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, AND CHARLI MAE SYKES, Plaintiffs, v. THE GUILFORD COUNTY BOARD OF ELECTIONS, Defendant.	BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I. NATURE OF THE MATTER BEFORE THE COURT

Plaintiffs The City of Greensboro ("City of Greensboro" or "City") and Lewis A. Brandon III, Joyce Johnson, Reverend Nelson Johnson, Richard Alan Koritz, Sandra Self Koritz, and Charli Mae Sykes (collectively "Citizen Plaintiffs") seek a Preliminary Injunction enjoining Defendant the Guilford County Board of Elections ("the Board") from implementing, enforcing, or giving any effect to Session Law 2015-138, House Bill 263, entitled "An Act to Modify the Form of Government in the City of Trinity and to Clarify the Form of Government, Method of Election, and Determination of Election Results in the City of Greensboro" (hereinafter "the Greensboro Act" or "the Act"). The Act purports to restructure the City of Greensboro's municipal government by (among other things) decreeing the form of municipal government, defining eight new single-member districts from which the City Council would be elected, limiting the Mayor's

vote and veto on Council matters, extending the terms of the Mayor and Council members from two to four years, and altering the structure of the 2015 City Council election from the primary/general election format the City has followed for 42 to years to a new general/runoff election format. The new districting plan raises serious constitutional concerns: Several of the districts it creates will unfairly dilute the votes of Greensboro voters whose new districts are more populous than those of other Greensboro voters or divide communities of interest among multiple districts. Compounding these issues, the Act removes from the City of Greensboro and its citizens—alone among North Carolina municipalities—the statutory right to control the structure of their municipal government in the future by means of petitions for initiative and referendum.

Preliminary injunctive relief is essential to protect the rights of the City and its citizens to govern themselves locally—a right available to the citizens of every other North Carolina municipality—while this litigation moves forward and to ensure that the framework and structure for elections to the Greensboro City Council dictated by the hastily-passed Greensboro Act do not unconstitutionally devalue (or overvalue) the votes of Greensboro citizens in the fast-approaching 2015 City Council election. To avoid these serious constitutional harms, this Court should issue a preliminary injunction restraining the implementation and enforcement of the Act and prohibiting the Board from conducting elections for the Greensboro City Council pursuant to its provisions.

II. FACTUAL ALLEGATIONS

The Greensboro Act (Compl. Exh. A) makes multiple changes to the structure of the City's municipal government, implements a new framework and scheme for the election of the Greensboro City Council, redraws the lines of City Council districts to overpopulate certain districts while underpopulating others, split precincts, and pair incumbent council members in the same district—and at once withdraws the statutory authority of the City and its citizens to choose their form of local government.

A. The Greensboro Act Removes from the City of Greensboro Alone the Right to Control the Structure of Its Municipal Government.

The North Carolina General Statutes grant every North Carolina municipality, and their citizens, the right to control the structure of their municipal governments. Section 160A-101 allows every North Carolina municipality to adopt or alter its name; the style of the municipal corporation and its governing board; the number, terms of office, and mode of election of members of the council; the method of conducting municipal elections; the method of selecting the mayor; and the form (mayor-council or council-manager) of municipal government. N.C. Gen. Stat. § 160A-101. The city council is authorized to adopt any of the options identified in Section 160A-101 by means of an ordinance amending the city's charter and is permitted (but not required) to condition adoption of such an ordinance on approval by the people. N.C. Gen. Stat. § 160A-102. The authority to alter the structure of municipal government is not, however, placed exclusively in the hands of the city council. The General Statutes emphatically preserve the rights of initiative and referendum by the people themselves:

> An ordinance adopted under G.S. 160A-102 that is not made effective upon approval by a vote of the people **shall be subject to a referendum petition**. Upon receipt of a referendum petition . . . , the council shall submit an ordinance adopted under G.S. 160A-102 to a vote of the people.

N.C. Gen. Stat. § 160A-103 (emphasis added).

> The people may initiate a referendum on proposed charter amendments. . . . **Upon receipt of a valid initiative petition, the council shall call a special election** on the question of adopting the charter amendments proposed therein, and shall give public notice thereof . . . .

N.C. Gen. Stat. § 160A-104 (emphasis added).

By its plain terms, the Act prohibits the City of Greensboro—and thus its citizens—from making any changes to the form or structure of the City's government by means of a citizen petition for initiative or referendum, a right otherwise made available by statute to citizens of every North Carolina municipality:

> Notwithstanding Part 4 of Article 5 of Chapter 160A of the General Statutes . . . , **the City of Greensboro** shall not alter or amend the form of government for the City. Upon the return of the 2020 federal decennial census the North Carolina General Assembly shall revise the districts set out in this action, if needed. The City of Greensboro may submit proposed changes to the districts set out in this section to the North Carolina General Assembly.

(Emphasis added). If any doubt remained that the General Assembly intended to single out the City and its citizens for withdrawal of the powers conveyed by Sections 160A-103 and -104, the Act specifies in Section 2.(g) that it "applies only to the City of Greensboro."

B. In Restructuring Greensboro's Municipal Government, the Act Creates New City Council Districts That Violate Citizen Plaintiffs' Equal Protection Rights.

In broad terms, the Greensboro Act:

- Restructures the Greensboro City Council. Previously, the Greensboro City Council was comprised of three council members elected at large and five council members elected from single-member districts. Now, each of the eight council members will be elected from single-member districts. Sess. Law 2015-138, § 2.(c); Compl. ¶ 41.a.

- Draws new single-member districts. The Act handcrafts eight new single-member districts from which City Council members are to be elected and specifies their geographic composition. Sess. Law 2015-138, § 2.(c); Compl. ¶ 41.b.

- Changes the format and timing of City Council elections. The Act repeals the primary/election method for selecting City Council members—a method that has been in place for forty-two years, *see* Greensboro, N.C., Charter, Ch. II, § 2.21 (last amended by 1973 N.C. Sess. Laws 213 § 1)—and replaces it with the election/runoff-election method, *see* Sess. Law 2015-138, Section 2.(f). That change will have the practical effect of selecting more City Council members at the October election, despite historical data revealing that voter turnout in October elections is half that in November elections. Compl. ¶ 41.c.

- Alters the voting powers of the Greensboro Mayor. Prior to the Act, the Mayor had a vote on all City Council matters. Now, the Mayor is authorized to vote only in the case of a four-to-four tie among Council members (as well as on certain personnel decisions). Sess. Law 2015-138, §§ 2.(d)., 2.(e); Compl. ¶ 41.d.

- Alters the terms of the Mayor and City Council. Previously, the Mayor and the council members served two-year terms. Now, they serve four-year terms. Sess. Law 2015-138, § 2.(c); Compl. ¶ 41.e.

The city council districts crafted by the Act raise serious constitutional concern. The previous districts had an overall population deviation of 3.95%—that is, the deviation from the population of an ideal voting district determined by dividing the total population of the City by the total number of voting districts. *See Daly v. Hunt*, 93 F.3d 1212, 1215 n.2 (4th Cir. 1996). The districts created by the Act have an overall population deviation of 8.25%. Compl. ¶ 44; Declaration of Frederick G. McBride ¶ 5 & Appendix D. Districts 1, 4, and 6, all of which are majority-minority districts, are overpopulated, while Districts 2, 3, 5, 7, and 8 are underpopulated:

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

See Compl. ¶ 44; McBride Decl. ¶ 5 & Appendix E.

Although no precincts were split prior to the Act, the newly-created districts split seven precincts. Compl. ¶ 49. By way of example, under the previous district plan, Precinct G35 was assigned to District 4. Under the new plan, Precinct G35 is split between Districts 3 and 7. *See* Compl. Exh. C; McBride Decl. Appendix C.[1]

And the new single-member districts drawn by the Act pit incumbents against one another: Six of the eight incumbent members of the Greensboro City Council are paired in a district with another incumbent council member:

Name	Race	Elected in District	New District
Sharon Hightower	Black	1	1
Justin Outling	Black	3 (Appointed)	1
Jamal Fox	Black	2	2
Yvonne Johnson	Black	At-Large	2
Nancy Hoffman	White	4	3
Mike Barber	White	At-Large	3
Tony Wilkins	White	5	5
Marikay Abuzuaiter	White	At-Large	8
Nancy Vaughan	White	Mayor	Mayor

[1] *See also:* <<http://www.ncleg.net/Applications/BillLookUp/LoadBillDocument.aspx?SessionCode=2015&DocNum=5583&SeqNum=3>> (last visited July 13, 2015).

Compl. ¶¶ 51-52; McBride Decl. ¶ 4 & Appendix B. Of particular note, each of the four African-American incumbents are paired in a district with another African-American incumbent. Compl. ¶ 51; Declaration of Yvonne J. Johnson, ¶ 6.

The Greensboro City Council is a nonpartisan body. The City's voters are registered 55.66% Democrat, 22.84% Republican, 21.35% unaffiliated, and 0.15% Libertarian. Compl. ¶ 50. The mayor and seven of the eight City Council members are registered Democrats. One Council member is a registered Republican. *Id*. Under the Act, all six of the incumbents paired in a newly-defined district are registered Democrats. Compl. ¶ 52; The single registered Democrat who is not paired in a district with another incumbent lives in District 8, where voters in the 2010 general election voted 59.6% straight-ticket Republican. *Id*. ¶ 53. The single registered Republican is not paired in a district with another incumbent and lives in District 5, where voters in the 2010 general election voted 47.03% straight-ticket Republican. *Id.*

III. QUESTION PRESENTED

Have Plaintiffs demonstrated their entitlement to a preliminary injunction prohibiting the Board from implementing, enforcing, or otherwise giving effect to the Greensboro Act while this litigation proceeds?

IV. ARGUMENT

A. THE CITY OF GREENSBORO HAS STANDING TO SEEK INJUNCTIVE RELIEF

Under settled law, the City of Greensboro has standing to seek injunctive relief on its own behalf as well as on behalf of its citizens with respect to the equal protection

violation arising from the Act's withdrawal of the right of initiative and referendum from Greensboro voters alone. "[W]here a municipal corporation seeks to vindicate the rights of its residents, there is no reason why the general rule on organizational standing should not be followed." *City of Milwaukee v. Saxbe*, 546 F.2d 693, 698 (7th Cir. 1976). As a general rule, an association has standing where "(1) at least one of its members would have standing to sue as an individual, (2) the interests at stake in the litigation are germane to the organization's purpose, and (3) neither the claim made nor the relief requested requires the participation of the individual members in the suit." *Nat'l Alliance for Accessibility, Inc. v. Big Lots Stores, Inc.*, No. 1:11-cv-730, 2013 U.S. Dist. LEXIS 85993, at *28-29 (M.D.N.C. June 19, 2013). The associational standing requirements are satisfied here: Greensboro citizens would have standing to assert a violation of their constitutional rights to equal protection arising from the Act's withdrawal of the initiation and referendum rights from Greensboro voters alone, and ensuring that its citizens retain the right to self-governance is plainly "germane" to the City's purpose as an institute of local government. *Cf. Huntley v. Pandya*, 139 N.C. App. 624, 626, 534 S.E.2d 238, 239 (2000) ("[M]unicipal corporations are created as local units of self-government.") (citing cases). Finally, although the participation of individual Greensboro voters is not essential to obtain the relief sought with respect to Section 2.(b) of the Act, the Citizen Plaintiffs assert violations of their rights to equal protection arising from the vote-diluting effects of the city council districts newly drawn by the Act as well as its potential withdrawal of the rights of initiative and referendum, and their standing to assert those direct constitutional injuries cannot be questioned.

B. THE STANDARD FOR ISSUANCE OF A PRELIMINARY INJUNCTION

Rule 65 of the Federal Rules of Civil Procedure governs the issuance of preliminary injunctions. The requirements for granting preliminary injunctive relief are well settled: "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). *See also Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013); *NAACP-Greensboro Branch v. Guilford Cnty. Bd. of Elections*, 858 F. Supp. 2d 516, 522 (M.D.N.C. 2012).

C. PLAINTIFFS ARE ENTITLED TO PRELIMINARY INJUNCTIVE RELIEF

Plaintiffs Are Likely to Succeed on the Merits

1. Because the Act Withdraws the Rights of Initiative and Referendum from Greensboro Voters Alone, It Violates the Equal Protection Clause.

Sections 160A-103 and 160A-104 grant all North Carolina citizens the right to institute an initiative or a referendum to alter the structure of their municipal government. The Greensboro Act withdraws those rights from Greensboro citizens alone. That targeted withdrawal, entirely lacking in basis, rational or otherwise, violates the Equal Protection Clauses of the United States and North Carolina Constitutions.

Just this past Term, the United States Supreme Court reiterated the historical importance of the citizen initiative and referendum rights. In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, No. 13-1314 (June 29, 2015), the Court

declared that "the invention of the initiative was in full harmony with the Constitution's conception of the people as the font of governmental power." Slip op. at 30; *see also id.* at 27 (describing initiative and referendum as "the people's legislative prerogatives"). To be sure, "there is no fundamental right to initiate legislation as there is a fundamental right to vote." *Kendall v. Balcerzak*, 650 F.3d 515, 522 (4th Cir. 2011); *see also, e.g.*, *Save Palisade FruitLands v. Todd*, 279 F.3d 1204, 1210-11 (10th Cir. 2002) (noting that "nothing in the language of the Constitution commands direct democracy"; instead, "initiatives are state-created rights and are therefore not guaranteed by the U.S. Constitution" (citing cases)).

If, however, "a state chooses to confer the right of referendum to its citizens, it is obligated to do so in a manner consistent with the Constitution," including the Equal Protection Clause. *Molinari v. Bloomberg*, 564 F.3d 587, 597 (2d Cir. 2009). *See also, e.g.*, *Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 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); *Wright v. State of North Carolina*, 787 F.3d 256, 2015 U.S. App. LEXIS 8731, at *27-28 (4th Cir. May 27, 2015) (citing *Blankenship v. Bartlett*, 363 N.C. 518, 522, 681 S.E.2d 759, 762-63 (2009), for the proposition that "[t]he right to vote on equal terms in representative elections—a one person, one vote standard—is a fundamental right" under the North Carolina Constitution); *Martin v. Preston*, 325 N.C. 438, 454, 385 S.E.2d 473, 481 (1989) ("[T]he right to vote per se is

not a fundamental right under our [N.C.] Constitution; instead once the right is conferred, the equal right to vote is a fundamental right." (emphasis added)).

Because the Act withdraws the statutory right to petition for initiative and referendum from the City of Greensboro and its citizens alone among North Carolina municipalities, it cannot survive constitutional scrutiny unless there is a rational basis for the distinction it draws between Greensboro and every other North Carolina city, town, and village. *See Save Palisade FruitLands*, 279 F.3d at 1207, 1210-11 (applying rational basis review to Colorado statutory scheme that "grant[ed] the power to initiate legislation to the electors of home rule counties but not to those of statutory counties" despite a state constitutional provision reserving the powers of initiative and referendum to the people "of every city, town, and municipality"; finding statutory distinction "rationally related" to" "legitimate government purposes" (quoting Colorado Const. Art. V, subsection 1(9))); *Taxpayers United for Assessment Cuts*, 994 F.2d at 297 (state procedures for reviewing the validity of initiative petitions "pass muster if they are reasonably related to a legitimate government interest"); *Kelly v. Macon-Bibb Cnty. Bd. of Elections*, 608 F. Supp. 1036, 1039(M.D. Ga. 1985) (approving state referendum procedure as "reasonably related to a permissible state interest").

Measured against that standard, Plaintiffs are likely to succeed on the merits of their equal protection challenge to the targeted withdrawal of the initiative and referendum rights from Greensboro citizens alone. Put plainly, no interest of the State in withdrawing the right of self-government from Greensboro residents alone is apparent, none appears in the text of the hastily-enacted Act or its legislative history, and no

legitimate interest of the State could possibly be served by depriving Greensboro citizens of the right to petition for initiative and referendum when that right remains available in every other municipality in North Carolina. *Cf. Cipriano v. Houma*, 395 U.S. 701, 706 (1969) (per curiam) (invalidating state statute that gave right to vote in special election called to approve issuance of utility revenue bonds only to property owners because the statute "excludes otherwise qualified voters who are as substantially affected and directly interested in the matter voted upon as those who are permitted to vote"); *Taxpayers United for Assessment Cuts*, 994 F.2d at 297 (approving state procedure that did "nothing more than impose non-discriminatory, content-neutral restrictions on the plaintiff's ability to use the initiative procedure that serve Michigan's interest in maintaining the integrity of its initiative process" but noting that constitutional analysis "would be different if [plaintiffs] alleged they were being treated differently than other groups seeking to initiate legislation").

2. The Act's Redistricting Plan Violates the Equal Protection Clause.

Decades ago, the Supreme Court confirmed that "[t]he fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State." *Reynolds v. Sims*, 377 U.S. 533, 560-61 (1964). Applying that principle, the Court pronounced that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Id.* at 555. *See also, e.g., Avery v. Midland County*, 390 U.S. 474, 479-80 (1968) ("[W]hen the State delegates lawmaking power to local

government and provides for the election of local officials from districts specified by statute, ordinance, or local charter, it must insure that those qualified to vote have the right to an equally effective voice in the election process."); *Wright*, 2015 U.S. App. LEXIS 8731, at *1 ("'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.'" (quoting *Bush v. Gore*, 531 U.S. 98, 104-05 (2000)); *Daly*, 93 F.3d at 1226 (elected representatives "should represent roughly the same number of constituents, so that each person, whether or not they are entitled to vote, receives a fair share of the governmental power, through his or her representative"). *See generally Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) ("In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." (citing cases)); *Kramer v. Union Free Sch. Dist.*, 395 U.S. 621 (1969) ("Statutes granting the franchise to residents on a selective basis always pose the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives.").

Just weeks ago, the Fourth Circuit articulated the legal framework that governs Citizen Plaintiffs' "one person, one vote" claim:

> The courts have recognized that "[m]athematical exactness or precision is hardly a workable constitutional requirement" and do not hold state or local government districts to such a standard. *Daly*, 93 F.3d at 1217 (quoting *Reynolds*, 377 U.S. at 577). Nevertheless, governments must "make an honest and good faith effort" to construct districts as close to equal population "as is practicable." *Daly*, 93 F.3d at 1217 (quoting *Reynolds*, 377 U.S. at 577). Generally, therefore, a district apportionment plan with a maximum population deviation under 10% will not, "by itself," support an equal protection claim. *Daly*, 93 F.3d at 1217-18. The 10% threshold does

> not, however, "insulate" a state or local districting plan from attack. *Id*. at 1220. Rather, it determines the "allocat[ion of] the burden of proof," with a plaintiff in a case below the 10% population disparity mark unable to "rely on it alone to prove invidious discrimination or arbitrariness. To survive summary judgment, the plaintiff would have to produce further evidence to show that the apportionment process had a 'taint of arbitrariness or discrimination.'" *Id*. (quoting *Roman v. Sincock*, 377 U.S. 695, 710, 84 S. Ct. 1449, 12 L. Ed. 2d 620 (1964)).

Wright, 2015 U.S. App. LEXIS 8731, at *14. *See also Cox v. Larios*, 300 F. Supp. 2d 1320, 1341-42 (N.D. Ga.) (three-judge panel), *summarily aff'd*, 542 U.S. 947 (2004) (striking down statewide legislative redistricting plan where the record made "abundantly clear that the population deviations," although less than 10%, "were not driven by any traditional redistricting criteria such as compactness, contiguity, and preserving county lines" but instead reflected "a concerted effort to allow rural and inner-city Atlanta regions of the state to hold on to their legislative influence" and "to protect incumbents in a wholly inconsistent and discriminatory way," factors that suggested a "taint of arbitrariness or discrimination"). That legal standard is applied with care: When a statute "dilute[s] the effectiveness of some citizens' votes," it will "receive close scrutiny from th[e] Court." *Kramer*, 395 U.S. at 626 (emphasis in original; citing *Reynolds*); *Locklear v. North Carolina State Bd. of Elections*, 514 F.2d 1152, 1154 (4th Cir. 1975); *NAACP*, 858 F. Supp. 2d at 524.

Applying that close scrutiny, numerous facts demonstrate that the Greensboro Act's redistricting plan and the process that yielded these results was tainted with precisely the sort of bad faith, arbitrariness, and discrimination that *Wright* described:

- The only overpopulated districts drawn by the Act have a majority-minority population.

- The Act pairs the four current African-American City Council members in districts with another African-American incumbent.

- The Act's eight-district plan was adopted within 48 hours of the defeat of the seven-district plan originally set out in Senate Bill 36, a hurried process that left no opportunity for thoughtful consideration of the makeup or propriety of the new district map.

- Prior to the act, not a single precinct was split. Now, seven precincts within the City are divided, indicating the General Assembly's disregard for the communities of interest and commonalities among voters who make up the City.

- The Act removes from the City of Greensboro and its citizens—alone among all North Carolina municipalities—the ability to choose or change their form of municipal government, including the number of districts within the City, and reserves for the General Assembly the authority to draw districts in the future.

- The Act was so hastily enacted that it fails to acknowledge the potential conflict between the language of Section 2.(b), which prohibits the City of Greensboro from altering its form of municipal government, and Sections 160A-103 and 104, which command that the City "shall" take action in response to valid petitions for initiative and referendum.

- The Act was passed on the eve of the July 27, 2015 opening of the filing period for upcoming City Council elections, giving candidates and voters alike virtually no time to learn about and consider the newly-drawn districts.

- The Act moves the date of the key City Council election from November to October—when voter turnout has historically been half of what it is at November elections.

Viewed as a whole, the Act, its various decrees and prohibitions, and the process by which it was enacted demonstrate that the General Assembly's new plan for the City's government and the process it implements for the election of the Greensboro City

Council were tainted with arbitrariness and discrimination.[2] As the Complaint alleges, the Act was designed to "serve the predilections and preferences of a few, as opposed to the interest of the community as a whole, its commonalities and communities of interest." Compl. ¶ 58. Neither the legislative history nor the text of the hastily-enacted Greensboro Act suggests any legitimate or rational interest in crafting city council districts that simultaneously devalue the votes of some City residents while overvaluing the votes of others, and none is apparent. It cannot be that the General Assembly wished to preserve precincts or communities of interest in Greensboro, because the Act affirmatively destroys precinct lines and splits communities of interest. *See* Compl. ¶¶ 43-53. Given that the General Assembly plainly is willing to reconfigure precincts and fragment communities of interest, it is impossible to imagine a justification for the Act's creation of overpopulated and underpopulated districts. Put simply, the population variances reflected in the newly-drawn districts are arbitrary, not rational. The numerous indications of arbitrariness and discrimination that pervade the Act render it unconstitutional.

In 2012, this Court applied *Reynolds*' "fundamental principle" to enjoin the implementation of a local act that, among other things, redrew district lines in Guilford

[2] Although the General Assembly's authority over municipalities undoubtedly is substantial, it is limited by the Constitution. Article VII, Section 1 of the North Carolina Constitution provides that "[t]he General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable." N.C. CONST. Art. VII, § 1 (emphasis added); *see also City of New Bern v. New Bern-Craven Cnty. Bd. of Educ.*, 338 N.C. 430, 438, 450 S.E.2d 735, 740 (1994).

County on equal protection grounds. *NAACP*, 858 F. Supp. 2d at 523. The same reasoning applies here. Because the Greensboro Act dilutes (or overvalue) the votes of Greensboro voters, pits incumbents against one another, and splits multiple precincts, the Citizen Plaintiffs are likely to succeed on the merits of their claim that the eight new single-member city council districts crafted by the Act violate the Equal Protection Clause of the U.S. and North Carolina Constitutions.

Plaintiffs Will Suffer Irreparable Harm Absent Injunctive Relief

Plaintiffs' brief in support of their motion for a temporary restraining order, filed contemporaneously herewith, explains how they will be irreparably harmed absent injunctive relief restraining the implementation and enforcement of the provisions of the Act before the fast-approaching filing date for 2015 municipal elections. Out of respect for this Court's limited resources and in the interests of efficiency for all parties, this Brief incorporates those arguments by reference rather than repeat them herein.

The Balance of Equities Favors Injunctive Relief

The balance of the equities tips decidedly in favor of preliminary injunctive relief, both to ensure that the new electoral districts created by the Greensboro Act are not implemented to dilute the votes of the Citizen Plaintiffs and other similarly-situated Greensboro voters and to ensure that the significant changes to the very structure and function of the electoral framework in the City of Greensboro do not take effect at the outset of the fast-approaching electoral season, to the detriment of voters and candidates alike. Allowing Defendants to implement the Act this close to the October 2015 City Council elections will lead to candidate and voter confusion, waste and inefficiency by

candidates, and unnecessary tax expenditures, among other harms. *Cf. Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (observing that court orders affecting elections must be carefully drawn to avoid "voter confusion and consequent incentive to remain away from the polls"). Moreover, allowing the election process to proceed will ensure that citizens' representation will be diluted for the next four years.

On the other hand, entry of a preliminary injunction would not impair the Board's ability to conduct the 2015 election for City Council. The current districts and election procedure are constitutional and have worked well. The Board of Elections has administered elections under this system before and can do so again.

Courts have repeatedly enjoined upcoming elections where injunctive relief was necessary to preserve fundamental rights, including the right to vote on equal terms, notwithstanding administrative inconveniences. *See, e.g.*, *Cromartie v. Hunt*, 34 F. Supp. 2d 1029, 1029 (E.D.N.C. 1998) (permanently enjoining the conduct of primary and general elections for congressional offices under unconstitutional state congressional redistricting plan); *Watson v. Commr's Ct. of Harrison Cnty.*, 616 F.2d 105, 106-07 (5th Cir. 1980) (per curiam) (enjoining primary election less than 30 days from date of order and directing county governing body to formulate "an equitable apportionment plan as speedily as possible"); *Johnson v. Mortham*, 926 F. Supp. 1540, 1542 (N.D. Fla. 1996) (refusing to stay remedial proceedings pending appeal where sufficient time remained to adopt constitutional districting plan prior to upcoming election; "the mere administrative inconvenience the Florida Legislature and Florida elections officials will face in redistricting simply cannot justify denial of Plaintiffs' fundamental rights"); *Heggins v.*

City of Dallas, Tex., 469 F. Supp. 739, 742 (N.D. Tex. 1979). And in 2012, this Court enjoined an upcoming election in order to avoid "voter confusion, wasted candidate efforts and expenditures, needlessly spent tax dollars, and possible low voter turnout" notwithstanding potential administrative inconvenience where (as here) the plaintiffs had not unduly delayed bringing suit. *NAACP*, 858 F. Supp. 2d at 526-27.[3]

The balance of equities overwhelmingly favors injunctive relief in this case, both because the Act withdraws from Greensboro citizens alone the statutory right to petition for initiative and referendum and because it simultaneously dilutes the value of certain residents' votes while overvaluing the votes of others, thereby impairing Greensboro citizens' right to have a full and fair "voice in the election of those who make the laws under which, as good citizens, we must live." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Allowing the Act to take effect threatens confusion on the part of both voters and candidates alike, who are confronted with newly-defined, single-member districts and new arrangements of incumbent candidates, with just days to access and analyze the provisions of the Act and its potential impacts before the filing period opens on July 27, 2015 for City Council candidates. On the other hand, the potential burdens on Defendant are entirely manageable, as described above. Because the balance of equities tips decidedly in favor of ensuring that Plaintiffs' right of local self-governance is not unfairly

[3] Indeed, the *NAACP* plaintiffs did not seek a preliminary injunction "until approximately six days before the filing period for the Office of Guilford County Commission was scheduled to open." 858 F. Supp. 2d at 528. This Court nevertheless entered a mandatory injunction directing the general election of Guilford County Commissioners to proceed upon terms and conditions and pursuant to a schedule decreed by the Court. *Id.* at 531.

compromised and the Citizen-Plaintiffs' votes are not unconstitutionally diluted in the 2015 Greensboro City Council elections, equitable relief is appropriate.

Injunctive relief will serve the public interest

Just as in *NAACP*, "the public interest in an election and a [City Council] that complies with the constitutional requirements of the Equal Protection Clause is served by granting a preliminary injunction in this case." 858 F. Supp. 2d at 529. *Cf. Johnson*, 926 F. Supp. at 1543 (finding public interest served by denying stay pending appeal of redistricting decision where "there is sufficient time to ensure that the Plaintiffs' equal protection rights are vindicated, without unduly trampling on the rights of the congressional candidates and the general public").

CONCLUSION

For the foregoing reasons, the City respectfully requests that this Court enter a preliminary injunction prohibiting the implementation of the Greensboro Act and directing that the July 27, 2015 candidate filing period open based upon the electoral districts and form of government as they existed prior to the Greensboro Act.

Respectfully submitted this the 13th day of July 2015.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day electronically filed the foregoing Brief in Support of Plaintiffs' Motion for Preliminary Injunction in the above-titled action with the Clerk of the Court using the CM/ECF system, and served the document by mail and electronic mail to the following counsel who has accepted service on behalf of Defendants:

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