

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

RODNEY D. PIERCE and
MOSES MATTHEWS,

Plaintiffs,

Case No. 4:23-cv-00193-D

v.

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

Defendants.

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’ EMERGENCY MOTION
FOR EXPEDITED BRIEFING AND DECISION
ON FORTHCOMING MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs Rodney D. Pierce and Moses Matthews respectfully request that the Court order an expedited schedule for briefing and decision on their forthcoming motion for a preliminary injunction, which will seek to enjoin use of Senate Districts 1 and 2 in the 2023 enacted map and order adoption of remedial districts which include a minority opportunity district comprised of

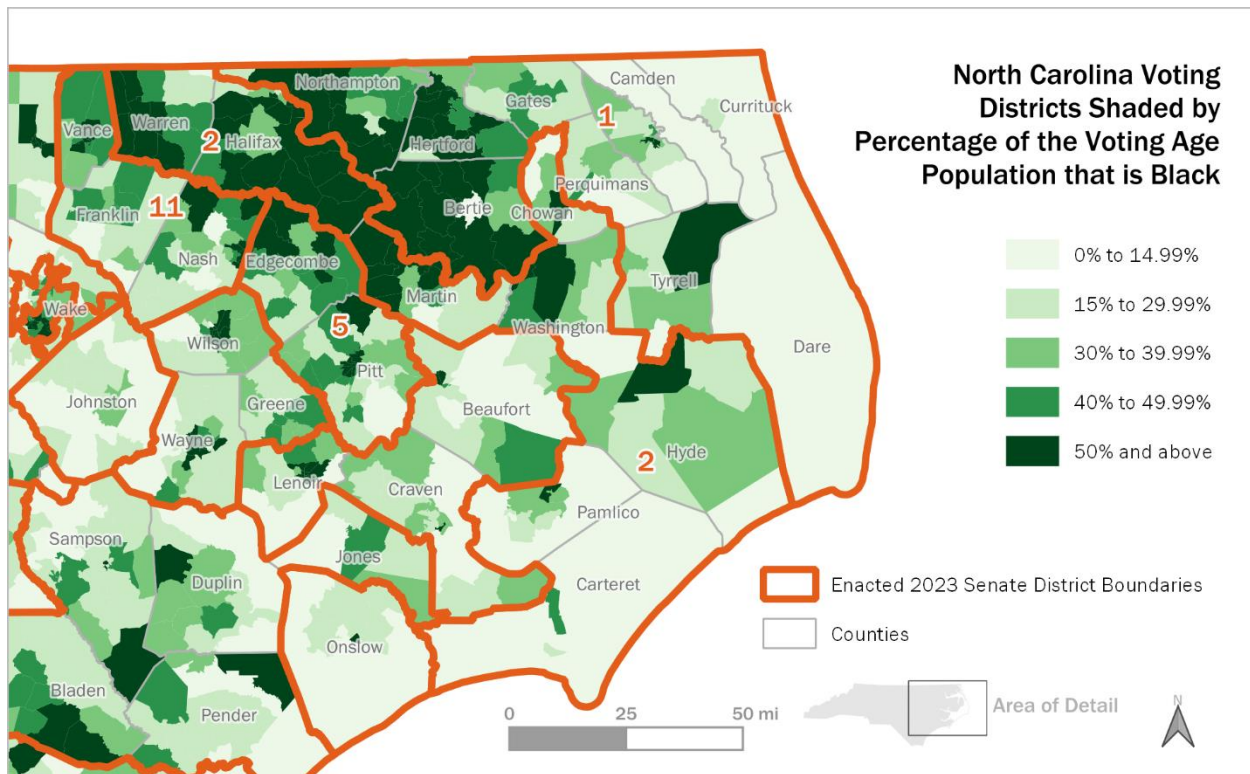
Black Belt counties in northeastern North Carolina.

Summary of the Nature of the Case and Statement of Facts

1. Plaintiffs filed this action today challenging the state Senate map enacted by the General Assembly on October 25, 2023—Senate Bill 758 (2023-2024 Session) (SB 758), Session Law 2023-146—under Section 2 of the Voting Rights Act (VRA), 52 U.S.C. § 10301.

2. The 2023 enacted map dilutes the voting strength of Black voters in northeastern North Carolina’s Black Belt Counties across by cracking them across multiple districts. This map facially violates Section 2 of the VRA. Black voters in the Black Belt counties are sufficiently numerous and geographically compact to form a majority-minority district; voting in the region is also racially polarized in the extreme; and the totality of the circumstances establishes that the 2023 enacted map’s cracking of Black voters in this region dilutes their voting strength.

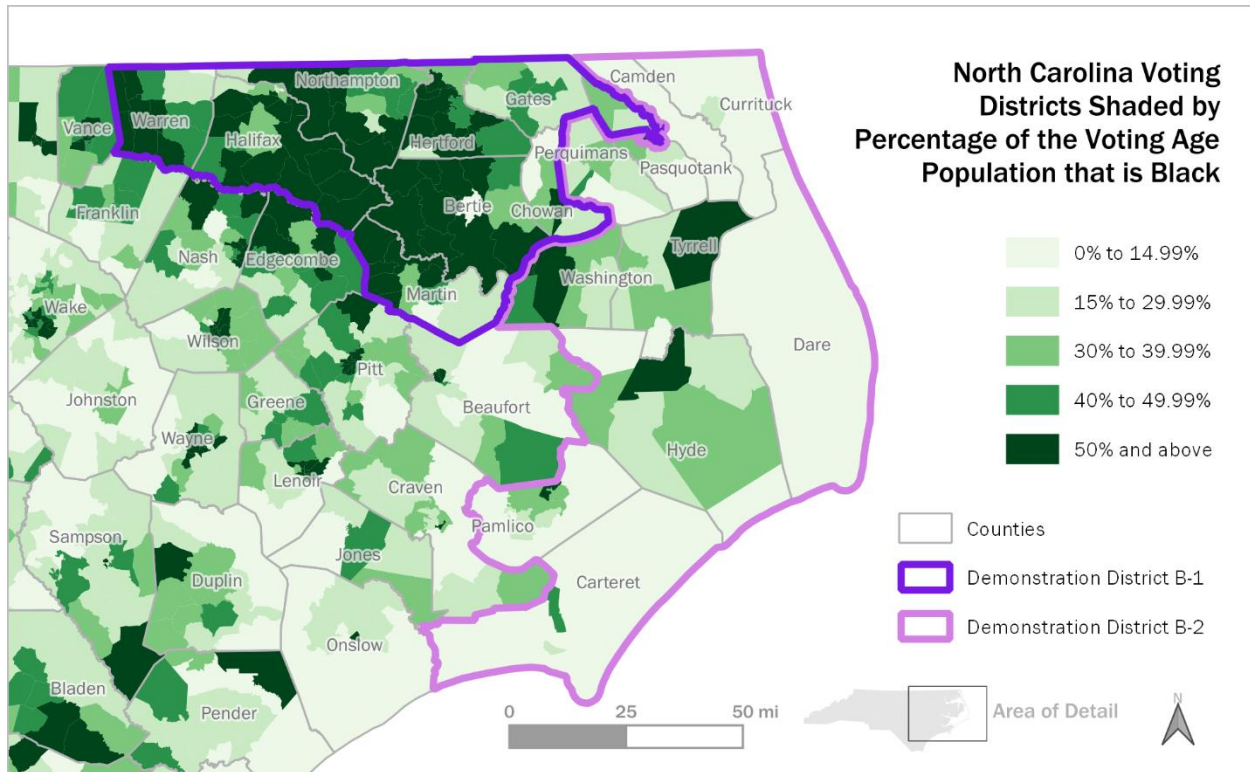
3. Anyone looking at Senate Districts 1 and 2 in the 2023 enacted map can easily see that they unlawfully crack Black voters in the Black Belt counties:



Argument

4. Plaintiffs intend to file a motion for a preliminary injunction two days from now, on November 22, 2023. The motion will seek to bar use of enacted Senate Districts 1 and 2 in the 2024 elections, and an order adopting specific remedial districts that include a minority opportunity district in the Black Belt counties while following traditional redistricting criteria.

5. To be clear, this case involves only two districts—Senate Districts 1 and 2. And the VRA violation can and should be remedied without altering the boundaries of *any* other district. Specifically, the Court can and should adopt the following remedial districts:



6. The 2024 primaries are set for Tuesday, March 5, 2024, and the general election is Tuesday, November 5, 2024. The window for candidate filing for these elections is set to begin at noon on Monday, December 4, 2023, and end at noon on Friday, December 15, 2023.

7. To facilitate a decision on a preliminary injunction before candidate filing begins, the Court should set an expedited schedule for briefing and any oral argument. Specifically:

- Plaintiffs’ motion for preliminary injunction, due November 22, 2023
- Defendants’ response(s), due November 27, 2023
- Plaintiffs’ reply, due November 28, 2023
- Oral argument, if any, on November 29, 2023

8. Although it would still be feasible and appropriate to grant a preliminary injunction and adopt a remedial map after candidate filing has begun under the 2023 enacted map, this proposed schedule would facilitate a decision on a preliminary injunction by December 1, 2023,

which would allow for candidate filing to open in remedial districts without delay.

9. It is not too late to afford relief for the General Assembly's violation of the VRA in time for the 2024 elections, which are still three-and-a-half months from now. For the most recent 2022 elections, candidate filing initially opened on December 6, 2021, but two days later, on December 8, 2021, the North Carolina Supreme Court suspended the candidate filing period due to a pending challenge to numerous districts in the 2021 state Senate, state House, and congressional plans. The Court postponed the primaries, originally set for March 8, 2022, until May 17, 2022. The state trial court eventually approved remedial Senate, House, and congressional plans on February 23, 2022, and candidate filing under those remedial plans began at 8 a.m. the next day, on February 24, 2022. The schedule proposed here would make it unnecessary to consider comparable adjustments.

10. When the VRA violation is as obvious as this, and the remedy is so limited and straightforward, the General Assembly should not be entitled to conduct one election under an illegal map just because they waited until the election season was drawing near to enact the map. The General Assembly knew for *six months* that a new state Senate map would be enacted, since the North Carolina Supreme Court said as much in its decision in *Harper III* on April 28, 2023. *See Harper v. Hall (Harper III)*, 886 S.E.2d 393, 449 (N.C. 2023).

11. These are exactly the type of circumstances in which members of the U.S. Supreme Court have said that the *Purcell* doctrine *does* permit judicial adoption of a remedial map. *See Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., and Alito, J., concurring) (“[T]he *Purcell* principle thus might be overcome even with respect to an injunction issued close to an election if a plaintiff establishes at least the following: (i) the underlying merits are entirely clearcut in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii)

the plaintiff has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship.”).

Wherefore, Plaintiffs respectfully request that the Court set an expedited schedule for briefing, oral argument, and decision as outlined above.

Dated: November 20, 2023

Respectfully submitted,

**ARNOLD & PORTER
KAYE SCHOLER LLP**

POYNER SPRUILL LLP

R. Stanton Jones*
Elisabeth S. Theodore*
Samuel I. Ferenc*
601 Massachusetts Ave. NW
Washington, DC 20001-3743
202.942.5000
stanton.jones@arnoldporter.com
elisabeth.theodore@arnoldporter.com
sam.ferenc@arnoldporter.com

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

Attorneys for Plaintiffs

**Notices of Special Appearance forthcoming*

CERTIFICATE OF SERVICE

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

Hand Delivery:

Hon. Tim Moore, Speaker of the House
c/o Sam Hayes, Process Agent
2304 Legislative Building
16 W. Jones Street
Raleigh, NC 27601

Hon. Phil Berger
President Pro Tempore of the North Carolina Senate
c/o Joshua Yost, Process Agent
2007 Legislative Building
16 W. Jones Street
Raleigh, NC 27601

Via courtesy email to:

Phillip J. Strach
Nelson Mullins
phil.strach@nelsonmullins.com
On behalf of Defendants, Philip E. Berger and Timothy K. Moore

Paul Cox
North Carolina State Board of Elections
paul.cox@ncsbe.gov
On behalf of Defendants The North Carolina State Board of Elections, Alan Hirsch, Jeff Carmon III, Stacy "Four" Eggers IV, Kevin N. Lewis, and Siobhan O'Duffy Millen

Dated: November 20, 2023

By: /s/ Edwin M. Speas, Jr.
Edwin M. Speas, Jr.