IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION No. 1:15-cv-559

THE CITY OF GREENSBORO, LEWIS A. BRANDON III, JOYCE JOHNSON, NELSON JOHNSON, RICHARD ALAN KORITZ, SANDRA SELF KORITZ, CHARLI MAE SYKES, MAURICE WARRREN II, and GEORGEANNA BUTLER WOMACK, *Plaintiffs*, v. THE GUILFORD COUNTY BOARD OF ELECTIONS, *Defendant*.	)	**PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to Local Civil Rule 40.1(c) and the scheduling order in this case, *see* Doc. 105, Plaintiff the City of Greensboro[1] (hereinafter, "The City"), and Lewis A. Brandon III, Joyce Johnson, Nelson Johnson, Richard Alan Koritz, Sandra Self Koritz, Charli Mae Sykes, Maurice Warren II, and Georgeanna Butler Womack (hereinafter collectively "Individual Plaintiffs") submit the following proposed findings of fact and conclusions of law.

[1] The City joins in these proposed findings of fact and conclusion of law only with regard to matters directly relating to the claim alleging that the legislature's decision to deprive the citizens of Greensboro, alone among all other municipal jurisdictions, of the right to use the initiative and referendum provisions of Chapter 160A of the North Carolina General Statutes, constitutes unconstitutional disparate treatment.

PROPOSED FINDINGS OF FACT

I. BACKGROUND

A. City of Greensboro population, demographics, and growth

1. The third-largest city in North Carolina, Greensboro experienced rapid 20.45% growth between 2000 and 2010, growing from 223,891 to 269,666 residents. (Joint Stip. ¶¶ 2, 4, 5.)

2. Between 2000 and 2010, growth among the city's minority populations outpaced growth among white residents, and for the first time the number of non-white residents surpassed the number of white residents. In 2000, the city was 55.5% white, 37.4% black, 2.8% Asian, and 4.2% other races, with 4.4% of the population identifying as Hispanic of any race. By 2010, the city was 48.4% white, 40.6% black, 4% Asian, and 7% other races, with 7.5% of the population identifying as Hispanic of any race. (Joint Stip. ¶¶ 7-8; Ex. 120, Greensboro Demographic Trends Presentation, at 10.)

3. Much of the city's black population is concentrated in neighborhoods in the southern and eastern parts of the city, while the city's northwestern neighborhoods are more homogenously white. The city's sizable immigrant and refugee population is spread throughout the city, with some small concentrations in southern and northeastern Greensboro. (Tr. Test. Abuzuaiter.)

4. Greensboro's voters are registered 55.66% Democrat, 22.84% Republican, 21.35% unaffiliated, and 0.15% Libertarian. (Joint Stip. ¶ 9.) In the 2008

presidential election, Greensboro voters supported Barack Obama with 68.13% of the vote. (Ex. 3, H.B. 263 Stat Pack, at 7.)

5. Greensboro is a hub for higher education in North Carolina, with seven colleges and universities, two of which are historically black. These institutions, the largest of which are located in south-central and eastern Greensboro, attract tens of thousands of students and alumni to the city each year and are a significant source of jobs and revenue for the city. (Tr. Test. Vaughan, Robinson, Abuzuaiter.)

6. Greensboro's seven colleges and universities also contribute to the city's reputation as a cultural hub in North Carolina. The city is home to a number of theaters, performance groups, and museums, including the International Civil Rights Center & Museum, Guilford Courthouse National Military Park, and the Triad Stage. The city is also home to the headquarters of the Atlantic Coast Conference, which frequently hosts major tournament and championship events at the Greensboro Coliseum and Greensboro Aquatic Center in the south-central part of the city. In cooperation with Guilford County, the city also continues to build and connect a network of public greenways throughout the city, which have been constructed in western and northern Greensboro but have yet to reach downtown. (Tr. Test. Vaughan, Abuzuaiter, Hightower.)

7. Greensboro's educational and cultural heft has contributed to the city's attractiveness to businesses, and the city council has worked to cultivate a business-friendly reputation. The city has made substantial investments in western Greensboro near Piedmont Triad International Airport, and in offering incentives

to businesses such as aeronautic servicer HAECO, chip maker Qorvo, and chemical supplier Ecolab. The city has also cleared the way for continued private retail and residential development by Greensboro businessman Marty Kotis in the midtown area of the city outside downtown, which serves as a gateway to the northern and western parts of the city. Additionally, the city has successfully worked with the General Assembly, NC Rail, Randolph County Commission, Bryan Foundation, and Golden Leaf Foundation to facilitate development of a planned megasite off the southern edge of Greensboro, which will create a significant number of jobs. (Tr. Test. Vaughan, Robinson, Hightower, Abuzuaiter.)

8. The city council has also prioritized investment in eastern Greensboro, which is economically disadvantaged compared with the western part of the city and is home to a number of food deserts. Data show that poverty levels grew more acute in southern and northeastern Greensboro between the beginning of the national recession in 2009 and the end of the recession in 2014. (Ex. 126, Greensboro Poverty Levels 2010-2014.) To that end, the city council has supported development of the Renaissance Community Co-Op grocery store in northeastern Greensboro, has created the East Greensboro incentive for businesses, has created the Guilford Economic Development Alliance that meets monthly, and has worked to package shovel-ready sites in eastern Greensboro that make relocation attractive to businesses. The city council has also consistently invested in and supported projects in eastern Greensboro, including Barber Park, Keeley Park, the UNC-

Greensboro Joint School of Nanoscience and Engineering, and Gateway University Research Park, which is a collaboration between UNC-Greensboro and North Carolina A&T State University. (Tr. Test. Robinson, Wells, Vaughn, Abuzuaiter, Hightower.)

9. Recent investments also have extended to western Greensboro, where the city council allocated resources and support for Griffin Recreation Center, utilities at Hester Park, and paving Gate City Boulevard. (Tr. Test. Abuzuaiter, Hightower, Robinson, Vaughan.)

10. The city continues to grow steadily, both in terms of population and acreage. The 2015 census estimates show that the population of Greensboro midway through the decade was 285,342, a nearly 6% increase over 2010. (Joint Stip. ¶ 6.) Between 2010 and 2016, the city annexed 1,411.5 acres, including 190 already-occupied housing units. These annexations were located primarily on the southern and eastern edges of the city, where current growth is concentrated. (Joint Stip. ¶¶ 82-83; Tr. Test. Hightower, Abuzuaiter.)

11. Annexations and population growth are projected to continue to be concentrated in the southern and eastern parts of the city in the next decade and beyond as construction is completed on the Interstate 85/40 bypass loop through those parts of the city. (Tr. Test. Hightower, Abuzuaiter.)

12. By contrast, the city limits on the northern, western, and southwestern edges of the city abut neighboring municipalities, and further annexation is not possible in those areas. (*See* Joint Stip. ¶ 3; Tr. Test. Hightower, Abuzuaiter.)

B. Greensboro City Council structure and election history

13. Since 1983, the Greensboro City Council has consisted of a voting mayor elected at large citywide, three representatives elected at large citywide, and five representatives elected from single-member districts. Before 1983, all eight council members and the mayor were elected at large. (Joint Stip. ¶¶ 12-13.)

14. Although elections for mayor and council members are nonpartisan, historically candidates' partisan affiliations and ideological leanings have been widely known and understood by Greensboro voters. (Joint Stip. ¶ 11; Tr. Test. Vaughn, Wells, Abuzuaiter, Hightower.)

15. Republicans, Democrats, and unaffiliated candidates alike have had success winning election to the Greensboro City Council running citywide and in districts. (Joint Stip. ¶ 21; Tr. Test. Wells, Vaughan, Abuzuaiter.)

16. Generally, one to three Republicans have been on the nine-member council at a time every year since 1983, although for one two-year term, Republicans controlled the city council. (Joint Stip. ¶¶ 9, 21.)

17. In the past twenty years, African-American voters have demonstrated considerable and sustained success in electing their candidates of choice to the Greensboro City Council, in both citywide and single-member district elections. (Tr. Test. Wells, Hightower.)

18. Every year since at least 1999, there have been two to four black members on the city council. In 2013, the number of black council members reached four for the

first time, and in 2015 all incumbent council members were re-elected. (Joint Stip. ¶ 21; Tr. Test. Wells, Hightower, Vaughan.)

19. Council member Yvonne Johnson has been elected to the Greensboro City Council eight times since 1999 running at large citywide, including one term as mayor and six terms as mayor pro tempore, having earned the most votes of any at-large candidate. (Joint Stip. ¶ 21; Tr. Test. Wells, Hightower, Vaughan.)

20. Certain white council members also have been consistent candidates of choice of black voters, including Marikay Abuzuaiter, Nancy Vaughan, Keith Holliday, and others. Those candidates have also been successful running in at-large elections citywide. (Joint Stip. ¶ 21; Tr. Test. Hightower, Wells.)

21. Following the return of the 2010 Census, in 2011 the Greensboro City Council adjusted the boundaries of its five single-member districts. The Republican majority on the council during the 2011 redistricting process was led by Council Member Trudy Wade, who drew the districts that were ultimately adopted. (Joint Stip. ¶¶ 17, 21; Tr. Test. Vaughan, Wells.)

22. The 2011 city council redistricting plan reduced the overall deviation among the five single-member districts to 3.86% and split only one precinct. (Tr. Test. Fairfax; Ex. 145, Fairfax Report, at 7, 8.)

23. During the 2011 city council redistricting process, no council member or member of the public suggested changing the structure of the council. No council member or member of the public raised concerns about the current council structure providing inadequate geographic or racial diversity on the council. No council

member or member of the public raised concerns about citywide campaigns being too expensive—including the three at-large council members and the mayor. (Tr. Test. Vaughn, Wells, Hightower; Ex. 212, April 5, 2011 City Council Meeting Minutes, at 16-17; Ex. 213, May 3, 2011 City Council Meeting Minutes, at 8-14.)

24. The only change to the structure of the Greensboro City Council since 1983 occurred in 2015, although citizens possessed the power to make additional changes under North Carolina General Statutes §§ 160A-101, -103, and -104. In 2015, following introduction of Senate Bill 36, the Greensboro City Council adopted an ordinance to extend the mayor's and council members' term lengths from two to four years effective in 2017, subject to approval by a majority of Greensboro voters in a citywide referendum. In November 2015, Greensboro voters approved the council's decision by 16.8% margin. (Joint Stip. ¶¶ 15-16; Tr. Test. Vaughan, Abuzuaiter; Ex. 78, November 2015 Election Results, at 20.)

C. Trudy Wade's relationship with the Greensboro City Council

25. Trudy Wade, a Republican, was first elected to the Greensboro City Council in 2007 from District 5 in southwest Greensboro and served in the same position through 2012, when she successfully ran for election to the North Carolina Senate. (Joint Stip. ¶ 21; Tr. Test. Wells.)

26. A particularly contentious issue on the Greensboro City Council during Trudy Wade's tenure involved the White Street Landfill in Northeast Greensboro. In 2011, then-Council Member Wade attempted to reopen the landfill, located in a heavily black neighborhood, to municipal solid waste. For a time, Nancy

Vaughan, the current mayor, had a conflict that kept her from participating in the debate and vote on reopening the landfill to MSW, and it appeared that Ms. Wade had the votes to proceed with reopening the landfill. However, citizens of Greensboro, the League of Women Voters of the Triad, and Citizens for Environmental and Economic Justice filed a lawsuit and obtained a preliminary injunction to prevent that reopening, and Ms. Vaughn's conflict resolved, leaving her free to vote against the reopening. D.H. Griffin, one of Council Member Wade's largest political contributors, then and now, was an investor in a company likely to win a contract to operate the landfill had it reopened to municipal solid waste. The events surrounding the consideration of reopening the landfill were contentious and created bitterness between Council Member Wade and other members on the city council. (Tr. Test. Wells.)

27. After her election to the Senate, Senator Wade became chair of the legislative delegation from Guilford County for the 2015-16 legislative session. The chair of a county's legislative delegation traditionally coordinates filing of all local bills requested by the local governments within the county. However, in spring 2015 Senator Wade failed to file any local bills requested by the Greensboro City Council. As a result, the city missed the bill filing deadline in the Senate, and other members of the delegation had to scramble to line up House sponsors for the city's bills and ensure they were filed in the House before that deadline also passed. (Tr. Test. Robinson, Harrison.)

II. 2015 REDISTRICTING PROCESS

A. December 2014 Guilford County legislative delegation meeting

28. Following the November 2014 general election, in December 2014 the members of the Guilford County legislative delegation, which consists of all legislators whose districts include part of Guilford County, met at Blandwood Mansion in Greensboro. At that meeting, Senator Trudy Wade was elected delegation chair, and Senator Gladys Robinson was elected delegation vice chair. (Tr. Test. Robinson, Harrison.)

29. During the December 2014 delegation meeting, a member of the Greensboro City Council asked Senator Wade about a rumor that Senator Wade was planning a local bill to redistrict the Greensboro City Council. Senator Wade denied the rumor was true. (Tr. Test. Abuzuaiter, Vaughan.)

30. Before the start of the 2015-16 legislative session in January 2015, Senator Wade did not seek input from the local delegation or from the Greensboro City Council on a potential redistricting plan. (Tr. Test. Robinson, Harrison, Vaughan, Abuzuaiter, Hightower.)

B. Senate Bill 36

31. Senator Trudy Wade filed Senate Bill 36, a local bill short-titled "Greensboro City Council Changes," on February 4, 2015. Contrary to legislative custom on local bills, the need for the redistricting bill or the restriction on Greensboro citizens' right of initiative and referendum was never discussed among the Guilford County legislative delegation or with the mayor or Greensboro City Council before the bill

was filed, nor was their input sought or heeded during the legislative process for the bill. Also contrary to legislative custom on local bills, the changes proposed in Senate Bill 36 were not requested at any meeting held by the local legislative delegation with members of the public or local governing boards in Guilford County. Further contrary to legislative custom on local bills, members of the local legislative delegation and local government were not given advance notice that the bill would be filed. It was particularly unusual for a redistricting bill to be introduced with such little notice because redistricting bills are considered controversial, tend to be more high profile than average bills, and must meet a higher number of legal requirements than average bills. Indeed, House and Senate Rules typically require, during the Short Session, a statement from the unit's entire legislative delegation that the subject matter of the local bill is not controversial and is unanimously agreed upon. (Joint Stip. ¶ 31; Tr. Test. Harrison.)

32. Senate Bill 36 proposed to restructure and redistrict the Greensboro City Council using seven single-member districts, with a substantially higher maximum population deviation than the current plan (just under 10%). The bill called for eliminating the three at-large seats on the Greensboro City Council and provided that the mayor would be permitted to vote only in the event of a tie among the council's seven members. The bill also removed the Greensboro City Council and Greensboro citizens' ability to change the city's form of government by initiative and referendum. (Joint Stip. ¶¶ 32-33; Tr. Test. Vaughan, Harrison, Robinson; Ex. 4, S.B. 36 v.2.)

33. During the legislative process for the bill, Senator Wade stated that the goals of the plan included improving representation for black voters, whom she said had been unable to elect their candidates of choice in citywide elections. Senator Wade and other bill proponents also said the plan was intended to increase geographic diversity on the city council and reduce campaign costs by eliminating at-large seats. Senator Wade stated that the plan was requested by the business community in Greensboro. (Tr. Test. Robinson, Harrison; Ex.13, March 5 Senate Redistricting Committee Transcript, at 3:6-10; Ex. 17, March 10 Senate Redistricting Committee Transcript, at 32:23-33:4; Ex. 18, March 11 Senate Floor Transcript, at 2:9-14; 2:25-3:10, 34:11-35:11.)

34. Less than 24 hours' notice was provided before Senate Bill 36 was first heard in committee on March 5, 2015. During the limited public comment permitted during that meeting and a subsequent committee meeting on March 10, 2015, the overwhelming majority of Greensboro residents who addressed the committee expressed opposition to the bill. (Joint Stip. ¶¶ 34-35; Tr. Test. Robinson, Fesmire, Vaughan, Abuzuaiter, Hightower; Ex. 207, March 5 Senate Redistricting Committee Meeting Notice; Ex. 13, March 5 Senate Redistricting Committee Transcript, at 7:15-45:4; Ex. 17, March 10 Senate Redistricting Committee Transcript, at 4:15-30:25.) During testimony before the Senate Redistricting Committee, several speakers specifically identified and expressed concern regarding the bill's withdrawal from the Greensboro City Council and Greensboro citizens of the ability to change the city's form of government by initiative and

referendum. Senator Wade did not address or respond to those concerns. (Ex. 13, March 5 Senate Redistricting Committee Transcript, at 14:1-15:8, 21:14-17, 23:3-13, 24:24-25:4, 44:16-24.)

35. Senators' attempts to add a referendum to Senate Bill 36 failed in the Senate Redistricting Committee and on the Senate floor. (Joint Stip. ¶ 37; Tr. Test. Robinson; Ex. 17, March 10 Senate Redistricting Committee Transcript, at 47:6-48:7; Ex. 18, March 11 Senate Floor Transcript, at 9:17-11:11.) During discussion of adding a referendum to Senate Bill 36 in the Senate Redistricting Committee, Senator Wade stated that she did not want such an amendment added to the bill because referenda had historically been ineffectual in Greensboro. (Ex. 17, March 10 Senate Redistricting Committee Transcript, at 39:25-40:8.) Guilford County legislators and city council members made several attempts to reach a compromise with Senator Wade, all of which failed. (Tr. Test. Robinson, Harrison, Vaughan.)

36. Senate Bill 36 passed the Senate along party lines, with no African-American senator voting in support of the bill. The bill then moved to the House, where it stalled in the House Elections Committee without ever coming up for a hearing, before officially dying in committee at the end of the 2015-16 legislative session. While the bill was stalled in the House Elections Committee in the spring of 2015, Republican and Democratic House members from Greensboro publicly stated that their constituents were overwhelmingly against the bill and that they would not support it unless a referendum were attached to the bill, as the House had recently

done for a bill to restructure the Rockingham County School Board. (Joint Stip. ¶ 38-41; Tr. Test. Harrison.)

C. Committee substitute bill for House Bill 263

37. House Bill 263 was filed March 17, 2015 by Representative Pat Hurley of Randolph County as a local bill to redistrict the Trinity City Council. The bill passed the House on March 30, 2015 and was referred to the Senate Local Government Committee, where it remained idle until it was re-referred to the Senate Redistricting Committee on May 6, 2015. (Joint Stip. ¶¶ 42-46.)

38. On June 9, 2015, the Senate Redistricting Committee provided notice that a committee meeting was scheduled for the morning of June 10, 2015 to discuss House Bill 263. The public meeting notice listed the bill under its short title, "City of Trinity Terms of Election," and made no mention of Greensboro. (Joint Stip. ¶ 47; Ex. 208, June 10 Senate Redistricting Committee Meeting Notice.)

39. During the June 10 meeting of the Senate Redistricting Committee, a proposed committee substitute bill was introduced for House Bill 263. Section 1 of the committee substitute bill contained the previous version of House Bill 263 in its entirety. Sen. Trudy Wade was called upon to explain the contents of the new Section 2 of the revised bill, which were substantially identical to the contents of Senate Bill 36. (Joint Stip. ¶¶ 49, 52; Tr. Test. Robinson; Ex. 20, H.B. 263 Committee Substitute Bill.)

40. The committee substitute bill for House Bill 263 included the same seven-district plan proposed in Senate Bill 36, with identical population deviations and district

boundaries. The committee substitute bill also prohibited the Greensboro City Council and Greensboro citizens from using the powers of initiative or referendum to change the city's form of government until after the return of the 2020 Census. (Joint Stip. ¶¶ 50-51; Tr. Test. Robinson; Ex. 20, H.B. 263 Committee Substitute Bill, at § 2.(b).)

41. In explaining the Greensboro provisions of the amended House Bill 263 in the Senate, Senator Wade described the bill as substantially the same bill as Senate Bill 36, with three technical changes. (Tr. Test. Robinson, Harrison; Ex. 22, June 10 Senate Redistricting Committee Transcript, at 8:11-9:9; Ex. 24, June 11 Senate Floor Transcript, at 2:16-4:4.) In presenting the amended bill to the House, Representative Hurley provided the same rationales for the Greensboro provisions that Senator Wade had provided for Senate Bill 36. (Tr. Test. Harrison, Ex. 25, June 29 House Floor Transcript, at 5:6-19.)

42. As with Senate Bill 36, members of the local legislative delegation and local government were not given advance notice that House Bill 263 would be amended to include the contents of Senate Bill 36, nor was their input sought on the plan. (Tr. Test. Robinson, Harrison, Vaughan.)

43. The committee substitute for House Bill 263 passed the Senate Redistricting Committee the same morning it was introduced, with no Democratic or African-American senator voting in favor of the plan. No public comment was permitted during the committee meeting, which lasted less than twenty minutes. (Joint Stip. ¶¶ 48, 53; Ex. 21, June 10 Senate Redistricting Committee Minutes, at 1.)

44. The amended version of House Bill 263 passed the full Senate the next day along party lines, with no Democratic or African-American senator voting in support of the bill. A motion to vote on the provisions for Trinity and Greensboro separately died on the Senate floor. (Joint Stip. ¶¶ 54-56.)

45. On June 29, 2015, after a lengthy and contentious debate, the House voted 35-73 in a bipartisan vote not to concur in the Senate's changes to House Bill 263. No Democratic or African-American representative voted in favor of concurrence. (Joint Stip. ¶¶ 59-60; Tr. Test. Harrison; Ex. 25, June 29 House Floor Transcript, at 2:23-34:19.)

46. As with Senate Bill 36, the Republican and Democratic members of the Guilford House delegation were largely united in their opposition to the amended version of House Bill 263 unless a referendum allowing Greensboro voters to approve or reject the measure were attached to the bill. (Tr. Test. Harrison.) Senator Wade had opposed attaching a referendum to the bill, stating that past citywide referenda in Greensboro had been ineffectual. (Tr. Test. Harrison; Ex. 16, March 10 Senate Redistricting Committee Transcript, at 39:25-40:7.)

D. Conference report for House Bill 263

47. On June 29 and 30, the Speaker of the House and President Pro Tempore of the Senate appointed conference committee members to resolve the House and Senate's differences on House Bill 263. Although the House's internal governance rules required that a majority of appointees to the conference committee reflect the majority position of the House, which had voted not to

concur in the Senate's changes to the bill, the conference committee was made up entirely of Republicans, only one of whom had voted against concurrence. And although House Bill 263 was a local bill, only four of the eight conference committee members represented either Guilford or Randolph counties. (Joint Stip. ¶¶ 29, 61-62; Tr. Test. Harrison, Robinson; Ex. 26, House Rules, at 21:46-48; Ex. 27, Conferees for House Bill 263.)

48. On July 1, just one day after the final conference committee members had been named, the committee released a substitute bill for House Bill 263. The substitute bill was an entirely new redistricting plan, with eight single-member districts rather than seven, and permanently prohibited the City of Greensboro and its citizens from exercising their rights of initiative and petition to change the city's form of government, instead reserving that power to the General Assembly. (Joint Stip. ¶¶ 63-65, 67.)

49. The eight-district plan had a maximum population deviation of 8.24%, substantially higher than the current plan's maximum deviation of 3.86%. The eight-district plan also split eight precincts, whereas the previous plan split only one. (Joint Stip. ¶¶ 65; Tr. Test. Fairfax; Ex. 3, H.B. 263 Stat Pack, at 1; Ex. 145, Fairfax Report, at 7, 8.)

50. Population deviations and racial composition of each district are as follows:

District	White VAP	Black VAP[2]	Hispanic VAP	Deviation
1	19.34%	73.89%	5.24%	+4.37%
2	29.28%	62.15%	6.90%	-3.68%

[2] "Black VAP" includes mixed-race black residents.

3	73.35%	19.07%	4.42%	-3.03%
4	20.95%	72.74%	6.72%	+2.87%
5	63.81%	27.28%	6.18%	-0.09%
6	43.04%	40.61%	13.52%	+4.57%
7	81.05%	12.77%	4.20%	-3.56%
8	82.22%	13.60%	2.56%	-1.46%

(Joint Stip. ¶ 65.)

51. As with Senate Bill 36 and the previous version of House Bill 263, members of the local legislative delegation and city government were not given advance notice of the changes proposed in the conference committee substitute bill for House Bill 263, nor was their input sought on the plan. (Tr. Test. Robinson, Harrison, Vaughan.)

52. The conference report was not signed by Rep. John Blust of Guilford County, the only committee member who had previously voted against the Senate's changes to House Bill 263. Representative Blust later stated on the House floor that the contents of the conference report did not accurately reflect what was discussed in committee. (Ex. 29, H.B. 263 Conference Report, at 2; Ex. 31, July 2 House Floor Transcript, at 13:21-14:2, 17:20-18:19, 19:3-5.)

53. Rep. Jon Hardister of Guilford County, who was not a member of the conference committee but had long been talking publicly about his plans to propose a compromise, had shown conference committee members an alternative eight-district map, but it is unclear whether that alternative map was seriously considered by the bill proponents. (Tr. Test. Harrison; Ex. 25, June 29 House Floor Transcript, at 14:3-9; Ex. 28, H.B. 263 Alternative Map.)

54. On the morning of July 2, 2015, less than twenty-four hours after the conference report for House Bill 263 was made public, and following a contentious debate, the House voted in a bipartisan 53-50 vote not to adopt the conference report. (Joint Stip. ¶¶ 68-69; Tr. Test. Harrison.) The Republican leadership of the House immediately called a recess and party caucus, and the Senate leadership did the same. (Joint Stip. ¶¶ 70-71; Tr. Test. Harrison, Robinson.)

55. On return from caucus, Republican Rep. Charles Jeter of Mecklenburg County, who had been a vocal opponent of the bill, moved to reconsider the conference report for House Bill 263. Following a series of procedural maneuvers by House leaders to prevent further debate, the conference report was brought back up for an immediate up-or-down vote and was adopted 57-46. No Democratic or African-American representative voted in favor of adopting the conference report. (Joint Stip. ¶¶ 72-75; Tr. Test. Harrison.)

56. After the second House vote on the conference report, the Senate voted along party lines to adopt the conference report. No Democratic or African-American senator voted in favor of adopting the conference report. (Joint Stip. ¶¶ 76-77; Tr. Test. Robinson.)

57. The conference committee substitute bill for House Bill 263 became law July 2, 2015, one day after its contents had become public, and with no opportunity for public comment on the eight-district plan. (Joint Stip. ¶¶ 63, 78; Tr. Test. Robinson, Harrison.)

E. Senate Bill 119

58. On September 29, 2015, Representative John Faircloth of Guilford County successfully moved to amend Session Law 2015-138 to prohibit the City of Greensboro from changing its form of government until after the return of the 2020 Census. (Joint Stip. ¶¶ 79-81; Tr. Test. Harrison; Ex. 35, Sept. 29 House Floor Transcript, at 3:14-22, 5:21-22.)

59. During the House floor debate on his amendment, Representative Faircloth did not provide a rationale for the change or for depriving Greensboro citizens of their rights of petition and referendum. (Joint Stip. ¶¶ 79-81; Tr. Test. Harrison; Ex. 35, Sept. 29 House Floor Transcript, at 3:2-4:5.)

III. EFFECTS OF SESSION LAW 2015-138

A. The plan singles out the City of Greensboro and its citizens for denial of petition and referendum rights.

60. The plan removes petition and referendum rights from the City of Greensboro and its citizens alone among North Carolina municipalities and citizens. (Joint Stip. ¶¶ 63, 67; Tr. Test. Vaughan, Robinson, Harrison; Ex. 33, S.L. 2015-138, at § 2.(b); Ex. 37, Compilation of Local Acts, at 2.)

61. In no other local act that revised methods of election for cities or towns in North Carolina has the legislature taken away from those municipalities the rights of the governing body or the citizens to use the initiative or referendum process to later revise their local jurisdiction's government. (*See generally* Ex. 37, Compilation of Local Acts.) In fact, in making changes to the structure of another city council

within the same local act, the General Assembly did not restrict the Trinity City Council or citizens of Trinity from using the initiative or referendum process to change their form of government. (Ex. 33, S.L. 2015-138, at § 1.) And in a remarkably similar local act from the same 2015-16 legislative session, the General Assembly converted the three at-large seats on the Albemarle City Council into single-member district seats, yet did not restrict the Albemarle City Council or citizens of Albemarle from using the initiative or referendum process to change their form of government. (Ex. 205, S.L. 2015-253, at § 1.(b).)

62. When the Greensboro City Council became aware that the original bill was under consideration, Mayor Nancy Vaughan and other members of the city council tried to learn the rationale for the legislation. They were never given any explanation for why Greensboro was being singled out for legislative withdrawal of initiative and referendum rights. (Tr. Test. Vaughan.)

63. During the legislative process for the plan, legislators and members of the public pointed out to Senator Wade and Representative Hurley that the plan would take away Greensboro voters' right to change their form of government via initiative and referendum. Neither Senator Wade nor any other proponent of the plan ever provided an explanation, plausible or not, for why Greensboro was targeted for that restriction. Representative Hurley simply responded that she had not put that restriction into House Bill 263. (Tr. Test. Robinson, Harrison; Ex. 13, March 5 Senate Redistricting Committee Transcript, at 14:5-15:8; Ex. 18, March 11 Senate Floor Transcript, at 13:1-7 (Robinson); Ex. 22, June 10 Senate Redistricting

Committee Transcript, at 8:23-9:3 (Wade); Ex. 24, June 11 Senate Floor Transcript, at 2:18-22 (Wade); Ex. 25, June 29 House Floor Transcript, at 6:15-18 (Hurley), 33:14-19 (Blust); Ex. 31, July 2 House Floor Transcript, at 10:5-17 (Harrison), 18:14-21 (Hurley); Ex. 32, July 2 Senate Floor Transcript, at 11:19-24 (Robinson); Ex. 35, Sept. 29 House Floor Transcript, at 3:4-5:22 (Faircloth, Harrison).)

64. Since Session Law 2015-138 was enacted, neither the General Assembly nor any party to this lawsuit has ever proffered a reason for singling Greensboro out from among all North Carolina municipalities for even a temporary withdrawal of its citizens' rights of initiative and referendum. (Tr. Test. Vaughan.)

65. For at least the past twenty years, there have not been an inordinate number of initiatives or referenda in Greensboro that would suggest volatility that required legislative action to stabilize the structure of the Greensboro City Council. In fact, Senator Wade acknowledged that she understood attempts at past referenda in Greensboro had been ineffectual. (Tr. Test. Harrison; Ex. 17, March 10 Senate Redistricting Committee Transcript, at 39:25-40:7.) Since the council adopted its current structure in 1983, there has been only one change to the city's form of government via referendum, and that change was one of the structural changes that the General Assembly would have imposed on Greensboro citizens via Session Law 2015-138 had the plan not been preliminarily enjoined. That decision illustrates that Greensboro voters and their local government do not require oversight by the General Assembly of their use of the initiative and referendum

processes to alter the structure of their local government. (Tr. Test. Vaughan; Ex. 78, November 2015 Election Results, at 20.)

B. The plan and the deviations therein minimize the voice of black voters and target incumbents who are black.

66. The eight-district plan minimizes the electoral voice of black voters by packing them into three of eight districts, limiting their political influence over the city council. (Joint Stip. ¶ 65; Tr. Test. Wells, Hightower, Fairfax.)

67. All overpopulated districts in the plan are majority-minority districts. District 1 has 73.89% BVAP and deviates from ideal population by 4.37%, District 4 has 72.74% BVAP and deviates from ideal population by 2.87%, and District 6, a coalition district with 40.61% BVAP and 13.52% Hispanic VAP, deviates from ideal population by 4.57%. (Joint Stip. ¶ 65.)

68. By contrast, all majority-white districts are underpopulated. District 3 has 73.35% white VAP has a -3.03% deviation, District 5 has 63.81% white VAP and has a -0.09% deviation, District 7 has 81.05% white VAP and has a -3.56% deviation, and District 8 has 82.22% white VAP and has a -1.46% deviation. The plan operates to weight to more heavily the votes of voters living in underpopulated districts, including all of the majority-white districts. (Joint Stip. ¶ 65; Tr. Test. Chen, Fairfax.)

69. Further, all of the overpopulated districts in the plan are located on the southern and eastern sides of the city, where annexation and population growth are currently outpacing and are projected to continue outpacing growth in the northern

and western parts of the city. By contrast, the underpopulated majority-white districts are located in the northern and western parts of the city. As a result, the 8.24% maximum population deviation in the plan is extremely likely to increase as more residents move into the overpopulated districts. (Joint Stip. ¶¶ 3, 82-83; Tr. Test. Hightower, Abuzuaiter, Fairfax, Chen; Ex. 145, Fairfax Rep., at 7.)

70. The plan also breaks up communities of interest in East Greensboro, which is heavily black. (Joint Stip. ¶ 64; Tr. Test. Robinson, Wells, Hightower.)

71. The plan breaks up the core of Northeast Greensboro, historically a strong source of community organizing and voter engagement for Greensboro's black residents, between Districts 1 and 2. (Joint Stip. ¶ 64; Tr. Test Robinson, Wells, Hightower.)

72. The plan also breaks up the area including North Carolina A&T State University and Bennett College, both of which are historically black and strongholds culturally, educationally, and economically in East Greensboro, between Districts 1 and 4. Currently, those two campuses are kept whole within city council District 2, where they have the opportunity to organize and vote together to secure their shared interests. Under the plan, they would lose the District 2 and at-large representatives they have chosen and who are familiar with their interests, and would be unable to organize and vote together with the same electoral force. (Joint Stip. ¶ 64; Tr. Test Robinson, Wells, Hightower; Ex. 132, Guilford County Precinct Maps, at 18, 88-91.)

73. Further, the plan targets the chosen representatives of black voters because all four black incumbents are paired in single-member districts with other black

incumbents. Sharon Hightower and Justin Outling are paired in District 1, and Jamal Fox and Yvonne Johnson are paired in District 2, while nearby District 4 in East Greensboro contains no incumbent. As a result, at minimum, the Greensboro City Council would lose two experienced black incumbents were the plan to take effect. (Joint Stip. ¶ 66; Tr. Test. Robinson, Wells, Hightower, Fairfax; Ex. 154, Fairfax Incumbent Address Map.)

74. An alternative district map submitted to the conference committee by Republican House member Jon Hardister of Greensboro would have paired two fewer black incumbents by placing incumbent Justin Outling in District 3 with no other incumbent, rather than in District 1 with incumbent Sharon Hightower. The conference committee failed to put the alternative plan to a vote. (Joint Stip. ¶ 20; Tr. Test. Harrison; Ex. 145, Fairfax Rep.; Ex. 28, Alternative 8-District Map.)

75. The full membership of the Greensboro NAACP voted to oppose the plan. Every African-American legislator representing Guilford County voted against the plan and spoke out against the plan during legislative debate. Every black member of the Greensboro City Council voted in support of a resolution opposing the plan, and three members traveled to Raleigh to speak against the plan before the Senate Redistricting Committee. (Tr. Test. Johnson, Robinson; Ex. 16, March 10 Senate Redistricting Committee Minutes, at 26-27; Ex. 17, March 10 Senate Redistricting Committee Transcript, at 4:20-22, 20:7-23, 21:2-22:15, 22:20-24:4; Ex. 31, July 2 House Floor Transcript, at 11:7-12:23, 20:11-21:22; Ex. 32, July 2 Senate Floor Transcript, at 3:20-12:6.)

C. The plan and the deviations therein create an advantage for Republican voters and candidates and target incumbents who are registered Democrats.

76. The eight-district plan makes it likely that Republican voters will be able to elect their candidates of choice in at least four new districts that have performed for Republicans in recent elections: District 3, District 5, District 7, and District 8. (Tr. Test. Wells, Abuzuaiter, Robinson, Fairfax; Ex. 3, H.B. 263 Stat Pack, at 6-9.)

77. Two of those districts, Districts 7 and 8, have no incumbents. (Joint Stip. ¶¶ 20, 66.)

78. The plan targets Democratic incumbents by double-bunking six of seven of them, including all four African-American incumbents. (Joint Stip. ¶¶ 19-20, 66; Tr. Test. Fairfax, Abuzuaiter, Hightower, Wells; Ex. 154, Fairfax Incumbent Address Map.)

79. The seventh Democratic incumbent is drawn into a district that leans Republican. Democratic incumbent Marikay Abuzuaiter's precinct is split off from the rest of her community to draw her into a district in which 59.6% of ballots cast in 2010 were Republican straight tickets. (Joint Stip. ¶¶ 19-20, 64; Tr. Test. Fairfax, Abuzuaiter; Ex. 3, H.B. 263 Stat Pack, at 9; Ex. 154, Fairfax Incumbent Address Map.)

80. Two other Democratic incumbents are double-bunked in a district that leans Republican. The plan splits Precinct G35 in the middle of the city to isolate the townhome development where Democratic incumbent Nancy Hoffmann lives, and draws that piece of her precinct into District 3 with Democratic incumbent Mike

Barber. In the 2010 Senate election, District 3 residents supported Republican Richard Burr over Democrat Elaine Marshall with 50.5% of the vote, and in that election 46.76% of voters in District 3 voted a straight Republican ticket. The plan leaves the rest of Precinct G35 in District 7, which has no incumbent and also leans Republican. In the 2004 presidential election, District 7 residents supported George W. Bush with 56.63% of the vote, and in the 2008 presidential election District 7 voters supported John McCain over Barack Obama. (Joint Stip. ¶¶ 19-20, 64; Tr. Test. Fairfax, Abuzuaiter; Ex. 3, H.B. 263 Stat Pack, at 6, 8, 9; Ex. 154, Fairfax Incumbent Address Map; Ex. 132, Guilford County Precinct Maps, at 52.)

81. By contrast, Republican incumbent Tony Wilkins remains alone in District 5, which substantially covers the same geographic area as his current district and has consistently performed for Republicans in city council elections since the election of Trudy Wade from that district in 2007. (Joint Stip. ¶¶ 19-21, 64; Tr. Test. Vaughn, Abuzuaiter, Fairfax; Ex. 154, Fairfax Incumbent Address Map.)

82. Given the political makeup of the city and its residents' voting habits, the electoral performance in favor of Republicans created by the eight-district plan is grossly skewed. (Joint Stip. ¶¶ 4, 21; Tr. Test. Robinson, Harrison, Vaughn, Abuzuaiter, Fairfax, Chen; Ex. 3, H.B. 263 Stat Pack, at 6-9.)

D. The plan splits communities of interest.

83. In addition to the core of Northeast Greensboro and the historically black university area, the plan splits at least three other communities of interest in

Greensboro. (Joint Stip. ¶ 64; Tr. Test. Robinson, Vaughn, Abuzuaiter; Ex. 132, Guilford County Precinct Maps, at 28, 35-38, 41, 57-59.)

84. The plan splits the historic neighborhoods north of downtown, Fisher Park and Irving Park, between Districts 1 and 3. Incumbent District 3 Council Member Justin Outling lives in the Fisher Park neighborhood. Residents in these two affluent, predominantly white neighborhoods go to school, church, and social functions together, rely on the same city parks and services in north-central Greensboro, are likely to own their own homes and be subject to the requirements of similar neighborhood and homeowners' associations, and share other common socioeconomic characteristics and political interests that they do not share with residents of District 1 in the southeastern part of the city. (Joint Stip. ¶¶ 20, 64; Tr. Test. Robinson, Vaughn, Abuzuaiter; Ex. 154, Fairfax Incumbent Address Map; Ex. 132, Guilford County Precinct Maps, at 28, 35-38.)

85. The plan also splits neighborhoods in the middle-class Lawndale community between Districts 2 and 8, isolating Precinct G24 from the surrounding precincts that form its community of interest and placing it in District 2, with which it has little in common other than its mixed-race composition. Precinct G24 borders a Food Lion grocery store and includes a Fresh Market gourmet grocery store where the surrounding north-central Greensboro community shops, yet the plan places the precinct in a Northeast Greensboro district notable for its continued vocal engagement with the city council to combat the district's high number of food

deserts. (Joint Stip. ¶¶ 64; Tr. Test. Robinson, Vaughn, Abuzuaiter, Wells; Ex. 132, Guilford County Precinct Maps, at 41.)

86. The plan additionally splits a community along New Garden Road between Districts 7 and 8. Incumbent At-Large Council Member Marikay Abuzuaiter lives in one of the neighborhoods in this community. Previously, Precinct G40B was in the same district as Precincts G40A1 and G40A2, all of which consist of a combination of neighborhoods and new retail development along New Garden Road from Battleground Avenue to Jefferson Elementary School. Residents of these three precincts share the same grocery stores, gyms, restaurants, and shopping centers within the community, send their children to school together and to play at Carolyn Allen Community Park together, and live in demographically similar neighborhoods. The plan would split off Precinct G40B, where Council Member Abuzuaiter lives, and assign that precinct to District 8, while G40A1 and G40A2 are assigned to District 7. The core of District 8 is made up of older neighborhoods and older commercial development that stretch south along Battleground Avenue and do not have as much in common with Precinct G40B demographically. (Joint Stip. ¶ 20, 64; Tr. Test. Robinson, Vaughn, Abuzuaiter, Wells; Ex. 154, Fairfax Incumbent Address Map; Ex. 132, Guilford County Precinct Maps, at 57-59.)

E. The plan does not improve geographic diversity on the city council.

87. During the 2015 legislative process for the city council redistricting plan, bill proponents falsely claimed that a high number of incumbent Greensboro City

Council members lived within a two-mile radius of downtown Greensboro. (Joint Stip. ¶ 20; Tr. Test. Robinson, Vaughn, Abuzuaiter; Ex. 17, March 10 Senate Redistricting Transcript, at 32:23-33:4; Ex. 18, March 11 Senate Floor Transcript, at 2:9-14; Ex. 25, June 29 House Floor Transcript, at 5:15-19; Ex. 154, Fairfax Incumbent Address Map.)

88. Incumbent council members Sharon Hightower, Jamal Fox, Yvonne Johnson, Marikay Abuzuaiter, and Tony Wilkins all live outside the purported two-mile radius, and the bill would in fact draw all of them into districts that include precincts closer to downtown than where they currently live. (Joint Stip. ¶¶ 20, 64; Ex. 154, Fairfax Incumbent Address Map.)

89. There has been no pattern in Greensboro City Council elections of candidates who live closer to downtown defeating candidates who live farther from downtown, in either district or at-large elections. In fact, candidates who live outside downtown have defeated candidates who live closer to downtown, including in at-large elections. (Joint Stip. ¶ 21; Tr. Test. Abuzuaiter, Wells.)

90. The current city council members have effectively represented areas outside downtown, directing funding and support to projects including the Piedmont Triad International Airport and surrounding businesses, Renaissance Community Co-Op, East Greensboro incentive for businesses, Guilford Economic Development Alliance, Greensboro Aquatic Center, Greensboro Coliseum, Guilford Courthouse National Military Park, Barber Park, Keeley Park, UNC-Greensboro Joint School of Nanoscience and Engineering, Gateway University Research Park, Griffin

Recreation Center, Hester Park, greenways in western and northern Greensboro, and road paving along Gate City Boulevard. (Tr. Test. Abuzuaiter, Hightower.)

91. Greensboro residents who live outside downtown currently may vote for five representatives on the city council, a majority of the council, whom they can approach and hold accountable through elections: their district representative, three at-large members, and a voting mayor. The plan eliminates the three at-large seats on the council and takes away the mayor's vote except in the case of a tie, and as a result each voter would be permitted to vote for only one district representative and a non-voting mayor. (Joint Stip. ¶ 63; Tr. Test. Harrison, Robinson, Vaughn, Abuzuaiter, Wells; Ex. 33, S.L. 2015-138, at §§ 2(c)-(e).)

F. The plan will not decrease campaign costs.

92. Eliminating at-large seats on the council will not reduce campaign costs because, as unrebutted evidence shows, in recent years candidates who were elected to single-member council districts have spent more, and in some cases dramatically more, than candidates who were elected to at-large council districts. (Joint Stip. ¶ 22; Tr. Test. Abuzuaiter.)

93. Mayoral campaigns are consistently the most expensive in the city, and the plan does nothing to offset the costs of running for mayor. (Joint Stip. ¶ 22; Tr. Test. Abuzuaiter.)

94. During legislative debate on the plan and in community forums to discuss the plan, no proponent of the plan gave any example of a candidate who had been deterred from running because of campaign costs, for either district or at-large seats. (Tr.

Test. Vaughan, Abuzuaiter, Fesmire, Robinson, Harrison; Ex. 13, March 5 Senate Redistricting Committee Transcript, at 3:6-9, 43:17-44:12.)

G. Prominent business leaders in Greensboro opposed the plan.

95. Despite her claim that the plan was a result of requests made by business leaders in Greensboro, Senator Wade did not identify any business leader in Greensboro who had asked for the plan. (Tr. Test. Robinson, Harrison, Vaughan; Ex. 18, March 11 Senate Floor Transcript, at 2:25-3:5.)

96. Roy Carroll was the most prominent Greensboro business leader to publicly support the plan, and he publicly rescinded his support during the legislative process for the plan. (Tr. Test. Fesmire, Wells; Ex. 18, March 11 Senate Floor Transcript, at 15:12-20; Ex. 211, June 17 News & Record Column.)

97. Skip Alston, one of the very few individuals to speak in favor of the bill, testified in deposition that he did not request the bill or have any input into how it was developed. (Ex. 214, Alston Deposition Designations).

98. A number of business leaders in Greensboro signed onto a League of Women Voters advertisement in the Greensboro News & Record reflecting community opposition to the plan. Those business leaders included prominent business leader Jim Melvin. (Tr. Test. Fesmire, Harrison; Ex. 203, LWV Ad.)

99. Several business leaders also voiced opposition to the plan during legislative committee meetings in Raleigh, community meetings in Raleigh, and through letters sent to members of the General Assembly. (Tr. Test. Harrison, Robinson,

Vaughn; Ex. 25, June 29 House Floor Transcript, at 11:18-12:13; Ex. 178, Constituent Email in Opposition to Plan.)

100. The Greensboro City Council has developed a business-friendly reputation by offering incentives for businesses such as HAECO, Qorvo, and Ecolab, and by developing the additional East Greensboro incentive. (Tr. Test.Vaughan, Abuzuaiter, Hightower.)

101. In recent years, the city council has worked with business leaders on numerous economic development projects, including Marty Kotis' development of midtown, creation of the Guilford Economic Development Alliance, opening the UNC-Greensboro Joint School of Nanoscience and Engineering and Gateway University Research Park, and working with numerous local and regional partners and the General Assembly to develop a megasite off the southern boundary of the city. (Tr. Test. Robinson, Vaughan, Abuzuaiter, Hightower.)

H. The plan ignores the will of Greensboro voters.

102. The uncontested record demonstrates that a vast majority of Greensboro voters were opposed to the plan. (Tr. Test. Robinson, Harrison, Fesmire, Vaughan, Hightower, Abuzuaiter, Wells, Johnson; Ex. 17, March 10 Senate Redistricting Transcript, at 4:15-30:25, 41:11-15, 45:13-18; Ex. 18, March 11 Senate Floor Transcript, at 12:13-17, 23:1-9; Ex. 25, June 29 House Floor Transcript, at 13:16-23, 28:3-28:19; Exs. 174-99, Constituent Emails in Opposition to Plan; Ex. 203, LWV Ad.)

103. At a February 2015 Greensboro City Council meeting at which the Guilford County legislative delegation was present, the council chamber was full, and the members of the public who were present overwhelmingly opposed the plan. (Tr. Test. Fesmire, Harrison, Robinson, Wells, Vaughn; Ex. 18, March 11 Senate Floor Transcript, at 13:8-13.)

104. At a March 2015 public forum at Congregational United Church of Christ in Greensboro, the large sanctuary and balcony were filled to capacity, and many members of the public who could not find seats were standing along the walls. All members of the Guilford County House legislative delegation were present at that forum except for Representative Jon Hardister. When a delegation member asked the audience for a show of hands, no one in the capacity crowd supported the plan. All members of the public who were present opposed the plan. (Tr. Test. Fesmire, Harrison, Wells.)

105. The plan was also discussed among the public in Greensboro throughout the spring of 2015 at meetings in Greensboro of the Greensboro NAACP full membership, Pulpit Forum, Citizens for Economic and Environmental Justice, Concerned Citizens of Northeast Greensboro, League of Women Voters of the Piedmont Triad, and at a panel of former Greensboro mayors convened by Voices for a Stronger Guilford. Each of these meetings was strongly attended by members of the public interested in the bill. At each of these meetings, opposition to the bill was overwhelming among those in attendance. (Tr. Test. Fesmire, Johnson, Wells.)

106. Over approximately a week in May 2015, members of the League of Women Voters collected names for inclusion in an advertisement in opposition to the plan that was to be published in the Greensboro News & Record. In just a few days of publicizing the effort, the League collected approximately 1,000 names and addresses that it vetted to confirm that the signatories lived within Greensboro city limits. In the process, the League recovered more than the advertisement cost in donations. The advertisement was published in the News & Record on May 31, 2015, and the newspaper wrote an article describing the public support behind the advertisement. The League continued to receive requests from residents seeking to sign on to the advertisement after the deadline for submissions had passed. (Tr. Test. Fesmire; Ex. 203, LWV Ad; Ex. 203, May 30 News & Record Article.)

107. During the Senate Redistricting Committee's two public hearings on Senate Bill 36, which were the only opportunities for public comment on the plan at the General Assembly before it became law, a number of Greensboro residents traveled to Raleigh to address the committee. In those two meetings, the members of the public who spoke on the bill were overwhelmingly opposed to the plan. Among the few who spoke in favor of the bill, many were not in fact Greensboro residents. (Tr. Test. Vaughan, Robinson; Ex. 13, March 5 Senate Redistricting Committee Transcript, at 7:15-45:4; Ex. 17, March 10 Senate Redistricting Transcript, at 4:15-30:25.)

108. During the legislative process for the plan, legislators received an overwhelming number of letters, emails, phone calls, and in-person visits from constituents

opposed to the plan, and comparatively very little correspondence from constituents who supported the plan. During legislative debate on the plan, legislators from Greensboro and other parts of North Carolina stated publicly that the volume of feedback they had received on the plan was unusually high, and overwhelmingly in opposition to the plan. (Tr. Test. Robinson, Harrison; Exs. 174-99, Constituent Emails in Opposition to Plan; Ex. 17, March 10 Senate Redistricting Committee Transcript, at 41:11-15, 45:13-18; Ex. 18, March 11 Senate Floor Transcript, at 12:13-17, 23:1-9; Ex. 25, June 29 House Floor Transcript, at 13:16-23, 28:3-28:19.)

109. During the legislative process, Greensboro legislators and members of the public repeatedly asked bill proponents to amend the bill to allow Greensboro voters to approve or reject the plan in a citywide referendum. Senator Wade, despite claiming the bill was supported by Greensboro residents, repeatedly refused these requests. (Tr. Test. Robinson, Harrison; Ex. 17, March 10 Senate Redistricting Committee Transcript, at 39:18-40:7.)

110. The only indication that the plan had significant support from Greensboro residents, a poll in the politically-conservative weekly publication the Rhino Times, was not conducted transparently and was marred by questions of illegitimacy. (Tr. Test. Wells, Fesmire; Ex. 200, April 9 News & Record Blog Post; Ex. 201, April 10 News & Record Article; Ex. 202, April 11 News & Record Article.)

I. Traditional redistricting criteria do not explain the population deviations in the plan.

111. Dr. Jowei Chen's expert analysis ruled out that legitimate and traditional redistricting principles explained or caused the large deviations seen in the enacted plan. (Tr. Test. Chen; Ex. 133, Chen Report, at 10.)

112. Dr. Chen's simulations are designed to hold certain factors constant when developing multiple plans. Specifically, he instructs the computer to achieve a certain level of population equality, to hold precincts intact, and to prioritize the drawing of geographical compactness. (Tr. Test. Chen; Ex. 133, Chen Report, at 5.) While he later in his analysis relaxed the population equality requirement to test for whether that enabled the partisan outcome achieved, he kept the geographical compactness and precinct integrity requirements in place. *Id*.

113. Specifically, with respect to geographic compactness, Dr. Chen set the standard for compactness to be either at the level of compactness observed in the General Assembly's enacted plan or better. Dr. Chen was thus able to rule out an attempt to draw compact districts as a reason for the deviations. (Tr. Test. Chen.) In any event, the enacted districts are not visually more compact than the current plan, so this explanation is doubly non-credible.

114. Likewise, Dr. Chen kept precincts whole in his simulations, and was likewise able to rule out the effort to keep precincts whole as a reason for the deviations in the enacted plan. (Tr. Test. Chen.) In any event, the enacted plan splits far more precincts than the current plan, so this explanation is also doubly non-credible.

J. Testimony on the role of race in the design of District 2

115. Dr. Chen used simulations to determine what the expected black voting age population would be in any districts produced in the plan if non-racial traditional redistricting criteria are utilized. In his first set of simulations, he found that it was not uncommon, in an eight-district plan, to have three majority black districts, but that in none of his race-neutral simulations did the third-most-heavily black district have as high a black voting age population (BVAP) as Enacted Plan District 2. That indicated to him that race-neutral criteria could not explain District 2 as constructed. He then looked at a subset of those 100 simulations where the third-most-heavily black district had approximately the same political performance (a 22.3% Republican vote share). This allowed him to assume that partisanship, not race, motivated the way the district was drawn. He found that twenty-four simulations had such a partisan performance. Among those districts, the BVAP ranged from 50.16% to 58.89%, but the BVAP in enacted District 2, 61.03%, was completely outside the distribution of race-neutral but partisan-motivated simulations. This led him to conclude that partisan concerns did not predominantly drive the way that District 2 was constructed. (Tr. Test. Chen; Ex. 133, Chen Report, at 18-21.)

116. District 2 is also visually non-compact, with several oddly-shaped appendages that the current plan, and the district in the region of enacted District 2, do not have. (*Compare* Ex. 2, HB. 263 v.3 Map, *with* Ex. 209, Current City Council Map.)

117. District 2 has a long appendage that reaches west into the city, all the way to Lawndale Drive. It pulls into the district Precinct G24, which has not previously been in the district. (*Compare* Ex. 2, HB. 263 v.3 Map, *with* Ex. 209, Current City Council Map.)

118. Mr. Anthony Fairfax, Plaintiffs' demographer and map drawer, testified that Precinct G24, while majority white, has more minority population than any of the surrounding precincts, and that the appendage can be explained as an effort to extract minority population from a predominantly white district to place into a predominantly black district. (Tr. Test. Fairfax.)

119. Lay witnesses credibly testified that in the large satellite annexation in northeast Greensboro, near Lake Townsend, that separate piece of Greensboro had always been assigned to District 2, the nearest adjacent district in northeast Greensboro. In the enacted plan, that annexed area is divided, with the top sliver of it, extending in a hooked shape across the territory, assigned to predominantly white District 8 and the lower bulk of it, more racially diverse, assigned to majority-black District 2. Specifically, there is a new development in the area assigned to District 8 that is majority white and higher income. (Tr. Test. Wells.)

PROPOSED CONCLUSIONS OF LAW

I. Disparate Treatment with Respect to the Referendum and Initiative Power – Fourteenth Amendment

A. Applicable Standard

1. The Equal Protection Clause of the Fourteenth Amendment states that "[n]o State shall…deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

2. That provision "keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike." *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992).

3. As this Court has previously noted, "[t]o succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated." *City of Greensboro v. Guilford Cnty. Bd. of Elections*, 120 F. Supp. 3d 479, 487 (M.D.N.C. 2015) (citing *Morrison v. Garraghty*, 239 F.3d 648, 654 (4th Cir. 2001)).

4. Generally speaking, where a challenged state law does not involve a fundamental right or a suspect class, a reviewing court will apply only rational basis-level inquiry—that is, the court will uphold the law if there is a rational relationship between the disparate action taken and a legitimate governmental purpose. *See Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985); *cf. United States v. Carolene Products Co.*, 304 U.S. 144, 152 n. 4 (1938) (suggesting "more exacting

judicial scrutiny" for restrictions on "political processes which can ordinarily be expected to bring about repeal of undesirable legislation.")

5. It is true that cities are essentially creatures of the state under the North Carolina Constitution, and have only the powers that the legislature delegates to them. *See, e.g., In re Ordinance of Annexation No. 1977-4*, 296 N.C. 1, 16-17, 249 S.E. 2d 698, 707 (1978); *City of Asheville v. State*, 192 N.C. App. 1, 20, 665 S.E.2d 103, 119 (2008). However, the legislature cannot exercise that authority over cities in a manner that runs afoul of the state or federal constitution. *See, e.g., Martin v. Bd. of Comm'rs of Wake Cnty.*, 208 N.C. 354, 365, 180 S.E. 777, 783 (1935); *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

6. "If a state choses to confer the right of referendum to its citizens, it is obligated to do so in a manner consistent with the Constitution." *Molinari v. Bloomberg*, 564 F.3d 587, 597 (2nd Cir. 2009); *see also, e.g., Taxpayers United for Assessment Cuts v. Austin*, 994 F.3d. 291, 295 (6th Cir. 1993) ("[A]lthough the Constitution does not require a state to create an initiative procedure, if it creates such a procedure, the state cannot place restrictions on its use that violate the federal Constitution") (citing cases); *Bush v. Gore*, 532 U.S. 98, 104-05 (2000) ("Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another.").

B. Applied to the Facts in this Case

7. Measured against the applicable standard, the City Plaintiff and Individual Plaintiffs have demonstrated that the targeted withdrawal of initiative and referendum rights violations the equal protection clauses of the federal and state constitutions.

8. The City Plaintiff and the Individual Plaintiffs have demonstrated that the City of Greensboro and its citizens were treated differently than similarly situated cities and citizens without a rational basis in furtherance of a legitimate government purpose.

9. Statutory research conducted by Plaintiffs, and confirmed by the Court, reveals that in no other legislation in the last fifty-six years has the General Assembly ever revoked any other city's rights under N.C. Gen. Stat. §160A-102 through 104. (Ex. 37, Compilation of Local Acts.)

10. Furthermore, a review of local bills enacted by the legislature in recent years reveals no other example of a city being redistricted and having its initiative and referendum rights removed. (Ex. 206, Demonstrative of Recent Local Bills Affecting Municipal Government.)

11. Indeed, the same 2015 legislature enacted a bill making essentially the same structural changes to elections for the city council of Albemarle (converting the city elections to all districts, from a mixed system of district and at-large seats), but the legislature did not take from Albemarle and its citizens the rights afforded to it under N.C. Gen. Stat. §160A-102 through -104. *See* 2015 N.C. Sess. Laws 253.

12. Even within the same bill changing Greensboro's method of election and taking away its right to initiative and referendum, the legislature made modifications to the electoral system for the city of Trinity but did not so deprive them of their right to initiative and referendum. *See* 2015 N.C. Sess. Laws 138.

13. Thus, the City Plaintiff and Individual Plaintiffs have proven that the City of Greensboro and its citizens were treated differently than similarly-situated cities and citizens. The Court then must examine whether such disparate treatment was warranted—that is, whether the restriction was rationally related to advancing a legitimate state interest in treating Greensboro differently.

14. This Court, having carefully reviewed the entire legislative record, including transcripts, and considering on its own plausible state justifications that could have legitimately supported the differential treatment of Greensboro, finds that no such legitimate state interests exist.

15. As this Court explained in its order granting a preliminary injunction, in some contexts, "courts have held that a desire to experiment with different election formats provides a sufficient rational basis to support treating some local entitles differently from others. *See, e.g.*, *Sailors v. Bd. of Educ. of Cnty. Of Kent*, 387 U.S. 105, 110-11 (1967)." *City of Greensboro*, 120 F. Supp. 3d at 489. However, that justification cannot rationally explain the situation here, where the General Assembly was not experimenting with different election formats but rather chose one of the traditional systems available and in use for many years by other municipalities. *See* N.C. Gen. Stat. § 160A-101.

16. And while concerns for consistency and stability of government might, in the abstract, provide a rational justification for revoking the referendum rights of a jurisdiction where the legislature was making some mid-decade modifications of the electoral structure, it does not rationally explain why Greensboro was singled out and treated differently from other cities where the legislature made mid-decade modifications, especially in light of how little Greensboro's referendum and initiative powers had been utilized historically.

17. Likewise, although it was not articulated as a justification during legislative debate, this Court considered whether the removal of referendum rights could have been rationally justified because the General Assembly was removing at-large seats from the city. That is, could the legislature have been justified in taking away referendum rights from Greensboro because the city, voting at-large, might have undone that which the legislature just did—remove at-large seats from the city council? The Court, however, finds that this could not have been a rational justification for the disparate treatment because that same justification would have supported removing the referendum rights from the city and citizens of Albemarle, in a nearly identical bill in the same legislative session. But the General Assembly did not take away those rights from voters in Albemarle. Thus, that justification cannot justify singling Greensboro out and treating it differently than Albemarle or any other similarly-situated city.

18. Finally, fear that Greensboro might exercise the right of referendum and initiative uniformly delegated to it and every other town and city in North Carolina cannot

be a legitimate reason for treating Greensboro differently by revoking it. Such logic, if even true, would be an example of legislative action so arbitrary that it fails rational basis review. *See, e.g., City of Cleburne, Texas v. Cleburne Living Center, Inc.*, 473 U.S. 431, 448-49 (1985) (justifications based on private biases against a group is not a legitimate governmental purpose); *United States Dep't of Agric. v. Moreno*, 413 U.S. 528, 534, 93 S. Ct. 2821, 2826 (1973) ("For if the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest"); *Allegheny Pittsburgh Coal Co. v. County Commission*, 488 U.S. 336, 345 (1989) (striking down a county tax assessor's practice of valuing real property such that properties with identical values would have widely divergent tax assessments based only on when the property was actually sold).

19. And while the law has been amended since this Court issued its preliminary injunction ruling, clarifying that the legislature would return to Greensboro and its citizens the right to utilize the referendum and initiative process after return of the 2020 census data, S.L. 2015-264, § 85.5, the Court finds that this slight change does not warrant a different outcome in its constitutional analysis.

20. In a number of different contexts, but particularly in the election law realm, federal courts have held that temporally-limited or non-permanent deprivations of constitutional rights are still subject to constitutional scrutiny and invalidation. *See, e.g., Gross v. Carter*, 265 F. Supp. 2d 995, 1001 (W.D. Ark. 2003) (noting

that the U.S. Supreme Court has held that "even temporary, non-final deprivations of property are deprivations within the protections of the Fourteenth Amendment" (citing *Sniadach v. Family Financial Corp*., 395 U.S. 337 (1969), and *Bell v. Burson*, 402 U.S. 535 (1971)); *see also Brill v. Carter*, 455 F. Supp. 172, 174-75 (D. Md. 1978) (applying strict scrutiny to strike down four-year residency requirements for candidates for county council because requirement "entirely prevents a new resident from running for office for a substantial period of time").

21. All of the same justifications the Court examined and dismissed as potentially rational reasons for treating Greensboro differently than other North Carolina municipalities would apply even with a shortened duration of constitutional injury, and they do not become any more rational in light of the change in duration in injury.

22. Finally, even recent cases that upheld restrictions on initiative and referendum rights are consistent with this standard articulated and do not direct that the statute challenged here be upheld. *Save Palisade FruitLands v. Todd*, 279 F.3d 1204, 1209-13 (10th Cir. 2002); *Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291, 295 (6th Cir. 1993).

23. In *Palisade*, a court upheld against equal protection challenge a Colorado law that gave referendum rights to some counties but not others. *See* 279 F.3d at 1207. However, even under that statutory scheme, all counties had the ability to satisfy procedural requirements to allow them to obtain referendum rights. *Id*. at 1208.

24. Likewise, in *Taxpayers*, the challenged state law imposed a non-discriminatory, neutral restriction on all voters' ability to use the initiative procedure. *See* 994 F.2d at 299. The court there noted that the constitutional analysis "would be different if [plaintiffs] alleged they were being treated differently than other groups seeking to initiate legislation." *Id.*

II. One Person, One Vote Claims – Fourteenth Amendment

A. Applicable Standard

25. The "one person, one vote" requirement of the Fourteenth Amendment to the Constitution demands that the votes of citizens be weighted equally and prohibits the differential weighting of votes depending on where the voter lives. *See Reynolds v. Sims*, 377 U.S. 433, 560-61 (1964); *see also Raleigh Wake Citizens Ass'n v. Wake Cnty. Bd. of Elections*, 827 F.3d 333, 340 (4th Cir. 2016) ("*RWCA"*).

26. This requirement also mandates that a redistricting body make a good faith effort to achieve population equality amongst districts. *Reynolds*, 377 U.S. at 577.

27. Mathematical exactitude is not required except in congressional redistricting, but that does not relieve the redistricting jurisdiction of the duty to engage in an honest and good faith effort to get as close to equal population as is practicable. *See Daly v. Hunt*, 93 F.3d 1212, 1217 (4th Cir. 1996).

28. The one person, one vote requirement also applies to state and local governments, including city councils. *See Avery v. Midland Cnty.*, 390 U.S. 474, 480 (1968).

29. "To determine compliance with the one person, one vote principle courts usually analyze the apportionment plan in terms of the maximum population deviation among the districts." *Daly*, 93 F.3d at 1215 n.2. To get to that maximum deviation, a court first calculates the hypothetical ideal district size by dividing the total population of the political unit (in this case, the county) by the total number of representatives who serve that population. In a system such as the one at issue here, the ideal population in the single member districts would be calculated by dividing the county population by seven, and the ideal population for the super districts would be calculated by dividing the county population by two. "Then, the court determines how much the actual population of each district varies from the population of the ideal district. This deviation is expressed as a percentage of the ideal population. Maximum deviation is the sum of the absolute value of the deviation of the district with the smallest population and that of the district with the largest population." *Id.*

30. Because some flexibility will be needed in state legislative and local redistricting, the general rule that has emerged is that a redistricting plan with a total deviation under 10% will not, without other evidence, be enough to establish an equal protection violation. *See, e.g.*, *Daly*, 93 F.3d at 1217 (citing *Brown v. Thompson*, 462 U.S. 835, 842-43 (1983)).

31. The 10% threshold does not, however, insulate a state or local redistricting plan from constitutional challenge. *Harris v. Ariz. Indep. Redistricting Comm'n*, 136 S.

Ct. 1301, 1307 (2016); *RWCA*, 827 F.3d, at 342; *Wright v. North Carolina*, 787 F.3d 256, 264 (4th Cir. May 27, 2015) (quoting *Daly*, 93 F.3d at 1220).

32. The 10% mark simply "serves as the determining point for allocating the burden of proof in a one person, one vote case." *Daly*, 93 F.3d at 1220.

33. To succeed in its claims that a redistricting plan with a less than 10% deviation unconstitutionally weights the votes of some residents over others, a plaintiff has to show that "it is more probable than not that a deviation of less than 10% reflects the predominance of illegitimate reapportionment factors rather than the 'legitimate considerations'" designated by the Supreme Court in its one person, one vote jurisprudence. *Harris v. Ariz. Indep. Redistricting Comm'n*, 136 S. Ct. 1301, 1307 (2016); *see also Roman v. Sincock*, 377 U.S. 695, 710 (1964) (demonstration that the redistricting process had a "taint of arbitrariness or discrimination" probative of constitutional violation).

34. Legislative justifications that may legitimately excuse slight deviations from population equality, if consistently applied, include: (1) "traditional districting principles such as compactness [and] contiguity," *Harris*, 136 S. Ct. at 1306 (citing *Shaw v. Reno*, 509 U.S. 630, 647 (1993)); (2) maintaining the integrity of political subdivisions, *Harris*, 136 S. Ct. at 1306 (citing *Mahan v. Howell*, 410 U.S. 315, 328 (1973)); (3) complying with the Voting Rights Act, *Harris*, 136 S. Ct. at 1306; and (4) maintaining competitive balance among political parties, *Harris*, 136 S. Ct. at 1306 (citing *Gaffney v. Cummings*, 412 U.S. 735, 752 (1973)).

35. The legitimate consideration to which the Court deferred in *Gaffney* was not the advantage for one party over another. *Gaffney* involved redistricting after a decennial census, not mid-decade redistricting. The state legislative plans developed in *Gaffney* had an overall deviation of 1.81% in the Senate and 7.83% in the House. *See* 412 U.S. at 737. The redistricting Board responsible for redistricting in *Gaffney* explained that they followed a "policy of 'political fairness,' which aimed at a rough scheme of proportional representation of the two major political parties." *Id*. at 738. Importantly, in *Gaffney* there was no allegation or evidence presented that in order to achieve that goal, the Board systematically under- or over-populated districts controlled by one political party.

36. Regional favoritism—that is, trying to favor suburban interests and voters over urban interests or voters—has never been recognized as a legitimate interest justifying population deviations. In fact, the Supreme Court has repeatedly condemned regionalism when contributing to the unequal weighting of votes. *See Reynolds*, 377 U.S. at 566.

37. Targeting incumbents of one political party for defeat is not a legitimate justification for violating the rights of individual voters to have their vote equally weighted. *See Larios v. Cox*, 300 F. Supp. 2d 1320, 1338 (N.D. Ga. 2004), *aff'd mem.*, 542 U.S. 947 (2004).

38. Courts have invalidated redistricting plans whose districts depart from population equality for discriminatory or illegitimate reasons or have otherwise identified illegitimate reasons for deviating from population equality. *See, e.g.*, *RWCA*, 827

F.3d at 338; *Perez v. Perry*, No. 11-ca-360, 2012 U.S. Dist. LEXIS 190609, at *55-*56 (W.D. Tex. Mar. 19, 2012); *Hulme v. Madison County*, 188 F. Supp. 2d 1041 (S.D. Ill. 2001); *see also Harris v. Arizona Ind. Red. Committee*, 993 F. Supp. 2d 1042, 1047 (D. Ariz. 2014) (assuming that unequally apportioning state legislative districts to gain a partisan advantage was not a legitimate reason justifying population deviations); *Troxler v. St. John the Baptist Parish Police Jury*, 331 F. Supp. 222, 223-24 (E.D. La. 1971) (rejecting defendant jurisdiction's remedial plan based on illegitimate justifications for population deviations); *Morris v. Board of Estimate*, 647 F. Supp. 1463, 1470 (1986) (rejecting arguments that population deviations in New York City were justified where they were designed to ensure that the smaller boroughs had equal voting power on the board).

39. One recent case, summarily affirmed by the U.S. Supreme Court, is highly instructive and analogous to the current case. *See Wright*, 787 F.3d at 266-68 (citing *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga.), *aff'd mem.*, 542 U.S. 947 (2004)).

40. In *Larios*, a three-judge panel held that Georgia's legislative reapportionment plan with just less than 10 percent overall population deviation was arbitrary and discriminatory in violation of the Equal Protection Clause.

41. The district court struck down the plans because it found that two primary motivations for the deviations in the plans—regional favoritism and Democratic

incumbency favoritism—were impermissible causes for the population deviations. *See* 300 F. Supp. 2d at 1322.

42. The *Larios* court recognized that the 2001 Georgia legislative plans were an attempt by state Democrats to maintain majorities in both state houses despite the fact that a Republican majority in the state had been developing in recent decades. *Id*. at 1347-48. In order to hold onto as many seats as possible in the state legislature, Democrats in control of the legislature systematically and deliberately underpopulated most of the districts in rural and inner-city areas, and overpopulated districts in the Republican-leaning suburbs. *Id*. at 1326-27.

43. Even an allegedly benign or corrective intent does not excuse such justification. The court in *Larios* was correct in noting that "[i]f the southern and inner-city Atlanta areas of the State of Georgia are in need of some political protection in order to ensure that their economic and other interests are recognized on a statewide basis, that need must be met in some way that does not dilute or debase the fundamental right to vote of citizens living in other parts of the state." *Id*. at 1347.

44. The court also found that the shape of the districts suggested an intent to favor Democratic incumbents and disfavor Republican incumbents. Districts in which Democratic incumbents resided were underpopulated so that those incumbents would not have to take in additional potentially-hostile constituents. Half of all Republican incumbents were placed in new districts in which at least one other incumbent lived, and these incumbent-pairing districts were often oddly-shaped

and overpopulated. *Id*. at 1329-30. The court noted that while incumbency protection generally is a legitimate traditional redistricting criterion, the one-sided partisan protection of certain incumbents and the targeting of others was not a legitimate state interest because it was not consistently applied. *Id*. at 1349.

45. Consistent with *Harris* and *Larios*, and binding on this Court, the Fourth Circuit last year struck down local bills enacted by the North Carolina General Assembly in 2013 and 2015 restructuring the Wake County Board of Education and Board of County Commissioners, respectively. *See RWCA*, 827 F.3d 333, 338. The Fourth Circuit was presented with evidence that illegitimate redistricting considerations caused and explained the deviations seen in the plans for those county boards and that the justifications offered by legislative proponents on the floor were pretextual. *See id.* at 346-49.

46. The illegitimate and pretextual considerations included: "guarant[eeing] republican victory through the independent packing of Democratic districts," "increas[ing] the alignment between citizen's voting district and their assigned schools," "reducing campaign costs," "increasing voter turnout," "allowing voters greater representation," and facilitating "administrative ease." *Id.* at 346-51.

47. Where plaintiffs have succeeded in proving that a mid-decade redistricting plan is unconstitutionally malapportioned and a plan that is constitutionally apportioned is still in place, a permanent injunction is the only necessary remedy. *See Dillard v. Baldwin Cnty. Comm'n*, 222 F. Supp. 2d 1283, 1287 (M.D. Ala. 2002) (having ruled that a change in the method of election was not required by federal law,

ordering that "the Baldwin County Commission shall return to the system of four members elected at-large used before the court's 1988 injunction"); *see also Cleveland Cnty. Assoc. for Gov't by the People v. Cleveland Cnty. Bd. of Comm'rs*, 142 F.3d 468 (D.C. Cir. 1998) (vacating decree entered where existing method of election was not contrary to federal law).

- *Arlington Heights* As Applicable to the One Person, One Vote Analysis

48. Because Individual Plaintiffs must demonstrate that challenged deviations were motivated by illegitimate redistricting criteria, the Supreme Court's guidance in determining when a legislature has acted with improper motivation is useful. However, to demonstrate that discrimination or illegitimate considerations motivated the deviations, Individual Plaintiffs are not required "to prove that the challenged action rested solely on [] discriminatory purposes." *Vill. of Arlington Heights v. Metro. Housing Redevelopment Corp*., 429 U.S. 252, 265 (1977).

49. "Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Arlington Heights*, 429 U.S. at 266; *see also Washington v. Davis*, 426 U.S. 229, 242 (1976) ("[A]n invidious discriminatory purpose may often be inferred from the totality of the relevant facts.").

50. Just as in intentional discrimination cases, the *Arlington Heights* analysis can be useful here in determining both whether discriminatory factors were at play or whether asserted justifications are merely pretextual. Relevant circumstantial factors to be considered in determining such legislative intent include "[t]he

historical background of the decision … particularly if it reveals a series of official actions taken for invidious purposes." *Arlington Heights*, 429 U.S. at 267. Courts should also take account of "[t]he specific sequence of events leading up the challenged decision," including any "[d]epartures from the normal procedural sequence" in the legislature's consideration of a bill. *Id*. In addition, "[t]he legislative or administrative history may be highly relevant, especially where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports." *Id*. at 268. Additionally, "the fact, if it is true, that the law bears more heavily" on one group when compared to another is relevant to the determination of whether there was an "invidious discriminatory purpose." *Davis*, 426 U.S. at 242; *see also Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 487 (1997) (disproportionate impact of legislation "is often probative of why the action was taken in the first place since people usually intend the natural consequences of their actions").

- Adverse Inference Law as Applicable to the One Person, One Vote Analysis

51. Individual Plaintiffs have asked this Court to draw an adverse inference with respect to the propriety of the motivations driving the weighting of the votes of some Greensboro citizens more heavily than others, because Sen. Wade and other legislative opponents have invoked legislative privilege and refused to give testimony or evidence on that topic.

52. "[W]hen a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him." *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. (UAW) v. NLRB*, 459 F.2d 1329, 1336 (D.C. Cir. 1972); *see also Dist. 65, Distributive Workers of Am. v. NLRB*, 593 F.2d 1155, 1163-64, 1164 n.21 (D.C. Cir. 1978) (affirming an adverse inference against an employer alleged to have committed discriminatory discharge where the employer failed to put on testimony of the discharged employees' supervisors to bolster its defense that the discharges were the result of non-discriminatory performance issues).

53. "[P]rivilege cannot be used both as a sword and as a shield." *Navajo Nation v. Peabody Holding Co.*, 255 F.R.D. 37, 44 (D.D.C. 2009) (citation omitted); *Recycling Solutions, Inc. v. District of Columbia*, 175 F.R.D. 407, 408 (D.D.C. 1997); *see also United States v. Rylander*, 460 U.S. 752, 758 (1983). This rule derives from concerns for fundamental fairness and just judicial outcomes.

54. The assertion of privilege to shield information from discovery "poses substantial problems for an adverse party who is deprived of a source of information that might conceivably be determinative in a search for the truth." *United States v. 4003-4005 5th Ave, Brooklyn NY*, 55 F.3d 78, 82 (2d Cir. 1995) (quoting *SEC v. Greystone Nash. Inc.*, 25 F.3d 187, 190 (3d Cir. 1994)).

55. Thus, because privilege assertions hinder courts' truth-seeking goal, courts have prevented litigants from using privilege assertions as "a tool for selective disclosure"—that is, allowing in evidence from a resisting party that may be

"helpful to his cause" but then allowing that resisting party to assert "privilege as a shield" to prevent meaningful inquiry on the subject matter in question to assess the truthfulness of the party's limited public explanations. *Computer Network Corp. v. Spohler*, 95 F.R.D. 500, 502 (D.D.C. 1982). Indeed, the Fourth Circuit recently noted that a court can hardly fault plaintiffs for not having direct evidence of discriminatory intent where legislators cloak themselves in legislative privilege. *See RWCA*, 827 F.3d at 347 n.7.

56. While not required to do so, a court can properly draw an adverse inference against a party claiming a privilege to resist producing relevant evidence. For instance, an inference will be drawn against a party to a civil suit that invokes the Fifth Amendment privilege against self-incrimination. *See Baxter v. Palmigiano*, 425 U.S. 308, 318-20 (1976); *see also Int'l Chemical Workers Union v. Columbian Chemicals Co.*, 331 F.3d 491, 497 (5th Cir. 2003).

B. Applied to the Facts in this Case

57. Under the equal protection standard applicable in this case, Plaintiffs have proven that "it is more probable than not" that the deviations in the redistricting plan for the Greensboro City Council reflect "the predominance of illegitimate apportionment factors rather than the legitimate apportionment factors" previously endorsed by the Supreme Court. *Harris*, 136 S. Ct., at 1304.

58. Supported by credible expert and lay witness testimony, Plaintiffs have demonstrated that the following considerations motivated the overall deviation in

the enacted plan: partisan bias, the goal of giving certain voters more weight in the electoral process because of their voting tendencies, favoring white voters by assigning them predominantly to underpopulated districts, and targeting black and Democratic incumbents. These are not neutral redistricting principles that justify population deviations of nearly 10% among election districts for the Greensboro City Council.

59. Favoring suburban voters over urban voters or otherwise ensuring that a certain number of City Council members live outside an arbitrarily-defined inner circle of the city is not a legitimate justification for violating the rights of individual voters to have their vote equally weighted.

60. Conferring a partisan advantage on one political party is not a legitimate justification for violating the rights of individual voters to have their vote equally weighted.

61. Dr. Chen's analysis establishes with a high level of statistical certainty that the desire for partisan advantage—that is, creating four districts controlled by Republican voters—was the reason for the deviations in the plan. Because the only way to achieve such a skewed political result was to increase the deviations between the districts, that partisan consideration thus caused the deviations.

62. Just as in *Larios*, here Republicans in the legislature have impermissibly used population deviations in the challenged plans in order to try to grab power in a city that has demonstrably preferred Democratic candidates. And the means of executing that power play is weighting more heavily Republican voters by placing

them in underpopulated districts and disfavoring Democrats by placing them in overpopulated districts.

63. Also like in *Larios*, if suburban neighborhoods in Greensboro, or business interests in the city, are in need of some political protection in order to ensure that their interests are well represented, that need must be met in some way that does not involve deviations from population equality.

64. The high deviations in the challenged plan also facilitated the pairing of six incumbents (and thus guaranteed electoral defeat of three of them). The plan also enabled another unpaired Democrat to be drawn into a heavily Republican district, thus ensuring her defeat as well. While incumbency protection may be a traditional redistricting criterion that would afford a legislative body some leeway in creating districts with slight deviations, *Larios* teaches that targeting incumbents, based on their race or party affiliation, is not a permissible reason for population deviations.

65. Any one of the illegitimate motivations for the deviations in the enacted plan is alone enough to uphold the challenges, but viewed cumulatively, Individual Plaintiffs' arguments that no legitimate state justifications warrant the population deviations in the enacted plan are on even firmer ground.

66. Individual Plaintiffs have also adequately demonstrated that what the Supreme Court has traditionally considered to be legitimate redistricting considerations did not cause the deviations in the plan.

67. Dr. Chen's analysis demonstrated that compactness and respect for political subdivisions (in this case, precincts) did not require deviations of the size in the enacted plan. (Ex. 133, Chen Rep. at 5, 22).

68. Although the speed with which the eight-district plan was introduced and enacted did not allow legislative opponents to draw and introduce an alternate eight-district plan with lower deviations, Rep. Harrison testified that she had seen an alternate seven-district plan that had near zero deviation, split fewer precincts, and better respected communities of interest. (Tr. Test. Harrison.) This is further evidence that legitimate redistricting criteria were not the impetus for the challenged plan.

69. Just as in *RWCA*, where the uncontested record evidence demonstrated that illegitimate factors predominated in creating a plan with high deviations, and the record evidence also exposed legislators' stated reasons as pretextual, so too here does the record evidence demand that conclusion, in further support of this Court's ultimate finding that illegitimate considerations motivated the plan and the deviations therein.

70. Specifically, legislative proponents at times argued that a move to all districts was necessary because of the high cost of running for at-large seats. (Ex. 13, March 5 Senate Redistricting Committee Transcript, at 3:6-9). However, a cursory review of campaign finance reports demonstrates that, in fact, candidates for at-large seats have raise and spent considerably less money in recent years than have certain district candidates. (Exs. 51-77; Tr. Test. Abuzuaiter). Thus, this justification is

pretextual, even beyond the fact that moving to district elections could have been achieved without such high deviations.

71. Next, proponents offered a tortured explanation that this new plan would increase geographic diversity in representatives. However, the enacted map makes clear that the districts guarantee no such thing, as the same number of districts touch the center of the city as in the previous plan. (Ex. 1, 209 (maps); Tr. Test. Fairfax, Abuzuaiter). Thus, this justification is also pretextual, and beyond that, a redistricting body may not use population deviations to ensure that different geographic areas are represented on a governing body. *Morris v. Board of Estimate*, 647 F. Supp. 1463, 1470 (E.D.N.Y. 1986).

72. Finally, Senator Wade may have also explained that the redistricting plan was requested by prominent business leaders. (Tr. Test. Vaughn, Abuzuaiter.) This seems pretextual, based on Sen. Wade's failure to even name any prominent business people who requested the change (Dep. Tr. Skip Alston, disavowing that he asked for the change), but regardless, a desire to move to single-member districts, regardless of the reasoning, does not explain or justify the deviations in the plan.

73. Senator Wade also claimed that this bill's redistricting plan was supported by the people of Greensboro, (Exs. 22, 24 (Transcripts)), based on one poll conducted by the Rhino Times, but the record evidence plainly refutes that. (Tr. Test. Robinson, Harrison, Vaughn, Abuzuaiter , Fesmire, Johnson.) This reason is also pretextual, but more significantly, even had Greensboro residents overwhelmingly wanted to

move to all singe-member districts, those districts could have been equally populated.

74. The Court holds that this is a situation in which drawing an adverse inference is appropriate. While the Court finds that Sen. Wade's silence on this topic is likely means that any evidence she would have given would have supported Individual Plaintiffs' case, the Court also notes that it would have arrived at the same legal conclusion regarding Individual Plaintiffs' one person, one claims even absent such an inference.

III. Racial Gerrymandering – Fourteenth Amendment

A. Applicable Standard

75. Laws that classify citizens based on race "are antithetical to the 14th Amendment whose central purpose was to eliminate racial discrimination emanating from official sources in the States." *Shaw v. Hunt*, 517 U.S. 899, 907 (1996) (*Shaw II*); *Harris v. McCrory*, No. 13-949, 2016 U.S. Dist. LEXIS 14581, *1 (M.D.N.C. Feb. 5, 2016). Racial gerrymandered districts adopted even for benign purposes or based on a misunderstanding of law are treated no differently. *Shaw II*, 517 U.S. at 904-05; *Harris v. McCrory*, 159 F. Supp. 3d 600, 604 (M.D.N.C. Feb. 5, 2016).

76. Legislative efforts "to classify and separate voters by race" through redistricting plans injure voters by "reinforc[ing] racial stereotypes and threaten[ing] to undermine our system of representative democracy by signaling to elected officials that they represent a particular racial group rather than their constituency

as a whole." *Shaw v. Reno*, 509 U.S. 630, 650 (1993) (*Shaw I*); *see also Covington v. North Carolina*, No. 1:15-cv-399, 2016 U.S. Dist. LEXIS 106162 at *3 (M.D.N.C. Aug. 11, 2016). Indeed, "[r]acial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters." *Shaw I*, 509 U.S. at 657.

77. When race is a predominant motivating factor in the drawing of electoral district lines, this Court must apply strict scrutiny. *See Ala. Legis. Black Caucus v. Alabama*, 135 S. Ct. 1257, 1272 (2015); *see also Bush v. Vera*, 517 U.S. 952, 958 (1996).

78. Plaintiffs in a racial gerrymandering case bear the burden of proving that race predominated. Once plaintiffs meet that burden, the burden shifts to the defending party to demonstrate that the district challenged was narrowly tailored to advancing a compelling governmental interest. *See Shaw II*, 517 U.S. at 908; *Abrams v. Johnson*, 521 U.S. 74, 91 (1997); *Miller v. Johnson*, 515 U.S. 900, 920 (1995).

79. No single type of evidence is dispositive in proving that race predominated, and both direct and indirect (or circumstantial) evidence that race predominated in the drawing of a challenged districts lines can be probative. *See Miller v. Johnson*, 515 U.S. at 916. A challenger may prove his case even in the absence of direct evidence. *See RWCA*, 827 F.3d at 347 n.7 ("direct evidence is simply not required").

80. Direct evidence that race predominated in the drawing of a challenged district can include state concessions, including statements by lawmakers asserting or conceding that the design of the plan was driven by race. With such evidence, a court may not even need to use the inferential analysis of district shape employed by the Supreme Court in Shaw. *See Johnson v. Miller*, 864 F. Supp. 1354, 1374 (1994).

81. Indirect evidence that race predominated in the drawing of a challenged district can include a district shape so contorted that it can only be explained by race or by a disregard for traditional redistricting criteria. *Id*. at 1374. The availability and use of incredibly detailed racial data may also support the conclusion that race was an overriding consideration. *Vera*, 517 U.S. at 962. The Supreme Court has endorsed the use of statistical analysis to parse racial from partisan motivations in drawing districts. *See Easley v. Cromartie*, 532 U.S. 234, 252 (2001)

82. After a court concludes that race was the predominant factor in the drawing of a challenged district, the court must next determine whether the challenged district survives strict scrutiny. This analysis is two- pronged: The first inquiry is whether a compelling state interest justifies the racial remedy, and the second inquiry is whether the racial remedy is narrowly tailored to satisfying the compelling state interest. Those defending the district bear the burden at this stage of the analysis. *See Miller*, 515 U.S. at 904.

83. Even assuming that compliance with the Voting Rights Act can constitute a compelling governmental interest, a legally-incorrect interpretation of the Voting

Rights Act cannot provide such a justification. *See Ala. Legis. Black Caucus*, 135 S. Ct. at 1272-74.

84. Section 2 of the Voting Rights Act is violated when, "[b]ased on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity to than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b).

85. Nothing about the use of at-large elections inherently violates Section 2, because Section 2 concerns are only triggered where minority voters do not have the opportunity to elect their candidates of choice.

86. In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the United States Supreme Court clarified the proof necessary to establish a violation when it first identified the "necessary preconditions" for an actionable Section 2 claim. The first necessary prong or precondition requires that the minority group in question be "sufficiently large and geographically compact to constitute a majority in a single-member district." *Id*. at 50-51. The second precondition is that the minority group be "politically cohesive." *Id.* The third precondition is that the majority must vote "sufficiently as a bloc to enable it…usually to defeat the minority's preferred candidate." *Id*. But the analysis of potential Section 2 liability does not end there; after establishing all three preconditions, a Section 2 plaintiff must also

demonstrate that a violation has occurred based on the totality of the circumstances. *Id*. at 79.

87. The Senate Report that accompanied the 1982 Amendment to Section 2 identified nine factors to be considered in an application of the totality of the circumstances test to measure racial vote dilution. These factors are: (1) the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process; (2) the extent to which voting in the elections of the state or political subdivision is racially polarized; (3) the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group; (4) if there is a candidate slating process, whether the members of the minority group have been denied access to that process; (5) the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process; (6) whether political campaigns have been characterized by overt or subtle racial appeals; (7) the extent to which members of the minority group have been elected to public office in the jurisdiction; (8) whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; (9) whether the policy underlying the state or political subdivision's use of such

voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous. S. Rep. No. 417, at 28-29, reprinted in 1982 U.S.C.C.A.N. at 206-07.

88. The use of a race-based remedy in the redistricting process, pursuant to Section 2, is restricted to those areas where all the preconditions are present in order to reasonably conclude that a race-based remedy is absolutely necessary to avoid liability. *See Gingles*, 478 U.S. at 49.

89. "[R]acial bloc voting and minority-group political cohesion never can be assumed, but specifically must be proved in each case in order to establish that a redistricting plan dilutes minority voting strength in violation of § 2." *Shaw*, 509 U.S. at 653; *see also Growe v. Emison*, 507 U.S. 25, 40-41 (1993) ("Unless these points are established, there neither has been a wrong nor can be a remedy").

90. Finally, when strict scrutiny is applied, a challenged district must be narrowly tailored to advance a compelling governmental interest. *See Miller*, 515 U.S. at 904; *Bush v. Vera*, 517 U.S. 952, 976 (1996).

91. The essence of narrow tailoring in the redistricting context has been described with the following analogy: "[J]ust as a homicide defendant may not use excessive force to stop an aggressor, neither may a state burden the rights and interests of its citizens more than is reasonably necessary to further the compelling governmental interest advanced by the state." *Hays v. Louisiana*, 839 F. Supp. 1188, 1206-07 (W.D. La. 1993), *appeal dismissed*, 18 F.3d 1319 (5th Cir. 1994). The state or jurisdiction engaged in redistricting must affirmatively provide evidence and

argument demonstrating that it did not go further than necessary in imposing a racial remedy and that it considered race-neutral alternatives.

92. A proper narrow tailoring inquiry must examine whether, in a racial gerrymander purportedly devised to avoid liability under Section 2 of the Voting Rights Act, the legislature has placed more black voters into a district, thus being over-inclusive and painting a remedy with too broad a brush, than is necessary to avoid running afoul of the Act. *See Miller,* 515 U.S. at 920-28.

B. Applied to the Facts in this Case

93. Plaintiffs have proven through direct and indirect evidence that race predominated in the construction of District 2.

94. The leading proponent of the bill, Senator Wade, and other legislative supporters stated in committee meetings and on the floor of the House and Senate on several occasions that this new plan was motivated by a desire to create more majority black seats, and in response to an inability of black voters to elect their candidates of choice. (Exs. 13, 17, 18, 22, 24(Transcripts).)

95. While these statements referenced all three of the enacted plan's majority-black districts and thus, on their own, do not prove that race predominated in the construction of District 2 specifically, they are nonetheless jurisdiction-wide evidence of race being a predominant legislative motive. *See Ala. Legis. Black Caucus,* 135 S. Ct. at 1265.

96. Additionally, Plaintiffs provided powerful statistical evidence that race predominated in the drawing of District 2. The Court finds credible and convincing the analysis of Plaintiffs' expert Dr. Jowei Chen. His statistical analysis convincingly demonstrated that partisan goals could not explain the level of packing seen in District 2 in the enacted plan, and thus race, not party, best explained the district lines.

97. Plaintiffs' additional indirect evidence was also credible and compelling. The appendages visually observed in District 2 are best explained on the basis of race, and this further supports that race predominated.

98. Where, as here, no party is defending the alleged racial gerrymander, Individual Plaintiffs succeed in their claim after establishing that race predominated.

99. However, even assuming Defendant in this case tried to satisfy its burden under strict scrutiny, evidence presented by Plaintiffs makes clear that it could not have established that the Voting Rights Act compelled the drawing of the challenged district as is.

100. African-American voters in Greensboro have a long history of electing the candidate of their choice in municipal elections. Having elected the candidate of their choice, an African-American candidate, in no fewer than eleven at-large elections in recent years, and in many more district elections, it cannot be credibly said that African American voters have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b).

101. As such, Section 2 of the Voting Rights Act does not compel the drawing of additional majority black districts for city council elections, and the legislature did not have a compelling interest for its predominant use of race.

IV. One Person, One Vote Claims – Article I, Section 19, North Carolina Constitution

A. Applicable Standard

102. Article I, Section 19, of the state Constitution provides that "no person shall be denied the equal protection of the laws." N.C. Const. art. I, § 19.

103. It is well settled in North Carolina that "the right to vote on equal terms is a fundamental right." *Northampton Cty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 746, 392 S.E.2d 352, 355 (1990); *James v. Bartlett*, 359 N.C. 260, 269-70, 607 S.E.2d 638, 644 (2005); *State ex rel. Martin v. Preston*, 325 N.C. 438, 454, 385 S.E.2d 473, 481 (1989); *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 12, 269 S.E.2d 142, 149 (1980).

104. As does the federal Constitution, the state Constitution creates a one person, one vote guarantee. *Northampton Cty.*, 326 N.C. at 747, 392 S.E.2d at 356.

105. While an equal protection analysis under Article I, § 19 generally follows the same analysis as performed under the federal Equal Protection Clause, *Richardson v. N.C. Dep't of Correction*, 245 N.C. 128, 134, 478 S.E.2d 501, 505 (1996), the one person, one vote protection in the state Constitution is stronger than the protection federal courts have deemed appropriate through the federal Constitution. *See*

Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377; *Blankenship v. Bartlett*, 363 N.C. 518, 681 S.E.2d 759.

106. The North Carolina Supreme Court's ruling in *Stephenson* lends support to this conclusion because in that case, the Court read the North Carolina Constitution to require that legislative districts be drawn within plus or minus 5% of the ideal district population without exception, which is a more stringent restriction on the state's redistricting authority than is the 10% federal burden-shifting rule. *See* 355 N.C. at 354, 562 S.E.2d at 377. The Court also went further than federal courts in holding that the state cannot use multimember districts and single-member districts in the same state legislative redistricting plan because it "creates an impermissible distinction among similarly situated citizens based upon the population density of the area in which they reside." 355 N.C. at 379, 562 S.E.2d at 395. Finally, the Court declared that the state constitutional equal protection guarantees are a check on partisan considerations in drawing state legislative districts. *See* 355 N.C. at 371-72, 562 S.E. 2d at 390.

107. Likewise, in *Blankenship*, the Court applied the state constitutional one person, one vote guarantee to state judicial elections, which federal courts have declined to do under the analogous equal protection clause of the federal Constitution. The North Carolina Supreme Court so held even after acknowledging that "federal courts have articulated that the 'one-person, one-vote' standard is inapplicable to state judicial elections." *See* 363 N.C. at 522, 681 S.E. 2d at 763. The Court further explained that because the right to vote is fundamental, heightened scrutiny

was warranted under the state equal protection clause when an election scheme unequally weighted votes. 363 N.C. at 523-24, 681 S.E.2d at 763-64. This is further proof that the state constitutional one person, one vote guarantee is more protective than the federal one.

108. It follows from these cases that the expansive state constitutional guarantee of substantially equal voting power extends to local governing bodies, *cf*. *Blankenship*, 363 N.C. at 525, 681 S.E. 2d at 765 (once the legal right to vote has been established, equal protection requires that the right be administered equally"), and that laws that infringe on that guarantee are subject to heightened scrutiny. *Id*.

B. Applied to the Facts in this Case

109. The same analysis performed in analyzing Plaintiffs' federal one person, one vote claims produces the same, but independent, results under the state constitutional analysis.

110. Under the state Constitution, partisan bias, the goal of giving certain voters more weight in the electoral process because of their voting tendencies, favoring white voters by assigning them predominantly to underpopulated districts, and targeting black and Democratic incumbents are not neutral redistricting principles that justify population deviations of nearly 10% among election districts for the Greensboro City Council.

111. Because Plaintiffs proved that in the enacted plan, it "is more probable than not that a deviation of less than 10% reflects the predominance of illegitimate

reapportionment factors rather than legitimate considerations," *RWCA*, 827 F.3d at 351, the challenged plan is unconstitutionally malapportioned under the state Constitution as well and must be permanently enjoined.

V. Severability

112. As this Court concluded in its ruling on the preliminary injunction motion, S.L. 2015-138 "adopts a comprehensive system for elections and governance in the City of Greensboro." *City of Greensboro*, 120 F. Supp. 3d, at 492. The Court has ruled unconstitutional two portions of the law, but because the remainder of the statute cannot be implemented without the districts at issue or the referendum portion invalidated, the statute must be enjoined in its entirety. Thus, it is still true that "as to the sections applicable to Greensboro and its voters, the Act is all of a piece." *Id.*

113. Under North Carolina law, when one portion of a statute is declared unconstitutional or is otherwise stricken, the surviving portion will be given effect only if it is severable. *See Flippin v. Jarrell*, 301 N.C. 108, 117-18, 270 S.E.2d 482, 488-89 (1980); *Constantian v. Anson County*, 244 N.C. 221, 227-28, 93 S.E.2d 163, 168 (1956).

114. Here, the statute at issue does not contain a severability clause. *See* 2015 N.C. Sess. Law 138. The parts of the law that were declared unconstitutional are an integral part of the election systems established for Greensboro by the statute. *City of Greensboro*, 120 F. Supp. 3d, at 492.

115. It is not possible to implement the new electoral scheme contemplated by the statute in its entirety without challenged provisions. There is no indication whatsoever that the North Carolina General Assembly intended that any portion of the Greensboro statute be implemented without the challenged provisions.

Respectfully submitted this 17th day of January, 2017.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this day electronically filed the foregoing in the above-titled action with the Clerk of the Court using the CM/ECF system, which will serve via electronic mail the following:

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