IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
Civil Action No. 5:19-CV-00452-BO

REBECCA HARPER, 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.

PLAINTIFFS' EMERGENCY MOTION TO REMAND AND TO EXPEDITE RESOLUTION OF MOTION TO REMAND
28 U.S.C. § 1447(c)

Plaintiffs Rebecca Harper and 13 other individual North Carolina voters respectfully move, pursuant to 28 U.S.C. § 1447(c), for remand of this case to the General Court of Justice, Superior Court Division, Wake County, North Carolina. Plaintiffs also move to expedite resolution of the motion, in light of the fact that the state court has ordered Defendants to respond to plaintiffs' motion for a preliminary injunction by Monday, October 21, and has set a hearing on the motion for a preliminary injunction by Wednesday, October 24.

In support hereof, Plaintiffs state that this Court lacks jurisdiction over this matter because the Supreme Court held in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), that federal courts lack subject matter jurisdiction over partisan gerrymandering claims. In addition, this case raises exclusively state constitutional challenges to a state law, and there is no basis for removal under 28 U.S.C. § 1443(2). The reasons for remand are set out more fully in the supporting memorandum filed contemporaneously herewith.

Thus, Plaintiffs request that the Court:

1. Grant Plaintiffs' Emergency Motion for Remand and to Expedite Resolution of the Motion to Remand, and remand this case by October 18, 2019 to the General Court of Justice, Superior Court Division, Wake County, North Carolina;
2. Retain jurisdiction over Plaintiffs' forthcoming motion for fees, costs, or other relief as allowed by 28 U.S.C. § 1447(c), the Federal Rules, and any other applicable law; and
3. Grant Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted this 15th day of October, 2019.

PATTERSON HARKAVY LLP

/s/ Narendra K. Ghosh
Narendra K. Ghosh, NC Bar No. 37649
Burton Craige, NC Bar No. 9180
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Plaintiffs

ARNOLD AND PORTER KAYE SCHOLER LLP

/s/ R. Stanton Jones
R. Stanton Jones
Elisabeth S. Theodore
Daniel F. Jacobson
William C. Perdue
Sara Murphy D'Amico
Graham W. White
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
stanton.jones@arnoldporter.com

PERKINS COIE LLP

/s/ Marc E. Elias
Marc E. Elias
Aria C. Branch
PERKINS COIE LLP
700 13th Street NW
Washington, DC 20005-3960
(202) 654-6200
melias@perkinscoie.com

Abha Khanna
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
(206) 359-8000
akhanna@perkinscoie.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this date, October 15, 2019, I caused the foregoing document to be filed and served on all counsel of record by operation of the CM/ECF system for the United States District Court for the Eastern District of North Carolina.

DATED: October 15, 2019

/s/ Narendra K. Ghosh
Narendra K. Ghosh, NC Bar No. 37649
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
nghosh@pathlaw.com

Counsel for Plaintiffs

EXHIBIT A

STATE OF NORTH CAROLINA

WAKE COUNTY

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.

FILED
2019 SEP 25 PM 3:31
WAKE COUNTY, C.S.C.
BY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

MEMORANDUM REGARDING HOUSE AND SENATE REMEDIAL MAPS AND RELATED MATERIALS

This Court's judgment raises unprecedented questions in this State about constitutional order, separation of powers, and the rule of law. While North Carolina courts have inserted themselves into the redistricting process in the past, they have always done so using objective, measurable, and plainly textually-grounded standards, such as maintaining the integrity of county lines or avoiding race discrimination. The Court's judgment in this case, for the first time in State history, expressly pits one political party against the other, but without a measurable standard for doing so. Not surprisingly, this has divided the general public and strained constitutional order. While Legislative Defendants respectfully disagree with the Court's judgment, they have nonetheless engaged in a herculean effort to comply with it, as set forth below. That effort was made more difficult by the unprecedented, and possibly unconstitutional, level of judicial management of legislative affairs mandated by the judgment.[1]

[1] The justiciability problems with the Court's asserted right to manage, let alone oversee, the General Assembly's internal affairs are well documented in precedent. *See, e.g.*, *Hart v. State*, 774 S.E.2d 281, 285 (N.C. 2015); *Alexander v. Pharr*, 179 N.C. 699 (1920); *In re Jud. Conduct Comm.*, 751 A.2d 514, 516 (N.H. 2000); *De Vesa v. Dorsey*, 634 A.2d 493, 497 (N.J. 1993); *Nixon v. United States*, 506 U.S. 224 (1993); *Barry v. U.S. ex rel. Cunningham*, 279 U.S. 597, 620 (1929). If any objections are predicated on an alleged failure of the General Assembly or its members or

Nevertheless, Legislative Defendants have determined that it is better for the common good to move on, if possible, rather than seek emergency relief from higher courts. Reasonable minds can disagree about the need for redistricting reform and the best means to achieve it. It should not be foisted upon the people by courts. But Legislative Defendants have taken the opportunity of the Court's judgment to implement a legislative redistricting process that is unimpeachably fair, non-partisan, and transparent.

On September 17, 2019, the General Assembly enacted new House and Senate plans into law, SL 2019-219 (SB 692) and SL 2019-220 (HB 1020). Those plans, and the process that produced them, comply with the law and this Court's order. This filing addresses § 2 of this Court's order of September 13, 2019, requesting an array of information regarding the new plans. Pursuant to subsections (a) and (b), the filing is accompanied with transcripts[2] and videos of the redistricting hearings and floor debates, and the "stat pack" for the plans.

This filing is also accompanied by maps and charts reflecting, among other things, the configurations and amendments considered and identities of persons involved with each. These items were prepared by non-partisan Central Staff of the General Assembly. These items are as follows:

- House plan cover sheet, showing basic data for the enacted House plan as a whole.

---

agents to comply with the terms of the order, Legislative Defendants reserve the right to challenge the order itself. As the record stands, Legislative Defendants believe that they complied with the order and that no objection of that nature would be factually sustainable.

[2] The General Assembly does not have an in-house court reporting service, and does not generally create transcripts of committee hearings or floor debates. The General Assembly retained multiple court reporting services in order to comply with the Court's order. One court reporting service was unable to complete the transcript for each day of the Senate Redistricting Committee meetings by today's deadline, and has informed the central staff the additional transcripts will be completed by 5:00 pm on Tuesday, September 23. The additional transcripts will be provided to the Court upon receipt.

- Senate plan cover sheet, showing basic data for the enacted Senate plan as a whole.
- House plan maps, showing configurations of the districts and groupings.
- Senate plan maps, showing configurations of the districts and groupings.
- House amendment cover sheets, showing basic data and a narrative for each amendment from the "base map" and the identities of members and committee staff involved.
- House draft cover sheets, showing basic data and a narrative for drafts that were not proposed as amendments to the base map and identities of members and committee staff involved.
- Senate amendment cover sheets, showing basic data for each amendment from the "base map" and the identities of members and committee staff involved.
- Senate draft cover sheets, showing basic data for drafts that were not proposed as amendments to the base map and identities of members and committee staff involved.

Pursuant to subsection (c), Legislative Defendants represent that the criteria governing the process are identical to those the Court identified at paragraph 5 of its decree, which is incorporated here by reference. Pursuant to paragraphs (d) through (f), this memorandum explains the new redistricting plans, the process of their enactment, why they comply with the criteria and governing law, the persons involved in creating and drafting them, and alternatives considered.

The districting maps created by the nonpartisan process described below have been enacted into law and replace the maps this court held unconstitutional. Respectfully, the Court should decline to enjoin these new maps in whole or in part and allow the electoral process to move forward without any further delay.

Legal Standard

The Court has before it two acts of the General Assembly. The Court must presume them to be constitutional. *Wayne Cty. Citizens Ass'n for Better Tax Control v. Wayne Cty. Bd. of Comm'rs*, 399 S.E.2d 311, 315 (N.C. 1991). That presumption applies in full force, even though the acts were enacted to remedy prior redistricting acts the Court invalidated. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324–25 (2018). That is especially so since, as the Court's decree recommended, "the invalidated 2017 districts [were] not…used as a starting point for drawing new districts, and no effort [was] made to preserve the cores of invalidated districts." Court's Decree ¶ 6.

The Court's role is limited to assessing the acts' compliance with legal standards and efficacy in remedying the supposed legal violations. *See Stephenson v. Bartlett*, 357 N.C. 301, 314, 582 S.E.2d 247, 254 (2003). The Court is bound to "follow the policies and preferences" of the General Assembly, without clear proof of a legal violation. *White v. Weiser*, 412 U.S. 783, 795 (1973). The Court's role is not "to engage in policy-making by comparing the enacted maps with others that might be 'ideally fair' under some judicially-envisioned criteria," nor is the Court empowered "to threaten[] the General Assembly's broad discretionary powers to create legislative districts." Court's Judgment, Conclusions of Law ¶ 139. Thus, the Court's role here is not to substitute its view of the best way to redistrict or the best map, but to ensure compliance with legal principles. As explained below, the legality of the enacted plans is unimpeachable.

Overview of the Redistricting Process

The House and Senate redistricting plans share the same general concept.

First, both chambers began with an initial step of picking a "base map" from Dr. Jowei Chen's computer-generated maps presented at the liability phase. Significantly, Dr. Chen's maps satisfy the Court's recommended criteria for a remedial plan—most notably that the maps not be drawn with any political or racial data or goals in mind. To aid the remedial process, Dr. Chen

supplied the General Assembly with the underlying data used to create each map and a composite scoring formula that ranked each county grouping in each map. Both chambers used Dr. Chen's composite scoring formula to winnow down the field to the five highest-ranking county-grouping configurations using non-partisan criteria to include compactness and reductions of municipal and VTD splits. Then, the House and Senate redistricting committees contacted the State Lottery Commission, which utilized secure equipment to conduct a random drawing from among these five top-scoring groupings to pick from that field, randomly, a rendition of each county grouping. The underlying data for those groupings were merged together and used by the General Assembly's non-partisan Central Staff to create the base map. This process means, not only that the base maps comply with the Court's recommended criteria, but that they are among the five most optimal maps by Dr. Chen's own scoring system for each county grouping.

Second, each chamber proceeded to make small adjustments tailored to legitimate criteria. Most of the adjustments were to unpair incumbents drawn together in the randomly drawn base map—a goal this Court's decree endorses. The entire process occurred in public, and most adjustments were executed by non-partisan legislative staff members.

The resulting maps were voted on, discussed in public hearings, and enacted into law. This all occurred within the very tight 14-day time-frame the Court provided.

The process received the support of Democratic members. For example, Senator Blue stated:

> For 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. But not only that, but on most of the issues that we deal with. I mean the public was at it, all the time. Screens were left open, we opened it for public comment....

Senate Floor Debate Audio 22:52–23:15. Senator Blue also stated that: "I believe that we've come up with the best we could come up with given the parameters that the Court decided." *Id.* 25:14–25:23. Additionally, he stated: "One of the mainstays of a democratic government is transparency and that's why I think this process worked so well. Because every aspect of it was transparency." *Id.* 25:48–26:01.

Likewise, Senator Jeff Jackson stated: "As someone who has been a frequent critic of redistricting, I feel I'm duty bound to acknowledge that these are the fairest maps and this was the fairest process to occur in North Carolina in my lifetime." *Id.* 27:51–28:06. Senator McKissick echoed that view:

> I'd like to speak to the fact that this process that we undertook was the most open, the most transparent, and the most inclusive that I've seen since I've been a member of the senate. And I think that's something to be commended.

Id. 41:27–41:41. Senator Marcus opined that: "I believe that these Senate Maps are as good as humans can draw." *Id.* 52:51–52:55.

Although this process and the resulting maps could merit fair-minded policy disagreement—after all, the process is not the General Assembly's first choice—Legislative Defendants respectfully submit that the remedial process it followed and the maps that process produced undisputedly comply with the law. The base maps, by definition, comply with the Court's criteria and all legal standards; the Court has already found them compliant.

Meanwhile, the discretionary adjustments reflect perhaps the least amount of human input ever involved in a legislative redistricting. As documented below (and in the General Assembly's voluminous materials), the adjustments did not take the plans out of compliance with the criteria, and legislators did not have access to partisan data when making them. Nevertheless, if the Court somehow finds—against all evidence—that some or all of these adjustments *still* violate the State

Constitution—a finding that would effectively render legislative redistricting impossible—Legislative Defendants respectfully submit that the Court should order the use of the base map for the affected county grouping, rather than draw districts of its own. Court-drawn districts are likely to raise, rather than reduce, partisan tensions and draw the criticism, meritorious or not, of partisan politics in the judiciary.

I. The Base Map Approach Is Lawful and a Reasonable Response to the Court's Decree

A. The Base-Map Process

Both chambers adopted, with minor modifications, redistricting plans created by Dr. Jowei Chen's computer—plans that were before the Court at the liability phase and found to comply with all relevant non-partisan criteria.

The Senate Committee on Redistricting oversaw the process of preparing a new Senate map. The Senate Committee began with the 1,000 plans Dr. Chen identified as "set 2," that is, maps drawn to avoid pairing incumbents. *See, e.g.*, Court's Findings of Fact ¶ 138. The Senate Committee debated whether to use "set 1," which did not avoid incumbency pairings, or set 2 and selected the latter, since the Court's decree allows the General Assembly to avoid incumbency pairings. Court's Decree ¶ 5(g). Notably, the Court found that set 2's incumbency criterion did not result in partisan bias, Court's Findings of Fact ¶ 138, undermining any contention that the choice of set 2 somehow preserved the partisan bias supposedly present in the 2017 Senate plan. Dr. Chen's algorithm sought only to avoid pairing incumbents; it did not involve a "core retention" component.

From the starting point of the 1,000 set 2 maps, the Senate winnowed down the options to the five "best" unique maps for each individual county grouping. The committee utilized Dr. Chen's composite scoring formula that ranked configurations by the compactness, VTD-split, and political-subdivision-split goals, identifying the configurations for each grouping that best met

these non-partisan criteria. In short, by Dr. Chen's own scoring method, these were the best non-partisan groupings of all his simulations. Notably, the Senate had intended to use a slightly different formula, but, after being notified by Plaintiffs' counsel that Dr. Chen disagreed with that formula and recommended another, the Senate agreed to use Dr. Chen's formula. Moreover, the Senate used data provided to the General Assembly's staff directly from Plaintiffs' counsel.[3]

These top five choices, one grouping at a time, were then given numbers, one through five, correlating with balls placed into the secure equipment provided by the State Lottery Commission by its employees. Grouping by grouping, the numbered balls were drawn out and the corresponding grouping configuration was selected for the base map. Non-partisan lottery employees did this work. Those groupings were then joined together into the base map.

This approach of choosing a Chen base map ultimately obtained unanimous support in the Senate Committee. To be sure, it did not begin that way. The choice of Chen set 2 initially faced limited objections, and the approach was first passed by a divided vote. However, a compromise was achieved: because Democratic Senators McKissick and Marcus raised concerns that set 2 might not be the better starting point for the base map, the Senate committee directed Central Staff to follow a similar map-picking process for set 1, creating an individual randomly selected—in fact, selected by Sen. McKissick himself—map from set 1 for each county grouping. The set 1 Chen maps were then made available for all Senators to review and use for the purpose of creating amendments to the base map if desired. Notably, no one proposed any amendment replacing a set

[3] Legislative Defendants' counsel provided Dr. Chen's data to the General Assembly's Central Staff, but Plaintiffs' counsel disagreed that the General Assembly should have Dr. Chen's data. Consequently, the General Assembly's Central Staff did not download that data, and the General Assembly's counsel promptly deleted it from the share link that had been sent. The data were not used in the ranking of base maps or the creation of any plans. The General Assembly relied solely on the data supplied by Plaintiffs' counsel.

2 county grouping with a set 1 county grouping, even though it was both possible and allowed. With that compromise, the Committee members all voted in favor of the base-map approach and, in particular, the use of Chen set 2.

The House proceeded with a similar process, overseen by the House Redistricting Committee. Initially, the House Redistricting Committee contemplated using Chen set 2 House maps, doing so on a state-wide basis, and using a scoring method the House committee had arrived at to winnow down the maps. After feedback and discussions in the Committee hearings (including from Democratic members), the House Committee chose to work with Chen set 1—that is, the Chen maps drawn without regard to incumbency residences, *See, e.g.*, Court's Findings of Fact ¶ 84—at the level of each affected county grouping. The Committee received notice from Plaintiffs' counsel that Dr. Chen disagreed with the House ranking formula and recommended his own formula, a position represented in an affidavit signed by Dr. Chen and provided by Plaintiffs' counsel to the Committee. The House Committee changed course on this too, adopting Dr. Chen's formula as the basis for winnowing the maps for each grouping to the top five. Ultimately, the approach obtained a unanimous endorsement of Committee members.

Like the Senate, the House committee used Dr. Chen's formula and data provided by Plaintiffs' counsel. And, like the Senate, the House committee utilized the services of the State Lottery Commission and its employees to select groupings at random from the top five configurations in each grouping.

All of the above-described steps occurred in public: the committee meetings, the selection of Dr. Chen's formula, the identification of the top five groupings, the lottery draws, etc. The work was done in committee rooms open to the public. It was conducted by members and non-partisan staff on computers in the committee room displayed to the public. The computer screens were

being live-streamed on the legislature's website with active microphones at each station. The computer screens were also displayed on two giant television screens in the committee rooms. The computer screens were fully visible to the public from the public areas of the committee room. Additional microphones in the room were on in order to capture conversations by members and staff. And all activity in the committee room was being captured by numerous cameras and itself live-streamed on the legislature's website. 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 involved.

B. The Base Maps Are Lawful and Comply with the Court's Decree

The base maps are plainly compliant with the Court's decree and remedy the alleged violation. The Court determined that Dr. Chen's maps complied with the General Assembly's 2017 criteria. Thus, by the Court's definition, *any* map the General Assembly chose from Dr. Chen's maps would satisfy subsections (a) through (f) of the Court's criteria—i.e., equal population, contiguity, county groupings and traversals, compactness, fewer split VTDs, and municipal boundaries. Court's Decree ¶ 5(a)–(f). Further, because the Court found that Dr. Chen's maps *better* honored those criteria than did the 2017 plan and because both chambers chose the *top five* configurations for each grouping, the choice of a Chen map would, by the Court's definition, be an improvement along these metrics from the 2017 plans, not to mention the 2011 plans. The Committees used the scoring method Dr. Chen personally recommended in an affidavit provided by Plaintiffs' counsel.

The choice of a Chen map also ensured that "[p]artisan considerations and election data" would not be used. Court's Decree ¶ 5(h). The Court found that Dr. Chen did not program his plans to be drawn towards any partisan goals, so choosing one of them necessarily entailed the choice

of a non-partisan map—as already approved by this Court. In addition, the General Assembly avoided even the appearance of partisan motive in choosing *among* the Chen maps because it relied solely on (a) Chen's own formula to pick the best five maps under the non-partisan criteria and (b) the State Lottery Commission's random drawing process to ensure a random choice among those five. There is no colorable argument that the General Assembly or any of its members somehow picked the most favorable among Dr. Chen's maps on a partisan basis.

The only matter for legislative discretion was whether to use set 1 or set 2. The Senate and House made different choices, and both are legitimate. Set 2 was a legitimate choice for the Senate because the Court's decree expressly states: "[t]he mapmakers may take reasonable efforts not to pair incumbents unduly in the same election district." Court's Decree ¶ 5(g). The Court found Dr. Chen's set 2 to be a legitimate approach—hence no "undu[e]" unpairing—and not to be the cause of the partisan bias supposedly infecting the 2017 plans. The House's choice was equally legitimate because the Court did not mandate incumbency considerations, but merely allowed them. As explained below, the House (and Senate) allowed for small adjustments to the base map on the back end to exercise its prerogative to place incumbents in different districts. It was a legitimate exercise of discretion for the House to choose to meet this goal in a different manner from the Senate.

C. No Objection to the Base-Map Approach Is Tenable

Several objections to the base-map approach were lodged during the legislative process. None of them supplies a basis for the Court to reject the base-map approach, which accounts for most of the lines constituting the redistricting plans.[4]

[4] It is unclear whether other objections will be lodged on or before September 27, so Legislative Defendants reserve the right to introduce other information and arguments in their reply of October 4.

First, there was suggestion that choosing a map from Dr. Chen's simulations may transgress the Court's decree requiring that "all map drawing…occur at public hearings." Court's Decree ¶ 8.

However, the General Assembly complied with the plain text, which clearly covers only future map-*drawing* that would be part of "the…remedial process." Court's Decree ¶ 8. Selecting a Chen map was not "map drawing," but map *picking*. The text does not bar the General Assembly from picking a map already drawn in the *past*, already vetted by the Court, and introduced into the litigation by Plaintiffs. Consistent with the Court's order, all map-drawing that was part of the remedial process *was* done in public hearings, as described herein, and facilitated by data provided by Plaintiffs' counsel directly to the committees during the process. Members of the General Assembly's non-partisan Central Staff simply used Chen's data to assist them in *drawing* the base map for each grouping (since Dr. Chen's data did not come with already-drawn maps), which they did in open committee. Moreover, the Chen maps picked served only as a starting point for further map drawing, or the use of legislative discretion to adopt without further revision, all of which was done publicly in open committee.

The General Assembly's approach also complies with the spirit of the Court's order, which was plainly intended to prevent backroom *partisan* line drawing, where Dr. Chen's maps have already been held—after an adversarial proceeding and based on Plaintiffs' own arguments—to be *non*-partisan. The process and criteria for selecting among Dr. Chen's maps and the selection itself all occurred at public hearings, satisfying any publicity requirement that might reach the selection process. This is not a case where the General Assembly picked a partisan map previously drawn to comply with the text, but not the purpose, of the Court's order. The General Assembly's choice complies with *both* letter and spirit.

Second, concern was raised that Dr. Chen did not prepare his simulated maps for the purpose of being enacted and used in elections, but merely as a comparison point for the 2017 plans. Whether or not that is true, what matters for the Court's purposes is that Dr. Chen's maps were found to be constitutional and lawful—or else they could not have served as baselines against which to judge the 2017 plans—so the choice of these plans as the baseline is necessarily compliant with law and the Court's order.

The General Assembly's choice was eminently reasonable under the circumstances. The Court provided only two weeks to prepare, debate, amend, and adopt redistricting plans. Setting out to draw a map from scratch at public hearings would have proven unworkable, and would have provided far less time for the development and deliberation upon amendments, all of which was required to be done in those same committee rooms. Even the most basic question of what point on the map to start drawing—why in this corner of the grouping and not that?—would have drawn out the discussions for days or longer. Every proposed line would have been met with the allegation of partisanship; every single VTD selected by any member of any party would draw accusations—baseless or not—of secret partisan intent. Choosing a map that was already created, and held to comply with the criteria, proved to be a workable solution to these very practical, very political problems. Whether Dr. Chen envisioned that role is irrelevant.

Third, the General Assembly received some criticism for selecting Dr. Chen's simulations rather than those of other experts. The criticism rings hollow. The General Assembly could not have chosen one of Dr. Pegden's maps because his algorithm started from the 2017 plans. Using one of his plans would have violated the Decree's mandate that "the invalidated 2017 districts may not be used as a starting point for drawing new districts." Court's Decree ¶ 6.

Choosing from among Dr. Mattingly's maps would have proven unworkable. "The number of maps that Dr. Mattingly generated is greater than the number of atoms in the known universe." Court's Findings of Fact ¶ 149. Attempting to winnow this number down to a few maps for administration by the State lottery machine would have been unworkable. Dr. Chen's sets of 1,000 maps each provided a manageable set of maps already vetted by the Court, so there was no need to resort to Dr. Mattingly's more elaborate approach. In all events, if the General Assembly truly maintains "broad discretionary powers" in this area, Court's Conclusions of Law ¶ 139, it surely may pick one set of simulated non-partisan maps over another.

Fourth, there was some argument that using Dr. Chen's maps somehow preserved the supposed partisan bias from the 2017 plans. This contradicts the Court's findings. Dr. Chen's algorithm did not begin with the 2017 lines, but rather ran "thousands of random iterations, measuring for each proposed iteration whether the change would make the districts in the grouping better or worse on net across" the criteria. Court's Findings of Fact ¶ 85. Even set 2, which avoided pairing incumbents was found to be a "nonpartisan effort" that did not "account for the extreme partisan bias and subordination of traditional districting principles that Dr. Chen found in his Simulation Set 1." *Id.* ¶ 113; *see also id.* ¶ 116 ("Based on his House Simulation Set 2 analysis, Dr. Chen found that a nonpartisan effort to avoid pairing incumbents cannot explain the extreme partisan bias of the enacted House plan or its subordination of traditional districting criteria."). After this Court's findings that *both* of Dr. Chen's simulations sets are free from any hint of partisanship, it is implausible to claim that the adoption of maps from these sets somehow bakes partisan bias into the process. Any effect of the 2017 plans has been completely erased; those lines are gone.

Tellingly, the Senate—the only chamber to which this criticism even arguably applies—ran a *parallel* process using set 1 maps, allowing Democratic Senator McKissick to pick from the top 10 highest scoring Chen maps. At the request of Sen. McKissick, he personally selected from the sixth highest scoring through the tenth highest scoring Set 1 maps, as opposed to the first through fifth highest scoring as with the Set 2 maps, for each county grouping. The maps he picked were produced and published, and the Senate committee invited members to propose set 1 configurations to replace the base-map set 2 configurations. This means that anyone who believed set 1 provided better options from any perspective they could identify had the opportunity to propose a set 1 replacement and explain why it was superior. Yet no one made any such amendment.

Finally, there was suggestion that statewide public hearings or other public processes should be utilized. In an ideal world, this would have occurred, but the Court did not order public hearings to be conducted around the State, and its 14-day deadline rendered that infeasible. The General Assembly was already forced to temporarily but dramatically increase the number of Central Staff members assigned to redistricting issues, and running hearings across the State at the same time as an extraordinarily transparent process in Raleigh was simply impossible. Moreover, every member of the public that appeared at the public comment meeting was provided an opportunity to speak. The process here *was conducted in public*, was broadcast on the internet for anyone anywhere to watch, and allowed any interested persons to come to Raleigh to participate in person, and interested persons could submit comments through an online portal. This may have been the most open legislative redistricting process in history.

II. The Minor Departures From the Base Maps Are Justified

The base map starting point accounts for the overwhelming majority of district lines before the Court. However, consistent with "the General Assembly's broad discretionary powers to create

legislative districts," Court's Conclusions of Law ¶ 139, the General Assembly approved minor adjustments in both the House and Senate maps that were tailored towards legitimate redistricting goals. Many were simply to unpair incumbents; others were to preserve communities of interest; none were the result of partisan data. None of them resulted in a transgression of the criteria.

A. Departures from the House Base Map

The House adopted a general approach of altering the base map only to unpair incumbents drawn into the same district. The motion to unpair incumbents was offered by Democratic Representative Floyd and was endorsed by a unanimous vote of the committee. As noted, the House worked from Chen set 1. Because the House elected to avail itself of the right to place incumbents in different districts, Court's Decree ¶ 5(g), it became necessary to unpair them manually. The committee attempted to make minimal changes while keeping in mind the court's criteria. These changes were made by human efforts—a bipartisan team, almost always including the county's legislative delegation, supervised the changes made by non-partisan Central Staff. Within groupings, the Committee required districts that already contained a single member to remain unchanged. The Committee did not have access to an algorithm or automated program to calculate the fewest mathematically possible changes, yet the effort proved successful. Every member planning to run for reelection was unpaired. The votes on 12 groupings were unanimous. The vote on Cumberland was overwhelming and bipartisan. Only one prompted anything resembling partisan division.

Where there were no pairings, no changes were necessary, and they were not made. Four House groupings saw no changes from the base map and therefore represented solely the work of Dr. Chen's computer. They are the Duplin-Onslow grouping, the Union-Anson grouping[5],

[5] One Republican member, Rep. Mark Brody, with other members of the Union County delegation, began work with a staff member on proposed changes, but Chairpersons Lewis and Hall held to

the Pitt-Lenoir grouping[6], and the Brunswick-New Hanover grouping[7]. All of these groupings were adopted by a unanimous committee vote.

In addition, the Davie-Richmond grouping saw only a slight tweak to comply with the Court's order. The Decree provides that "House District 66 shall not be redrawn." Court's Decree ¶ 2(e). Dr. Chen's simulations, however, adjusted the district, and the House committee made minor changes to return it to its prior state, given the Court's clear instruction. Seven VTDs were exchanged in Stanly County for that narrow purpose. No other changes were made to any other district or county. The Committee adopted the grouping unanimously.

The following groupings saw changes to unpair incumbents:[8]

Buncombe County. Democratic members Brian Turner and Susan Fisher were paired in HD116 in the base map. Central Staff supervised by a bipartisan group of legislators made minimal changes to place Rep. Fisher in HD114 and adjust population to maintain both districts within the

---

the directive that no changes to House base maps where no members were double-bunked were tolerated, and no alternative proposal was presented to the chamber, and it appears that no proposal even reached a sufficiently advanced stage to satisfy the plus or minus five percent equal-population threshold.

[6] Initially, the General Assembly's Central Staff members prepared the wrong base map from Chen's files—i.e., inserted a map that had not been selected by the lottery machine. After Plaintiffs' counsel notified the Committee of the error, it was promptly corrected.

[7] There was a pairing in this grouping of Republican members Holly Grange and Ted Davis in HD20. A bipartisan team began exploring solutions, but, in the process, Rep. Grange withdrew her request to be unpaired. Rep. Grange is an announced candidate for Governor of North Carolina. She cannot file for both the state House and the gubernatorial race. Rather than force the committee to predict her progress in the Republican statewide primary for Governor, she chose to have the base map left unchanged.

[8] The amendments proposed and adopted are summarized here in narrative form. They are also identified in charts attached to this filing, which identify Central Staff and members involved in each process. To the extent objections are raised about any amendments, Legislative Defendants will investigate and provide further factual information if necessary.

plus or minus five percent threshold. HD115 was not changed. The correction moved four VTDs. The Committee unanimously adopted the grouping.

Guilford County. Republican member Jon Hardister and Democratic member Amos Quick were paired in HD59. Rep. Quick lived in the adjacent VTD next to HD58, which had no incumbent. Central Staff under bipartisan supervision simply moved Rep. Quick's home VTD into HD58. No other changes were made to the districts. HD60 was not changed. This is the only VTD that was moved. The Committee adopted the map unanimously.

Cumberland County. Democratic members Elmer Floyd and Billy Richardson were paired in HD43. Rep. Richardson lived in a VTD adjacent to HD44, which had no incumbent. Central Staff, under bipartisan supervision, moved Rep. Richardson's VTD into HD44. HD42 and HD45 were left unchanged. This is the only VTD that was moved. No other changes were made to the configuration of these districts. There was, however, a motion to renumber the districts, which passed unanimously.[9]

Franklin-Nash. The Chen simulated map drawn from the lottery machine for this grouping was, by happenstance, identical with the configuration in the 2017 plan. This posed a problem because the Court's order requires a *different* configuration from the 2017 plan, and the lottery equipment and employees were not on site, rendering another draw unworkable under the time

[9] A small group of Democratic members advocated for more extensive changes to HD42, HD43, and HD44. Rep. Floyd presented an alternative option that he developed, which was rejected on a wide, bipartisan basis because it made extensive changes that appeared to be politically motivated, or at least could not be justified by non-partisan concerns. These changes would not have altered the number of municipal splits or precinct splits, and unnecessarily altered Rep. Lucas's seat. A representative of Common Cause later criticized the Democratic members from Cumberland County for working off of the screen on an alternate proposal. Republican members expressed concerns that the team may have violated the Court's order in developing the alternate map. No other amendments or formal proposals were offered on this grouping, despite continuing discussion from the Democratic members of the delegation on developing an alternate proposal. Rep. Floyd was the only member who voted against the adopted grouping in the Committee.

constraints. Although the idea of drawing a different configuration from scratch was floated, this proved controversial to Democratic members of the Committee. Fortunately, another solution presented itself: the Committee unanimously agreed to use a website called "random.org" that generates random numbers to select a new Chen grouping.

This second map paired Republican member Lisa Stone Barnes with Democratic member James Gailliard. Central Staff, under bipartisan supervision, made limited changes to unpair these members. A minimal number of VTDs were moved to accomplish this, and one VTD was split to equalize population. The new grouping was adopted unanimously.

Forsyth County. Republican member Conrad was paired with Democratic member Montgomery in HD72. Central staff, under bipartisan supervision, made minimal changes to correct the double bunking by placing Rep. Conrad in the unrepresented HD74, which required a transfer of only one VTD. Republican member Lambeth and Democratic member Terry were paired in HD71. Central staff under bipartisan supervision made minimal changes to correct the double bunking by shifting two VTDs, including Rep. Lambeth's VTD, into the vacant HD75. Three VTDs were shifted from HD75 into HD71 to meet the equal-population standard. HD73 was not changed. In total, only 6 VTD moves were required to correct four members' pairings. Districts were renumbered to reflect current occupants. The committee adopted the map unanimously.

Alamance County. Republican members Ross and Riddell were paired. Central Staff, under bipartisan supervision, initially created a version that simply moved Rep. Ross's VTD into the unrepresented district. However, it was later discovered that this caused a population imbalance. Ultimately, Central Staff, under bipartisan supervision, moved an additional VTD into Rep. Riddell's district, HD64, and one VTD was split along or near a municipal line to balance

population without splitting the town. In total, two VTDs were moved and one divided. The committee adopted the map unanimously.

Cleveland/Gaston Counties: Republican members John Torbett and Kelly Hastings were paired. Because Rep. Torbett lived in the far northeastern portion of Gaston County while Rep. Hasting lived in the far northwestern portion of Gaston County, central staff, under bipartisan supervision, with input from the delegation shifted HD108 to cover the northwestern portion of the county while HD110 was shifted to cover portions of Cleveland and northwestern Gaston counties. Approximately 13 VTDs were moved and one was split to equalize population. Only HD 108 and HD110 were altered during the process. HD111 and HD109 were left untouched. Districts were renumbered to reflect current occupants The Committee adopted the map unanimously.

Mecklenburg County. Democratic members Logan, Alexander, Carney, Belk, Lofton, Hunt, and Harris were paired in various configurations in various districts. Some were double-bunked, others triple-bunked. Central staff, under bipartisan supervision, made various changes to unpair the incumbents. Despite the extensive double and triple bunking of Democratic members in this grouping, the committee gave the Democratic members latitude to correct the double-bunkings. The committee came to an agreeable solution proposed by the Democratic members of the delegation which moved approximately 14 VTDs and split one additional VTD. The committee adopted the map unanimously.

Columbus-Robeson. Republican members Jones and Smith were paired. This district grouping provoked the most disagreement among committee members. The committee debated several versions, finally settling on one that did not alter Democratic Rep. Charles Graham's seat, split any VTDs, or divide any municipalities and moved roughly 11 VTDs. Rep. Jones and Sen. Britt, who represents Robeson and Columbus Counties, and community members through the

public portal and hearings, expressed the view that Columbus County should be kept as whole as possible. Democratic leader Rep. Jackson presented several versions of this grouping on the House floor, which were rejected by the body for splitting towns or VTDs or pairing members. The disagreement over this grouping consumed much of the floor debate and even led the Senate committee to see if it could come up with a bipartisan compromise proposal once the bill was in its possession. They too were unable to do so. Legislative Defendants respectfully submit that the enacted version is non-partisan and avoids partisan considerations that might otherwise have worked their way into the grouping. It keeps all towns and municipalities whole within the county while not pairing members. While passing the House plan on the House floor, the body divided the question, allowing members to separately vote on the 13 other county groupings and this grouping. Eight Democratic members voted for the other 13 groupings.

B. Departures from the Senate Base Map

In the Senate, four of the groups saw no change from the base map: Bladen-Brunswick-New Hanover-Pender, Buncombe-Henderson-Transylvania, Davie-Forsyth, and Duplin-Harnett-Johnston-Lee-Nash-Sampson. The Senate made changes to the base map in only three groupings, and it did so for incumbency and community-of-interest reasons. All three of these sets of changes were joined together in one proposed committee substitute, and it passed the Senate committee with only one "nay" vote.[10]

1. Mecklenburg

Although the Senate used Chen set 2, which avoided incumbency pairings, the set did not account for members elected in 2018. Thus, the Senate committee deemed it appropriate for Senators drawn together to be unpaired. Two Democratic Senators, Marcus and Mohammed, were

[10] The one "nay" vote in Committee was from Senator Michael Garrett.

paired in Mecklenburg County. These Senators originally drafted a series of changes that would have moved 29 VTDs, but Senators Hise and Blue worked with them to better tailor their alterations, resulting in a change of only 14 VTDs that achieved the goal of unpairing the incumbents. No other changes were made to the districts' configuration, and the other three districts in southern Mecklenburg County were left unchanged from the base map.

2. Franklin-Wake

The alterations in Wake County stemmed largely from the unusual occurrence that Republican Senator Alexander announced his decision not to seek reelection during the redistricting process. This meant that the base map, drawn from set 2, had been configured not to pair Sen. Alexander, which was no longer necessary. The five-member Wake County delegation, redrew the grouping to create a more regular shape and also to keep whole a community that Sen. Blue had represented for decades by moving only 4 VTDs compared to the base map.

3. Alamance-Guilford-Randolph

The changes in this grouping were advocated by Democratic Senators Garrett, McKissick and Blue, who expressed the view that the Court Order required as much of the City of High Point to be placed in SD27 as possible, which had the corresponding impact of removing other VTDs from SD27 and adding to SD26. Other concerns were raised that revising the base map to add more VTDs in High Point to SD27, and correspondingly moving other VTDs from SD27 to SD26, was not based in any criteria permitted to be considered by the Court. Nevertheless, in an effort to resolve the matter and the inconsistent understandings of the Court's directive, the Senate committee reached a compromise to place three additional VTDs from High Point into SD27. A total of five VTDs were moved as compared to the base map.

C. The Departures Did Not Take the Maps Out of Compliance With the Criteria

As discussed, the base maps, by the Court's definition, comply with governing law, the criteria, and the Court's order. The alterations to the base maps do not render the plans unlawful or in violation of the criteria or the Court's order. The plans remain within the plus or minus five percent range, the districts are contiguous, the county traversal rules were honored, the compactness scores exceed the scores of the plans in place prior to the 2017 maps, there are fewer split VTDs than there were in the plans in place prior to the 2017 maps, and the plans generally continue to follow municipal boundary lines where possible. The attached spreadsheets addressing each change provide the data supporting these assertions.

The amendments also comply with the Court's express endorsement of the goal to keep incumbents in separate districts and its prohibition on partisan considerations and data. As explained, most of the amendments were executed in order to ensure that incumbents were not paired, and none of them was executed for partisan reasons. The other purposes of the amendments, such as the community-of-interest goals, were non-partisan. Indeed, the public process appears to have been successful in keeping partisan purposes out; at those times when members appeared to be making proposals for partisan reasons, other members were able to step in and check those goals in route to a better resolution. To the extent that any objections are raised alleging partisan purpose, Legislative Defendants will investigate and respond in due course.

D. If the Court Rejects any Departures from the Base Map, Its Action Should Be Narrowly Tailored, Which Here Requires No Court Line Drawing

As explained above, the Court's role is limited to enforcing legal requirements; it has no policymaking role. Since the departures from the base map violate no legal requirements, there is no basis to reject these legitimate legislative choices.

If the Court disagrees as to any specific grouping, its role should, even then, be limited. Court intrusion into the redistricting process impinges on separation of powers principles and must be narrowly tailored. It should therefore go without saying that the Court's rejection of any *specific* change does not justify intrusion into *other* areas of the map. As discussed, most departures from the base map were non-controversial, drawing unanimous Committee approval and bipartisan support. Most were narrow efforts to unpair incumbents and should, in all events, be respected.

To the extent the Court finds specific alterations to the base map, it should narrowly tailor its remedy by returning the specific objectionable lines back to their configuration under the base map. This should mean only a few lines affected in any grouping, and, at very most, the return of the grouping itself to its base-map configuration. There is no reason for the Court to draw its own lines.

That is because the base map best reflects the most recent legitimate legislative policy choices and provides the Court with a workable, lawful standard that would otherwise be completely absent. By adopting the base-map starting point, both chambers adopted the overarching theory that Plaintiffs themselves proffered at the liability phase that non-partisan criteria should interact with North Carolina's natural political geography to produce whatever political result may inhere. *See, e.g.*, Court's Conclusions of Law ¶ 139. "Allowing the General Assembly discretion to establish its own redistricting criteria and craft maps accordingly is what the North Carolina Constitution requires." *Id.* ¶ 140. The base map reflects the overarching policy goals. The Court has no guiding principle by which to guide its own line drawing, and any line drawing its chooses to conduct will necessarily raise questions—justified or not—about the Court's own intentions.

To be sure, the departures from the base map represent equally legitimate policy goals that should be honored, which is why any intrusion into the process should be narrowly tailored. But, if the Court disagrees, the proper resolution is *not* for the Court to concoct its own goals but to return the map to the General Assembly's default goals, freed from any error the Court purports to discern. The way to do that is by returning any grouping found to be non-compliant to the base map.

E. The General Assembly Was Not Presented With Information to Provide a Strong Basis in Evidence To Consider Racial Data

The Court placed a very high burden on the General Assembly's options for attempting to comply with the Voting Rights Act. *See* Court's Decree ¶ 7. Although the General Assembly disagrees with the premises of this portion of the decree—e.g., it disagrees that estoppel applies—the General Assembly has again chosen the path of non-confrontation to de-escalate any separation-of-powers issues. Based on the Court's apparent belief that no Voting Rights Act considerations are raised in this remedial proceeding and Plaintiffs' position to that effect, Legislative Defendants state that no strong basis in evidence was presented to justify the use of race to draw districts for Voting Rights Act-compliance purposes. To be clear, Legislative Defendants do not have affirmative evidence either way on whether the Voting Rights Act's prerequisites could be satisfied. It simply states that it was, at the time and place of redistricting, not presented with a strong basis in evidence to use race.

Accordingly, race was not used. Dr. Chen's maps were drawn without any effort to achieve a racial target. Consequently, the base maps were drawn in a race-blind fashion. The amendments to the base map were not made with attention to race or for the purpose of hitting any racial target.

III. Statement Regarding Redistricting Participants

Pursuant to § 2(e) of the Court's order of September 13, 2019, Legislative Defendants provide the following information about "participants involved in the process of drawing and enacting the Remedial Maps."

First, Legislative Defendants object to the Court's apparent requirement to account for the acts of legislative members. Suffice it to say that *all* members had a role in enacting legislation, *all* members had a right to participate within the confines of legislative procedure, and *all* members enjoy immunity and privilege for their legislative actions, unless they waive immunity or privilege. It should also go without saying that members of the Senate and House committees responsible for redistricting had more involvement than other legislators in the process. The membership of the General Assembly and its committees is public information.

Second, Legislative Defendants have provided charts identifying the names of legislative members and staff associated with amendments and drawing efforts. Legislative Defendants incorporate these by reference here. Further, the Court can discern from the legislative transcripts the degree of involvement of various members. To the extent the Court has any concerns or any objections are raised by parties or non-parties about the actions of any members, Legislative Defendants will attempt to respond within the confines of applicable privileges and immunities.

Third, as to non-legislative participants, Legislative Defendants can confirm that the principal person involved was Dr. Jowei Chen, whose computer simulations formed the base maps accounting for the overwhelming majority of district lines. Legislative Defendants can confirm that non-partisan Central Staff members used Chen's underlying data to draw the base map in committee. Legislative Defendants can also confirm that non-partisan central staff members assisted in the creation of amendments, and they are identified by amendment or task in the aforementioned attachments incorporated by reference. Legislative Defendants were also assisted

by employed and outside legal counsel, whose roles were restricted to providing legal advice. Logistical support was provided by various members of Central Staff and committee staff. Central Staff has listed all members and staff directly involved in the drafting of districts.

Exclusively through counsel, Legislative Defendants also relied for very limited purposes on experts called in this case (in particular, Dr. Thornton) and their non-testifying expert, Clark Bensen. Thornton and Bensen were used only to assess data provided by Plaintiffs and Dr. Chen to the General Assembly to ensure its accuracy and authenticity. In other words, when Plaintiffs' counsel sent Dr. Chen's data to the General Assembly to allow the above-described base-map process to proceed, it became necessary for someone with expertise to confirm that the data were accurate and authentic. Similarly, Legislative Defendants understood that Dr. Chen was involved in assisting with that data under the supervision of Plaintiffs' counsel, and he, in fact, submitted an affidavit to the General Assembly about the data. Plaintiffs' counsel confirmed to the employed counsel for the House and Senate that these roles are appropriate, prior to any review of the data by Legislative Defendants' experts.

Perhaps most importantly, the General Assembly employed the services of employees of the State Lottery Commission to perform the function of randomly drawing balls from the lottery machine. The State Lottery Commission is non-partisan and is committed to the principle of randomness. The Lottery Commission employees involved were Robert Denton, Joe Cosgriff, Jorge Alfonso, and Matthew Ford.

Legislative Defendants employed no other agent, such as a map-drawing consultant. Legislative Defendants used experts solely to ensure the integrity of the base-map data. Experts were not involved in amendments from the base map. Experts were not asked, by Legislative Defendants or their lawyers, to conduct political analysis of the maps or configurations.

Legislative Defendants can also confirm that numerous members of the public attended and (presumably) watched proceedings. And it is simply impossible to account for all their actions or identify all involved. For example, Plaintiffs' lawyers—Stanton Jones, Daniel Jacobson, and Elisabeth Theodore—were present at most or all of the sessions and had extensive input. With them at times was Blake Esselstyn, Bill Gilkeson, and Dr. Jonathan Mattingly. Mr. Esselstyn, Plaintiffs' non-testifying expert, had a laptop computer. These persons were conferring especially with Democratic members, and they were often seen looking over computer screens to which Legislative Defendants did not have access. There were many other members of the public going in and out through the proceedings, some members of the public spoke at the public comment meetings Legislative Defendants conducted, and Legislative Defendants were incapable of monitoring their actions or intentions.

To the extent the Court or objectors raise discrete concerns or questions, Legislative Defendants will do their best to respond and, if necessary, gather facts to respond.

IV. Statement Regarding Alternative Maps

Pursuant to § 2(f) of the Court's order of September 13, 2019, Legislative Defendants provide the following information about "alternative maps considered" by the committees or the General Assembly.

No complete "alternative maps" were proposed. Importantly, no other "base map" was proposed. As discussed above, in the Senate, set 1 base map groupings were prepared by request of Senator McKissick, which could have allowed for an alternative base map or configurations. But no one formally proposed such an alternative, and interest appeared to die as soon as the set 1 groupings were published.

Several amendments were proposed to county groupings and are discussed above. All Senate amendments that were proposed to the committee were passed. The proposals rejected in the House are discussed above. All amendments proposed and rejected are reflected in the appended charts.

Other configurations were considered on an informal or unfinished basis. Computer terminals were available at the committee locations (connected to public screens for viewing), and central staff members were available to assist. Thus, it was not unusual for a member to sit down, begin drawing, have discussions in that public forum, and then abort the map. It is simply impossible to account for all those occurrences, though many are reflected on the public transcripts. Central Staff members have done their best to compile the record of aborted redistricting efforts, and this record is provided with the exhibits.

Should the Court be concerned with any specific proposal, Legislative Defendants will do their best to respond and, if necessary, gather facts to respond.

V. Conclusion

Questions of redistricting reform have proven difficult to solve and have divided reasonable minds—a point that should be readily apparent from the United States Supreme Court's recent sharply divided opinion on the question. The North Carolina general public is similarly divided in this case. It certainly is a fair question whether the approach adopted by the Court denied, rather than enforced, equal protection, and whether the constituencies now represented by the General Assembly's majority have been treated unfairly as understood from a wider historical perspective.

Suffice it to say, by enacting the remedial maps as required by the Court's judgment, Legislative Defendants are not agreeing with the Court's approach nor abandoning their position

that the redistricting process is an inherently political one and questions of "how much politics is too much" are best left to the legislative arena.

Nonetheless, Legislative Defendants—as elected officials who represent the General Assembly itself before the Court—have made a policy choice to attempt to resolve these issues by enacting new plans created in the most non-partisan and transparent process in North Carolina history. Legislative Defendants respectfully request that the Court honor that choice. The selection of a Chen base map is unimpeachable, as are the minor deviations that were largely the product of bipartisan compromise. The Court should honor the legislative discretion its judgment has recognized. The best way to do that is to allow the enacted maps to stand as enacted.

This 23rd day of September, 2019

Respectfully submitted,

BAKER & HOSTETLER, LLP

E. Mark Braden*
(DC Bar #419915)
Katherine L. McKnight*
(DC Bar #994456)
Trevor M. Stanley*
(VA Bar # 77351)
Richard B. Raile*
(VA Bar # 84340)
mbraden@bakerlaw.com
kmcknight@bakerlaw.com
tstanley@bakerlaw.com
rraile@bakerlaw.com
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5403
Telephone: (202) 861-1500
Facsimile: (202) 861-1783

Patrick T. Lewis*
(OH Bar # 0078314)
127 Public Square, Suite 2000
plewise@bakerlaw.com
Cleveland, OH 44114-1214
Telephone: (216) 621-0200
Facsimile: (216) 696-0740

Robert J. Tucker*
(OH Bar # 0082205)
rtucker@bakerlaw.com
200 Civic Center Drive, Suite 1200
Columbus, OH 43215-4138
Telephone: (614) 228-1541
Facsimile (614) 462-2616

* Admitted *pro hac vice*

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By: _____

Phillip J. Strach
N.C. State Bar No. 29456
Thomas A. Farr
N.C. State Bar No. 10871
Michael McKnight
N.C. State Bar No. 36932
phil.strach@ogletreedeakins.com
tom.farr@ogletreedeakins.com
michael.mclmight@ogletreedeakins.com
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
Telephone: (919) 787-9700
Facsimile: (919) 783-9412

Counsel for the Legislative Defendants

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing in the above titled action upon all other parties to this cause by email transmittal to the following:

Edwin M. Speas, Jr.
Caroline P. Mackie
P.O. Box 1801
Raleigh, NC 27602-1801
(919) 783-6400
espeas@poynerspruill.com

Counsel for Common Cause, the North Carolina Democratic Party, and the Individual Plaintiffs

John E. Branch, III
Nate Pencook
128 E. Hargett St, Suite 300
Raleigh, NC 27601
(919)856-9494
jbranch@shanahanlawgroup.com

Counsel for the Intervenor-Defendants

R. Stanton Jones
David P. Gersch
Elisabeth S. Theodore
Daniel F. Jacobson
601 Massachusetts Ave. NW
Washington, DC 20001-3761
(202) 942-5000
Stanton.jones@arnoldporter. Com

Marc E. Elias
Aria C. Branch
700 13 th Street NW
Washington, DC 20005-3960
(202) 654-6200
melias@perkinscoie.com

Abha Khanna
1201 Third A venue
Suite 4900
Seattle, WA 98101-3099
(206) 359-8000

Counsel for Common and the Individual Plaintiffs

This 23rd day of September, 2019.

By: _____
Phillip J. Strach, N.C. State Bar No. 29456

40080532.1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
Civil Action No. 5:19-cv-00452-BO

REBECCA HARPER, 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.

[PROPOSED] ORDER GRANTING PLAINTIFFS' EMERGENCY MOTION TO REMAND AND TO EXPEDITE RESOLUTION OF MOTION TO REMAND

This matter is before the court on Plaintiffs' Emergency Motion to Remand and to Expedite Resolution of Motion to Remand. The court having fully considered the matter, it is hereby

ORDERED that Plaintiffs' Emergency Motion for Remand and to Expedite Resolution of Motion to Remand is GRANTED. It is further

ORDERED that this case is REMANDED to the General Court of Justice, Superior Court Division, Wake County, North Carolina, for further proceedings. And it is further

ORDERED that the Court will retain jurisdiction to consider any motion by Plaintiffs for fees and costs or other relief under 28 U.S.C. § 1447, the Federal Rules, or other applicable law.

SO ORDERED, this _____ day of _____, _____.

_____
Hon. Terrence W. Boyle
United States District Judge