 24, 2017, on a straight party-line vote, the Senate Redistricting Committee adopted the Senate map crafted by Hofeller without modification. The next day, the House Redistricting Committee adopted Hofeller’s proposed House plan without modification, also on a straight party-line vote.

102. On August 28, 2017, during a House floor debate on the proposed House map, an amendment modifying some districts in Wake County was approved by a largely party-line vote.

103. On August 31, 2017, the General Assembly passed the House plan (designated HB 927) and the Senate plan (designated SB 691), with a few minor modifications from the versions passed by the Committees. No Democratic Senator voted in favor of either plan. The sole Democratic member of the House who voted for the plans was Representative William Brisson, who switched to become a Republican several months later.

104. The 2017 Plans passed by the General Assembly altered at least 106 of the 170 total House and Senate districts from the 2011 Plans. *Covington*, 283 F. Supp. 3d at 418.

**G. The *Covington* Court Appoints a Special Master To Redraw Several Districts in the 2017 Plans That Remained Racially Gerrymandered**

105. The *Covington* plaintiffs objected to the new plans, arguing that the plans did not cure the racial gerrymanders in two House districts (21 and 57) and two Senate districts (21 and 28). *Covington*, 283 F. Supp. 3d at 429. The 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.

106. The *Covington* plaintiffs also stated that the new plans were blatant partisan gerrymanders. But given the remedial stage of the case, the plaintiffs did not "raise any partisan gerrymandering objections," and the court "[did] not address whether the 2017 Plans are unconstitutional partisan gerrymanders." *Covington*, 283 F. Supp. 3d at 429 n.2.

107. 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 needed to adjust not only those districts, but also certain districts adjoining them. In his recommended remedial plans submitted to the court on December 1, 2017, the Special Master made material adjustments to House Districts 22, 59, 61, and 62 in redrawing House Districts 21 and 57, and made material adjustments to Senate Districts 19, 24, and 27 in redrawing Senate Districts 21 and 28. *Covington*, ECF No. 220 at 30-55. The court adopted the Special Master's recommended changes to all of these districts.

108. 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*, ECF No. 220 at 56-66. The court adopted these changes as well.

109. On June 28, 2018, the U.S. Supreme Court affirmed the lower court's adoption of the Special Master's remedial plans for House Districts 21 and 57 (and the relevant adjoining districts) and Senate Districts 21 and 28 (and the relevant adjoining districts). *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, finding that the district court had exceeded its remedial

authority in rejecting newly enacted districts on this basis. *Id.* at 2554-55. Plaintiffs do not challenge in this case any district materially redrawn by the Special Master that remains in effect.

110. On February 17, 2018, the North Carolina State Conference of NAACP Branches and other plaintiffs filed a new action in Wake County Superior Court challenging four of the House Districts (36, 37, 40, and 41) allegedly redrawn in violation of the North Carolina Constitution’s prohibition on mid-decade redistricting. *N.C. State. Conf. of NAACP Branches v. Lewis*, 18 CVS 2322 (N.C. Super.). On November 2, 2018, the Superior Court granted summary judgment to the plaintiffs and ordered the General Assembly to “remedy the identified defects and enact a new Wake County House District map for use in the 2020 general election.”

**H. The 2017 Plans Pack and Crack Plaintiffs and Other Democratic Voters To Dilute Their Votes and Maximize the Political Advantage of Republicans**

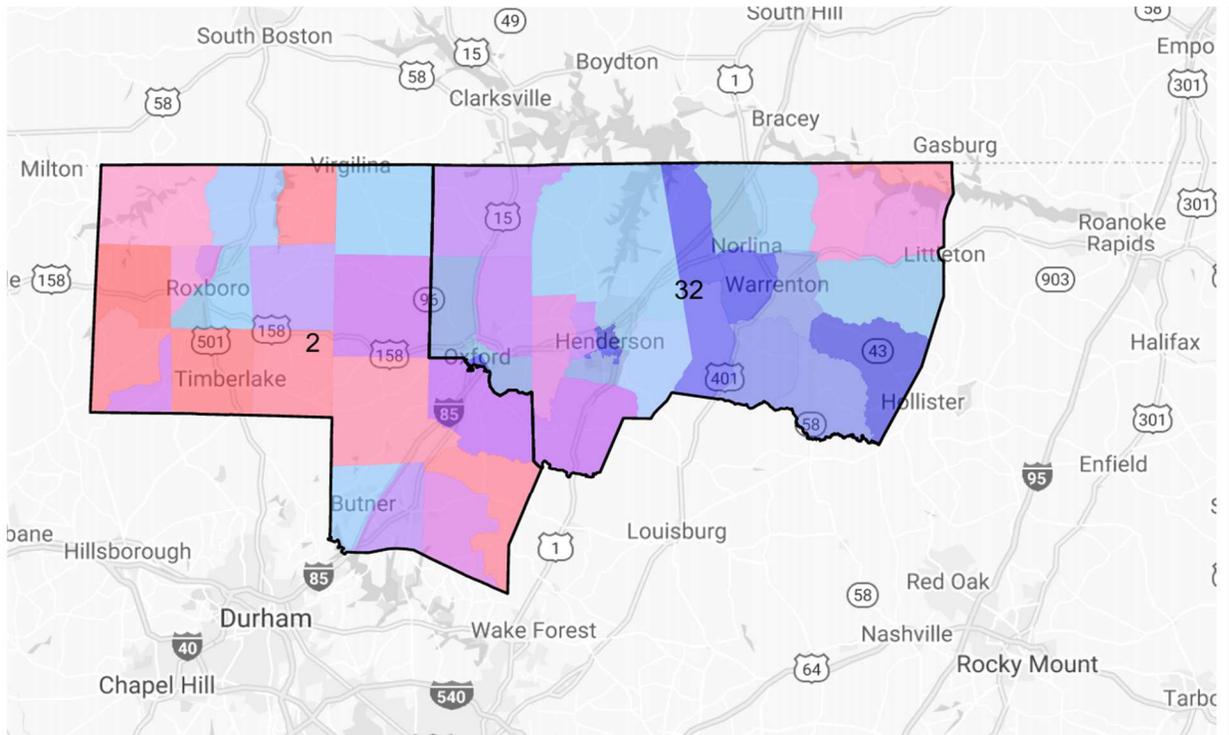
111. To maximize the number of Republican seats in the General Assembly, the 2017 Plans meticulously “pack” and “crack” Democratic voters. Packing and cracking are the two primary means by which mapmakers carry out a partisan gerrymander. “Packing” involves concentrating one party’s backers in a few districts that they will win by overwhelming margins to minimize the party’s votes elsewhere. “Cracking” involves dividing a party’s supporters among multiple districts so that they fall comfortably short of a majority in each district.

112. The sections below set forth some of the examples of packing and cracking of Democratic voters in each of the 2017 Plans.

**1. The 2017 House Plan Packs and Cracks Democratic Voters**

House Districts 2 and 32

113. House Districts 2 and 32 are within a county cluster of Person, Granville, Vance, and Warren Counties.



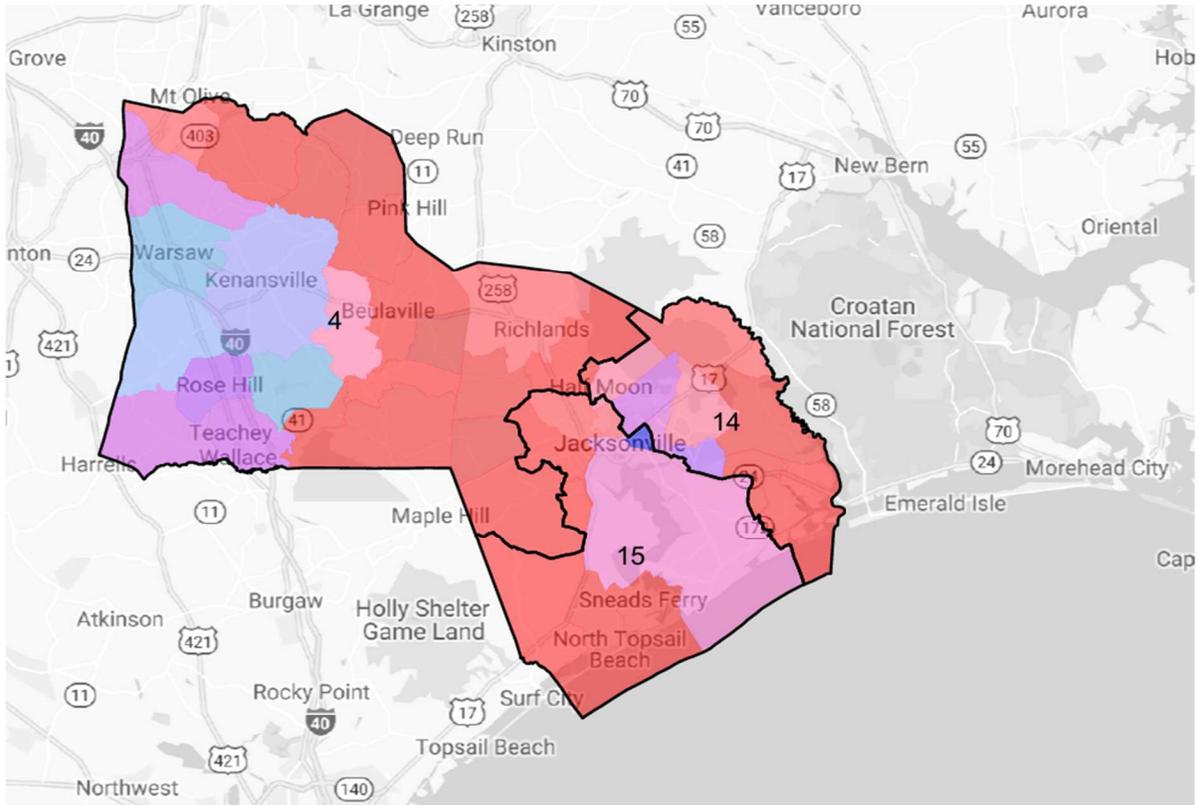
114. As shown in the image above,<sup>1</sup> in drawing the two districts within this cluster, the General Assembly packed the Democratic voters in and around Oxford with the Democratic voters in Henderson and in municipalities east of Henderson such as Warrenton and Norlina. This packing made House District 32 an overwhelmingly Democratic district in order to ensure that House District 2 would be a Republican-leaning district.

House Districts 4, 14, and 15

115. House Districts 4, 14, and 15 are within a county cluster containing Duplin and Onslow Counties.

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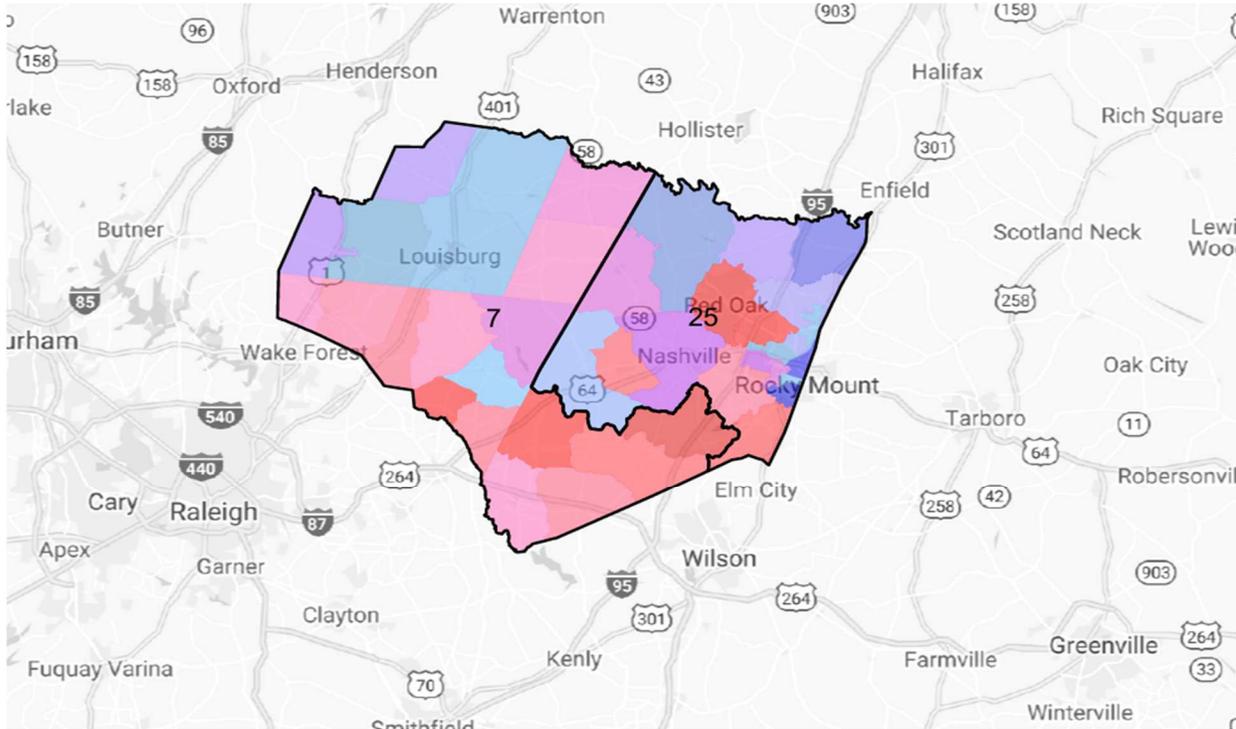
<sup>1</sup> All precinct-level partisanship data in the images that follow are based on the precinct-level election results from the 2014 U.S. Senate election in North Carolina.



116. The General Assembly split Jacksonville across House District 14 and 15, cracking its Democratic voters across the two districts and placing its most Democratic precincts in House District 15 with otherwise heavily Republican areas. The General Assembly also made sure to keep Jacksonville's Democratic voters in separate districts from the Democratic-leaning cities of Warsaw and Kenansville. This cracking allowed all three districts to lean Republican.

House Districts 7 and 25

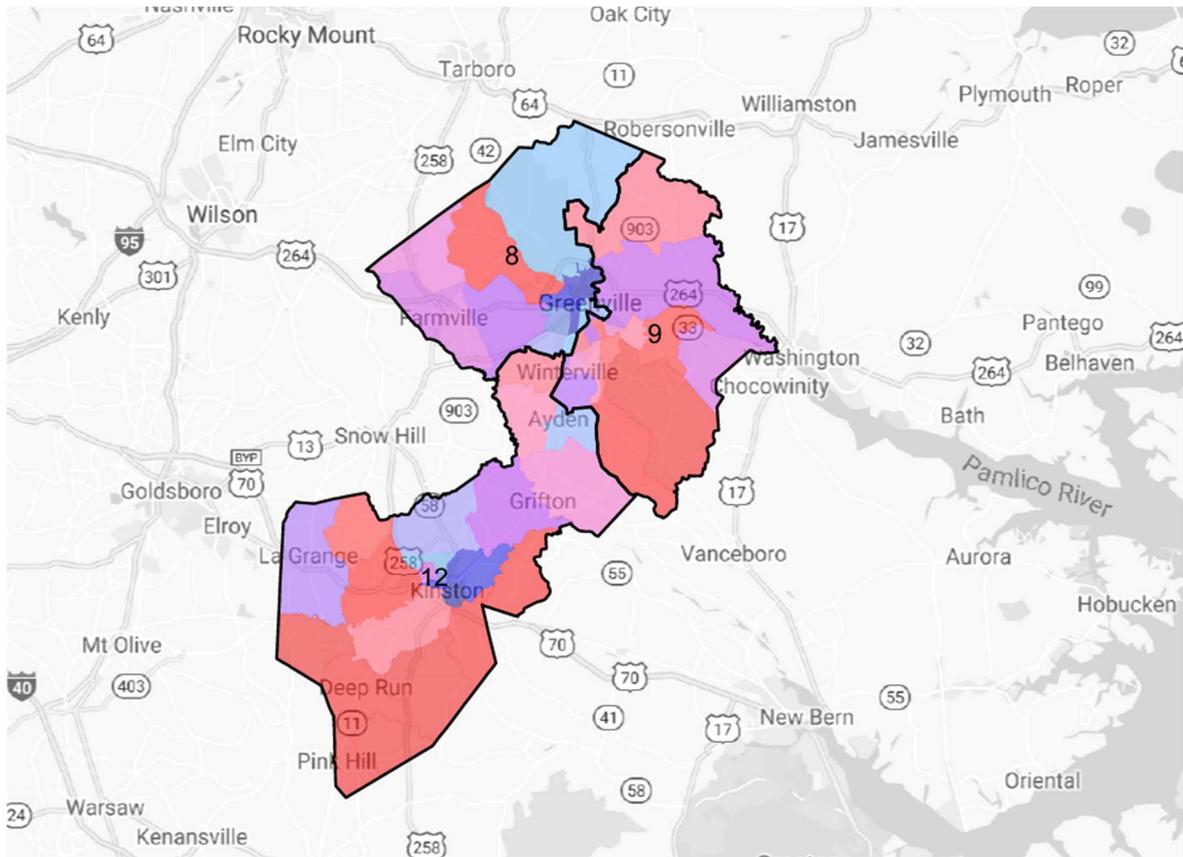
117. House Districts 7 and 25 are within a county cluster of Franklin and Nash Counties.



118. The General Assembly constructed this cluster to make sure that one of the two districts, House District 7, would favor Republicans, rather than risk that both districts could elect Democrats. To accomplish this, the General Assembly caused House District 7 to wrap around the southwestern edge of House District 25, allowing House District 7 to pick up deep red communities in southern Nash County.

House Districts 8, 9 and 12

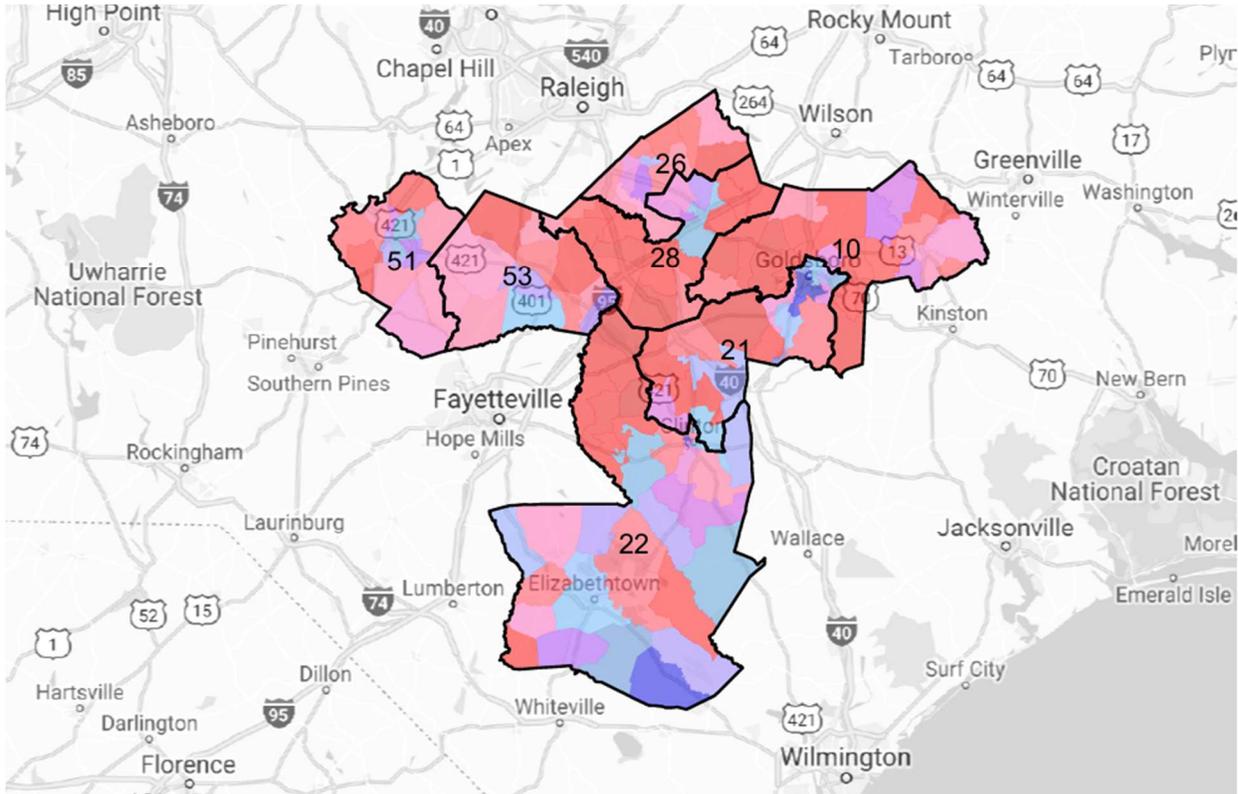
119. House Districts 8, 9, and 12 are within a county cluster consisting of Pitt and Lenoir Counties.



120. The General Assembly split Greenville nearly in half across separate districts in this cluster, even though Greenville is the county seat of Pitt County and has a population that is just slightly more than the target population for a single district. But the General Assembly carefully placed Greenville's most Democratic areas in House District 8, packing these Democratic voters with others in the surrounding areas to create an overwhelmingly Democratic district. The General Assembly placed the more moderate and Republican-leaning areas of Greenville in House District 9 with other Republican areas, ensuring that this district would elect a Republican. The General Assembly similarly constructed House District 12 to favor Republicans by avoiding the Democratic precincts in and around Greenville.

House Districts 10, 26, 28, 51, and 53

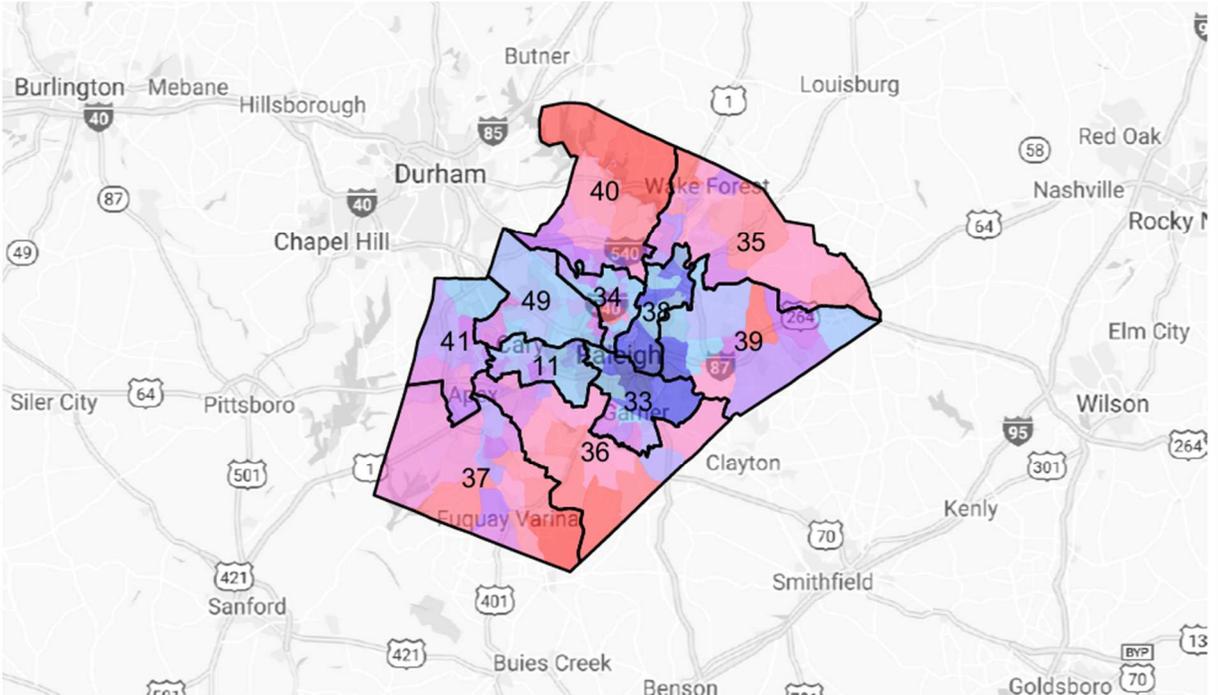
121. House Districts 10, 26, 28, 51, and 53 are part of a seven-county cluster spanning Greene, Wayne, Sampson, Bladen, Johnston, Harnett, and Lee Counties. This cluster also includes House Districts 21 and 22, which were redrawn by the special master in *Covington* and are not challenged in this case.



122. The General Assembly cracked the Democratic pockets of Johnston, Harnett, and Lee Counties into four separate districts (House Districts 26, 28, 53, and 51), so that none of these four districts would lean toward Democrats.

House Districts 11, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 49

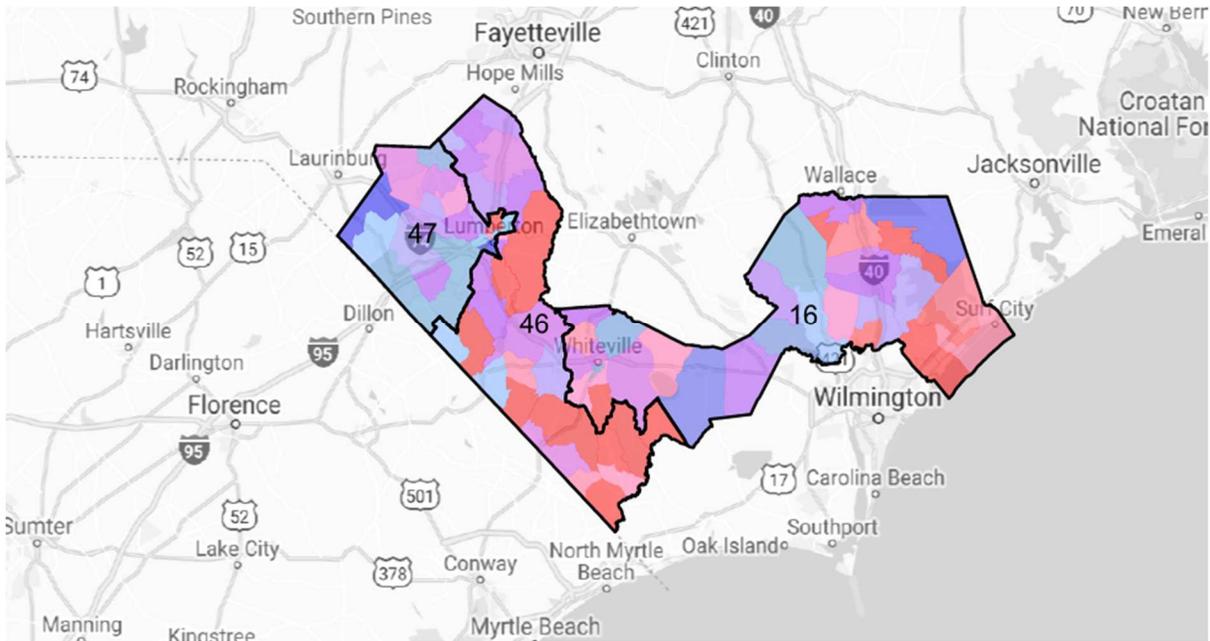
123. House Districts 11, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 49 are all located within Wake County.



124. The General Assembly packed Democrats into House Districts 11, 33, 34, 38, 39, and 49 in order to maximize the number of districts within Wake County that would be competitive for Republicans. Based on the 2014 U.S. Senate results, for example, House Districts 35, 36, 37, and 40 all favor Republicans. Under a non-partisan map, these districts would be more Democratic-leaning.

House Districts 16, 46, and 47

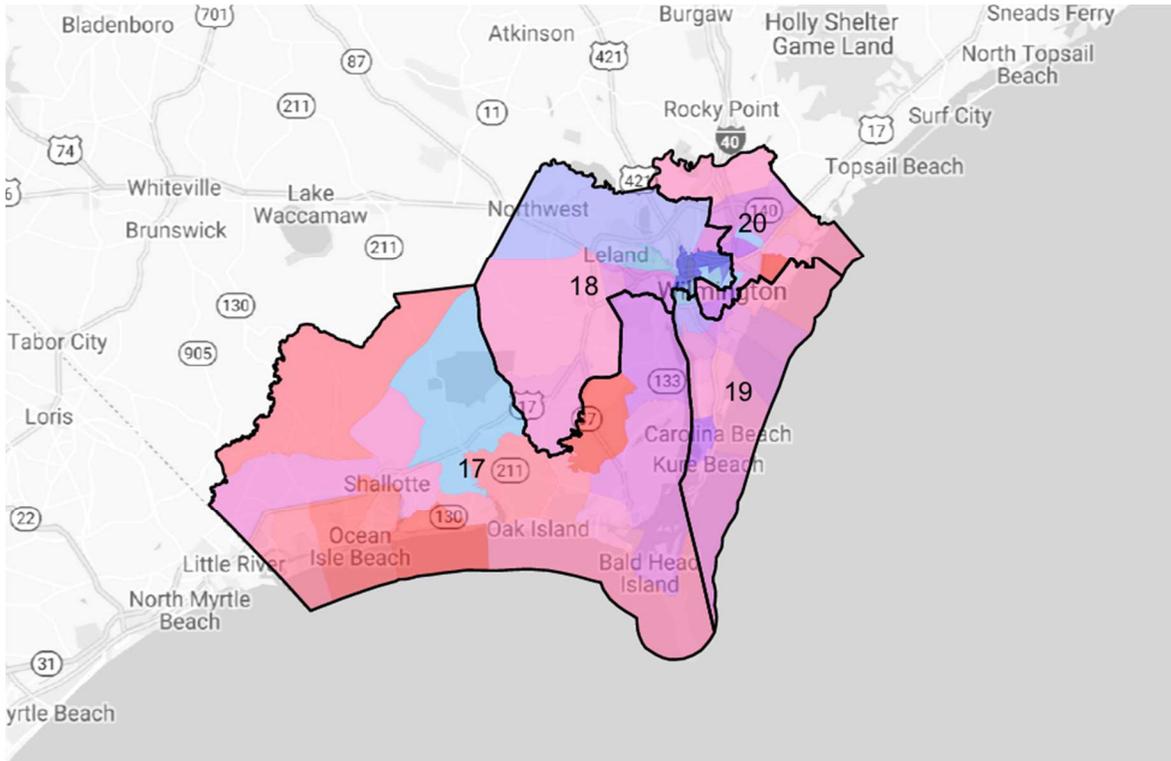
125. House Districts 16, 46, and 47 are within a county cluster of Pender, Columbus, and Robeson Counties.



126. The General Assembly split Lumberton across two separate districts in this cluster. It placed the Democratic areas of Lumberton in House District 47 with other heavily Democratic areas, while placing the more Republican parts of Lumberton into House District 46. The General Assembly then cracked the Democratic voters of Whiteville (in House District 16) from those in and around Chadbourn (just to the west of Whiteville in House District 46). Through these choices, the General Assembly created two districts that moderately favor Republicans using the statewide election results that the General Assembly considered (House District 16 and 46) and one overwhelmingly Democratic district (House District 47).

House Districts 17, 18, 19, and 20

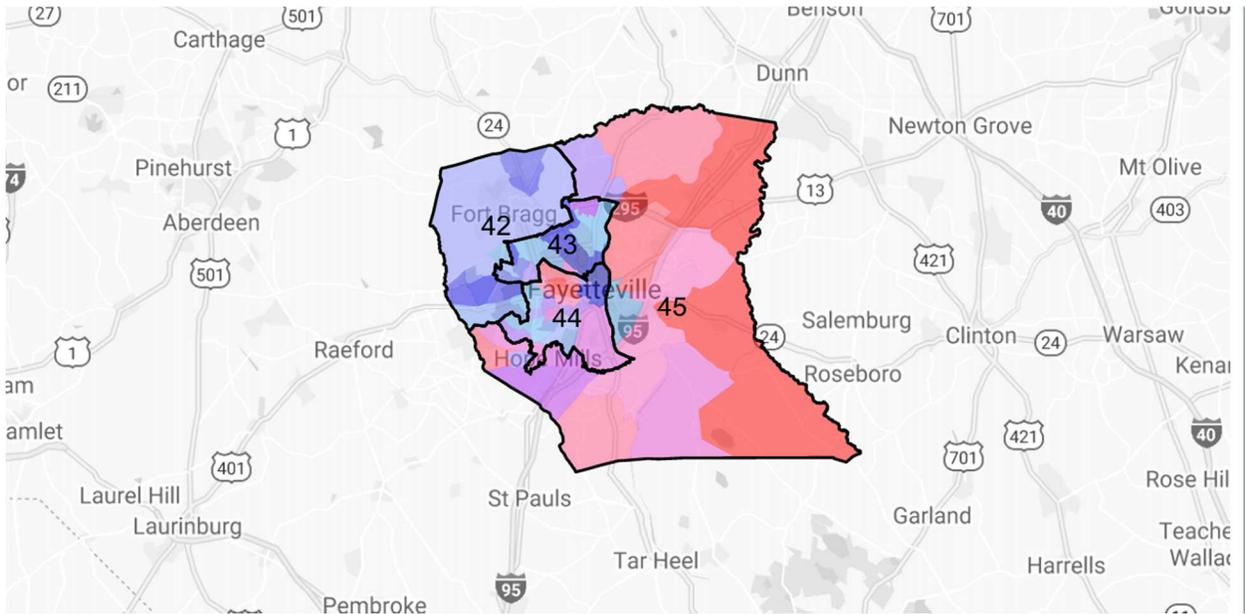
127. House Districts 17, 18, 19, and 20 are within a county cluster of New Hanover and Brunswick Counties.



128. The General Assembly manipulated this county cluster to create one packed Democratic district (House District 18) and three Republican-leaning districts (House Districts 17, 19, 20). The General Assembly split Wilmington across three different districts to accomplish this feat. It placed Wilmington’s most Democratic areas in House District 18, where these Democratic voters were joined with the Democratic voters in and around Leland, while Wilmington’s more Republican-leaning and swing precincts were placed in House Districts 19 and 20. In 2018, Republican candidates won House Districts 17, 19, and 20 with 64%, 51%, and 53% of the two-party vote respectively.

House Districts 42, 43, 44, and 45

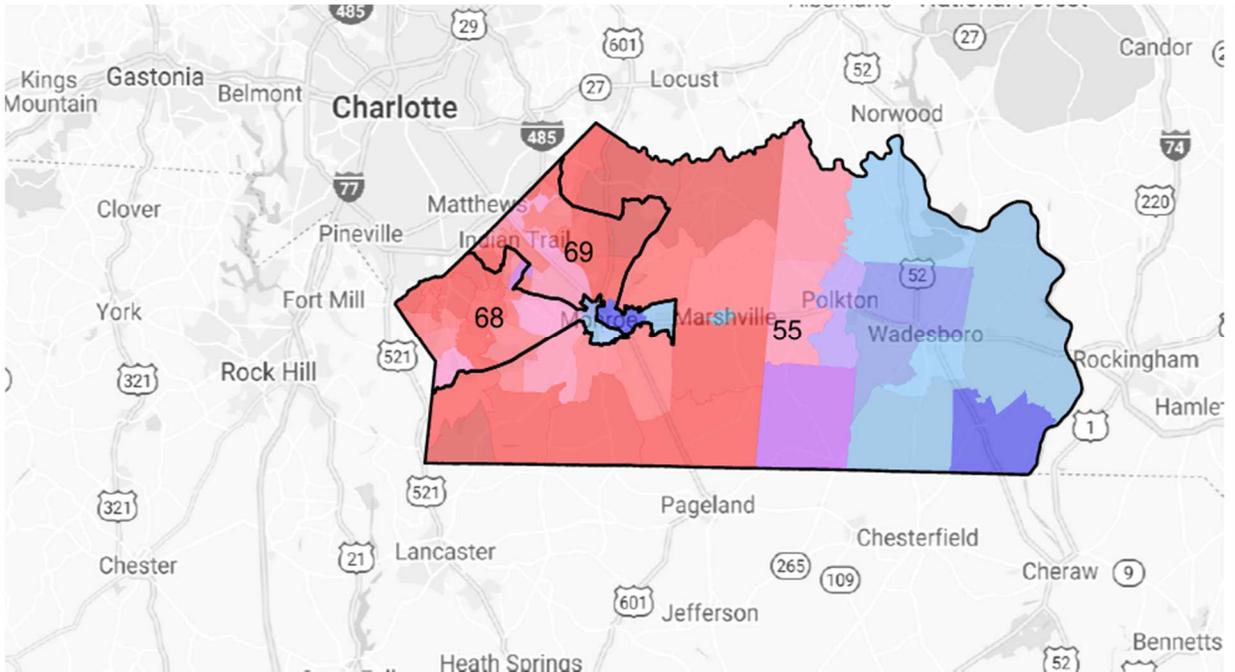
129. House Districts 42, 43, 44, and 45 are all within Cumberland County.



130. The General Assembly placed almost all of the most Democratic areas of Cumberland County into three of the four districts in this cluster, House District 42, 43, and 44. The General Assembly packed these Democratic voters to create a Republican-leaning district in Cumberland County, House District 45. Under a non-partisan map, this district would be more Democratic-leaning.

House Districts 55, 68, and 69

131. House Districts 55, 68, and 69 are within a county cluster of Anson and Union Counties.



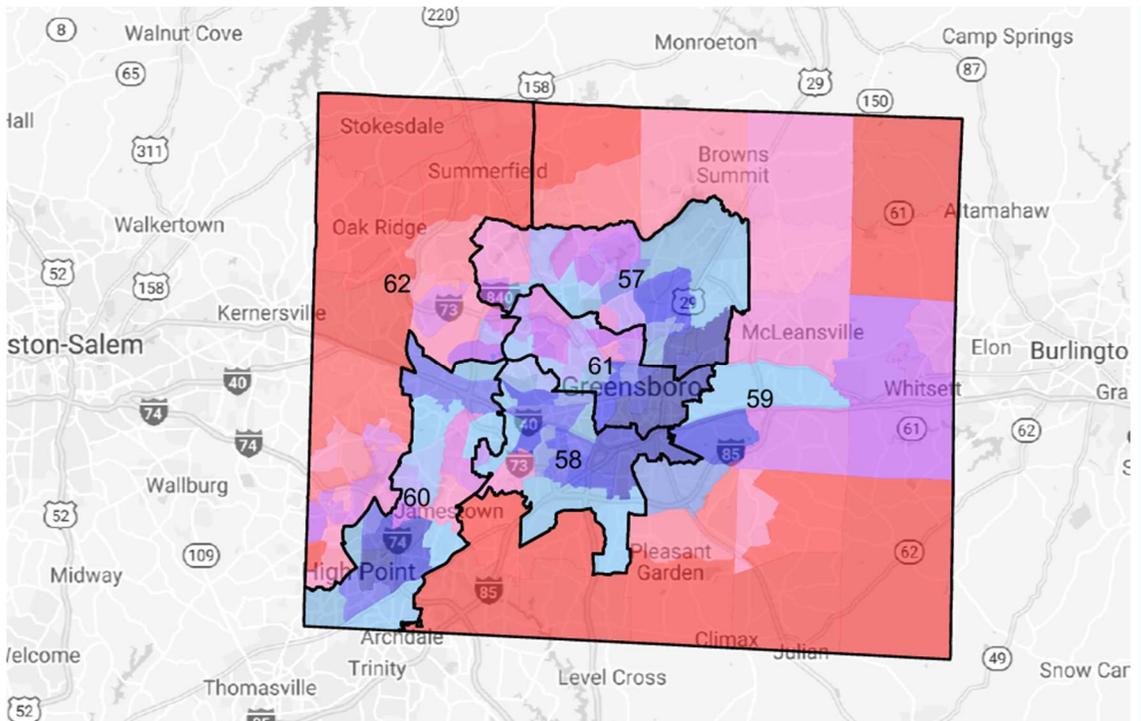
132. The General Assembly cracked the Democratic voters throughout this cluster to ensure that all three districts would favor Republicans. As part of this cracking, the General Assembly split Monroe across the three districts, and split Monroe’s most Democratic areas between House Districts 68 and 69.

House Districts 58, 59, and 60

133. House Districts 58, 59 and 60 are three of the six House districts within Guilford County. The other three districts—House Districts 57, 61, and 62—were redrawn by the special master in the federal Covington lawsuit and are not challenged in this case.<sup>2</sup>

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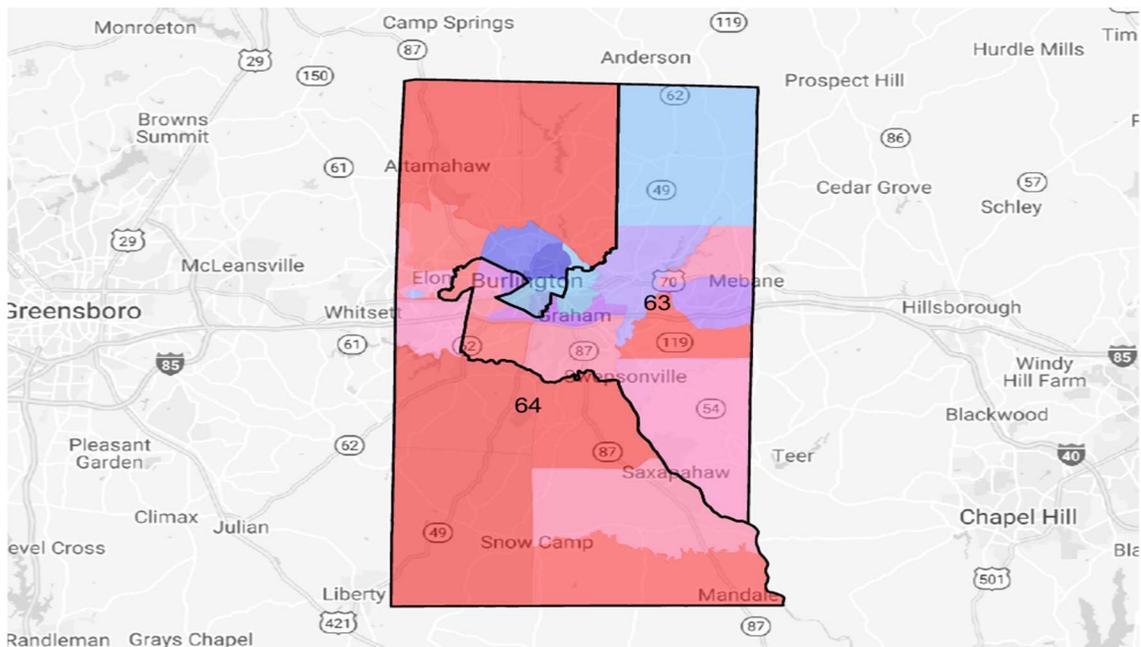
<sup>2</sup> The special master made minor changes to House District 59, but Plaintiffs challenge this district in this case.



134. The General Assembly packed House Districts 58 and 60 with heavily Democratic areas, enabling House District 59 to favor Republicans.

House Districts 63 and 64

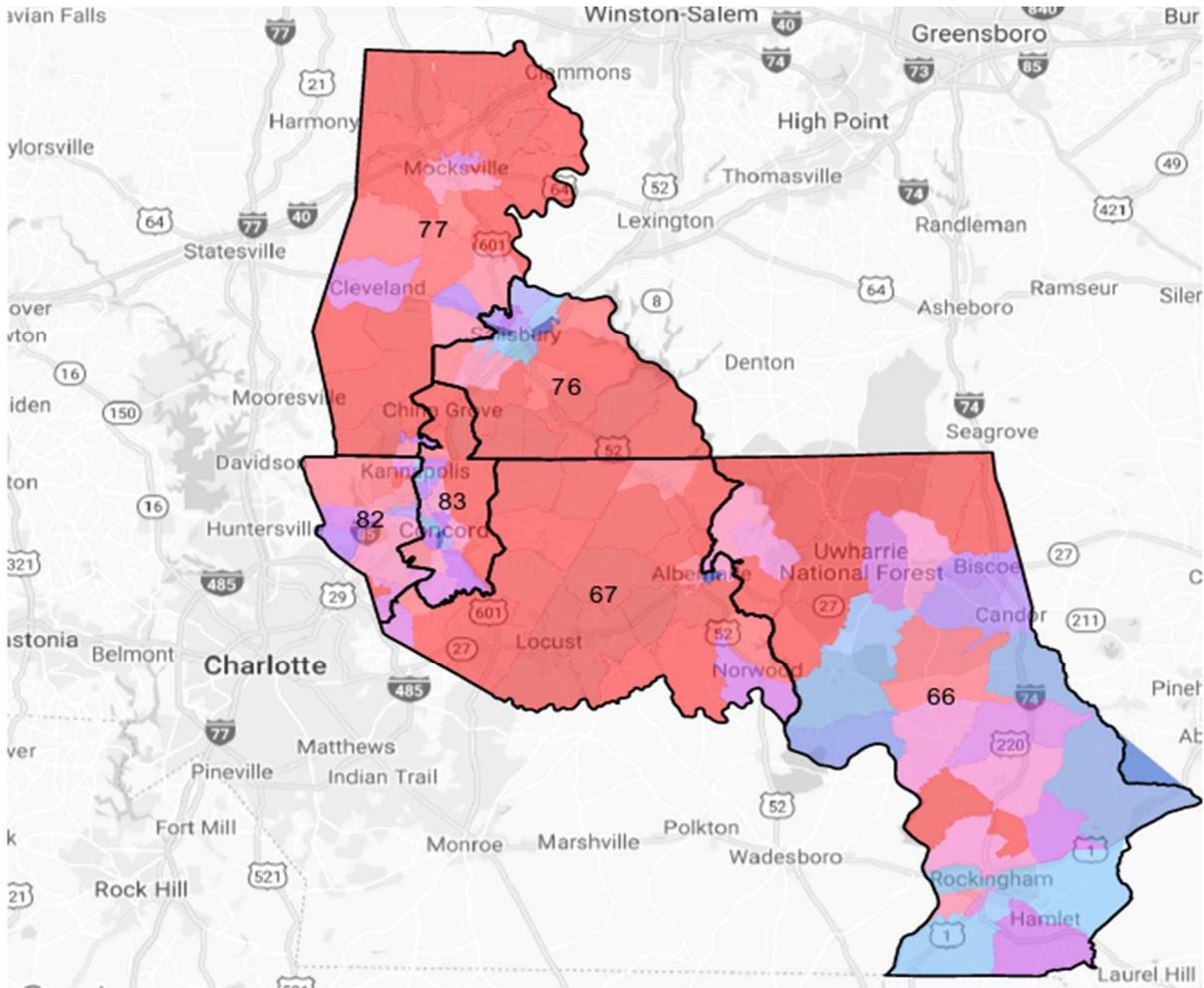
135. House Districts 63 and 64 are both located within Alamance County.



136. The General Assembly caused both House Districts 63 and 64 to favor Republicans by cracking Burlington and its Democratic voters in half across the two districts.

House Districts 66, 67, 76, 77, 82, and 83

137. House Districts 66, 67, 76, 77, 82, and 83 are part of a county cluster that covers Richmond, Montgomery, Stanly, Cabarrus, Rowan, and Davie Counties.

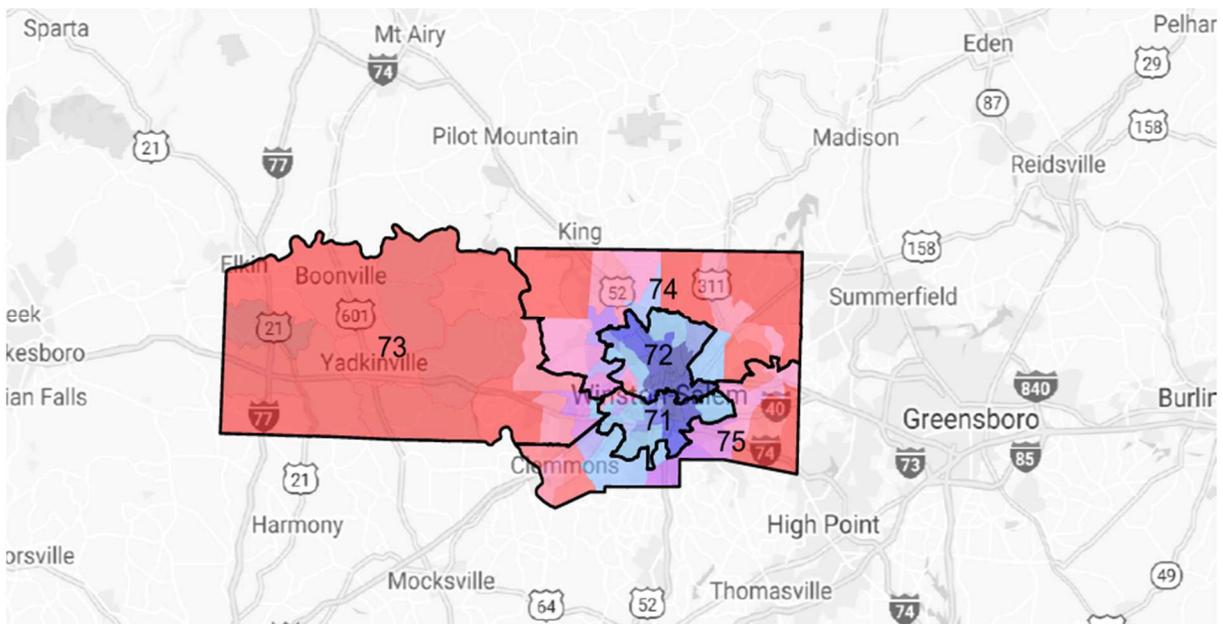


138. The General Assembly meticulously distributed the Democratic voters in these counties across all five districts in the cluster, such that Republicans have majorities in all five districts based on the statewide elections the General Assembly considered. For instance, the General Assembly put Albemarle into House District 67, wasting the votes of Albemarle's

Democratic voters in House District 67 to make House District 66 more competitive for Republicans. The General Assembly wasted Salisbury’s Democratic votes in House District 76 by grouping the city with deep red areas. The General Assembly also cracked Concord in half between House Districts 82 and 83, and it splintered Kannapolis and its Democratic voters into three different districts (House Districts 77, 82, and 83).

House Districts 71, 72, 73, 74, and 75

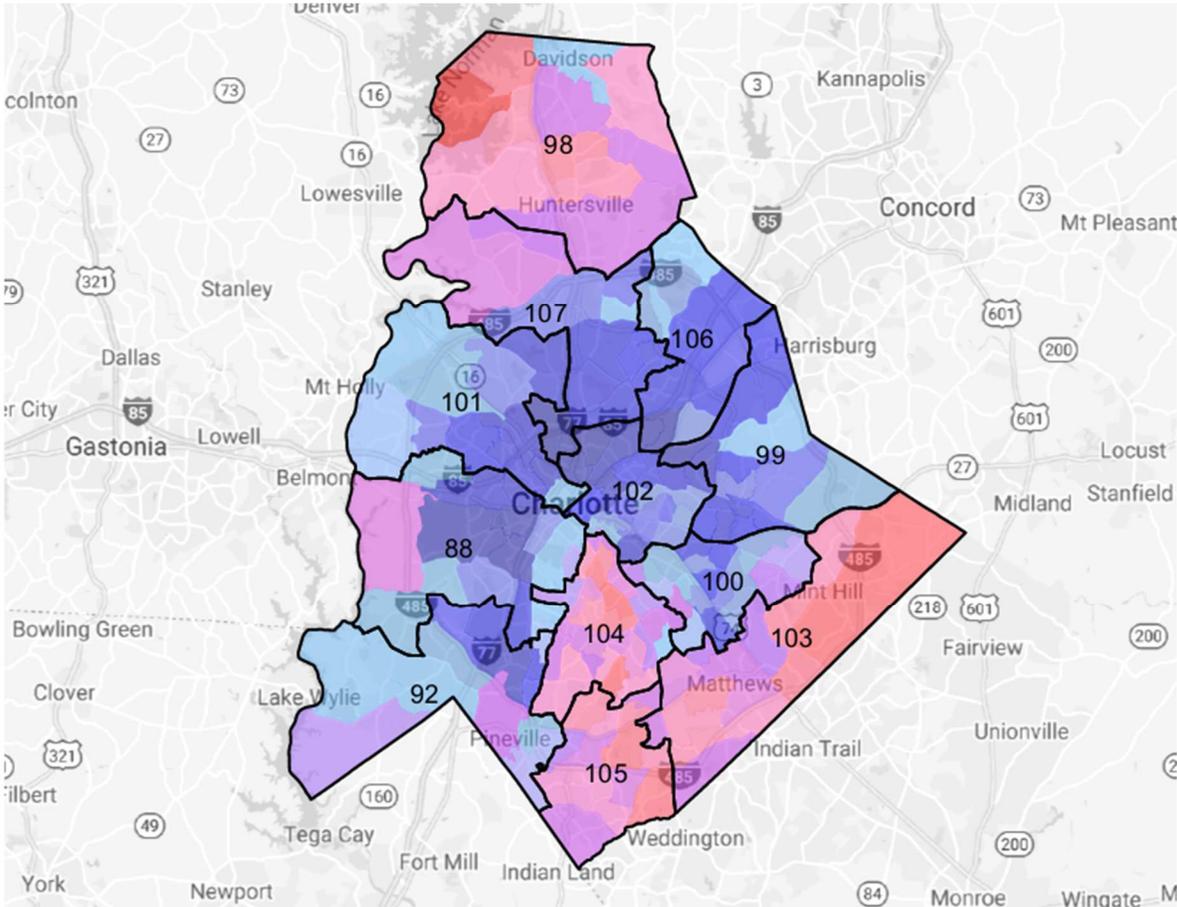
139. House Districts 71, 72, 73, 74, and 75 are within a county cluster of Forsyth and Yadkin Counties.



140. The General Assembly packed Democrats into House Districts 71 and 72 so that the other three districts—House Districts 73, 74, and 75—would all favor Republicans. The General Assembly split the City of Winston-Salem across all five districts in the cluster as part of this scheme, even though Winston-Salem’s population could fit within just three districts.

House Districts 88, 92, 98, 99, 100, 101, 102, 103, 104, 105, 106, and 107

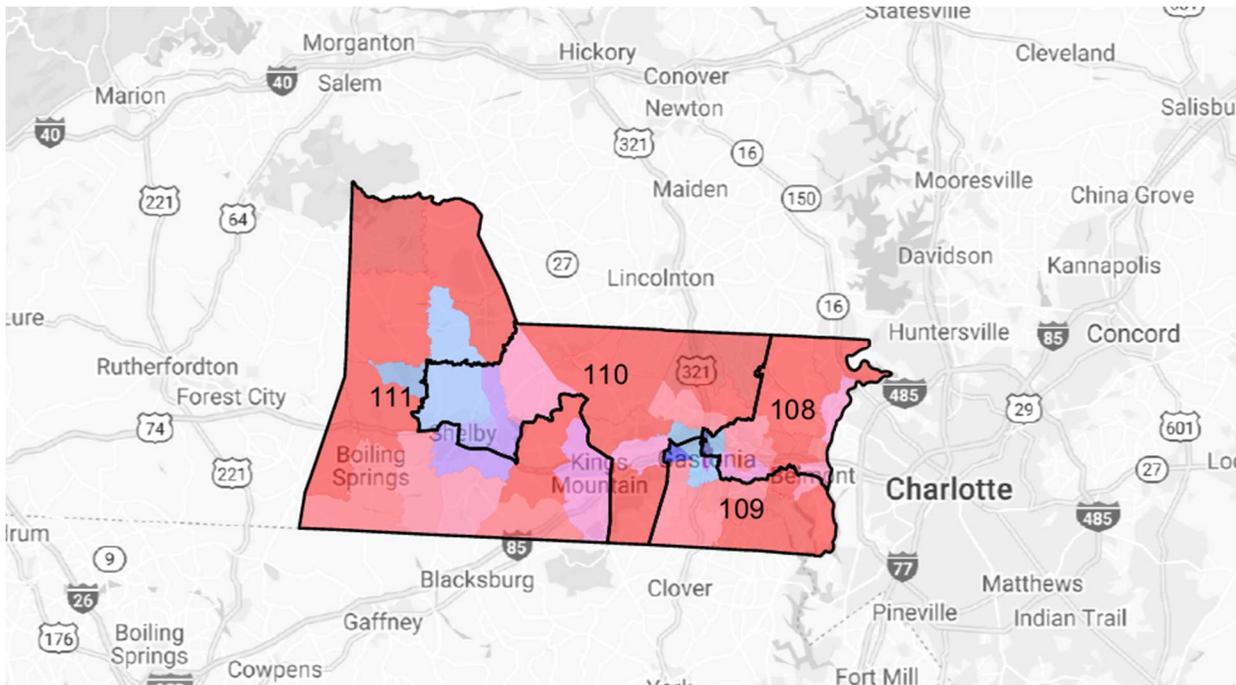
141. House Districts 88, 92, 98, 99, 100, 101, 102, 103, 104, 105, 106, and 107 are all within Mecklenburg County.



142. Mecklenburg County is the pinnacle of packing. The General Assembly packed as many Democratic voters as possible into seven Mecklenburg County districts (House Districts 88, 92, 99, 100, 101, 106, and 107), in order to create four districts in the county that are competitive for Republicans (House Districts 98, 103, 104, and 105). Under a non-partisan map, these districts would all be more Democratic-leaning.

House Districts 108, 109, 110, and 111

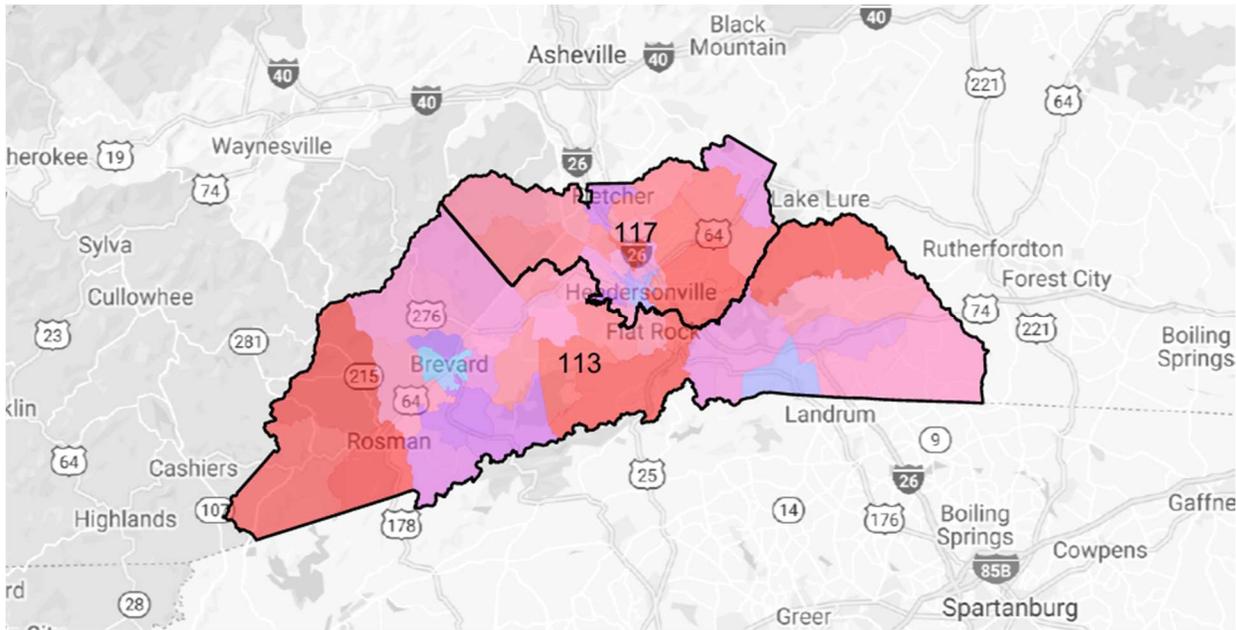
143. House Districts 108, 109, 110, and 111 make up a county cluster of Gaston and Cleveland Counties.



144. The General Assembly split the Democratic stronghold of Gastonia across three different districts (House Districts 108, 109, and 110), and cut the Democratic city of Shelby in half (in House Districts 110 and 111). The General Assembly similarly distributed the Democratic voters north of Shelby across House District 110 and 111. The result of all of this cracking is that all four districts in the cluster have comfortable Republican majorities: the Republican vote share in all four districts is around 60% using the 2014 U.S. Senate results.

#### House Districts 113 and 117

145. House Districts 113 and 117 are within a county cluster of Transylvania, Henderson, and Polk Counties.

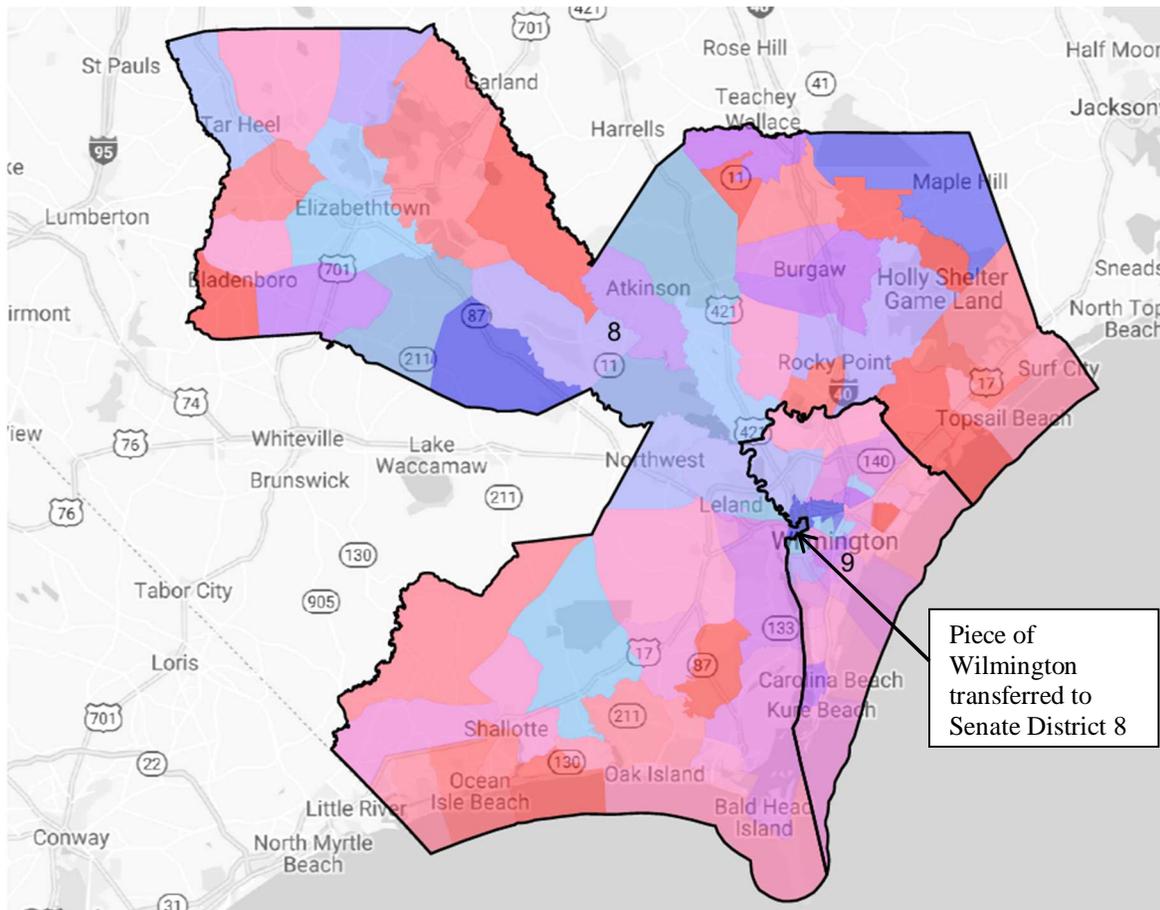


146. The General Assembly cracked the Democratic voters in and around Hendersonville from the Democratic voters in and around Brevard, ensuring that both districts in this cluster would elect Republicans.

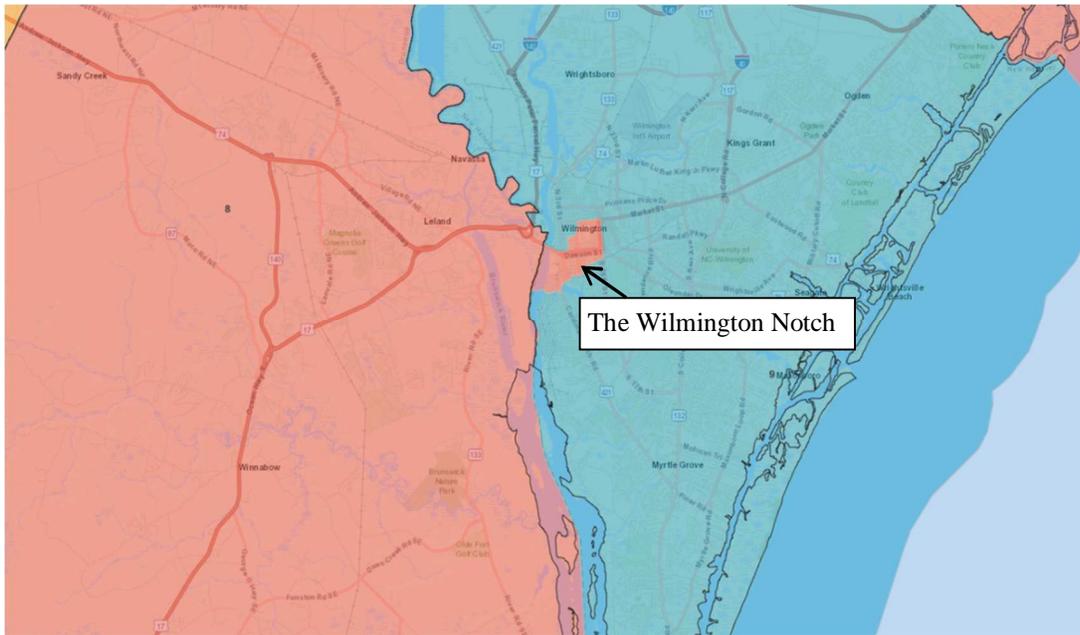
## **2. The 2017 Senate Plan Packs and Cracks Democratic Voters**

### Senate Districts 8 and 9

147. Senate Districts 8 and 9 are within a county cluster of Bladen, Pender, Brunswick, and New Hanover Counties.

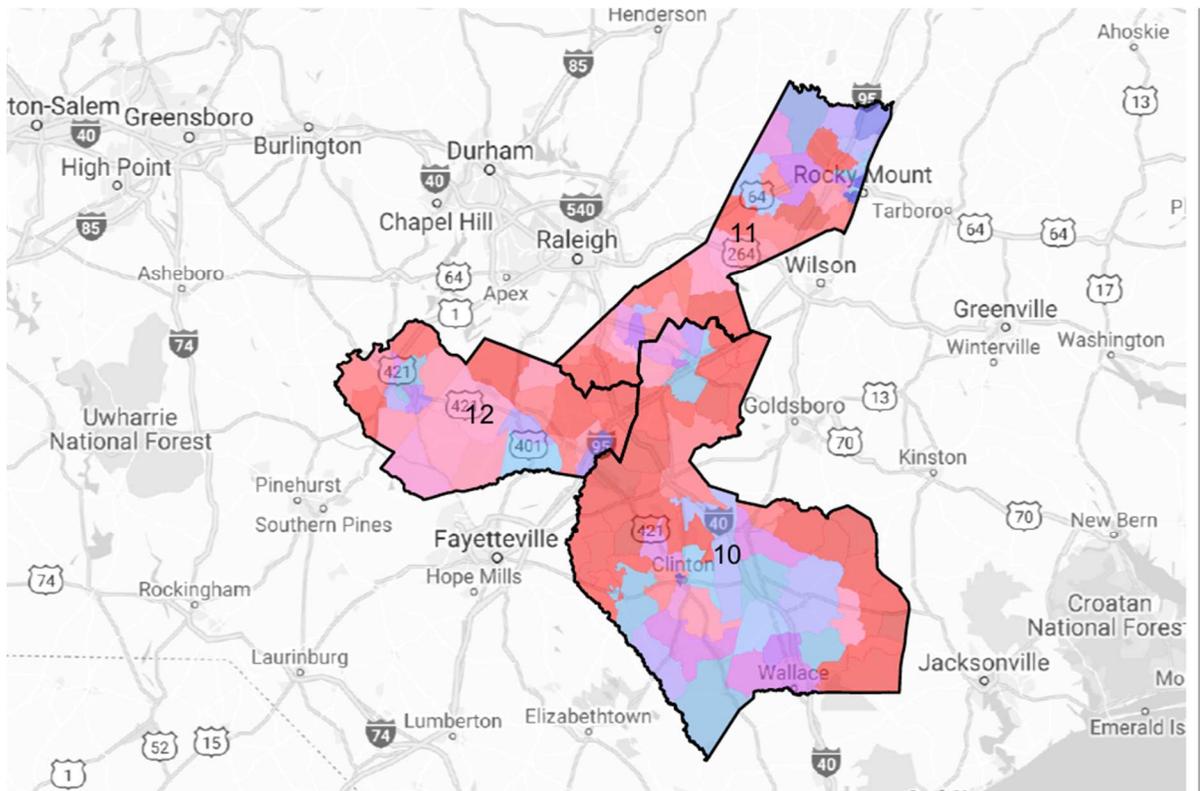


148. Although almost all of New Hanover County falls in Senate District 9, the General Assembly appended a small, heavily Democratic piece of New Hanover County to Senate District 8. Specifically, the General Assembly split off a small portion of Wilmington—the “Wilmington Notch”—transferring thousands of voters in Wilmington’s most heavily Democratic area from Senate District 9 to 8. The loss of these Democratic voters causes Senate District 9 to lean Republican rather than Democratic using the 2014 U.S. Senate election results.



Senate Districts 10, 11, and 12

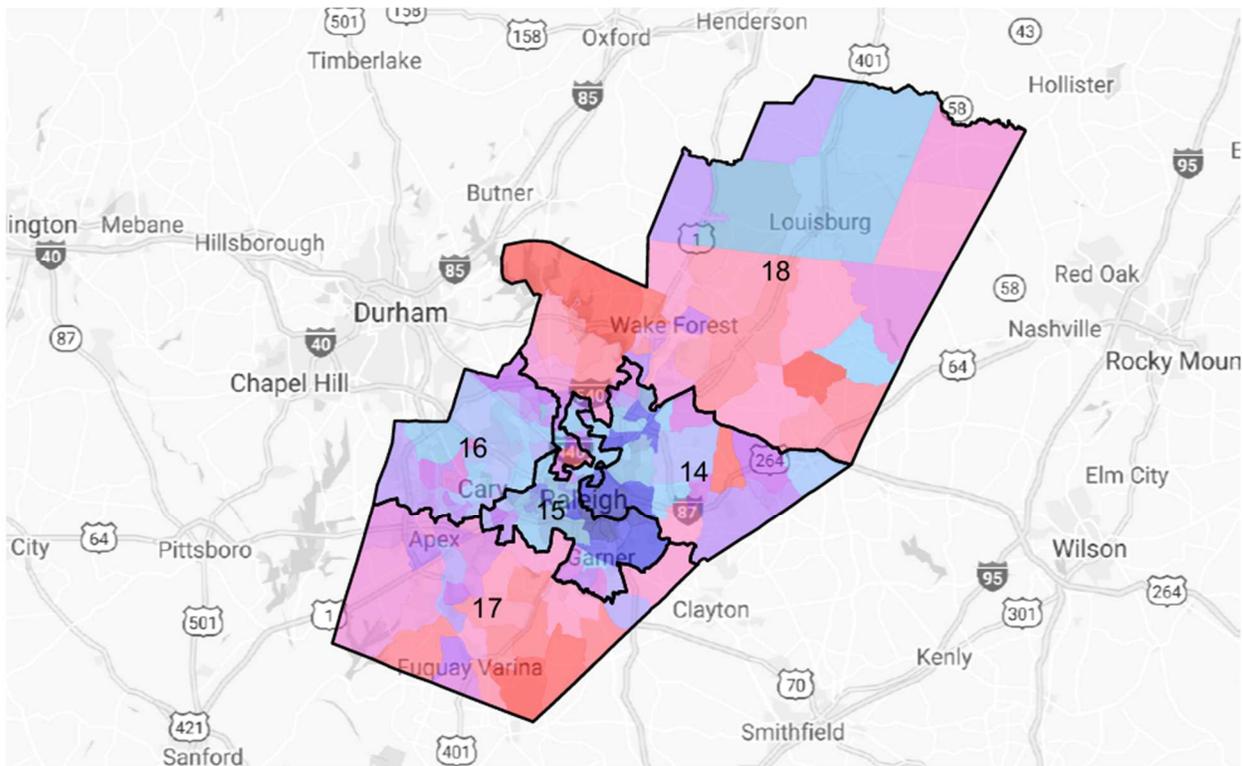
149. Senate Districts 10, 11, and 12 span a six-county cluster of Sampson, Duplin, Johnston, Nash, Lee, and Harnett Counties.



150. The General Assembly cracked the Democratic areas of the six counties in this cluster across the three districts that the cluster contains. For instance, the General Assembly dispersed the Democratic voters in and around Rocky Mount, Clinton, and Sanford across Senate Districts 10, 11, and 12, respectively. As a result, all three districts favor Republicans.

Senate Districts 14, 15, 16, 17, and 18

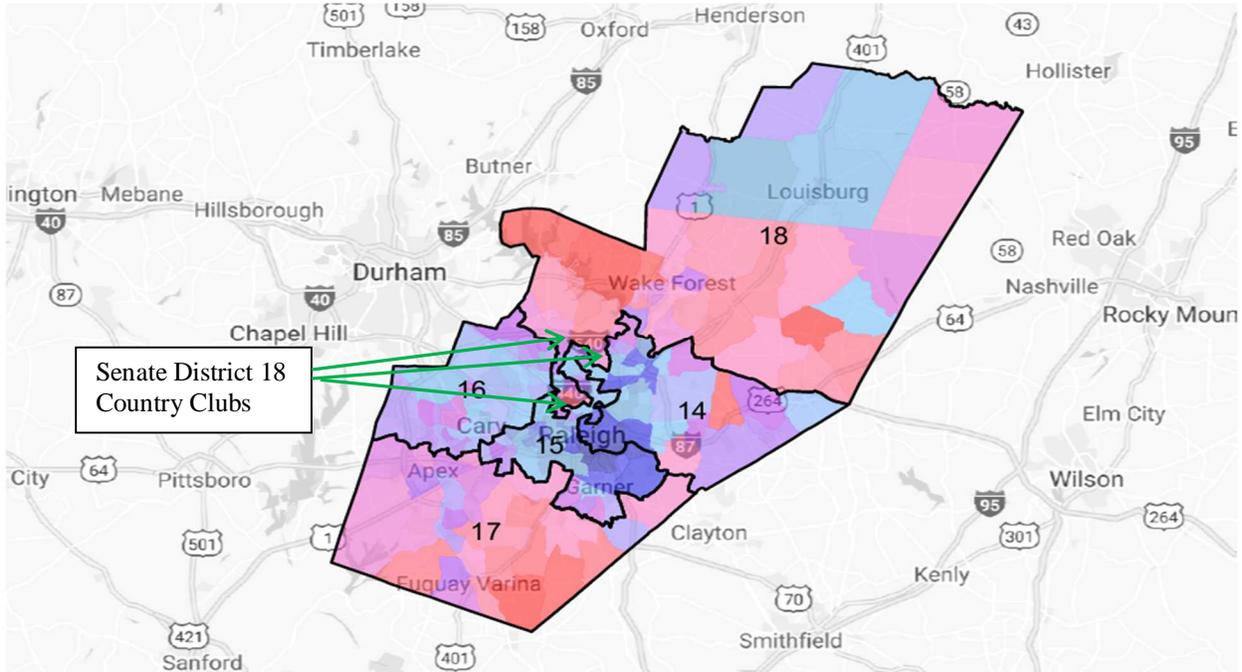
151. Senate Districts 14, 15, 16, 17, and 18 are within a county cluster of Wake and Franklin Counties.

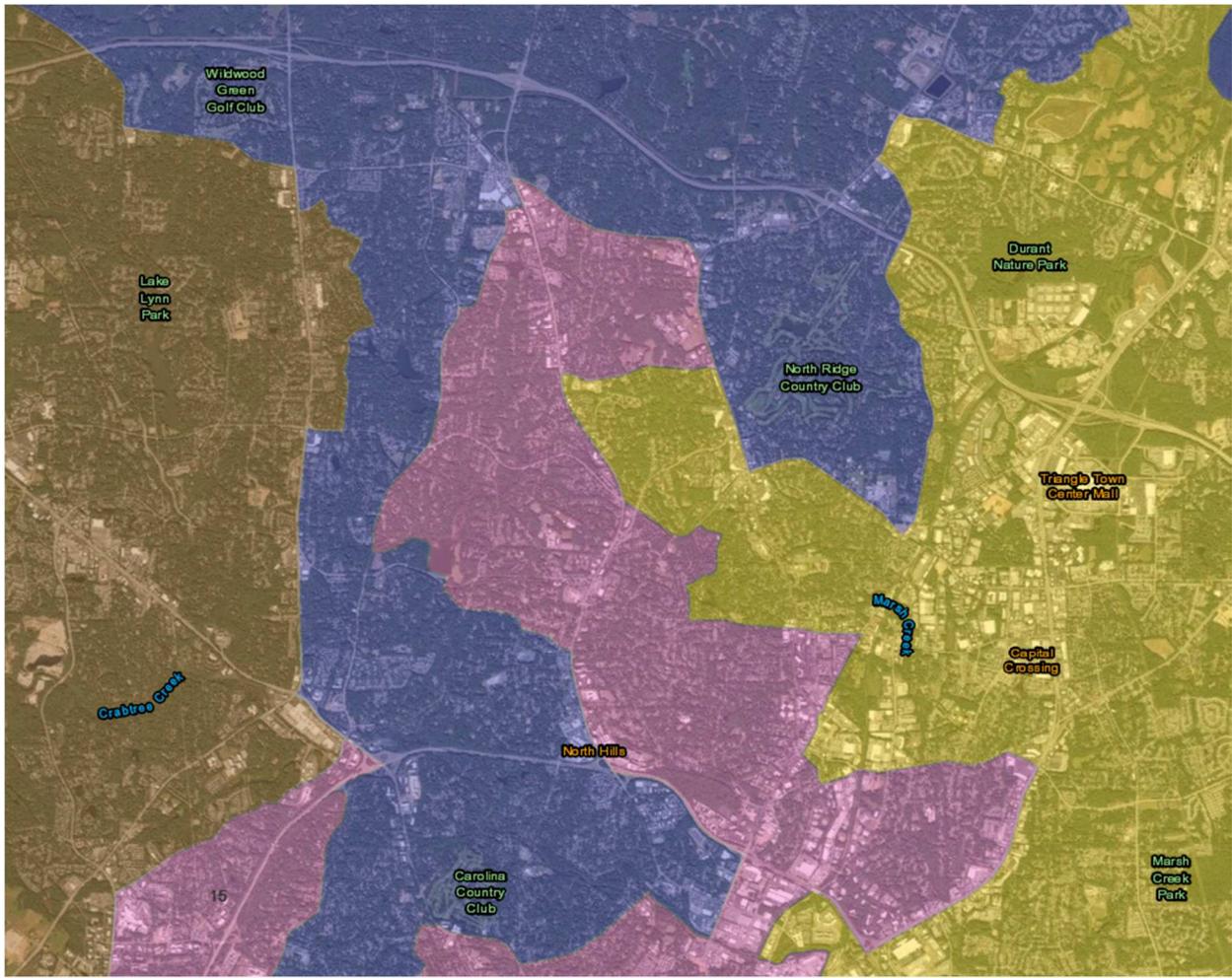


152. The General Assembly packed as many Wake County Democrats as possible into three districts within this cluster (Senate District 14, 15, and 16). This packing was done to make Senate Districts 17 and 18 as Republican-leaning as possible.

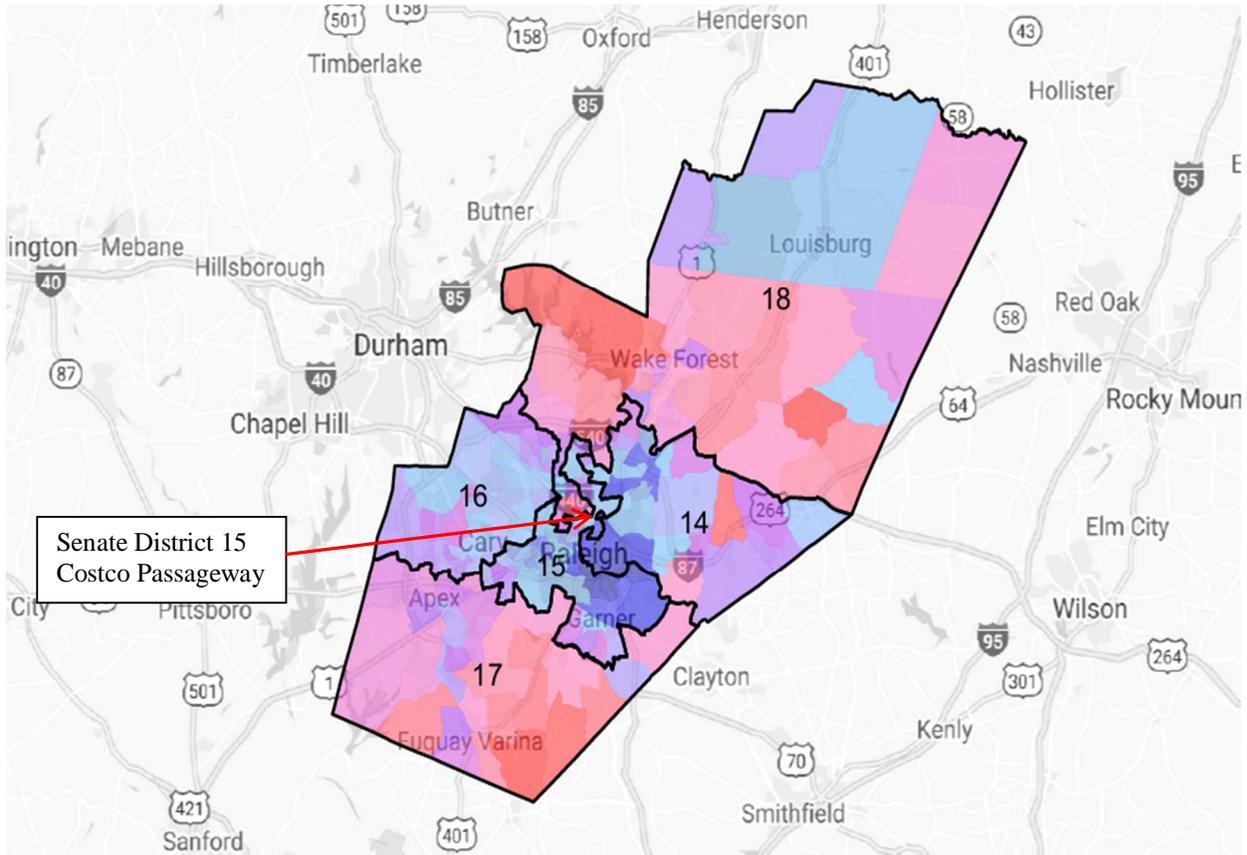
153. To carry out this scheme, the General Assembly split Raleigh across four districts (Senate District 14, 15, 16, and 18), even though Raleigh's population could fit almost entirely within two Senate districts. The General Assembly dissected Raleigh to put its only Republican-

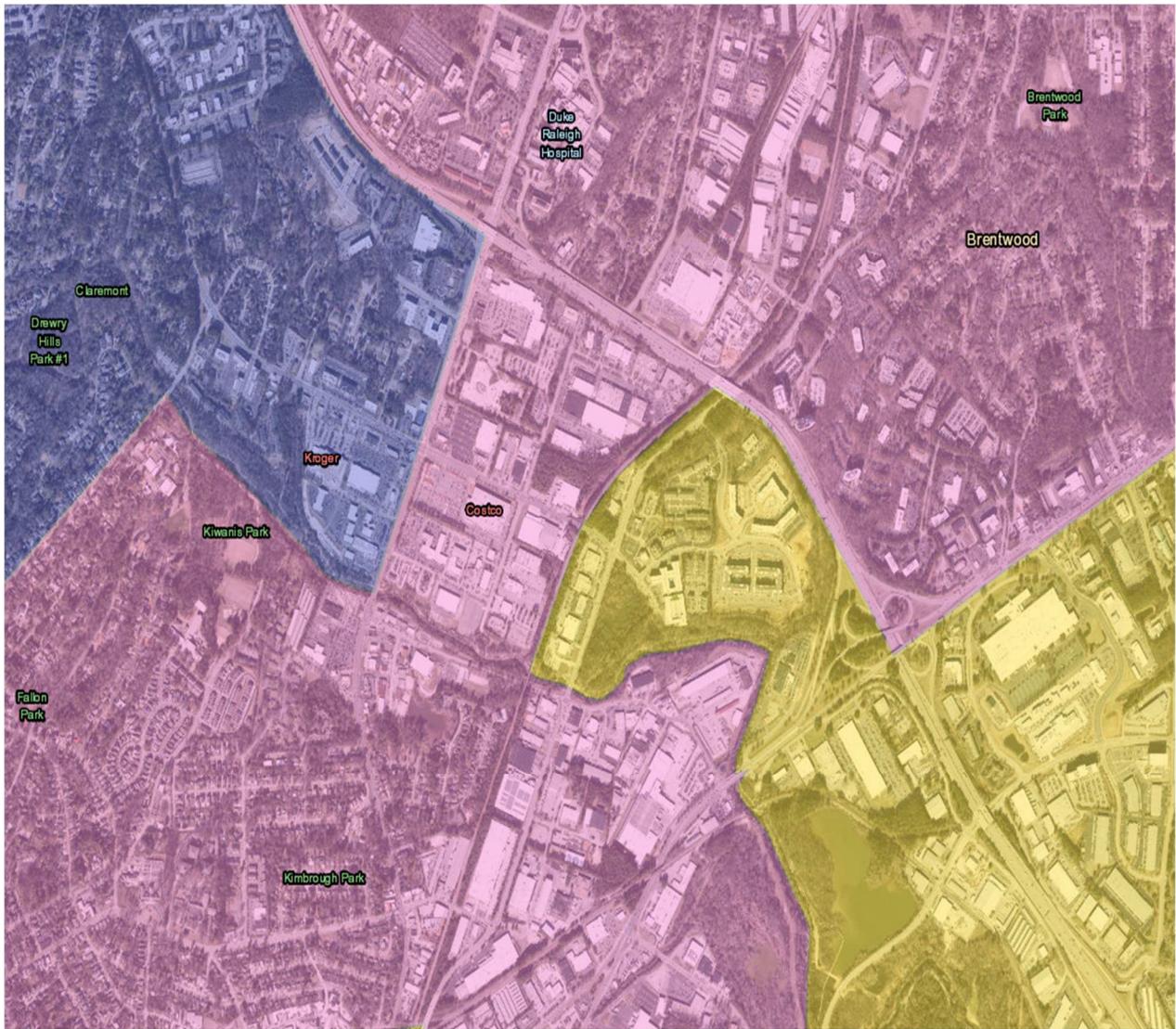
leaning areas, in north and northwest Raleigh, in Senate District 18. Specifically, Senate District 18 grabs the Republican-leaning communities that surround three different Raleigh country clubs—the North Ridge Country Club, the Wildwood Golf Club, and the Carolina Country Club.





154. To place these Republican areas in Senate District 18 while avoiding north Raleigh's Democratic areas, the General Assembly created a tentacle for Senate District 15 that grabs north Raleigh's Democratic voters. The General Assembly created this tentacle in Senate District 15 via a narrow passageway containing no more than a Costco.

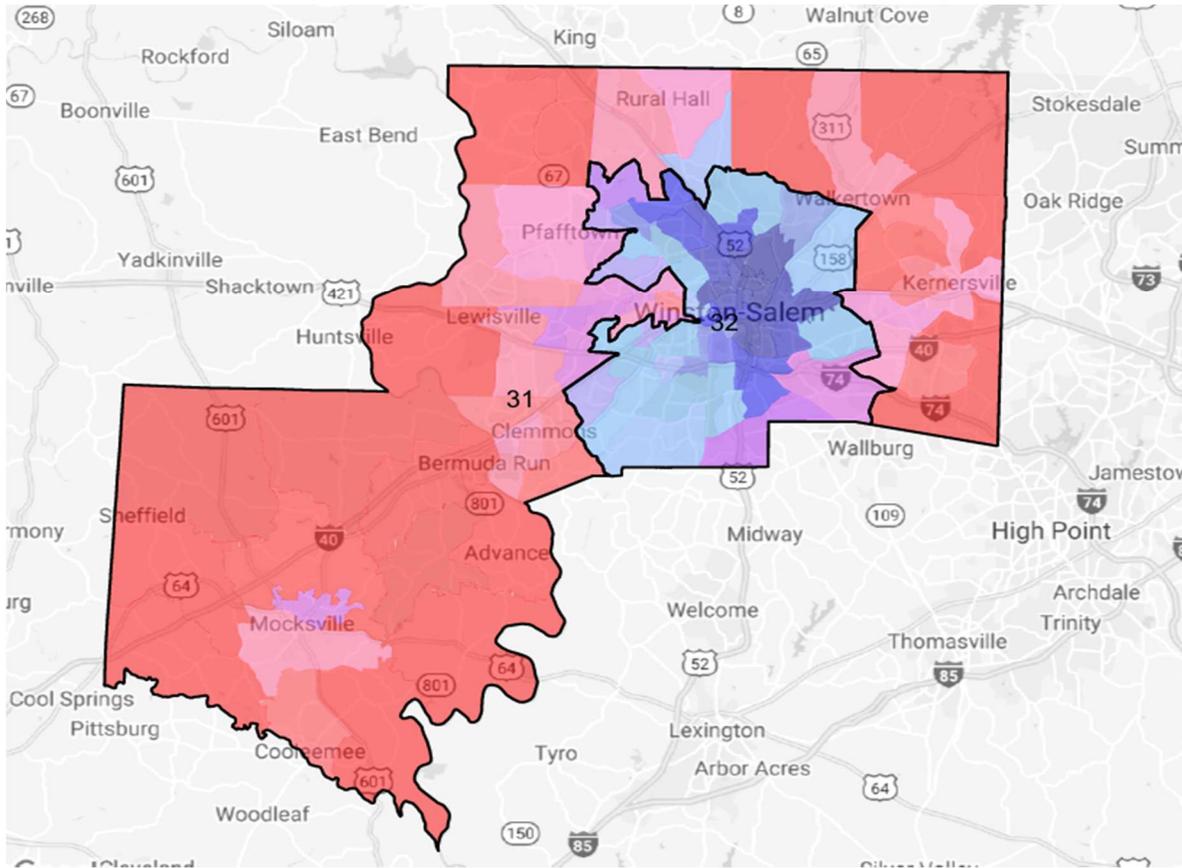




155. Senate District 18, the “Country Club District,” performed as the General Assembly hoped in the 2018 election: Republicans held onto it by a few percentage points. Republicans managed to win a Wake County seat in the Senate despite the fact that Democrats won every county-wide election in Wake County in 2018 by overwhelming majorities.

#### Senate Districts 31 and 32

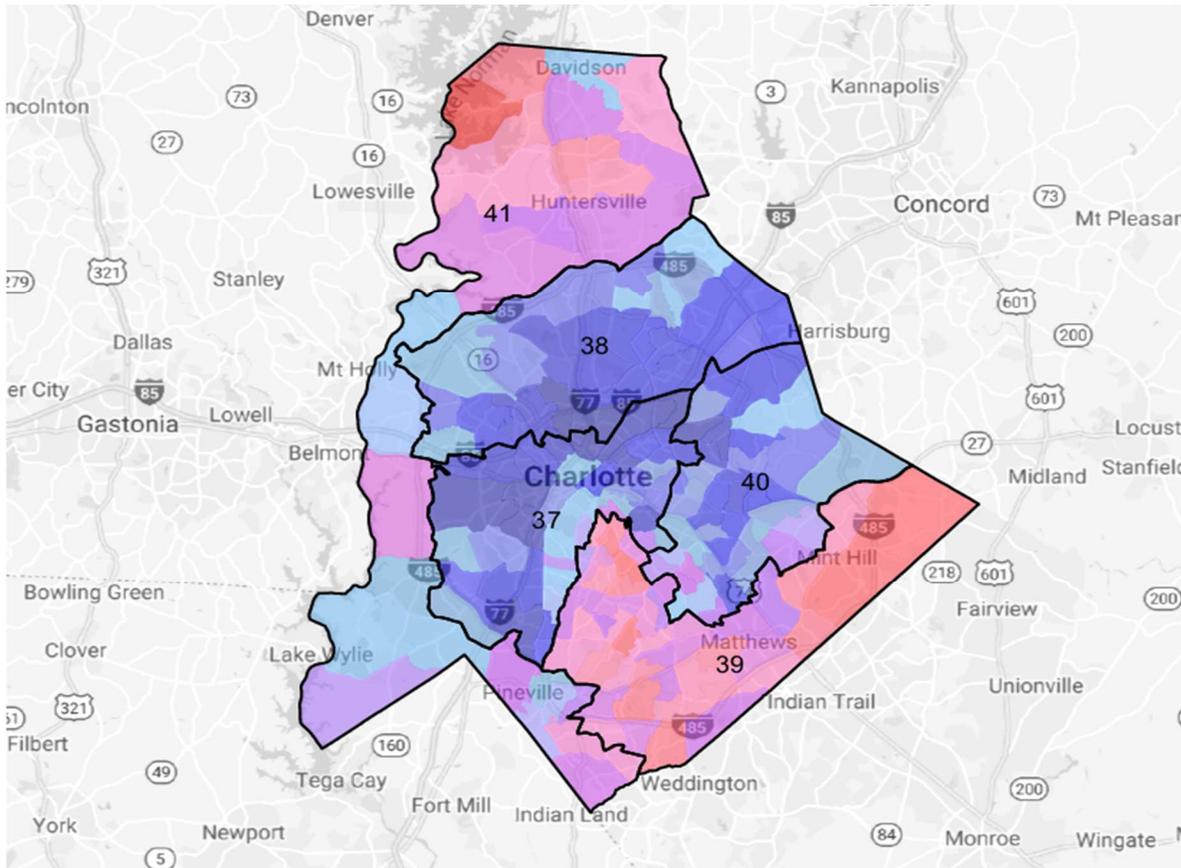
156. Senate Districts 31 and 32 are within a county cluster of Davie and Forsythe Counties.



157. The General Assembly packed all of the most Democratic areas in and around Winston-Salem into Senate District 32, so that Senate District 31 would favor Republicans.

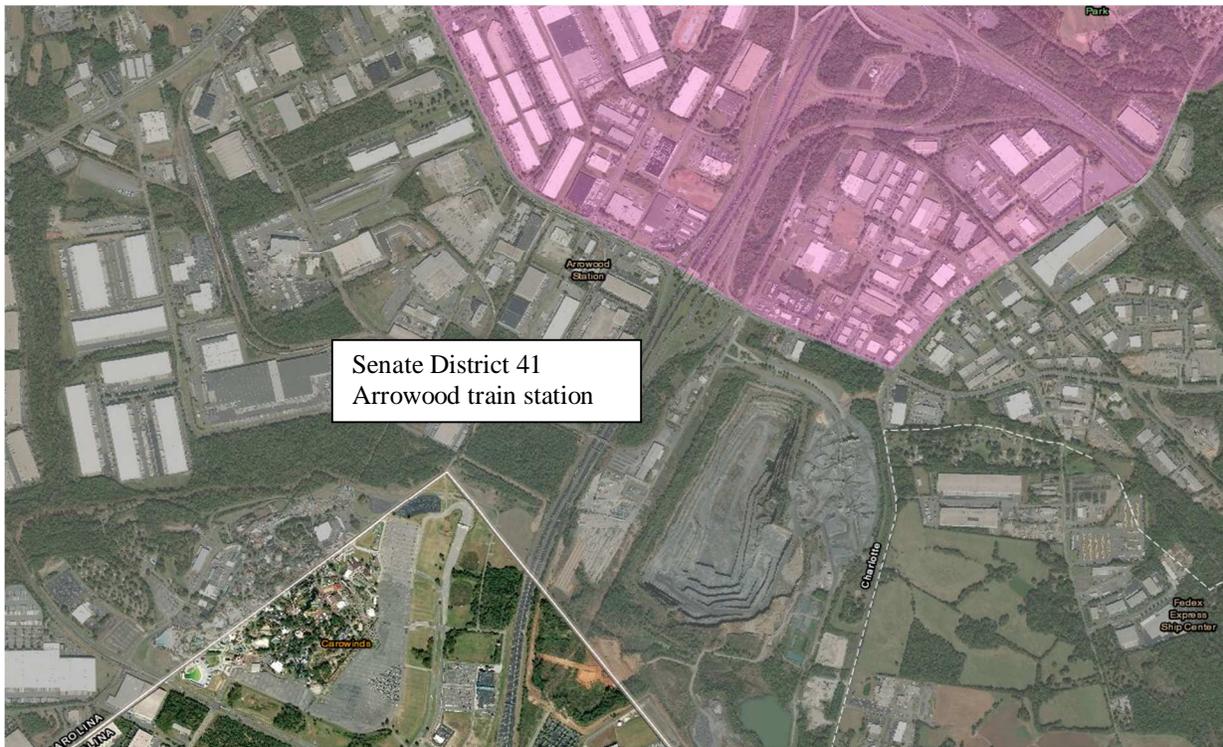
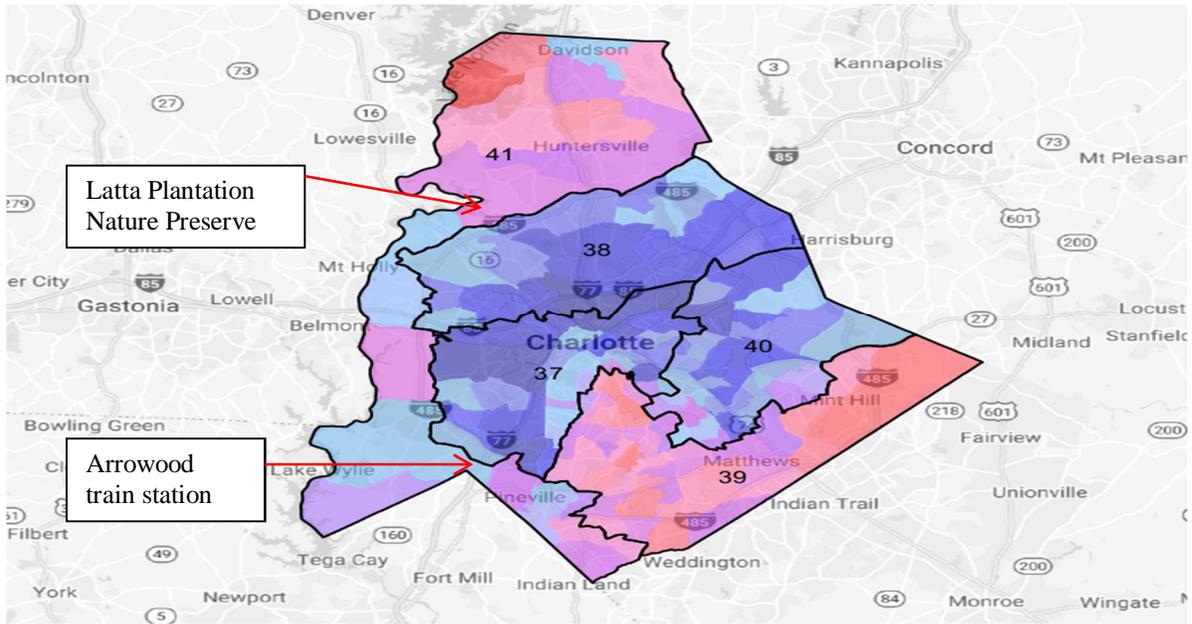
Senate Districts 37, 38, 39, 40, and 41

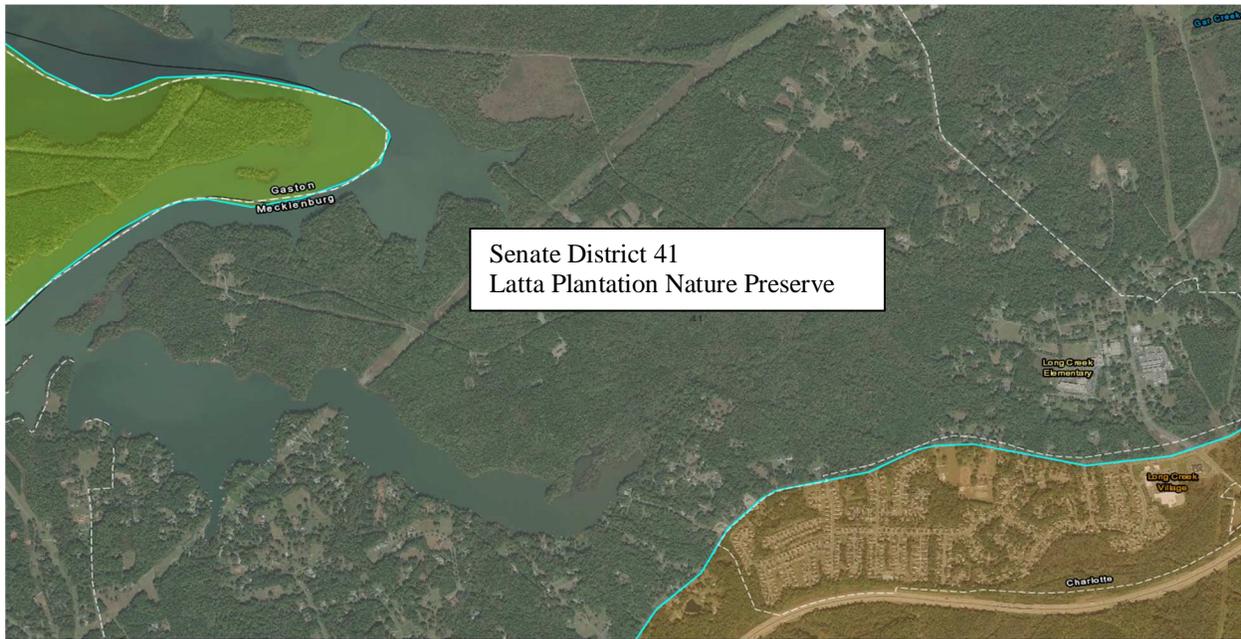
158. Senate Districts 37, 38, 39, 40, and 41 are all located within Mecklenburg County.



159. The General Assembly packed as many Democrats as possible into Senate Districts 37, 38, and 40, so as to create two Mecklenburg County districts—Senate Districts 39 and 41—that lean Republican based on the statewide elections the General Assembly considered.

160. The General Assembly had to go to particularly great lengths to make Senate District 41 competitive for Republicans. The district begins north of Charlotte, then slices through a thin stretch of land west of Charlotte, before curling back around to pick up Republican-leaning areas south of Charlotte. To stitch together these disparate areas, Senate District 41 at one point connects through a nature preserve and at another point the district is held together only by the Arrowood train station.

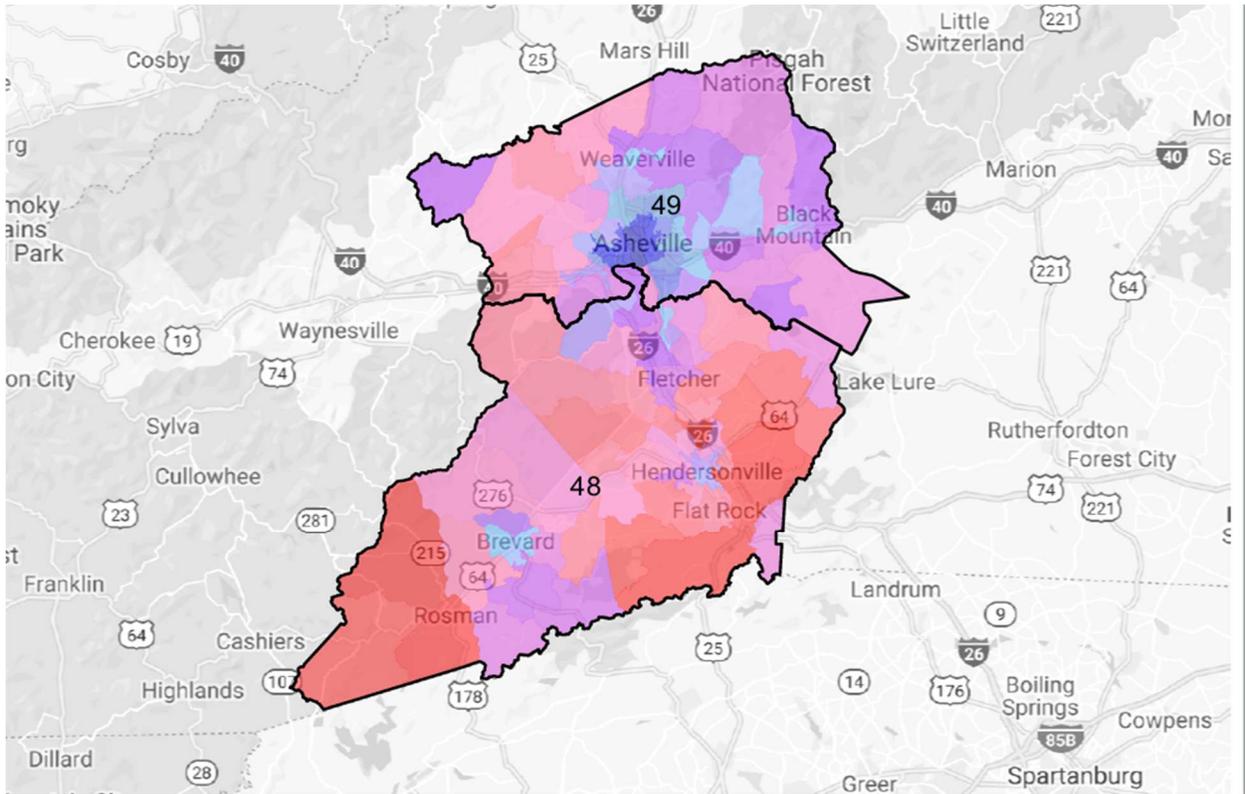




161. The General Assembly manipulated Senate District 39 to be favorable to Republicans. Despite the enormous Democratic wave in Mecklenburg County in 2018—with Democrats winning every county-wide election by huge margins and sweeping the Mecklenburg County Board of Commissioners races—Republicans managed to hold onto Senate District 39.

Senate Districts 48 and 49

162. Senate Districts 48 and 49 are within a county cluster of Transylvania, Henderson, and Buncombe Counties.



163. The General Assembly packed Democratic voters in and around Asheville into Senate District 49. This packing ensured that Senate District 48 would elect a Republican.

### 3. The 2017 Plans Achieved Their Goal in the 2018 Election

164. The 2017 Plans' cracking and packing of Democratic voters worked with remarkable success in the 2018 elections. While the Democratic wave did flip some seats, it could not overcome plans that were designed to guarantee Republicans majorities.

165. In the 2018 House elections, Democratic candidates won 51.1% of the two-party statewide vote, but won only 54 of 120 seats (45%).<sup>3</sup>

166. In the 2018 Senate elections, Democratic candidates won 50.4% of the two-party statewide vote, but won only 21 of 50 seats (42%).

<sup>3</sup> These statistics are based on the results posted on the North Carolina Board of Election's website as of November 12, 2018.

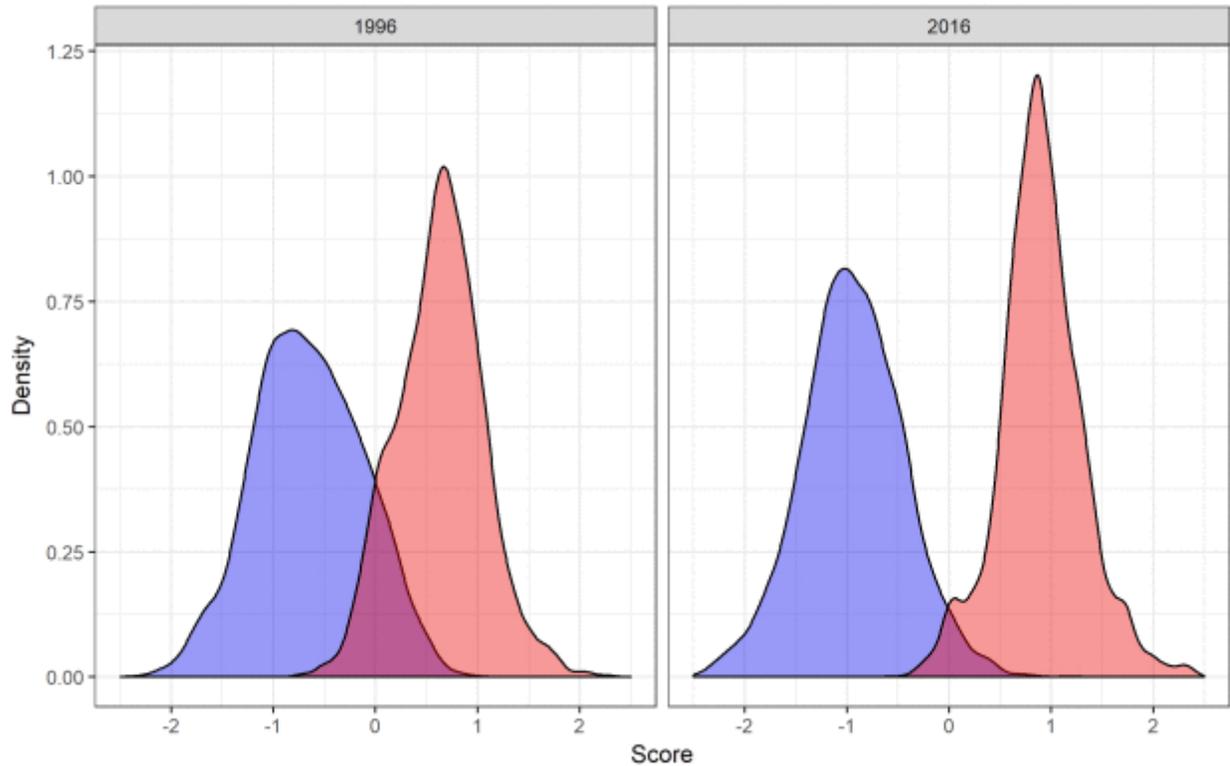
**I. The Partisan Gerrymandering of the 2017 Plans Causes Plaintiffs and Other Democratic Voters To Be Entirely Shut Out of the Political Process**

167. The effects of the gerrymander go beyond election results. In today’s state legislatures—and particularly in North Carolina—Republican representatives are simply not responsive to the views and interests of Democratic voters. Regardless of whether gerrymandering has *caused* this increased partisanship, such extreme partisanship magnifies the *effects* of partisan gerrymandering. When Democratic voters lose the ability to elect representatives of their party as a result of partisan gerrymandering, those voters lose not only electoral power, but also the ability to influence legislative outcomes—because Republican representatives pay no heed to these voters’ views and interests once in office.

168. There is substantial evidence documenting the increasing polarization of state legislatures, including ideological scores assigned to every state legislator in the country by political scientists Drs. Nolan McCarty and Boris Shor. The chart below depicts the ideological distribution of state legislators nationwide in 1996 and in 2016. Red reflects Republican legislators and blue reflects Democratic legislators, with negative scores on the left of the x-axis indicating a more liberal ideology and positive scores on the right on the x-axis indicating a more conservative ideology.<sup>4</sup> The chart shows that today there are barely any state legislators across the country who overlap ideologically—*i.e.*, barely any Democratic and Republican legislators who overlap in ideological score—and far less than in 1996. Instead, legislators from the parties have grown farther apart, and Republicans legislators in particular have become much more homogenous in ideology, coalescing around an ideological score of +1.

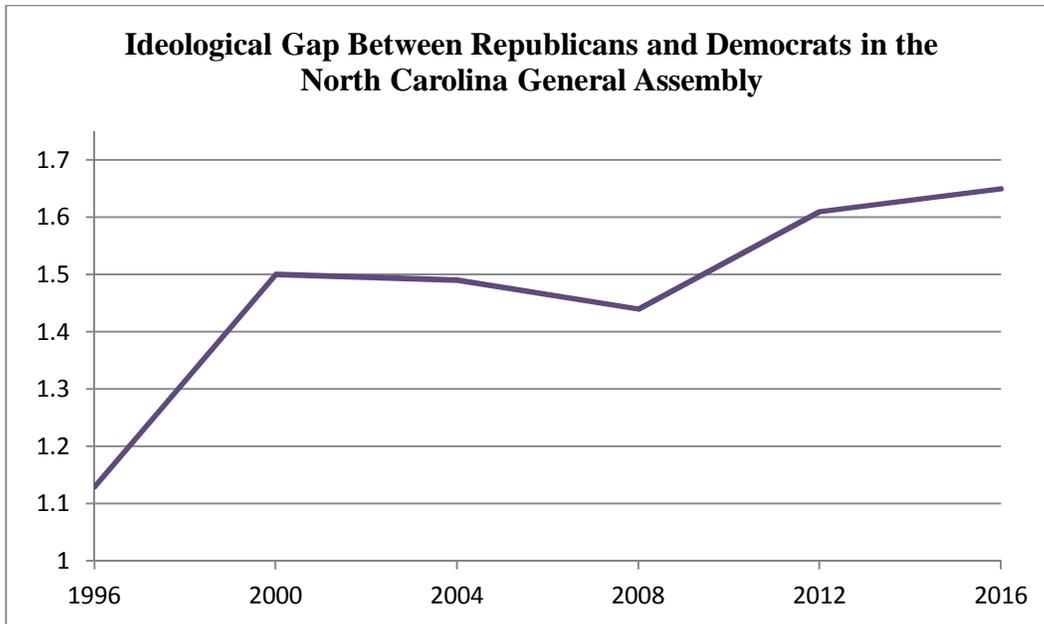
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<sup>4</sup> See State Polarization, 1996-2016, <https://americanlegislatures.com/2017/07/20/state-polarization-1996-2016/>.

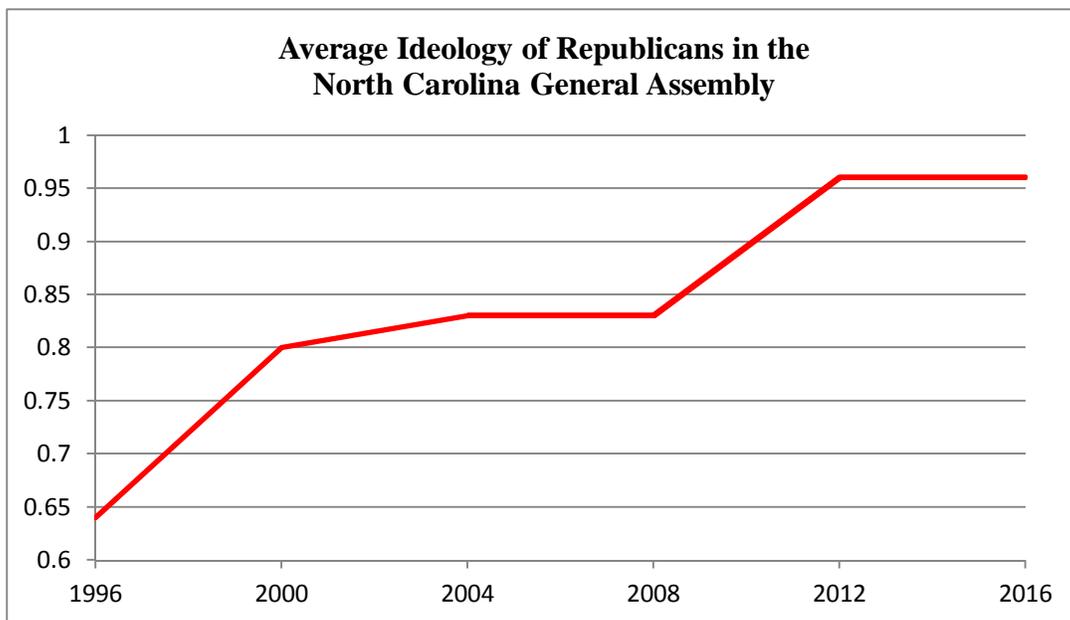


169. The North Carolina General Assembly is no exception to this trend. Political scientists McCarty and Shor have developed ideological scores for every state legislator in the country based on each legislator’s roll call voting behavior. These ideological scores range from negative -3 to +3, with negative scores indicating more liberal ideological and positive scores a more conservative one. The below chart shows the gap between the average ideological scores of Republicans and Democrats in the North Carolina General Assembly. It shows that gap has grown dramatically—increasing by more than 50%—over the last 20 years.<sup>5</sup>

<sup>5</sup> See Boris Shor & Nolan McCarty, *Measuring American Legislatures*, <https://americanlegislatures.com/category/polarization/>.



170. This increasing ideological gap reflects the fact that Republican legislators in the North Carolina General Assembly have grown more and more conservative. The below chart shows the average ideological scores of Republicans in the General Assembly over the last 20 years. It demonstrates how Republicans in the General Assembly vote in an increasingly more conservative fashion, and thus are less likely to reflect the views of Democratic voters.



171. The extreme polarization of Republicans in the General Assembly is further evidenced by their near-uniform bloc voting behavior.

172. In the 2017-2018 Session, Republicans in the state Senate almost always voted with a majority of other Republicans and virtually never crossed over to vote with the minority. Every Republican Senator voted with a majority of Republicans over 95% of the time, and the median Republican Senator voted with the Republican majority a stunning 99.2% of the time.<sup>6</sup>

173. Likewise in the House, in the 2017-2018 Session, nearly every Republican in the state House of Representatives voted with the Republican majority over 90% of the time, and the median Republican in the House voted with the Republican majority 96.70% of the time.<sup>7</sup>

174. These statistics all illustrate that Republicans in the General Assembly do not represent the views and interests of their Democratic constituents and almost never engage in cross-over voting. Thus, when gerrymandering denies Democratic voters the ability to elect representatives of their party, they also lose any chance of influencing legislative outcomes.

**COUNT I**  
**Violation of the North Carolina Constitution's**  
**Equal Protection Clause, Art. I, § 19**

175. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

176. Article I, Section 19 of the North Carolina Constitution provides in relevant part that “[n]o person shall be denied the equal protection of the laws.”

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<sup>6</sup> See *Senate Member Vote Statistics, 2017-2018 Session*, <https://www.ncleg.net/gascripts/voteHistory/MemberVoteStatistics.pl?sSession=2017&sChamber=S>.

<sup>7</sup> See *House Member Vote Statistics, 2017-2018 Session*, <https://www.ncleg.net/gascripts/voteHistory/MemberVoteStatistics.pl?sSession=2017&sChamber=H>.

177. North Carolina’s Equal Protection Clause affords broader protections to its citizens in the voting rights context than the U.S. Constitution’s equal protection provisions. *See Stephenson v. Bartlett*, 562 S.E.2d 377, 393-95 & n.6 (N.C. 2002); *Blankenship v. Bartlett*, 681 S.E.2d 759, 763 (N.C. 2009).

178. Irrespective of its federal counterpart, North Carolina’s Equal Protection Clause protects the right to “substantially equal voting power.” *Stephenson*, 562 S.E.2d at 394. “It is well settled in this State that the right to vote on equal terms is a fundamental right.” *Id.* at 393 (internal quotation marks omitted).

179. The 2017 Plans intentionally and impermissibly classify voters into districts on the basis of their political affiliations and viewpoints. The intent and effect of these classifications is to dilute the voting power of Democratic voters, to make it more difficult for Democratic candidates to be elected across the state, and to render it virtually impossible for the Democratic Party to achieve a majority of either chamber of the General Assembly. Defendants can advance no compelling or even legitimate state interest to justify this discrimination.

180. The 2017 Plans’ intentional classification of, and discrimination against, Democratic voters is plain. The Republican leaders of the House and Senate Redistricting Committees explicitly used “political considerations and election results data” as a criterion in creating the 2017 Plans, drew the maps in secret with a Republican mapmaker, and admitted that they “did make partisan considerations when drawing particular districts.” *Covington*, ECF No. 184-17 at 26. The partisan composition of the districts based on recent results demonstrates that the map was designed to ensure overwhelming Republican majorities in both chambers. The General Assembly’s intent is also laid bare by the packing and cracking of individual Democratic

communities, as well as a host of statistical analyses and measures that will confirm the 2017 Plans necessarily reflect an intentional effort to disadvantage Democratic voters.

181. These efforts have produced discriminatory effects for Plaintiffs other Democratic voters, including members of Common Cause and the NCDP. On a statewide basis, Democrats receive far fewer state House and Senate seats than they would absent the gerrymanders. The grossly disproportionate number of seats that Republicans have won and will continue to win in the General Assembly relative to their share of the statewide vote cannot be explained or justified by North Carolina's geography or any legitimate redistricting criteria. Moreover, because the gerrymanders guarantee that Republicans will hold a majority in the House and Senate, Plaintiffs and other Democratic voters are unable to elect a legislature that will pass legislation that reflects Democratic voters' positions or policies. The 2017 Plans burden the representational rights of Democratic voters individually and as a group and discriminate against Democratic candidates and organizations individually and as a group.

182. Individual voters also experience discriminatory effects at the district level. For those Plaintiffs and other Democratic voters who live in cracked communities and districts, their voting power is diluted, and it is more difficult than it would be but-for the gerrymander for these voters to elect candidates of their choice. And given the extreme partisanship of Republican representatives in the General Assembly, these voters have no meaningful opportunity to influence legislative outcomes when Republican candidates win their districts, because the Republican representatives simply do not weigh their Democratic constituents' interests and policy preferences in deciding how to act. For those Plaintiffs and other Democratic voters, including members of Common Cause and the NCDP, who live in packed Democratic districts, the weight of their votes has been substantially diluted. Their votes have no marginal impact on

election outcomes, and representatives will be less responsive to their individual interests or policy preferences. Accordingly, for all Plaintiffs and others Democratic voters whose votes are diluted under the 2017 Plans, the 2017 Plans impermissibly deny these voters their fundamental right to “vote on equal terms” with “equal voting power.” *Stephenson*, 562 S.E.2d at 393-94.

**COUNT II**  
**Violation of the North Constitution’s**  
**Free Elections Clause, Art. I, § 5**

183. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

184. Article I, Section 10 of the North Carolina Constitution, which has no counterpart in the U.S. Constitution, provides that “All elections shall be free” (the “Free Elections Clause”).

185. North Carolina’s Free Elections Clause traces its roots to the 1689 English Bill of Rights, which declared that “Elections of members of Parliament ought to be free.”

186. Numerous other states have constitutional provisions that trace to the same provision of the 1689 English Bill of Rights, including Pennsylvania, which has a constitutional provision requiring that all “elections shall be free and equal.” *See League of Women Voters v. Commonwealth*, 178 A.3d 737, 793 (Pa. 2018). On February 7, 2018, the Pennsylvania Supreme Court held that the partisan gerrymander of Pennsylvania’s congressional districts violated this clause. The state high court held that Pennsylvania’s Free and Equal Elections Clause requires that all voters “have an equal opportunity to translate their votes into representation,” and that this requirement is violated where traditional districting criteria such as preserving political subdivisions and compactness are “subordinated, in whole or in part, to extraneous considerations such as gerrymandering for unfair partisan political advantage.” *Id.* at 814, 817.

187. North Carolina’s Free Elections Clause protects the rights of voters to at least the same extent as Pennsylvania’s analogous provision.

188. The 2017 Plans violate the Free Elections Clause by denying Plaintiffs and other Democratic voters, including members of Common Cause and the NCDP, an equal opportunity to translate their votes into representation, and by providing an unfair partisan advantage to the Republican Party and its candidates as a whole over the Democratic Party and its candidates as a whole. The General Assembly’s violation of the Free Election Clause is evidenced by, *inter alia*, its subordination of traditional districting criteria to illicit partisan motivations.

189. Elections under the 2017 Plans are anything but “free.” They are rigged to predetermine electoral outcomes and guarantee one party control of the legislature, in violation of Article I, § 5 of the North Carolina Constitution.

**COUNT III**  
**Violation of the North Constitution’s**  
**Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14**

190. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

191. Article I, § 12 of the North Carolina Constitution provides in relevant part: “The 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.”

192. Article I, § 14 of the North Carolina Constitution provides in relevant part: “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.”

193. North Carolina courts have recognized that Article I, Sections 12 and 14 may afford broader protections than the federal First Amendment. *Evans v. Cowan*, 468 S.E.2d 575, 578, *aff’d*, 477 S.E.2d 926 (1996).

194. Article I, Sections 12 and 14 protect the right of voters to participate in the political process, to express political views, to affiliate with or support a political party, and to

cast a vote. Voting for a candidate of one's choice is core political speech and/or expressive conduct protected by the North Carolina Constitution. Contributing money to, or spending money in support of, a preferred candidate is core political speech and/or expressive conduct as well. And leading, promoting, or affiliating with a political party to pursue certain policy objectives is core political association protected by the North Carolina Constitution.

195. Irrespective of the U.S. Constitution, the 2017 Plans violate Article 1, Sections 12 and 14 of the North Carolina Constitution by intentionally burdening the protected speech and/or expressive conduct of Plaintiffs and other Democratic voters, including members of Common Cause and the NCDP, based on their identity, their viewpoints, and the content of their speech. The 2017 Plans burden the speech and/or expressive conduct of Plaintiffs and other Democratic voters by making their speech and/or expressive conduct—*i.e.*, their votes—less effective. For those Plaintiffs and other Democratic voters who live in cracked districts, the 2017 Plans artificially make it more difficult (if not impossible) for their speech and/or expressive conduct to succeed. And because of the polarization of Republicans in the General Assembly, these voters will be unable to influence the legislative process, resulting in the complete suppression of their political views. For those Plaintiffs and other Democratic voters who live in packed districts, the 2017 Plans artificially dilute the weight and impact of their speech and/or expressive conduct. The General Assembly intentionally created these burdens because of disfavor for Plaintiffs and other Democratic voters, their political views, and their party affiliations.

196. Irrespective of the U.S. Constitution, the 2017 Plans also violate Article 1, Sections 12 and 14 of the North Carolina Constitution by burdening the protected speech and/or expressive conduct of the NCDP. Because of the gerrymanders, the money the NCDP contributes to or spends on Democratic candidates—and the messages conveyed through the

contributions and expenditures—are less effective and less able to succeed. The General Assembly intentionally rendered the NCDP’s contributions and expenditures less effective because of disagreement with the political viewpoints expressed through those contributions and expenditures and disfavor for the candidates that the NCDP supports.

197. Irrespective of the U.S. Constitution, the 2017 Plans also violate Article 1, Sections 12 and 14 of the North Carolina Constitution by burdening the associational rights of Plaintiffs. The 2017 Plans burden the ability of Plaintiffs and other Democratic voters, including members of Common Cause and the NCDP, as well as the NCDP as an organization, to affiliate and join together in a political party, to carry out the party’s activities, and to implement the party’s policy preferences through legislative action. The 2017 Plans burden these associational rights by, *inter alia*, making it more difficult for Plaintiffs and other Democratic voters, as well as the NCDP, to register voters, attract volunteers, raise money in gerrymandered districts, campaign, and turn out the vote, by reducing the total representation of the Democratic Party in the General Assembly, and by making it virtually impossible for Democrats to constitute a majority of either chamber of the General Assembly.

198. Irrespective of the U.S. Constitution, the 2017 Plans also violate Article 1, Sections 12 and 14 of the North Carolina Constitution by burdening the protected speech, expressive conduct, and associational rights of Common Cause. The 2017 Plans burden Common Cause’s ability to convince voters in gerrymandered districts to vote in state legislative elections and to communicate with legislators. And because the 2017 Plans allow the General Assembly to disregard the will of the public, the 2017 Plans’ burden Common Cause’s ability to communicate effectively with legislators, to influence them to enact that promote voting, participatory democracy, public funding of elections, and other measures that encourage

accountable government. The 2017 Plans similarly burden the associational rights of Common Cause by frustrating its mission to promote participation in democracy and to ensure open, honest, and accountable government.

199. Irrespective of the U.S. Constitution, the 2017 Plans also violate the North Carolina Constitution's prohibition against retaliation against individuals who exercise their rights under Article I, Sections 12 and 14. *See Feltman v. City of Wilson*, 767 S.E.2d 615, 620 (N.C. App. 2014). The General Assembly expressly considered the prior protected conduct of Plaintiffs and other Democratic voters, including members of Common Cause and NCDP, by considering their voting histories and political party affiliations when placing these voters into districts. The General Assembly did this to disadvantage individual Plaintiffs and other Democratic voters because of their prior protected conduct, and this retaliation has diluted these individuals' votes in a way that would not have occurred but-for the retaliation. *Id.* Indeed, many Plaintiffs and other Democratic voters who currently live in Republican state House or Senate districts would live in districts that would be more likely to have, or would almost definitely have, a Democratic representative but for the gerrymander. Moreover, but-for the gerrymander, Plaintiffs and other Democratic voters would have an opportunity to elect a majority of the state House and Senate, which would afford an opportunity to influence legislation. The retaliation has also impermissibly burdened the associational rights of Plaintiffs and the NCDP by making it more difficult for Democrats to register voters, recruit candidates, attract volunteers, raise money, campaign, and turn out the vote, by reducing the total representation of the Democratic Party in the General Assembly, and by making it virtually impossible for Democrats to constitute a majority of either chamber of the General Assembly.

200. There is no legitimate state interest in discriminating and retaliating against Plaintiffs because of their political viewpoints, voting histories, and affiliations. Nor can the 2017 Plans be explained or justified by North Carolina's geography or any legitimate redistricting criteria.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendant, and:

- a. Declare that each of the 2017 Plans is unconstitutional and invalid because each violates the rights of Plaintiffs and all Democratic voters in North Carolina under the North Carolina Constitution's Equal Protection Clause, Art. I, § 19; Free Elections Clause, Art. I, § 5; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14;
- b. Enjoin Defendants, their agents, officers, and employees from administering, preparing for, or moving forward with the 2020 primary and general elections for the North Carolina General Assembly using the 2017 Plans;
- c. Establish new state House and state Senate districting plans that comply with the North Carolina Constitution, if the North Carolina General Assembly fails to enact new state House and state Senate districting plans comporting with the North Carolina Constitution in a timely manner;
- d. Grant Plaintiffs such other and further relief as the Court deems just and appropriate.

Dated: November 13, 2018

**POYNER SPRUILL LLP**

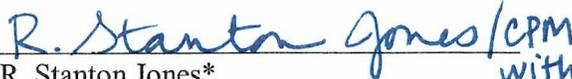
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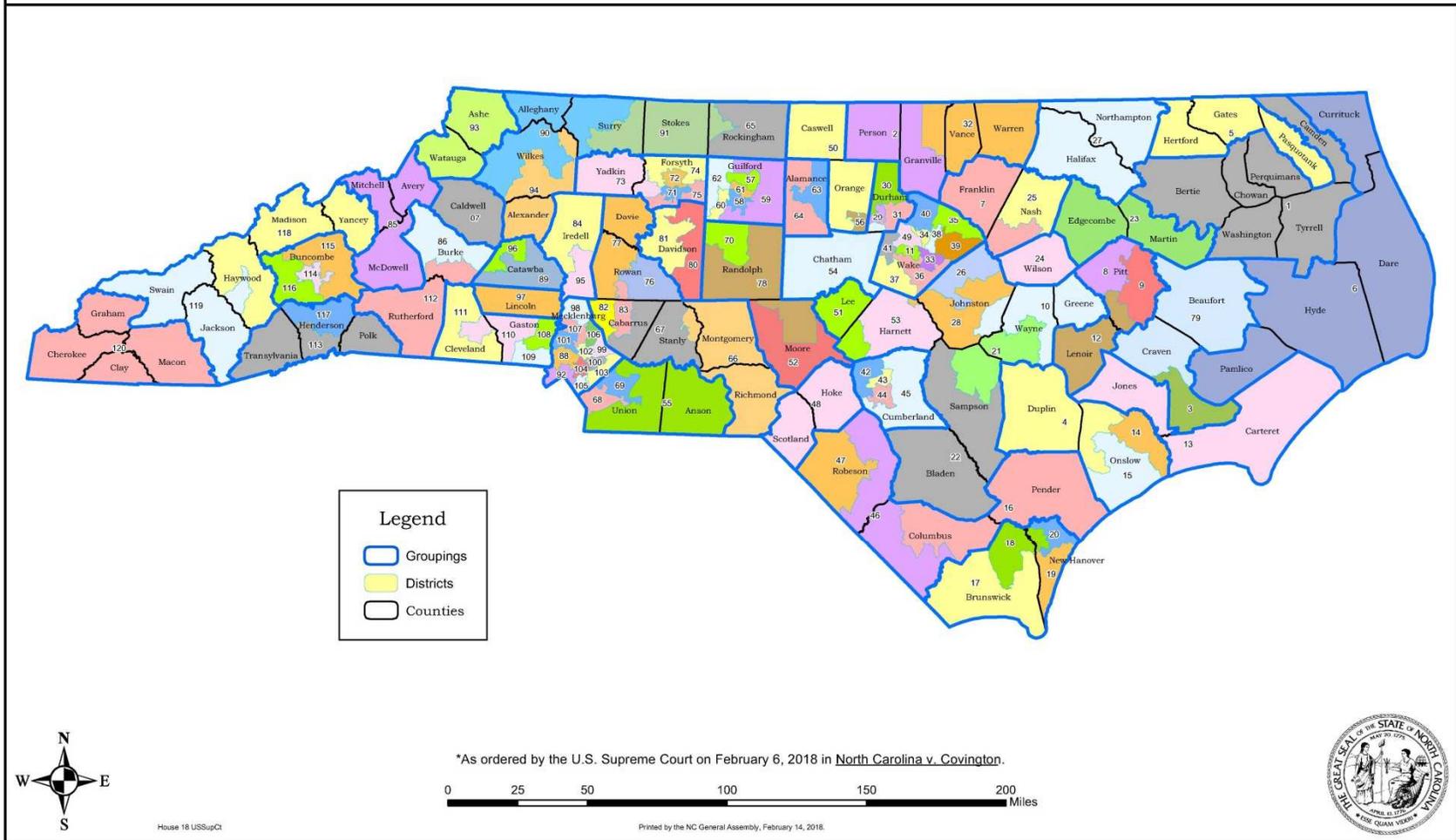
*Counsel for Common Cause and the  
Individual Plaintiffs*

\* *Pro hac vice motions forthcoming*

# **Appendix**

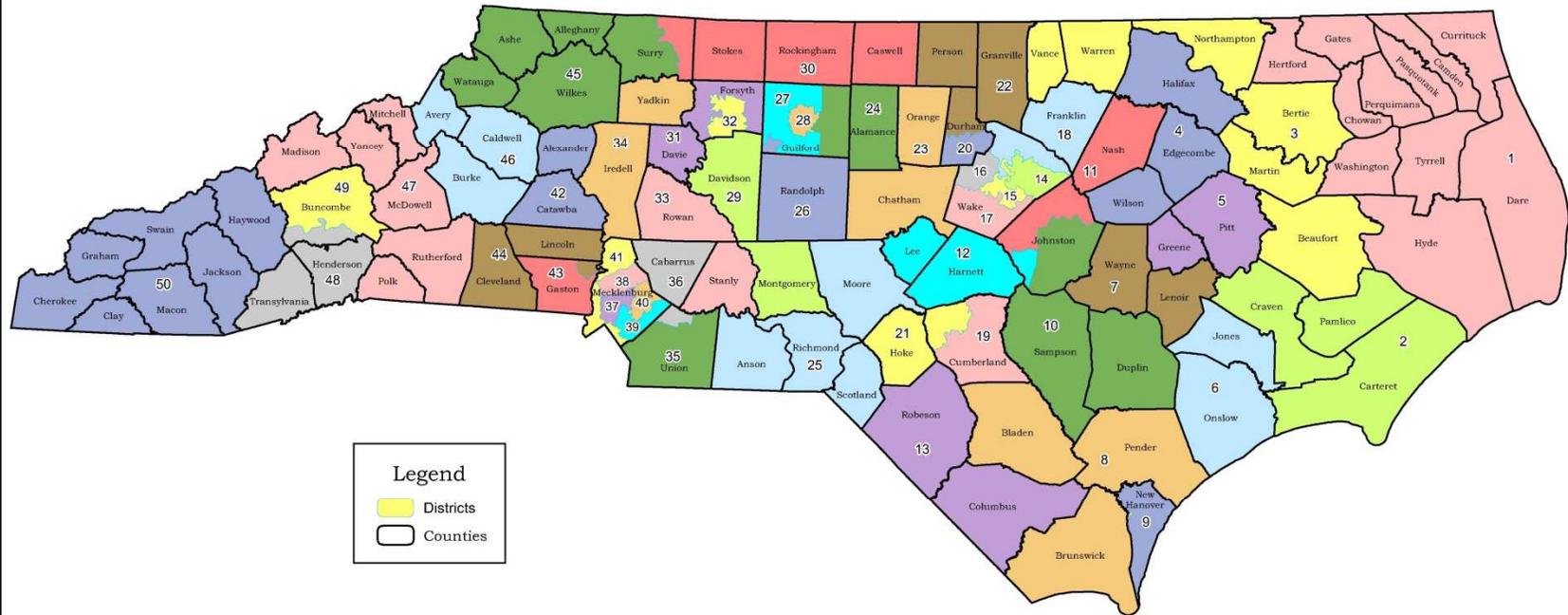
Appendix A: North Carolina House of Representatives Districts

2018 House Election Districts



Appendix B: North Carolina Senate Districts

2018 Senate Election Districts



**Legend**  
Districts  
Counties



Senate 18 USSupCt

As ordered by the U.S. Supreme Court on February 6, 2018 in North Carolina v. Covington.



Printed by the NC General Assembly, February 14, 2018.

