STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 18 CVS 014001

COMMON CAUSE, *et al.*
Plaintiffs,

v.

Representative DAVID R. LEWIS, in his official capacity as Senior Chairman of the House Select Committee on Redistricting, *et al.*,
Defendants.

ORDER

This matter comes before the undersigned three-judge panel for review of Remedial Redistricting Maps (hereinafter "Remedial Maps") enacted by the North Carolina General Assembly on September 17, 2019, N.C. Sess. Laws. 2019-219 (Senate Bill 692) and 2019-220 (House Bill 1020), to apportion the legislative districts within North Carolina. The Remedial Maps were enacted following entry of the September 3, 2019, Judgment of this Court wherein the Court held that certain districts in the 2017 House and Senate plans (hereinafter "2017 Enacted Maps") were unconstitutional partisan gerrymanders. The Court ordered that twenty-one Senate districts contained within seven county groupings and fifty-six House districts contained within fourteen county groupings be redrawn in conformance with the mandate of its Judgment.

Following the enactment of the Remedial Maps, Plaintiffs submitted objections to the new maps. Plaintiffs raised no specific objections to the twenty-one new districts drawn in the Remedial Senate Maps. Plaintiffs raised no specific objection to thirty-seven House Districts contained within nine county groupings in the Remedial House Map, but did raise specific objections to nineteen House Districts contained within five county groupings. *See,*

generally, Plaintiffs' Objections to the Remedial Plans (Sept. 27, 2019). The county groupings and House Districts that are the subject of the Plaintiffs' objections are:

a. Columbus-Pender-Robeson (HD-16, -46, & -47);

b. Forsyth-Yadkin (HD-71, -72, -73, -74, & -75);

c. Gaston-Cleveland (HD-108, -109, -110, & -111);

d. Brunswick-New Hanover (HD-17, -18, -19, & -20); and

e. Guilford (HD-58, -59, & -60).

All parties have had a full opportunity to submit memoranda supporting or opposing the Remedial Maps. The Court has examined each of the seventy-seven newly-drawn Senate and House districts in the Remedial Maps, and in particular the nineteen districts objected to by Plaintiffs, as well as the transcripts, video and written record of the General Assembly proceedings, and the arguments of counsel. The findings and conclusions of the Court are set out below.

In this Court's September 3, 2019, Judgment, the Court required that remedial maps conform to specific criteria. Certain of the Court's criteria governed the *process* required of the General Assembly if it chose to enact remedial maps, while other criteria set out *substantive requirements* for any remedial maps enacted.

I. Compliance with the Procedural Requirements of the September 3, 2019, Judgment of the Court.

With respect to the process that the Court required of the General Assembly, the following criteria were set out in the Court's Judgment:

> a. Legislative Defendants and their agents shall conduct the entire remedial process in full public view. At a minimum, this requires all map drawing to occur at public hearings, with any relevant computer screen visible to legislators and public observers. Legislative Defendants and their agents shall not undertake any steps to draw or revise the new districts outside of public view.

b. In redrawing the relevant districts in the Remedial Maps, the invalidated 2017 districts may not be used as a starting point for drawing new districts, and no effort may be made to preserve the cores of invalidated 2017 districts.

c. Election Data. Partisan considerations and election results data shall not be used in the drawing of legislative districts in the Remedial Maps.

d. To the extent that Legislative Defendants wish to retain one or more individuals who are not current legislative employees to assist in the map-drawing process, Legislative Defendants must seek and obtain prior approval from the Court to engage any such individuals.

In reviewing the actions of the General Assembly that led to the enactment of the Remedial Maps, the Court is satisfied that the process chosen and implemented by both the House and Senate of the General Assembly comported with the procedural requirements of the Court's Judgment. Several aspects of the General Assembly's process, and several of the Plaintiffs' objections thereto, merit further discussion.

a. Requirement that the remedial redistricting process be conducted in full public view.

In contrast to the unconstitutional 2017 Enacted Maps, the remedial redistricting process was conducted in full public view, as ordered by the Court. To comply with the Court's mandate, both the Senate and the House conducted the vast majority of the remedial redistricting process in public hearings, broadcast by audio and video livestream, so that Plaintiffs and interested public could view the process in its entirety. A record of the entire proceedings has been made and preserved and is available not only to the Court, but to the public for inspection and scrutiny.

Plaintiffs, in their *Objections to the Remedial Plans,* make note of some apparent lapses in transparency that predictably and justifiably give rise to suspicion. These lapses are detailed in *Plaintiffs' Objections to the Remedial Plans* on pages 2-7. For example, Plaintiffs suspect that Rep. David Lewis, chair of the House Redistricting Committee,

conferred with Republican redistricting strategists to determine which dataset of simulated maps created by Plaintiffs' expert Dr. Jowei Chen, Set 1 or Set 2, ought to be used as the base map in the remedial process. Rep. Lewis denies taking such action, but if Rep. Lewis had consulted in private regarding the partisan consequences of choosing either Set 1 or Set 2, the Court does not accept Legislative Defendants' rationalization that such a consultation would not be "'map drawing' but 'map *picking*'" and therefore not in violation of the Court's mandate that the "entire remedial process" be conducted in "full public view." *Leg. Defs' Memorandum Regarding House and Senate Remedial Maps (hereinafter "Leg. Defs' Memorandum"), p. 12 (Sept. 23, 2019) (emphasis original).* On the other hand, the Court notes that the House Redistricting Committee's ultimate choice to use Set 1 as the starting point for the remedial process was made with unanimous and bipartisan approval by the House Redistricting Committee after thorough debate in public. *Tr. H. Redistricting Comm., Sept. 11, 2019 at 17:3-22.*

The Court is satisfied, despite the lapses identified by Plaintiffs, that the efforts made by the General Assembly to ensure that the remedial process was conducted in public view were reasonable and complied with the Court's mandate. It is noteworthy to the Court that both Legislative Defendants and ranking Democratic members of the General Assembly concur that "the level of public access provided to the committee process was unprecedented in the history of the General Assembly, regardless of the type of committee or subject matter involve." *Leg. Defs' Memorandum at 10.* Democratic Minority Leader Senator Dan Blue, during Senate floor debate on the Senate's remedial plan, stated that "[f]or this process, the rules that have been applied have been evenly administered. It is a transparent, open, process, more transparent than anything I've seen in this legislature, especially with redistricting" and "[o]ne of the mainstays of a democratic government is transparency and that's why I think this process worked so well." *Senate Floor Debate*

Transcript, Sept. 16, 2019, at 20:7-12; 22:15-17. As such, the Court overrules the objections of Plaintiffs to the extent the objections challenge the General Assembly's compliance with the mandate of the Court that the remedial process be conducted in full public view.

b. Requirement that invalidated 2017 districts not be used as a starting point for drawing new districts and there be no effort to preserve the cores of invalidated districts.

The Court finds and concludes that the General Assembly's use of Set 2 (Senate) and Set 1 (House) of the simulated maps created by Dr. Chen as the datasets from which to select the base Remedial Senate and House Maps comports with the mandate of the Court that invalidated 2017 districts not be used as a starting point for drawing new districts. The Court has previously found, in its September 3, 2019, Judgment, that these simulated maps – both Set 1 and Set 2 – were created by an algorithm designed by Dr. Chen to maximize traditional redistricting criteria and to disregard partisan criteria and the cores of the 2017 districts. *See Judgment, ¶ 83-86, 113-114.* The Court accorded Dr. Chen's testimony and methodology great weight in the liability phase of this litigation and again does so here.

The Court further concludes that the methodology adopted by the General Assembly to select the ultimate House and Senate base remedial maps, through a random process from among the various simulated maps contained in Dr. Chen's datasets, was reasonable. The methodology utilized by the General Assembly rank-ordered the simulated maps for each county grouping by optimizing traditional, nonpartisan redistricting criteria computed by Dr. Chen, and then selected a map, through a random drawing, from the top five rank-ordered maps to serve as the base district maps for that grouping. The process was overseen by nonpartisan staff and conducted in public view. Notably, the base map selection process received broad bipartisan support in both the House and Senate Redistricting Committees. The Court recognizes that other methodologies might have been

chosen that could have resulted in maps that more reliably optimized traditional and nonpartisan redistricting criteria. For example, the decision to randomly draw a base map from county groupings where Dr. Chen's simulation showed that only a few unique maps could possibly be drawn within the group raises the possibility that the "optimal" map was supplanted by a map significantly less optimal through the random drawing process.[1] Nonetheless, despite these possible shortcomings in the chosen methodology, the decision to consistently employ and abide by random choice to choose among simulated maps created through a nonpartisan algorithm was reasonable. As such, the Court overrules the objections of Plaintiffs to the extent the objections challenge the General Assembly's compliance with the mandate of the Court that invalidated 2017 districts not be used as a starting point for drawing new districts and there be no effort to preserve the cores of invalidated districts.

c. Requirement that no partisan consideration or election results data be used in the drawing of legislative districts in the Remedial Maps.

The Court is satisfied that significant and reasonable efforts were taken by the General Assembly to attempt to limit partisan consideration and election results data from being used in the remedial redistricting process. The Court finds and concludes that to the degree that this mandate could be achieved, it was significantly aided by public and media scrutiny and the transparency of the remedial process.

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[1] For example, in the simulations produced by Dr. Chen for the Franklin-Nash House county grouping, due to the relatively small number of VTDs and municipalities in that grouping, only five unique maps could possibly be drawn while comporting with traditional and legal redistricting criteria. *See, Testimony of Dr. Chen, Trial Tr. 357:10-358:15.* As such, the random choice of one of those five possible simulated maps for this House grouping might (with a 1:5 chance) have resulted in choosing the fifth-most optimal choice – i.e. the "worst" choice – rather than the more optimal first choice.

Plaintiffs, in their *Objections to the Remedial Plans,* raise a serious concern regarding the use of election data or partisan data. Specifically, Plaintiffs have provided evidence to the Court that shortly after the House and Senate Redistricting Committees announced that Dr. Chen's simulated maps would be used to select the base map, counsel for the Legislative Defendants, responding to a request from legislative staff for shapefiles and block assignments for those maps, sent an email containing a link to Dr. Chen's backup files to dozens of recipients, including all members of the House and Senate Redistricting Committees. Dr. Chen's backup files contained extensive partisanship data on every district in every one of Dr. Chen's simulated maps. With these files, any recipient could look up the partisan composition of any district in any of Dr. Chen's simulated maps. The link was emailed by Legislative Defendants' counsel at 4:21 p.m. on September 9, 2019; Plaintiffs counsel objected to the distribution of the data shortly thereafter at 4:45 p.m., and the link was disabled at or about 7:09 p.m.

Legislative Defendants, in their *Reply Brief*, report that no central staff member completed the download of the partisan dataset, and that of the members of the House Redistricting Committee,[2] only two, one Republican member and one Democratic member, had, through their staff, downloaded the data at issue. Legislative Defendants further report that as to the data downloaded by the Republican member's staff, the zip file containing the partisan data was never accessed; with respect to the Democratic member's data, counsel argues there is no evidence that the Democratic member or her office used the data or sought to inject partisan changes into the maps. Legislative Defendants' counsel

[2] Legislative Defendants only report the potential use of data by members of the House and House staff members because "Plaintiffs only attack the House" and are not raising objections to the Senate Remedial Maps. *Reply Brief at 14.*

also note the complexity of the partisan data, asserting that it is "entirely unusable for a non-expert in political data analysis." *Reply Brief at 14.*

The Court finds and concludes that the distribution of partisan data by email to legislative staff and members of the Redistricting Committees by counsel for Legislative Defendants is a serious breach of this Court's mandate. However, the Court further finds that the distribution was inadvertent, and the potential damage was mitigated by public scrutiny and the vigilance of Plaintiffs' counsel and their prompt objection. As such, the Court concludes that this breach alone is not sufficient to invalidate the remedial map drawing process. The Court overrules the objections of Plaintiffs to the extent the objections challenge the General Assembly's compliance with the mandate of the Court that no partisan consideration or election results data be used in drawing the remedial maps.

d. Requirement that Legislative Defendants obtain prior approval of the Court to retain individuals who are not current legislative employees to assist in the map-drawing process.

Plaintiffs, in their *Objections to the Remedial Plans,* establish that Legislative Defendants, without seeking prior approval of the Court, utilized the services of Clark Bensen, who operates a political consulting firm known as "POLIDATA," during the remedial map drawing process. Plaintiffs note that Mr. Bensen is an attorney by training, and according to his resume, has been involved in "redistricting and census issues throughout the previous three reapportionment cycles and has developed political and census datasets for every state in the nation" and that "development of election datasets for every level of geography has been a specialty since 1974." *Id. at 5.* Mr. Bensen previously served as director of "Political Analysis" for the Republican National Committee where his duties were to "undertake the collection, compilation, systemization and analysis of

politically related data." *Id.* In 2011, Legislative Defendants relied upon Mr. Bensen to provide political data for them in drawing the 2011 plans. *Id.*

Legislative Defendants, by way of affidavit of Mr. Bensen, confirm that Mr. Bensen was contacted by email on September 9, 2019, inquiring about his availability to "analyze 1,000 districting plans" in a short period of time. *Bensen Affidavit,* ¶ *7.* He responded that he had limited availability, and he was then requested to "simply compare the two sets of 1,000 plans with two of the sets of 1,000 plans that Dr. Chen had provided during the liability stage, for the purposes of verifying that the plans submitted by Dr. Chen during the remedial stage appeared to be the same plans that had been submitted previously.'" *Id.*, ¶¶ *7-8.* Mr. Bensen further reports that he conducted this comparison on September 10, 2019, and by 2:30 p.m. that same day, he reported to counsel for Legislative Defendants that "it appeared to [him] 'like almost all of the old plans are included." *Id.*, ¶ *16.* He states that "he had neither the time nor the instructions to undertake" any other review associated with the remedial maps and that comparison of datasets was the sole task he performed. *Id.*, ¶ *17.* Mr. Bensen denies that he conducted any partisan analysis of any simulated districts in the data provided and did not provide any information to counsel or anyone else about partisan performance of the simulated districts. *Id.*, ¶ *18.*

Plaintiffs also object to the utilization of Dr. Janet R. Thornton during the remedial map drawing process without prior authorization of the Court. Dr. Thornton testified as an expert on behalf of the Legislative Defendants during the liability phase of this litigation. Like Mr. Bensen, Dr. Thornton has provided an affidavit stating that her role, at all times prior to the enactment of the Remedial House and Senate Maps, was limited to the single task, on September 10, 2019, of verifying that the datasets provided to the General Assembly were in fact the same datasets that Dr. Chen had produced for the purposes of

the litigation. *Thornton Affidavit, ¶¶ 3-6.* She further states that between September 3, 2019, and September 29, 2019, she did not "review the partisan make-up or review political information for the county groupings for the remedial plan." *Id., ¶ 7.*

Legislative Defendants respond to Plaintiffs' objection by stating, in summary, that the fact that outside personnel would be verifying that the data received by the General Assembly were identical to the data Dr. Chen had utilized during the liability phase of the litigation was discussed in public redistricting committee meetings (*see, e.g. Tr. S. Redistricting Comm., Sept. 10, 2019, at 50:10-15).* Moreover, Legislative Defendants argue, the authentication of data is not "assistance in the map-drawing process." *Reply Brief at 10.* The Court agrees. There is no direct evidence contradicting the affidavits of Mr. Bensen and Dr. Thornton, and taking their sworn testimony as true, the Court concludes that their assistance in authenticating and verifying data does not violate the specific mandate of the Court. As such, the Court overrules the objections of Plaintiffs to the extent the objections challenge the General Assembly's compliance with the mandate of the Court that Legislative Defendants obtain prior approval of the Court to retain outside individuals to assist with the remedial process.

II. Compliance with the Substantive Requirements of the September 3, 2019, Judgment of the Court.

The Court, in its Judgment of September 3, 2019, required that any remedial maps enacted by the General Assembly comport with a number of substantive criteria. The criteria are as follows:

> a. Equal Population. The mapmakers shall use the 2010 federal decennial census data as the sole basis of population for drawing legislative districts in the Remedial Maps. The number of persons in each legislative district shall comply with the +/- 5 percent population deviation standard established by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E. 2d 377 (2002).

b. Contiguity. Legislative districts shall be comprised of contiguous territory. Contiguity by water is sufficient.

c. County Groupings and Traversals. The mapmakers shall draw legislative districts in the Remedial Maps within county groupings as required by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E. 2d 377 (2002) (*Stephenson I*), *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*), *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*) and *Dickson v. Rucho*, 368 N.C. 481, 781 S.E.2d 460 (2015) (*Dickson II*). Within county groupings, county lines shall not be traversed except as authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*. The county groupings utilized in the 2017 House and Senate Maps shall be utilized in the Remedial Maps.

d. Compactness. The mapmakers shall make reasonable efforts to draw legislative districts in the Remedial Maps that improve the compactness of the districts when compared to districts in place prior to the 2017 Enacted Legislative Maps. In doing so, the mapmaker may use as a guide the minimum Reock ("dispersion") and Polsby-Popper ("perimeter") scores identified by Richard H. Pildes and Richard G. Neimi in *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483 (1993).

e. Fewer Split Precincts. The mapmakers shall make reasonable efforts to draw legislative districts in the Remedial Maps that split fewer precincts when compared to districts in place prior to the 2017 Enacted Legislative Maps.

f. Municipal Boundaries. The mapmakers may consider municipal boundaries when drawing legislative districts in the Remedial Maps.

g. Voting Rights Act. Any Remedial Maps must comply with the VRA and other federal requirements concerning the racial composition of districts.

h. Incumbency Protection. The mapmakers may take reasonable efforts to not pair incumbents unduly in the same election district.

With respect to each criteria (a) through (f), as to the maps as a whole, there is no evidence that the General Assembly did not comply, and Plaintiffs do not object to the Remedial Maps as a whole on these grounds. As such, the Court finds and concludes that the Remedial House and Senate Maps, as a whole, comport with the legal requirements of

equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of compactness, fewer split precincts, and consideration of municipal boundaries when compared to the districts in place prior to the 2017 Enacted Maps.

a. Mandate that the Remedial Maps comply with the VRA and other federal requirements concerning the racial composition of districts.

The Court further finds and concludes that the Remedial Maps comply with criterion (g) above, namely that the Remedial Maps comply with the Voting Rights Act and other federal requirements concerning the racial composition of districts. In the Court's Judgment of September 3, 2019, the Court stated that any parties "may submit briefing, which may attach expert analysis, on whether the *Gingles* factors are met in particular counties and county groupings and/or the minimum BVAP needed in particular counties and county groupings for African Americans to be able to elect candidates of their choice to the General Assembly." Plaintiffs submitted such a brief, including expert analysis of Jowei Chen, Ph.D. (report dated September 17, 2019) and Lisa Handley, Ph.D. (report dated September 17, 2019). No other parties submitted briefs or expert analysis on this issue within the time allowed by the Court. The Court finds the analysis performed by Dr. Chen and Dr. Handley to be credible and adopts their conclusions. A separate Order shall be issued by this Court detailing the findings of fact that support these conclusions.

b. Mandate that the General Assembly may take reasonable efforts to not pair incumbents unduly in the same election district.

In its September 3, 2019, Judgment, the Court adopted the criterion that the General Assembly "may take reasonable efforts to not pair incumbents unduly in the same election district." The Court recognizes that this criterion permits a degree of legislative discretion to enter into the remedial process and, indeed, a degree of political discretion. It

is not surprising, therefore, that each of Plaintiffs' challenges to the enacted House Remedial Maps – namely, their objections to five of fourteen House county groups redrawn pursuant to the Court's Judgment – arise largely as a result of the exercise of this legislative discretion to unpair incumbent legislators who had been paired by Dr. Chen's simulated maps.

In applying this criterion, the Court finds noteworthy and appropriate that the House Redistricting Committee recognized that changes made to base maps to unpair incumbents ought to be "extremely narrow, tailored, precise, and thoughtful." *Video record of House Redistricting Committee, Sept. 12, 2019, 3:24:19-3:26.* Accordingly, the Committee adopted the following directives: (1) no changes would be made to the House base maps derived from Dr. Chen's dataset where no incumbent members were paired; (2) where incumbent members were paired in a single district, the paired district and the corresponding empty district would be the sole districts altered to unpair the paired members, and those alterations should be as few as possible; and, (3) a legislator who informed the Committee that he or she did not intend to run for re-election would not be treated as an incumbent for the purposes of unpairing. *See, Legislative Defendants' Memo Re House and Senate Remedial Maps, at 16 and n. 3; Video record, Sept. 12, 2019, 3:07:00-3:09:44; 3:22:48; 3:24:19-3:29:00.* These directives were applied uniformly by the House Redistricting Committee to all county groupings under its consideration. The Court finds and concludes that these directives reflect a reasonable effort by members of the Committee to preserve the nonpartisan and traditional redistricting criteria optimized in Dr. Chen's maps and are therefore consistent with the Court's mandate.

In its September 3, 2019, Judgment, the Court observed that "[a]t its most basic level, partisan gerrymandering is defined as: 'the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power'" *Ariz.*

State Legislature v. Ariz. Indep. Redistricting Comm'n, 135 S. Ct. 2652, 2658 (U.S. 2016). With this in mind, the Court finds it significant that the House Redistricting Committee voted unanimously to adopt twelve of the fourteen remedial county groupings under its consideration and one other grouping received only one "no" vote. Only one county grouping, the Robeson-Columbus-Pender county grouping, provoked disagreement among the Committee members. The House Redistricting Committee is comprised of seventeen members – seven Democrats and ten Republicans. The Speaker Pro Tempore, a Republican, participated as an *ex officio* voting member as well. The Court finds and concludes that unanimous or nearly unanimous consensus across party lines within the Committee for thirteen of fourteen remedial county groupings is significant evidence that, for at least those thirteen groupings, partisan gerrymandering has been significantly abated.

Plaintiffs, in their *Objections to the Remedial Maps*, challenge five county groupings in the House Remedial Maps. Four of the groupings challenged were altered from Dr. Chen's base map to unpair incumbents. One county grouping, Brunswick – New Hanover, is challenged by Plaintiffs because the General Assembly did *not* unpair incumbents. The Court considers each of Plaintiffs' objections to these five county groupings in the House Remedial Map.

i. Brunswick-New Hanover County Grouping (HD-17, HD-18, HD-19, and HD-20)

The base map for this county grouping, which was selected in accordance with the methodology described above from Dr. Chen's simulated maps, paired two Republican incumbents in House District 20: Representative Holly Grange and Representative Ted Davis. The base map had the highest Reock score (*i.e.*, most compact) of all possible simulations, split no VTDs, and split the lowest number of municipalities (one). The

simulated map created three Republican districts and one Democratic district, as did every other simulated map generated by Dr. Chen's Set 1 algorithm for that county grouping except one, which created four Republican districts.

Plaintiffs object to adoption of this county grouping map because the General Assembly did not unpair Rep. Grange and Rep. Davis in HD-20. Plaintiffs do not propose an alternative map that unpairs the incumbents in HD-20, but suggest that had Rep. Grange and Rep. Davis been unpaired, Democratic voters might have been distributed more efficiently in HD-18, -19 and -20, presumably making one of the three Republican districts more competitive for a Democratic candidate. By failing to unpair Rep. Grange and Rep. Davis, Plaintiffs contend, Legislative Defendants perpetuated a partisan gerrymander in this county grouping.

Rep. Grange, however, announced her intention to run for Governor in 2020 several months prior to the drafting of the Remedial Map. Although Rep. Grange initially asked the House Redistricting Committee that she be unpaired from Rep. Davis, she later withdrew her request. *Tr. House Floor, Sept. 13, 2019, Vol. II at 560:15-561:5.* Because a person cannot file for both a House seat and the Office of Governor, it was reasonable for the General Assembly to disregard Rep. Grange's incumbency and treat the county grouping as one with no paired incumbents. Therefore, consistent with the directives adopted by the House Redistricting Committee, no changes were made to the simulated base map for this county grouping. The base map for Brunswick-New Hanover, with no alterations, was unanimously adopted by the bipartisan House Redistricting Committee.

In weighing all of these factors, the Court finds and concludes that the Brunswick-New Hanover remedial districts were not adopted in violation of the Court's mandate because: (1) the remedial map for the Brunswick-New Hanover county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably

comply with its mandate; (2) the districts within the county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of compactness, fewer split precincts, and consideration of municipal boundaries; (3) the decision not to alter the base map was consistent with a self-imposed limitation on the Redistricting Committee's discretion that the Court has found to be appropriate and uniformly applied; (4) no alternative map that better achieved these objectives was offered by Plaintiffs; and, (5) the remedial county grouping map was adopted unanimously by the House Redistricting Committee. Therefore, the objection of Plaintiffs to this county grouping is denied.

ii. Guilford County Grouping (HD-58, HD-59 and HD-60)

The Guilford County grouping contains six total House districts, but three of these districts (HD-57, HD-61, and HD-62) are frozen in both the computer-simulated plans as well as in the enacted House Remedial Map pursuant to the Court's September 3, 2019, Judgment. The base map for this county group, which was selected from Dr. Chen's simulated maps in accordance with the methodology described above, paired two incumbents in House District 59. To unpair these two incumbents, one VTD from HD-59 was moved in HD-58. No other changes were required. The House Redistricting Committee unanimously adopted the Guilford County remedial map.

Plaintiffs object to the Guilford County remedial map adopted by the General Assembly because, they contend, in the name of unpairing incumbents, the House substantially recreated one of the invalidated 2017 districts in this grouping (HD-58), rendering this grouping a statistical outlier with respect to compactness. Plaintiffs do not contend that the alteration to the base map rendered the county grouping a statistical outlier with respect to partisanship, and the change had no effect on the number of split

VTDs (0) or split municipalities (0). Plaintiffs do not propose an alternative map that unpairs the incumbents in HD-59.

In weighing all of these factors, the Court finds and concludes that the Guilford county remedial districts were not adopted in violation of the Court's mandate because: (1) the remedial map for the Guilford county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably comply with its mandate; (2) the districts within the county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of fewer split precincts, and consideration of municipal boundaries; (3) the decision to unpair the incumbents in HD-59 was achieved by as few alterations as possible (in this case, one VTD), which was consistent with a self-imposed limitation on the Redistricting Committee's discretion that the Court has found to be appropriate and uniformly applied; (4) the modest reduction in compactness of HD-58 and HD-59 to achieve unpairing of incumbents was not unreasonable; (5) no alternative map that better achieved these objectives was offered by Plaintiffs; and, (6) the remedial county grouping map was adopted unanimously by the House Redistricting Committee. Therefore, the objection of Plaintiffs to this county grouping is denied.

iii. Cleveland-Gaston County Grouping (HD-108, HD-109, HD-110 and HD-111)

The base map for the Cleveland-Gaston county grouping, which was selected from Dr. Chen's simulated maps in accordance with the methodology described above, paired two incumbents in House District 111. To unpair these two incumbents, a total of thirteen VTDs were moved from the base plan and one VTD was split. Every simulated map created by Dr. Chen's algorithm for this county grouping results in four Republican districts, three of which have more than 60% Republican vote share and the fourth has more than 55%

Republican vote share in all but a handful of the 1000 maps simulated by Dr. Chen. The House Redistricting Committee unanimously adopted the Cleveland-Gaston county grouping remedial map.

Plaintiffs object to the Cleveland-Gaston county grouping remedial map adopted by the General Assembly because, they contend, the alterations made to unpair incumbents return this county grouping to the prior gerrymander by cracking the municipality of Gastonia into three districts. Plaintiffs point out that the net partisan effect is a swing downward in Democratic vote share in HD-108 from 41.24% to 35.62%, and a swing upward in Democratic vote share in HD-111 from 26.63% to 31.10%. Plaintiffs also establish the districts in the county grouping are made less compact by the alterations made to the base map. Plaintiffs do not propose an alternative map that unpairs the incumbents in HD-111.

Legislative Defendants contend the choices made by the House Redistricting Committee to alter the map to unpair incumbents required a policy decision to either split Gastonia into three districts or to split many other smaller municipalities in northern and western Gaston County. Ultimately, by altering the base map as enacted, no other municipalities were split to achieve the unpairing of the incumbents in HD-111. Legislative Defendants further note that there is no incentive to engage in partisan gerrymandering in this county grouping because of the heavy Republican concentration throughout the entire grouping.

In weighing all of these factors, the Court finds and concludes that the Cleveland-Gaston county grouping remedial districts were not adopted in violation of the Court's mandate because: (1) the remedial map for the Cleveland-Gaston county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably comply with its mandate; (2) the districts within the county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county

grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of fewer split precincts, and consideration of municipal boundaries; (3) the decision to unpair the incumbents in HD-111 was achieved by alterations only to the district with the paired incumbents (HD-111) and to the district with no incumbent (HD-108), which was consistent with a self-imposed limitation on the Redistricting Committee's discretion that the Court has found to be appropriate and uniformly applied; (4) the division of Gastonia so as to avoid the division of other municipalities to achieve unpairing of incumbents was not unreasonable; (5) no alternative map that better achieved these objectives was offered by Plaintiffs; (6) no motive to disadvantage Democratic voters can be discerned in the alterations made; and, (7) the remedial county grouping map was adopted unanimously by the House Redistricting Committee. Therefore, the objection of Plaintiffs to this county grouping is denied.

iv. Forsyth-Yadkin County Grouping (HD-71, HD-72, HD-73, HD-74 and HD-75)

The base map for the Forsyth-Yadkin county grouping, which was selected from Dr. Chen's simulated maps in accordance with the methodology described above, paired two incumbents in House District 75 (one Democrat and one Republican) and two incumbents in House District 72 (one Democrat and one Republican).[3] In HD-75, the incumbents each resided two VTDs away from the nearest border of the base district. In order to attempt to unpair the four incumbents, the bipartisan Forsyth-Yadkin House delegation proposed to alter the base map by moving four VTDs in HD-75, and one VTD in HD-72. During the course of the discussions amongst the members of the delegation at the mapmaking terminal, which was carried out in full public view, Representative Donny Lambeth, the

[3] The House Districts were renumbered in the enacted Remedial House Maps: HD-71 to HD-72, HD-72 to HD-74, HD-74 to HD-75 and HD-75 to HD-71. For consistency, the Court uses the original district numbers in this discussion.

Republican incumbent paired in HD-75, asked to "take the 75th out to Kernersville because I've represented it in the past." *Video Record of House Redistricting Committee, Sept. 12, 2019, 7:12:00-10.* Rep. Lambeth's request was implemented by an alteration to the base map. As a result, two VTDs were removed from HD-75 and added to HD-74 (which includes Kernersville) and, to balance the population between the two districts, two VTDs from HD-74 were moved to HD-75. The base map for the Forsyth-Yadkin county grouping, as altered to unpair four incumbents, was unanimously adopted by the House Redistricting Committee.

Plaintiffs object to the Forsyth-Yadkin county grouping remedial map adopted by the General Assembly because, they contend, the alterations made to unpair incumbents were the result of partisan gerrymandering and resulted in districts that preserved cores of House districts that were declared unconstitutional. Plaintiffs show that as a result of altering four VTDs to unpair the incumbents in HD-75, the Democratic vote share in HD-75 increased from 69.09% to 71.37%, while in HD-74, the Democratic vote share decreased from 39.72% to 36.24%. This, Plaintiffs contend, is evidence of packing and cracking condemned by the Court in its September 3, 2019, Judgment. The alterations further had the effect of decreasing compactness, as compared to the base county grouping map, and split two more municipalities than the base map. Plaintiffs do not propose an alternative map that unpairs the incumbents in HD-75 and HD-72.

While there is no evidence that election result data was used by the Forsyth-Yadkin legislative delegation as they decided how to propose to unpair the incumbents in HD-75, it is reasonable to assume that the incumbents paired in HD-75, Rep. Lambeth (Republican) and Rep. Evelyn Terry (Democrat), both of whom have served in the House for four terms, knew from their extensive political experience that the two VTDs that were moved to place Rep. Lambeth into the Republican leaning HD-74 were two Republican-leaning VTDs, and

conversely, the two VTDs moved from HD-74 into HD-75 to rebalance the population were two Democratic-leaning VTDs. It is also reasonable to assume that Rep. Lambeth and Rep. Terry knew that the alternative means by which they could be unpaired would be to place Rep. Terry, the Democrat, into a safe Republican district, and to leave Rep. Lambeth, the Republican, in a safe Democratic district.

The Court concurs that the decision to alter HD-74 and HD-75 so as to place Rep. Lambeth in HD-74 and leave Rep. Terry in HD-75 was one that was likely made with partisan considerations in mind, although not with past election data on hand. The Court further recognizes that this is an example of where the Court's mandate that allows "reasonable efforts to not pair incumbents unduly in the same election district" permits, as noted above, a degree of legislative discretion to enter into the remedial process and, indeed, a degree of political discretion. And the Court concurs that traditional redistricting criteria of compactness and preserving municipal boundaries were subordinated to unpairing incumbents.

However, the constitutional defect at issue in this litigation is extreme partisan gerrymandering which, as the United States Supreme Court has said is, "[a]t its most basic level . . . the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power." *Ariz. State Legislature,* 135 S. Ct. at 2658. Here, the Court cannot conclude that the choice of how to unpair Rep. Lambeth and Rep. Terry was done to subordinate Democrats or entrench the Republican party in power. The fact that the alterations inured to the mutual benefit of both Democrats and Republicans in a plan that was proposed to the House Redistricting Committee by the bipartisan Forsyth-Yadkin House delegation, and that the plan was unanimously adopted by the full bipartisan Committee, shows that these alterations were not the result of extreme partisan gerrymandering.

In weighing all of these factors, the Court finds and concludes that the Forsyth-Yadkin county grouping remedial districts were not adopted in violation of the Court's mandate because: (1) the remedial map for the Forsyth-Yadkin county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably comply with its mandate; (2) the districts within the county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of fewer split precincts, and consideration of municipal boundaries; (3) the decision to unpair the incumbents in HD-71, HD-72, HD-74, and HD-75 was achieved by alterations only to the districts with the paired incumbents (HD-75 and HD-72) and the districts with no incumbent (HD-74 and HD-71), and by making the fewest alterations possible, which were consistent with self-imposed limitations on the Redistricting Committee's discretion that the Court has found to be appropriate and uniformly applied; (4) the decision to place Rep. Lambeth in HD-74 and leave Rep. Terry in HD-75 was not unreasonable; (5) no alternative map that better achieved these objectives was offered by Plaintiffs; (6) no motive to disadvantage Democratic voters can be discerned in the alterations made; and, (7) the remedial county grouping map was adopted unanimously by the House Redistricting Committee. Therefore, the objection of Plaintiffs to this county grouping is denied.

v. Columbus-Pender-Robeson County Grouping (HD-16, HD-46 and HD-47)

The base map for the Columbus-Pender-Robeson county grouping, which was selected from Dr. Chen's simulated maps in accordance with the methodology described above, paired two incumbents in HD-16. To unpair these two incumbents, eleven VTDs were altered from the base plan. Of the simulated maps created by Dr. Chen's algorithm for this county grouping, 99.5% of those simulated maps result in two Democratic districts

and one Republican district, and both the base map and enacted Remedial Map for this county grouping have this same ratio.

Plaintiffs object to the Columbus-Pender-Robeson county grouping remedial map adopted by the General Assembly because, they contend, the alterations made to unpair incumbents was an attempt to dilute Democratic voters in HD-46 by moving the Town of Whiteville VTDs into HD-16, thereby making HD-46 more competitive for Republicans. Plaintiffs show that the alterations to the base map resulted in a decrease of the Democratic vote share in HD-46 from 53.30% to 51.37% and an increase in the Democratic vote share in HD-16 from 39.44% to 40.64%.

This county grouping was the subject of extensive negotiation among the members of the House Redistricting Committee, and extensive discussion on the House Floor. Several amendments were offered by Representative Darren Jackson (D-Wake), which failed. The Columbus-Pender-Robeson county grouping remedial map was adopted by the House Redistricting Committee by a divided vote. Plaintiffs have not proposed an alternative map to the Court.

Legislative Defendants contend each possible alternative for unpairing the incumbents in HD-46 and HD-16 would have resulted in municipal splits and VTD splits. They contend that the policy decision of the Committee to preserve traditional redistricting criteria was a sound decision and should not be altered by the Court. The remedial maps proposed by Rep. Jackson would divide one municipality, Tabor City, or, alternatively, divide two VTDs. The enacted Remedial Map for the Columbus-Pender-Robeson county grouping splits no municipalities and splits no VTDs. The compactness scores, when comparing the base map to the enacted Remedial Map, are essentially the same.

In weighing all of these factors, the Court finds and concludes that the Columbus-Pender-Robeson county grouping remedial districts were not adopted in violation of the Court's mandate because: (1) the remedial map for the Columbus-Pender-Robeson county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably comply with its mandate; (2) the districts within the county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of compactness, fewer split precincts, and consideration of municipal boundaries; (3) the decision unpair the incumbents in HD-16 was achieved by alterations only to the district with the paired incumbents (HD-16) and the district with no incumbent (HD-46), which were consistent with a self-imposed limitation on the Redistricting Committee's discretion that the Court has found to be appropriate and uniformly applied; (4) the decision to place the Town of Whiteville in one district, and the Town of Chadbourn in another was not an unreasonable exercise of the discretion in the General Assembly's efforts to unpair incumbents while respecting traditional redistricting criteria; and, (5) no alternative map that better achieved these objectives was offered by Plaintiffs. Therefore, the objection of Plaintiffs to this county grouping is denied.

III. Senate Remedial Maps

Despite receiving no objections from Plaintiffs to the enacted Senate Remedial Maps, the Court has examined the seven county groupings and twenty-one Senate districts that were redrawn in the Senate remedial process. After reviewing the record of the Senate proceedings, the Court finds and concludes that each Senate district redrawn and enacted in the Remedial Maps comports with the Court's mandate because: (1) the Remedial Map for each Senate county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably comply with its mandate; (2) the districts

within each county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of compactness, fewer split precincts, and consideration of municipal boundaries; (3) all decisions to alter the base maps were narrow, reasonable, and received broad bipartisan support; (4) the entire process was conducted in full public view; and, (5) the Senate Remedial Maps were adopted by the Senate with broad bipartisan support.

BASED UPON THE FOREGOING findings and conclusions, the Court ORDERS that the House redistricting plan, N.C. Sess. Laws 2019-220 (House Bill 1020) enacted into law on September 17, 2019, and the Senate redistricting plan, N.C. Sess. Laws 2019-219 (Senate Bill 692) enacted into law on September 17, 2019, are hereby APPROVED by the Court.

SO ORDERED, this the 28th day of October, 2019.

/s/ Paul C. Ridgeway

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the persons indicated below by emailing a copy thereof to the address below, in accordance with the March 13, 2019 Case Management Order:

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This the 28th day of October, 2019.

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