

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

SUPERIOR COURT DIVISION

Docket No. _____

REBECCA HARPER; AMY CLARE
OSEROFF; DONALD RUMPH; JOHN
ANTHONY BALLA; RICHARD R. CREWS;
LILY NICOLE QUICK; GETTYS COHEN
JR.; SHAWN RUSH; JACKSON THOMAS
DUNN, JR.; MARK S. PETERS; KATHLEEN
BARNES; VIRGINIA WALTERS BRIEN;
DAVID DWIGHT BROWN,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN
HIS OFFICIAL CAPACITY AS CHAIR OF
THE HOUSE STANDING COMMITTEE
ON REDISTRICTING; SENATOR
WARREN DANIEL, IN HIS OFFICIAL
CAPACITY AS CO-CHAIR OF THE
SENATE STANDING COMMITTEE ON
REDISTRICTING AND ELECTIONS;
SENATOR RALPH HISE, IN HIS
OFFICIAL CAPACITY AS CO-CHAIR OF
THE SENATE STANDING COMMITTEE
ON REDISTRICTING AND ELECTIONS;
SENATOR PAUL NEWTON, IN HIS
OFFICIAL CAPACITY AS CO-CHAIR OF
THE SENATE STANDING COMMITTEE
ON REDISTRICTING AND ELECTIONS;
SPEAKER OF THE NORTH CAROLINA
HOUSE OF REPRESENTATIVES
TIMOTHY K. MOORE; PRESIDENT PRO
TEMPORE OF THE NORTH CAROLINA
SENATE PHILIP E. BERGER; THE
NORTH CAROLINA STATE BOARD OF
ELECTIONS; DAMON CIRCOSTA, IN
HIS OFFICIAL CAPACITY AS
CHAIRMAN OF THE NORTH

COMPLAINT

(Three-Judge Court Pursuant to
N.C. Gen. Stat. § 1-267.1)

CAROLINA STATE BOARD OF ELECTIONS; STELLA ANDERSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; JEFF CARMON III, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STACY EGGERS IV, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; TOMMY TUCKER, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants.

Plaintiffs, complaining of Defendants, say and allege:

INTRODUCTION

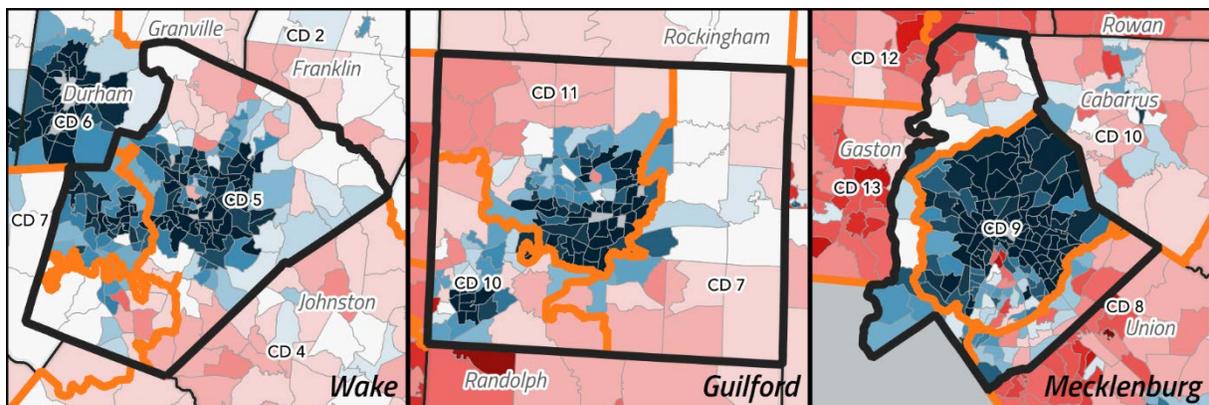
1. Partisan gerrymandering, where partisan mapmakers manipulate district boundaries from behind a computer to maximize their own party's advantage and guarantee the outcome of elections before anyone casts a ballot, is incompatible with "North Carolinians' fundamental rights guaranteed by the North Carolina Constitution." Order on Inj. Relief, *Harper v. Lewis*, No. 19-CVS-012667 ("*Harper I*"), at 15. It violates the Free Elections Clause's guarantee that elections shall be "conducted freely and honestly to ascertain, fairly and truthfully, the will of the people." *Id.* at 7 (citing *Common Cause v. Lewis*, 18-CVS-014001, slip op. at 298-307). It "runs afoul of the North Carolina Constitution's guarantee that no person shall be denied the equal protection of the laws." *Id.* at 8 (citing *Common Cause v. Lewis*, 18-CVS-014001, slip op. at 307-17). And it is irreconcilable with the "important guarantees in the North Carolina Constitution of the freedom of speech and the right of the people in our State to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances." *Id.* at 10-11 (citing *Common Cause v. Lewis*, 18-CVS-014001, slip op. at 317-31).

2. In 2019, a three-judge panel of this Court held in *Harper I* that the same Plaintiffs here were likely to prevail on the merits of their claims that North Carolina's "2016 congressional districts are extreme partisan gerrymanders in violation of the North Carolina Constitution's Free Elections Clause, Art. I, § 10; Equal Protection Clause, Art. I, § 19; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14." *Id.* at 14. The Court enjoined the Legislative Defendants and State Board Defendants from administering the 2020 primary and general elections for Congress using these unconstitutional districts, which were intentionally designed to entrench a partisan advantage of 10 Republicans and 3 Democrats in

this closely divided state. *Id.* at 13. It later directed that North Carolina’s 2020 congressional elections be conducted under a remedial map enacted just weeks before the December 2, 2019 candidate filing period. Order Lifting Inj., *Harper I*, at 1.

3. Following the 2020 decennial census, from which North Carolina gained an additional congressional seat, Legislative Defendants recently enacted a new congressional map. But rather than adhere to the *Harper I* Court’s admonition that extreme partisan gerrymanders unconstitutionally deprive millions of North Carolinians of fundamental rights, Legislative Defendants enacted another extreme and brazen partisan gerrymander. Like the 2016 congressional map (the “2016 Plan”), the new districts enacted this year (the “2021 Plan”) will entrench an overwhelming partisan advantage for Republicans.

4. While Legislative Defendants did not so openly admit to enacting an extreme partisan gerrymander this time, the results speak for themselves: The 2021 Plan flagrantly dilutes Democratic votes in large part by trisecting each of the three most heavily Democratic counties in the state—Wake, Guilford, and Mecklenburg.



5. The 2021 Plan packs North Carolina’s Democratic strongholds in Raleigh, Durham and Cary combined, and Charlotte into three congressional districts. And it cracks the State’s remaining Democratic voters across the remaining districts to ensure an overwhelming

majority of safe Republican seats. The result is as intended: A map that produces 10 safe Republican seats, 3 safe Democratic seats, and 1 competitive district.

6. As the *Harper I* Court explained in invalidating the 2016 Plan, extreme partisan gerrymandering “entrench[es] politicians’ power,” “evinces a fundamental distrust of voters by serving the self-interest of political parties over the public good,” and “dilute[s] and devalue[s] votes of some citizens compared to others” in violation of the North Carolina Constitution. Order on Inj. Relief, *Harper I*, at 7. The new map, like its 2016 predecessor, violates the fundamental constitutional rights of North Carolinians. It should meet the same fate as the unconstitutional 2016 Plan, and Plaintiffs will promptly file a motion for a preliminary injunction. This Court should enjoin use of the 2021 Plan immediately, enjoin any further intentional dilution of the voting power of citizens based on their political views or party affiliation, and order a new, constitutional map for use in the 2022 primary and general elections.

7. Plaintiffs here, who are also the plaintiffs in *Harper I*, have filed a motion in *Harper I* seeking leave under Rule 15(d) to file a supplemental complaint challenging the 2021 Plan on the same grounds set forth in this Complaint. The motion for leave has not been acted upon by the *Harper I* Court, which is presently composed of only a single judge (due to one retirement and one recusal), and Legislative Defendants have taken the position that Plaintiffs’ claims against the 2021 Plan should be filed in a new case. While Plaintiffs believe that their proposed supplemental complaint in *Harper I* should be allowed, they are commencing this action in light of the fast-approaching candidate filing period to ensure that some three-judge trial court will timely adjudicate their constitutional claims, including their forthcoming motion for a preliminary injunction.

PARTIES

A. Plaintiffs

8. Plaintiff Amy Clare Oseroff is a retired teacher residing in Greenville, North Carolina. Ms. Oseroff's residence was located within Congressional District 1 under the 2016 Plan and remains in District 1 under the 2021 Plan. Ms. Oseroff is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

9. Plaintiff Rebecca Harper is a real estate agent residing in Cary, North Carolina. Ms. Harper's residence was located within Congressional District 2 under the 2016 Plan and is now located within District 6 under the 2021 Plan. Ms. Harper is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

10. Plaintiff Donald Rumph is an Army and Air Force combat veteran and retired registered nurse residing in Greenville, North Carolina. Mr. Rumph's residence was located within Congressional District 3 under the 2016 Plan and is now located within District 1 under the 2021 Plan. Mr. Rumph is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

11. Plaintiff John Anthony Balla is a digital marketing strategist residing in Raleigh, North Carolina. Mr. Balla's residence was located within District 4 under the 2016 Plan and is now located within District 5 under the 2021 Plan. Mr. Balla is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

12. Plaintiff Richard R. Crews is a retired stockbroker residing in Newland, North Carolina. Mr. Crews's residence was located within Congressional District 5 under the 2016 Plan and is now located within District 14 under the 2021 Plan. Mr. Crews is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

13. Plaintiff Lily Nicole Quick is a homemaker residing in Greensboro, North

Carolina. Ms. Quick's residence was located within Congressional District 6 under the 2016 Plan and is now located within District 7 under the 2021 Plan. Ms. Quick is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

14. Plaintiff Gettys Cohen Jr. is a dentist residing in Smithfield, North Carolina. Dr. Cohen's residence was located within Congressional District 7 under the 2016 Plan and is now located within District 4 under the 2021 Plan. Dr. Cohen is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

15. Plaintiff Shawn Rush is part owner of a marketing firm, a Meals on Wheels organizer, and Mayor Pro Tem of East Salisbury residing in East Spencer, North Carolina. His residence was located within Congressional District 8 under the 2016 Plan and is now located within District 10 under the 2021 Plan. Mr. Rush is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

16. Plaintiff Jackson Thomas Dunn, Jr. is a retired attorney and law professor residing in Charlotte, North Carolina, within Congressional District 9 under both the 2016 and 2021 Plans. Mr. Dunn is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

17. Plaintiff Mark S. Peters is a retired physician assistant residing in Fletcher, North Carolina. Mr. Peters's residence was located within Congressional District 10 under the 2016 Plan and is now located within District 14 under the 2021 Plan. Mr. Peters is registered as an unaffiliated voter and has consistently voted for Democratic candidates for the U.S. House of Representatives.

18. Plaintiff Kathleen Barnes is the owner of a small publishing company residing in Brevard, North Carolina. Ms. Barnes's residence was located within Congressional District 11

under the 2016 Plan and is now located within District 14 under the 2021 Plan. Ms. Barnes is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

19. Plaintiff Virginia Walters Brien is a sales manager residing in Charlotte, North Carolina. Ms. Brien's residence was located within Congressional District 12 under the 2016 Plan and is now located within District 9 under the 2021 Plan. Ms. Brien is a registered unaffiliated voter who has consistently voted for Democratic candidates for the U.S. House of Representatives.

20. Plaintiff David Dwight Brown is a retired computer systems analyst residing in Greensboro, North Carolina. Mr. Brown's residence was located within Congressional District 13 under the 2016 Plan and is now located within District 11 under the 2021 Plan. Mr. Brown is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

B. Defendants

21. Defendant Destin Hall is a member of the North Carolina House of Representatives and currently serves as the Chair of the House Standing Committee on Redistricting. Mr. Hall is sued in his official capacity only.

22. Defendant Warren Daniel is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting and Elections. Mr. Daniel is sued in his official capacity only.

23. Defendant Ralph E. Hise, Jr. is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting and Elections. Mr. Hise is sued in his official capacity only.

24. Defendant Paul Newton is a member of the North Carolina Senate and currently

serves as a co-Chair of the Senate Standing Committee on Redistricting and Elections. Mr. Newton is sued in his official capacity only.

25. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives. Mr. Moore is sued in his official capacity only.

26. Defendant Philip E. Berger is the President Pro Tempore of the North Carolina Senate. Mr. Berger is sued in his official capacity only.

27. Defendant North Carolina State Board of Elections is an agency responsible for the regulation and administration of elections in North Carolina.

28. Defendant Damon Circosta is the Chair of the North Carolina State Board of Elections. Mr. Circosta is sued in his official capacity only.

29. Defendant Stella Anderson is the Secretary of the North Carolina State Board of Elections. Ms. Anderson is sued in her official capacity only.

30. Defendant Jeff Carmon III is a member of the North Carolina State Board of Elections. Mr. Carmon is sued in his official capacity only.

31. Defendant Stacy Eggers IV is a member of the North Carolina State Board of Elections. Mr. Eggers is sued in his official capacity only.

32. Defendant Tommy Tucker is a member of the North Carolina State Board of Elections. Mr. Tucker is sued in his official capacity only.

JURISDICTION AND VENUE

33. This Court has jurisdiction of this action pursuant to Articles 26 and 26A of Chapter 1 of the General Statutes.

34. Under N.C. Gen. Stat. § 1-81.1, the exclusive venue for this action is the Wake County Superior Court.

35. Under N.C. Gen. Stat. § 1-267.1, a three-judge court must be convened because

this action challenges the validity of a redistricting plan enacted by the General Assembly.

FACTUAL ALLEGATIONS

A. North Carolina Voters are Closely Divided Politically

36. For more than a decade, North Carolina’s voters have been closely divided between the Republican and Democratic Parties. Democrats have won three out of four gubernatorial elections since 2008 while Republican presidential and U.S. Senate candidates have each won the state three out of four times, nearly all in close races.

37. The most recent election cycle illustrates just how evenly divided this state is. In 2020, the Republican nominee for President narrowly defeated the Democratic nominee by a margin of 49.9% to 48.6%. The gubernatorial race was also close, with the Democratic nominee defeating the Republican nominee by a margin of 51.5% to 47.0%. And the race for Attorney General was closer still: the Democratic nominee defeated the Republican nominee by a margin of 50.1% to 49.9%. These razor-thin margins in statewide races reflect what everyone familiar with North Carolina knows—this is a closely divided state.

38. Nevertheless, due to consistent, systematic, and egregious gerrymandering by the Republican-controlled General Assembly, the popular will has not been reflected in the state’s congressional delegation for over a decade.

B. National Republican Party Officials Target North Carolina for Partisan Gerrymandering Prior to the 2010 Elections

39. In the years leading up to the 2010 decennial census, national Republican leaders undertook a sophisticated and concerted effort to gain control of state governments in 13 critical swing states such as North Carolina. The Republican State Leadership Committee (RSLC) code-named the plan “the REDistricting Majority Project” or “REDMAP.” REDMAP’s goal was to “control[] the redistricting process in . . . states [that] would have the greatest impact on

determining how both state legislative and congressional district boundaries would be drawn” after the 2010 census. The RSLC’s REDMAP website explained that fixing these district lines in favor of Republicans would “solidify conservative policymaking at the state level and maintain a Republican stronghold in the U.S. House of Representatives for the next decade.”

40. North Carolina was a key REDMAP “target state.” REDMAP aimed to flip both chambers of the North Carolina General Assembly from Democratic to Republican control.

41. To spearhead its efforts in North Carolina, the RSLC enlisted the most influential conservative donor in North Carolina, Art Pope. Together, the RSLC and Pope targeted 22 races in the North Carolina House and Senate. Pope helped create a new non-profit organization called “Real Jobs NC” to finance spending on the races, and the RSLC donated \$1.25 million to this new group. Pope himself made significant contributions; in total, Pope, his family, and groups backed by him spent \$2.2 million on the 22 targeted races. This represented three-quarters of the total spending by all independent groups in North Carolina on the 2010 state legislative races.

42. The money was well spent. Republicans won 18 of the 22 races the RSLC targeted, giving Republicans control of both the House and Senate for the first time since 1870.

C. Republican Mapmakers Create the 2011 Plan from Party Headquarters with the Intent to Advantage Republicans and Disadvantage Democrats

43. Following the 2010 election, the House and Senate each established redistricting committees that were jointly responsible for preparing a congressional redistricting plan. Representative David Lewis, in his capacity as the Senior Chair of the House Redistricting Committee, and Senator Robert Rucho, in his capacity as Senior Chair of the Senate Redistricting Committee, were responsible for developing the proposed congressional districting plan (the “2011 Plan”).

44. The House and Senate Redistricting Committees engaged Dr. Thomas Hofeller,

who also served on a REDMAP redistricting team, to draw the 2011 Plan. Dr. Hofeller and his team drew the 2011 Plan at the North Carolina Republican Party headquarters in Raleigh using mapmaking software licensed by the North Carolina Republican Party.

45. Legislative Defendants did not make Dr. Hofeller available to Democratic members of the General Assembly during the 2011 redistricting process, nor did Dr. Hofeller communicate with any Democratic members in developing the 2011 Plan.

46. Representative Lewis and Senator Rucho, both Republicans, orally instructed Dr. Hofeller regarding the criteria he should follow in drawing the new plan. Dr. Hofeller later testified that the Committee Chairs instructed him to “create as many districts as possible in which GOP candidates would be able to successfully compete for office.” Deposition of Thomas Hofeller (“Hofeller Dep.”) at 123:2-23 (Jan. 24, 2017). Following these instructions, Dr. Hofeller sought to “minimize the number of districts in which Democrats would have an opportunity to elect a Democratic candidate.” Hofeller Dep. at 127:19-21. Dr. Hofeller consulted “political voting history” as reflected in “past election results,” which he testified is “the most important information in trying to give one party or the other a partisan advantage in the redistricting process,” because it is “the best predictor of how a particular geographic area is likely to vote” in future elections. Hofeller Dep. at 14:7-15:14, 16:8-12, 132:14-134:13.

47. Dr. Hofeller sought to minimize the opportunities for Democratic voters to elect Democratic representatives by using past election data to concentrate as many Democratic voters as possible into Congressional Districts 1, 4, and 12. *See* Hofeller Dep. at 127:19-128:6. In his testimony, Dr. Hofeller admitted that the resulting 2011 Plan diminished the “opportunity to elect a Democratic candidate in the districts in which [he] increased Republican voting strength.” *See* Hofeller Dep. at 128:17-21.

48. The scheme worked. North Carolina conducted two congressional elections using the 2011 Plan, both of which handed outsized power to Republican congressional candidates. In 2012, Republicans won a *minority* of the statewide congressional vote but won 9 of the 13 seats.

Year	North Carolina State-Wide Votes in U.S. House Elections		Representatives Elected to U.S. House for North Carolina	
	Percentage of <i>Votes</i> Received by Democratic Congressional Candidates	Percentage of <i>Votes</i> Received by Republican Congressional Candidates	Percentage of <i>Seats</i> Won by Democratic Congressional Candidates	Percentage of <i>Seats</i> Won by Republican Congressional Candidates
2012	51%	49%	31% (4 of 13)	69% (9 of 13)
2014	46%	54%	23% (3 of 13)	77% (10 of 13)

D. Legislative Defendants Create the 2016 Plan with the Explicit Partisan Goal of Guaranteeing a 10-3 Republican Advantage in Congressional Seats

49. On February 5, 2016, a three-judge federal district court struck down the 2011 Plan as racially gerrymandered in violation of the Fourteenth Amendment’s Equal Protection Clause. *See Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016). The Court ordered the General Assembly to draw a new congressional map.

50. At that time, Republicans held supermajority control of both chambers of the North Carolina General Assembly, and thus had the power to draw the new congressional district lines unilaterally. Representative Lewis and Senator Rucho again took charge of the mapmaking process, and again engaged Dr. Hofeller to draw the remedial congressional plan.

51. On February 9, 2016, in a meeting at Dr. Hofeller’s home, Representative Lewis and Senator Rucho gave Dr. Hofeller oral instructions regarding the criteria he should use in drawing the remedial plan, directing him to use political data to create the new districts. This political data included precinct-level election results from all statewide elections, excluding presidential elections, dating back to January 1, 2008. Representative Lewis and Senator Rucho

specifically instructed Dr. Hofeller to use this partisanship data to draw a map that would ensure 10 Republican seats and 3 Democratic seats. *See* Deposition of Representative David Lewis (“Lewis Dep.”) at 162:24-163:7, 166:13-169:1 (Jan. 26, 2017); Hofeller Dep. at 175:19-23, 178:14-20, 188:19-190:2.

52. Working on his personal computer, Dr. Hofeller sought to achieve Representative Lewis and Senator Rucho’s partisan objectives through the use of a partisanship formula he created to score every voting tabulation district (VTD) in North Carolina. Dr. Hofeller’s partisanship formula measured the average Democratic and Republican vote share in each VTD across the following seven statewide elections: the 2008 Gubernatorial, U.S. Senate, and Commissioner of Insurance elections; the 2010 U.S. Senate election; the 2012 Gubernatorial and Commissioner of Labor elections; and the 2014 U.S. Senate election.

53. Dr. Hofeller testified that he used the averaged results from these seven elections “to get a pretty good cross section of what the past vote had been,” Hofeller Dep. at 212:16-213:9, and “[t]o give [him] an indication of the two-party partisan characteristics of VTDs,” Deposition of Thomas Hofeller (“Hofeller Dep. II”) at 267:5-6 (Feb. 10, 2017). Dr. Hofeller said that “he had drawn numerous plans in the state of North Carolina over decades,” and that in his experience, “the underlying political nature of the precincts in the state does not change no matter what race you use to analyze it.” Trial Testimony of Thomas Hofeller (“Hofeller Testimony”) at 525:6-10, *Common Cause v. Rucho*, No. 1:16-CV-1026, 1:16-CV-1164, 2018 WL 4214334 (M.D.N.C. Sept. 4, 2018), *vacated by Rucho v. Common Cause*, 139 S. Ct. 2484 (2019); *see* Hofeller Dep. at 149:5-18. “So once a precinct is found to be a strong Democratic precinct,” Dr. Hofeller explained, “it’s probably going to act as a strong Democratic precinct in every subsequent election. The same would be true for Republican precincts.” Hofeller

Testimony at 525:14-17.

54. As he drew the district lines in the Maptitude software program, Dr. Hofeller color-coded voting districts (“VTD”) on his screen based on his partisanship formula. Dr. Hofeller admitted that he used this partisan color-coding to guide him in assigning VTDs “to one congressional district or another,” using red to show VTDs where voter history data was “the most Democratic” and dark blue for areas that were “the most Republican.” Hofeller Dep. at 102:14-104:22, 106:23-107:1. He further admitted that he similarly used his partisanship formula to assess the partisan performance of draft plans as a whole. Hofeller Dep. II at 282:1-7.

55. Dr. Hofeller testified that he conveyed to Representative Lewis his assessment of the partisan performance of districts for which the partisan result wasn’t “really obvious.” Hofeller Dep. II at 290:17-25. Representative Lewis admitted in sworn testimony that “[n]early every time” he reviewed Dr. Hofeller’s draft plans, Representative Lewis assessed the plans’ partisan performance using the results from North Carolina’s 2014 Senate race between Senator Thom Tillis and former Senator Kay Hagan, because it was “in [his] mind the closest political race with equally matched candidates who spent about the same amount of money.” Lewis Dep. at 63:9-64:17.

56. Both Representative Lewis and Dr. Hofeller admitted that Dr. Hofeller had nearly finished drawing the final 2016 Plan before the House and Senate Redistricting Committees ever met, and that Dr. Hofeller pre-drew the plan with express partisan intent. Dr. Hofeller recalled that “the plan was actually brought into a form to be presented to the legislature long before [February] 16th.” Hofeller Dep. at 175:10-18. Indeed, on February 10, 2016, Dr. Hofeller met with Representative Lewis and Senator Rucho and showed them several draft plans. Lewis Dep. at 58:13-61:17. Representative Lewis visited Dr. Hofeller’s house several more times over the

next few days to review additional draft plans. *Id.* at 73:7-74:7, 77:7-20.

57. The maps Representative Lewis reviewed with Dr. Hofeller over the three days following the February 10 meeting were “near-final versions of the 2016 map” that Representative Lewis intended to submit to the legislature for approval. *Id.* at 77:7-20. Dr. Hofeller and Representative Lewis agreed on a draft plan on either February 12 or 13, 2016. *Id.* That plan was “ultimately adopted with a minor distinction for an incumbency issue.” *Id.* at 77:21-24.

58. On February 12, 2016, after the 2016 Plan was already nearly finished, the Republican leadership of the General Assembly appointed Representative Lewis and Senator Rucho as co-chairs of the newly formed Joint Select Committee on Redistricting (the “Joint Committee”). The Joint Committee consisted of 25 Republicans and 12 Democrats.

59. The Joint Committee held a public hearing on February 15, 2016. But because Dr. Hofeller finished drawing the 2016 Plan before the hearing took place, the final plan did not reflect any public input.

60. At a meeting on February 16, 2016, the Joint Committee adopted a set of criteria (the “2016 Adopted Criteria”) to govern the creation of the 2016 Plan.

61. The Joint Committee adopted “Partisan Advantage” as one official criterion. This criterion required the new plan to preserve Republicans’ existing 10-3 advantage in North Carolina’s congressional delegation. The criterion read as follows:

Partisan Advantage: The partisan makeup of the congressional delegation under the enacted plan is 10 Republicans and 3 Democrats. The Committee shall make reasonable efforts to construct districts in the 2016 Contingent Congressional Plan to maintain the current partisan makeup of North Carolina’s congressional delegation.

62. In explaining this Partisan Advantage criterion, Representative Lewis proposed that the Committee “draw the maps to give a partisan advantage to 10 Republicans and 3

Democrats because I do not believe it's possible to draw a map with 11 Republicans and 2 Democrats." Joint Comm. Session, Feb. 16, 2016, at 50:6-10.

63. Representative Lewis "acknowledge[d] freely that this would be a political gerrymander." *Id.* at 48:4-5.

64. The Joint Committee adopted "Political Data" as another criterion, which stated:

Political Data: The only data other than population data to be used to construct congressional districts shall be election results in statewide contests since January 1, 2008, not including the last two presidential contests. Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts in the 2016 Contingent Congressional Plan. Voting districts ("VTDs") should be split only when necessary to comply with the zero deviation population requirements set forth above in order to ensure the integrity of political data.

65. Representative Lewis left no doubt as to how this political data would be used, telling the Joint Committee members he "want[ed] to make clear that to the extent [we] are going to use political data in drawing this map, it is to gain partisan advantage on the map. I want that criteria to be clearly stated and understood." Joint Comm. Session, Feb. 16, 2016, at 53:24-54:4.

66. The remaining criteria adopted by the Joint Committee were to provide for equal population, to make the districts contiguous, to eliminate the then-current configuration of District 12, to improve the compactness of the existing districts, to keep more counties and VTDs whole than the existing districts, and to avoid pairing incumbents.

67. The Joint Committee adopted the Political Data and Partisan Advantage criteria on a party-line vote. The other criteria were passed on a bipartisan basis. Representative Lewis reassured the Committee that "the criteria that will be available to the mapmaker . . . will only be the criteria that this . . . committee has adopted," *id.* at 140:8-13, despite knowing that the 2016 Plan was "for the most part finished by the time the criteria were formally adopted by the committee," Hofeller Dep. at 177:9-14. He later emphasized that "the criteria that this committee

debated and adopted . . . are the criteria that *were used to draw these maps.*” Joint Comm. Session, Feb. 17, 2016, at 43:4-14 (emphasis added).

68. The Joint Committee authorized Representative Lewis and Senator Rucho to engage a consultant to assist the Committee’s Republican leadership in drawing the remedial plan. Representative Lewis and Senator Rucho immediately sent Dr. Hofeller an engagement letter, which he signed the same day. Dr. Hofeller then downloaded the 2016 Plan, which he had completed several days earlier, onto a state legislative computer.

69. Democratic members of the Joint Committee were not allowed to consult with Dr. Hofeller, nor were they allowed access to the state legislative computer on which he downloaded the 2016 Plan.

70. Dr. Hofeller later testified that the 2016 Plan followed the Committee’s Partisan Advantage and Political Data criteria. *See* Hofeller Dep. at 129:14-15.

71. On February 17, 2016, just one day after the Joint Committee adopted the official criteria, Representative Lewis and Senator Rucho presented the 2016 Plan to the Committee. *See* Joint Comm. Session, Feb. 17, 2016, at 11:8-15. During the presentation, Representative Lewis discussed the partisan performance of the proposed districts and asserted that the 2016 Plan would “produce an opportunity to elect ten Republicans members of Congress.” *Id.* at 12:3-7. To prove it, Representative Lewis provided Committee members with spreadsheets showing the partisan performance of the proposed districts in twenty previous statewide elections. *E.g., id.* at 17:4-18:23. The Committee then approved the 2016 Plan on a party-line vote.

72. On February 19, 2016, the North Carolina House of Representatives debated the 2016 Plan. During the debate, Representative Lewis “freely acknowledge[d] that [he] sought partisan advantage.” N.C. House Floor Session, Feb. 19, 2016, at 31:14-17. He defended the

Partisan Advantage criterion by stating: “I think electing Republicans is better than electing Democrats. So I drew this map in a way to help foster what I think is better for the country.” *Id.* at 34:21-23.

73. The North Carolina House and Senate approved the 2016 Plan on February 18 and February 19, 2016, respectively. No Democrat in either chamber voted for the 2016 Plan.

74. In sworn testimony, Senator Rucho confirmed that the 2016 Plan “satisfied” “all criteria,” including the criteria requiring a 10-3 partisan advantage for Republicans. Deposition of Senator Robert A. Rucho (“Rucho Dep.”) 193:24-194:14 (Jan. 25, 2017).

E. The 2016 Plan Achieves Its Intended Effect of Propelling Ten Republican Congressional Candidates to Electoral Victory Every Two Years

75. The 2016 Plan achieved precisely its intended partisan effects—a guaranteed 10-3 Republican advantage in North Carolina’s congressional delegation.

76. In the 2016 elections, Democratic congressional candidates in North Carolina won a combined 47% of the statewide vote, and yet won only 3 of 13 seats (23%).

77. The results were even more striking in 2018. Democrats won a majority of the statewide vote (50.9%, when adjusting for one uncontested race in which Democrats did not field a candidate) but carried only 3 of the 13 seats (23%).

F. A Three-Judge Panel of this Court Enjoins Use of the 2016 Plan as an Extreme Partisan Gerrymander

78. Plaintiffs filed a lawsuit on September 27, 2019, alleging that the 2016 Plan was an extreme partisan gerrymander that violated North Carolina’s Free Elections Clause, Equal Protection Clause, and Free Speech and Assembly Clauses. *See* Compl., *Harper I*, No. 19-CVS-012667. In *Harper I*, Plaintiffs alleged that the 2016 Plan “reflect[ed] an extreme and intentional effort to maximize Republican advantage.” *Id.* ¶ 2. On September 30, 2019, pursuant to N.C. Gen. Stat. § 1-267.1, a three-judge panel was convened.

79. Attempting to evade state-court jurisdiction, Legislative Defendants unsuccessfully removed the case to federal court on October 14, 2019. *See* Notice of Removal, *Harper v. Lewis*, No. 5:19-CV-00452-BO (E.D.N.C. Oct. 14, 2019), ECF No. 5. The federal court promptly granted Plaintiffs’ motion to remand the case to state court. Order Granting Remand at 9, *Harper*, No. 5:19-CV-00452-BO (E.D.N.C. Oct. 22, 2019), ECF No. 33; *see also Common Cause v. Lewis*, 956 F.3d 246 (4th Cir. 2020) (affirming remand in state-legislative challenge).

80. Plaintiffs moved for a preliminary injunction, arguing that they would suffer irreparable harm if they were forced to vote in the 2020 primary and general elections in egregiously gerrymandered congressional districts. The Court agreed and granted the motion for a preliminary injunction on October 28, 2019. Order on Inj. Relief, *Harper I*, at 15.

81. The preliminary injunction ruling resolved two threshold jurisdictional questions: First, the Court rejected Legislative Defendants’ contention that Plaintiffs’ claims presented non-justiciable political questions, holding that “partisan gerrymandering claims specifically present justiciable issues.” *Id.* at 3. Second, the Court rejected Legislative Defendants’ contention that Plaintiffs lacked standing to challenge the 2016 Plan. The Court held that Plaintiffs had standing to challenge the plan because they “have shown a likelihood of ‘a personal stake in the outcome of the controversy’ and a likelihood that the 2016 congressional districts cause them to ‘suffer harm.’” *Id.* at 5 (quoting *Goldston v. State*, 361 N.C. 26, 35, 637 S.E.2d 876, 882 (2006); and *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 642, 669 S.E.2d 279, 281 (2008)).

82. On the merits, the Court reaffirmed its holding in *Common Cause v. Lewis*, 18-CVS-14001, that extreme partisan gerrymandering violates multiple provisions of the North Carolina Constitution. It violates the Free Elections Clause by preventing elections from being

“conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 7. It violates the Equal Protection Clause by “treat[ing] individuals who support candidates of one political party less favorably than individuals who support candidates of another party.” *Id.* at 8. And it violates the Freedom of Speech and Freedom of Assembly Clauses by diluting the votes of “certain disfavored speakers (e.g., Democratic voters) because of disagreement with the views they express when they vote.” *Id.* at 10.

83. On October 30, 2019, Speaker Moore announced the creation of a joint House and Senate Select Committee to draw a remedial plan. The full House and Senate passed the remedial plan (the “2019 Plan”), this one an 8-5 partisan gerrymander, on straight party-line votes on November 14 and 15, 2019.

84. Legislative Defendants moved for summary judgment in *Harper I* on November 15, arguing that the case was moot and that Plaintiffs must file a new lawsuit to challenge the 2019 Plan. The Court *sua sponte* proceeded to enjoin the filing period for the 2020 congressional primary elections pending review of the remedial map. Order Enjoining Filing Period, *Harper I*, at 1-2.

85. At a hearing on Legislative Defendants’ motion for summary judgment, the Court explained that it had not determined whether the 2019 Plan was constitutional and that it “d[id] not reach th[e] issue” of “whether this action is moot.” *See* Ex. A, at 6. The Court observed that “although one can certainly argue that the process” leading to the enactment of the 2019 Plan “was flawed or that the result is far from ideal,” the “net result” was that the “grievously flawed 2016 congressional map has been replaced.” *Id.* at 7. The Court accordingly determined that it would not invoke its equitable authority to further delay the election. *Id.* at 8. And it expressed “fervent hope that the past 90 days” since the filing of the original complaint in this case would

become “a foundation for future redistricting in North Carolina and that future maps are crafted through a process worthy of public confidence and a process that yields elections that are conducted freely and honestly to ascertain fairly and truthfully the will of the people.” *Id.* at 9.

86. The Court subsequently lifted its injunction of the filing period, but did not conduct any further proceedings or hold that the 2019 Plan was constitutional.

G. Legislative Defendants Create the 2021 Plan with the Overt Goal of Guaranteeing a 10-3-1 Republican Advantage in Congressional Seats

87. In flagrant disregard of the *Harper I* Court’s directive that the General Assembly enact maps that “yield[] elections that are conducted freely and honestly to ascertain fairly and truthfully the will of the people,” Ex. A, at 9, Legislative Defendants replaced the 2019 Plan with yet another extreme partisan gerrymander.

88. The U.S. Census Bureau released data for states to begin redistricting efforts on August 12, 2021. North Carolina gained a congressional seat following the 2020 census after seeing its population grow by 9.5% over the previous decade. Several of the most populous counties in the state have grown even more rapidly over the same period: Wake County grew by 22.6%, Mecklenburg County by 20.3% Durham County by 18.4%, and Guilford by 9.7%. North Carolina’s new congressional map accordingly contains 14 congressional districts.

89. Also on August 12, the House Committee on Redistricting and the Senate Committee on Redistricting and Elections adopted criteria to guide the enactment of new maps. While the adopted criteria provide that “[p]artisan considerations and election results data *shall not* be used in the drawing of districts in the 2021 Congressional, House, and Senate plans,” they freely permitted the use of “local knowledge of the character of communities and connections

between communities,” as well as “[m]ember residence.”¹ Unlike the 2016 adopted criteria, which provided that “[r]easonable efforts shall be made not to divide a county into more than two districts,” the 2021 criteria did not counsel against splitting counties more than twice. The adopted criteria were otherwise materially identical to those used in drawing the 2016 Plan.

90. Over the next two months, Legislative Defendants undertook an opaque and constricted redistricting process that flagrantly flouted the prohibition on partisan considerations.

91. Legislative Defendants gave little notice to North Carolinians on the schedule for public hearings to discuss the redistricting process. The House and Senate redistricting committees waited until September 1 to announce initial public hearings that would be held from September 8 through September 30. And the number of hearings held by these committees was a small fraction of those held during the 2010 redistricting cycle.

92. Worse, Legislative Defendants held public hearings in smaller Republican counties while carefully avoiding Democratic strongholds, including Guilford County which the 2021 Plan splits into three congressional districts. Legislative Defendants also held hearings at far fewer sites compared to the previous cycle: While the House and Senate Committees held public hearings on the redistricting process at 64 different sites in 2011, they held hearings at only 13 sites in 2021. Legislative Defendants offered no options to participate virtually.

93. Legislative Defendants also largely ignored public testimony submitted during these hearings. For example, residents in the Sandhills overwhelmingly asked that their communities be united in one congressional district centered in Cumberland County. But the 2021 Plan entirely disregards this request by dividing the Sandhills communities among three

¹ House Committee on Redistricting & Senate Committee on Redistricting and Elections, Criteria Adopted by the Committees (Aug. 12, 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Criteria.adopted.8.12.pdf>.

different congressional districts, diluting their influence and further inhibiting the ability to coalesce around preferred candidates.

94. While the House and Senate Committees scheduled additional public hearings on October 25 and 26 regarding the proposed maps, they provided only a few days' notice and allowed only 210 North Carolinians to attend. Each attendee, moreover, was given only two minutes to speak.

95. On October 6, legislators began drawing potential maps for consideration by the House and Senate Committees. This map-drawing process, however, entirely ignored the prohibition on partisan data.

96. The House and Senate Committees set up rooms where legislators could draw and submit maps on computers with the assistance of legislative staff. But while Legislative Defendants prohibited partisan data from being uploaded onto these computers, they did not restrict legislators from bringing maps into the room that had been drawn using partisan data and copying those maps onto the computer.

97. When confronted with this obvious loophole that allowed the submission of maps using partisan data, Legislative Defendants asserted in committee meetings that they had no interest in preventing it—ensuring that the House and Senate Committees would receive maps drawn in violation of the adopted criteria.

98. Thus, although the adopted criteria nominally forbade use of partisan data, the 2021 Plan was in fact drawn based on maps that incorporated that very data.

99. The 2021 Plan was voted out of the Senate Committee as Senate Bill 740 on November 1. It was then voted out of the House Committee on November 3.

100. The full Senate and House passed the 2021 Plan on November 2 and November 4,

respectively. The 2021 Plan passed on strict party-line votes.

101. On November 5, Plaintiffs in *Harper I* filed a motion for leave under Rule 15(d) to file a supplemental complaint challenging the 2021 Plan. The Court has not ruled on that motion. Neither Legislative Defendants nor State Board Defendants have opposed the motion to supplement; Legislative Defendants instead have filed a “motion to transfer” the case to a newly-constituted three-judge panel. Because leave in *Harper I* has not been granted, and in light of the fast-approaching election cycle, Plaintiffs have filed this complaint to ensure that they have a venue in which to assert their rights under the North Carolina Constitution as to the 2021 Plan. Swift attention to these claims is warranted so that Plaintiffs are not forced to vote under an unconstitutional map in the forthcoming elections.

H. The 2021 Plan Packs and Cracks Democratic Voters in Every District

102. Unsurprisingly, this process resulted in the General Assembly enacting another extreme partisan gerrymander. Like the 2016 Plan, the 2021 Plan meticulously packs and cracks Democratic voters in every district—without exception.

103. The 2021 Plan trisects each of the three largest Democratic counties in the state—Wake, Guilford, and Mecklenburg.

104. And the 2021 Plan packs Democratic strongholds throughout the state into a handful of districts. The upshot is a map that results in 10 safe Republican seats, 3 safe Democratic seats, and 1 competitive seat—a nearly identical result to the 2016 Plan that produced a 10-3 Republican map in this evenly divided state.

105. As with the 2016 Plan, expert analysis confirms that the 2021 Plan is an intentional, extreme partisan gerrymander that dilutes Democratic votes and prevents Democratic voters from electing candidates of their choice. Dr. Jowei Chen, a professor of political science at the University of Michigan, generated hundreds of nonpartisan simulated maps respecting North

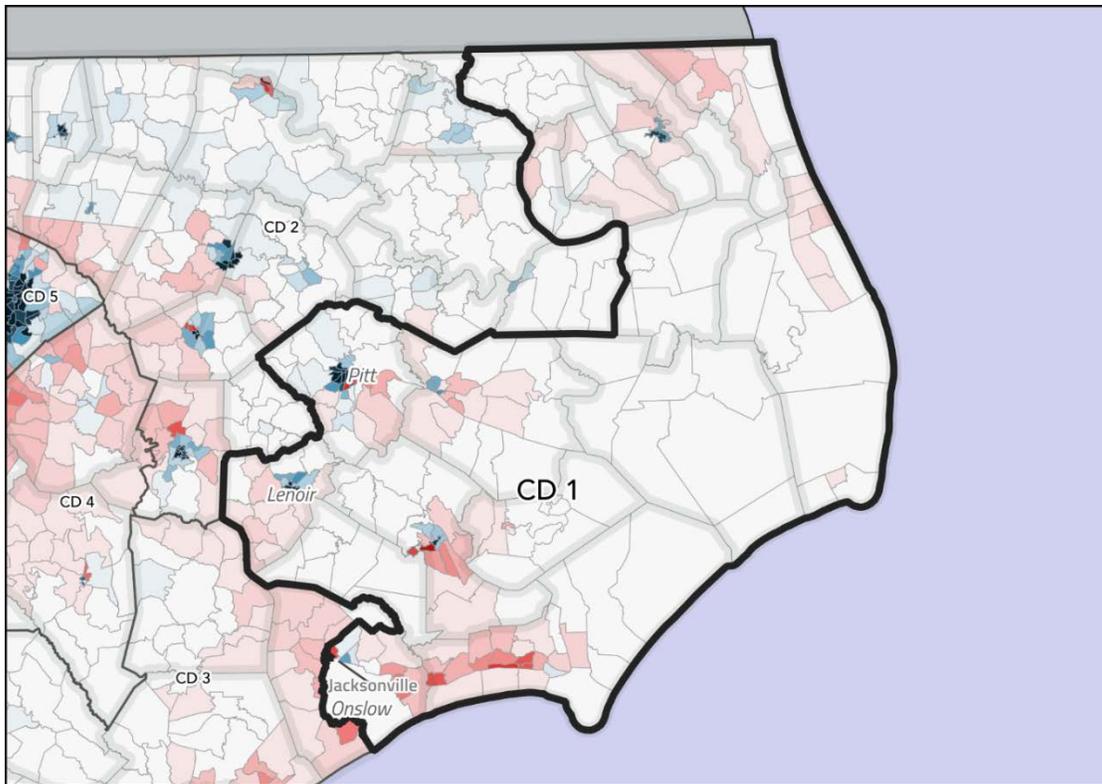
Carolina's political geography and traditional redistricting principles including equal population, contiguity and compactness, and avoiding splitting counties and VTDs. Dr. Chen found that the 2021 Plan was extraordinarily anomalous and heavily gerrymandered.

106. The sections below describe some of the most egregious examples of packing and cracking in each district.

Congressional District 1

107. Similar to District 3 in the 2016 Plan, Legislative Defendants drew District 1 to be a safe Republican seat while undermining Democratic voting strength in the neighboring District 2—the predecessor of which was a Democratic-leaning seat represented by Congressman G.K. Butterfield. District 1 receives nearly all of Pitt County’s Democratic VTDs from Congressman Butterfield’s former district (District 1 in the 2019 Plan), including the entire city of Greenville.

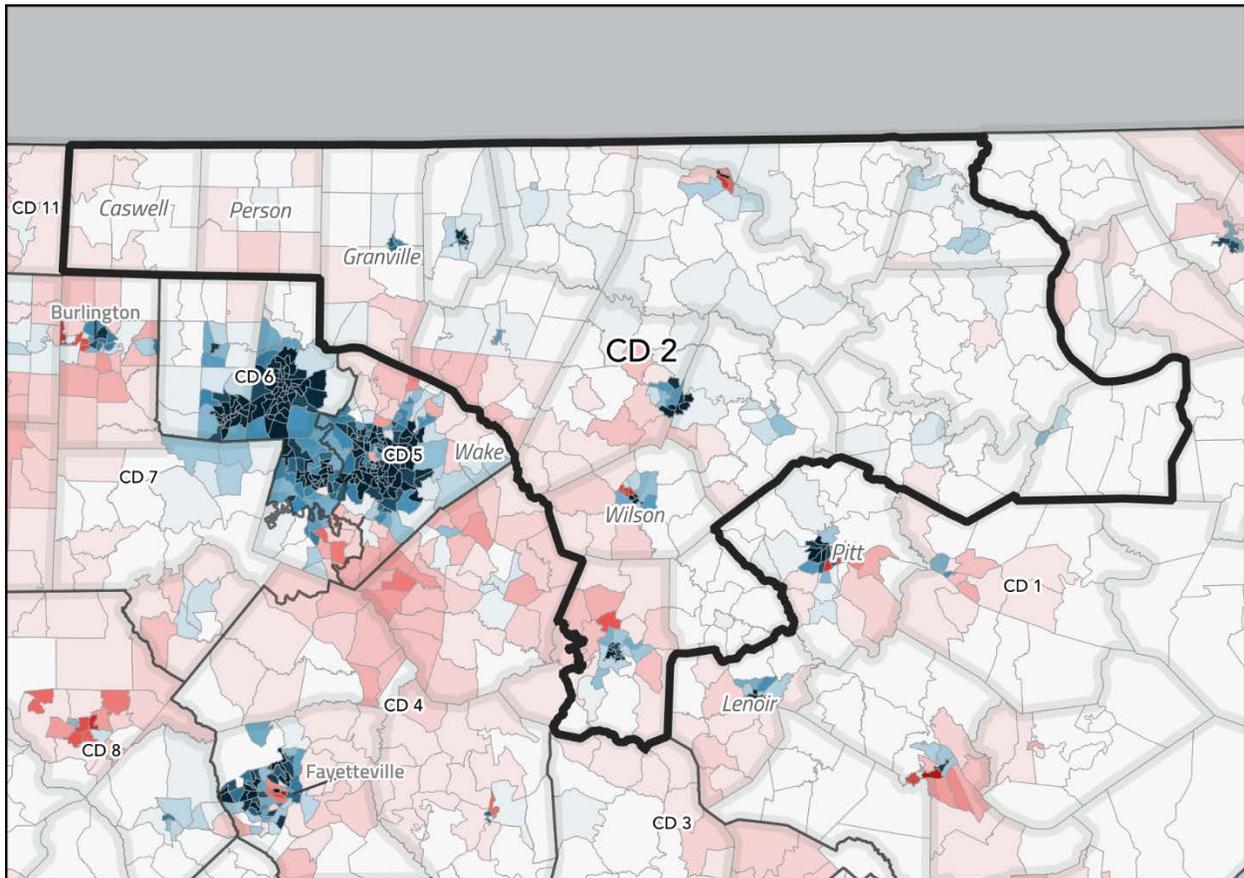
108. The following image (and others below) shows the district’s boundaries and the partisanship of its VTDs using a composite of the results of the 2020 North Carolina Attorney General and 2020 North Carolina Labor Commissioner races, with darker blue shading for the VTDs that voted more heavily Democratic, darker red for VTDs that voted more heavily Republican, and lighter shading for VTDs that were closer to a tie—with the shading adjusted for the VTD’s population.



109. The upshot of Legislative Defendants’ engineering is a safe Republican seat where Democratic voters have no meaningful chance of electing the candidate of their choice. In the 2020 presidential election, for example, Democratic candidate Joe Biden won only 43.2% of the vote in the new District 1.

Congressional District 2

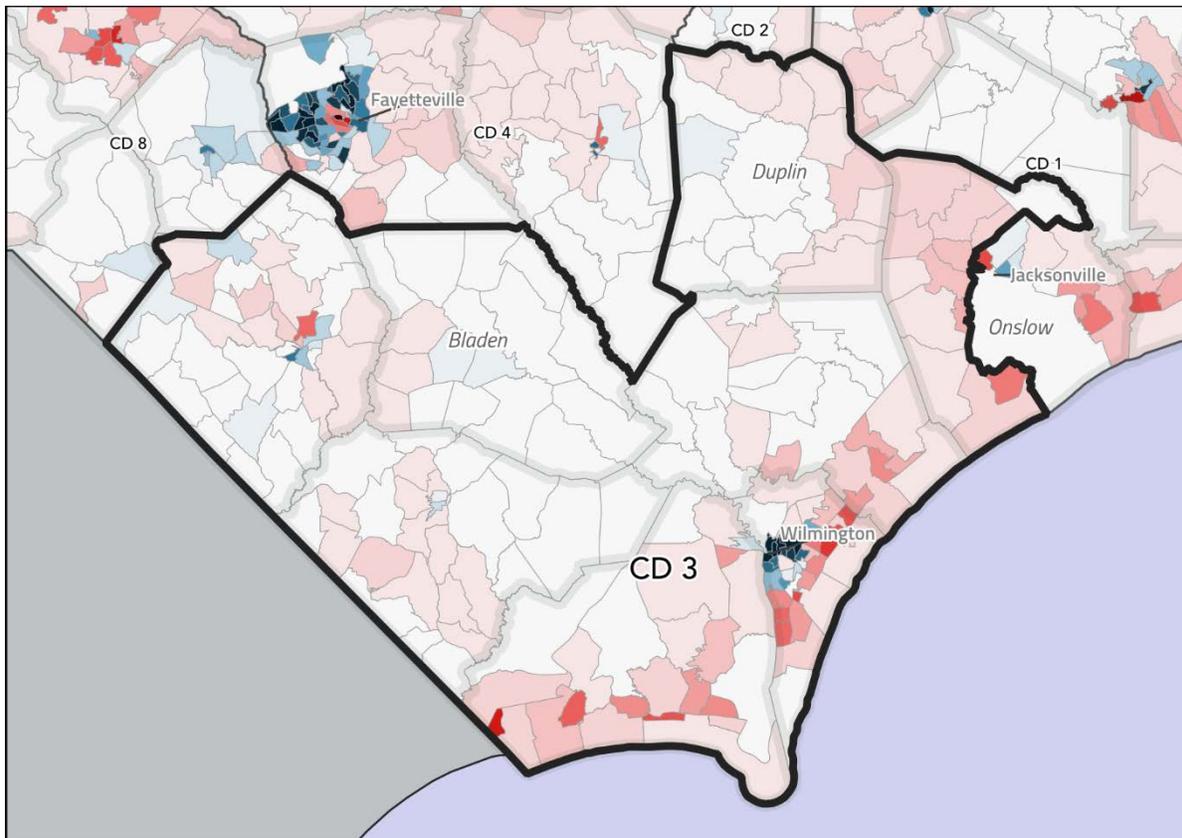
110. District 2 was a Democratic district under both the 2016 and 2019 Plans. The 2021 Plan significantly improves Republicans’ voting strength in the district by removing the Democratic stronghold of Greenville from Congressman Butterfield’s district and placing it into the new District 1. Legislative Defendants further undermined Democratic voting strength in this district by expanding the boundaries of its predecessor westward, stretching nearly 200 miles from the east to encompass the Republican strongholds of Caswell and Person Counties.



111. Legislative Defendants succeeded in undermining Democratic competitiveness in this district: President Biden won 51% of the vote in this new district, compared to 54% under the predecessor district in the 2019 Plan.

Congressional District 3

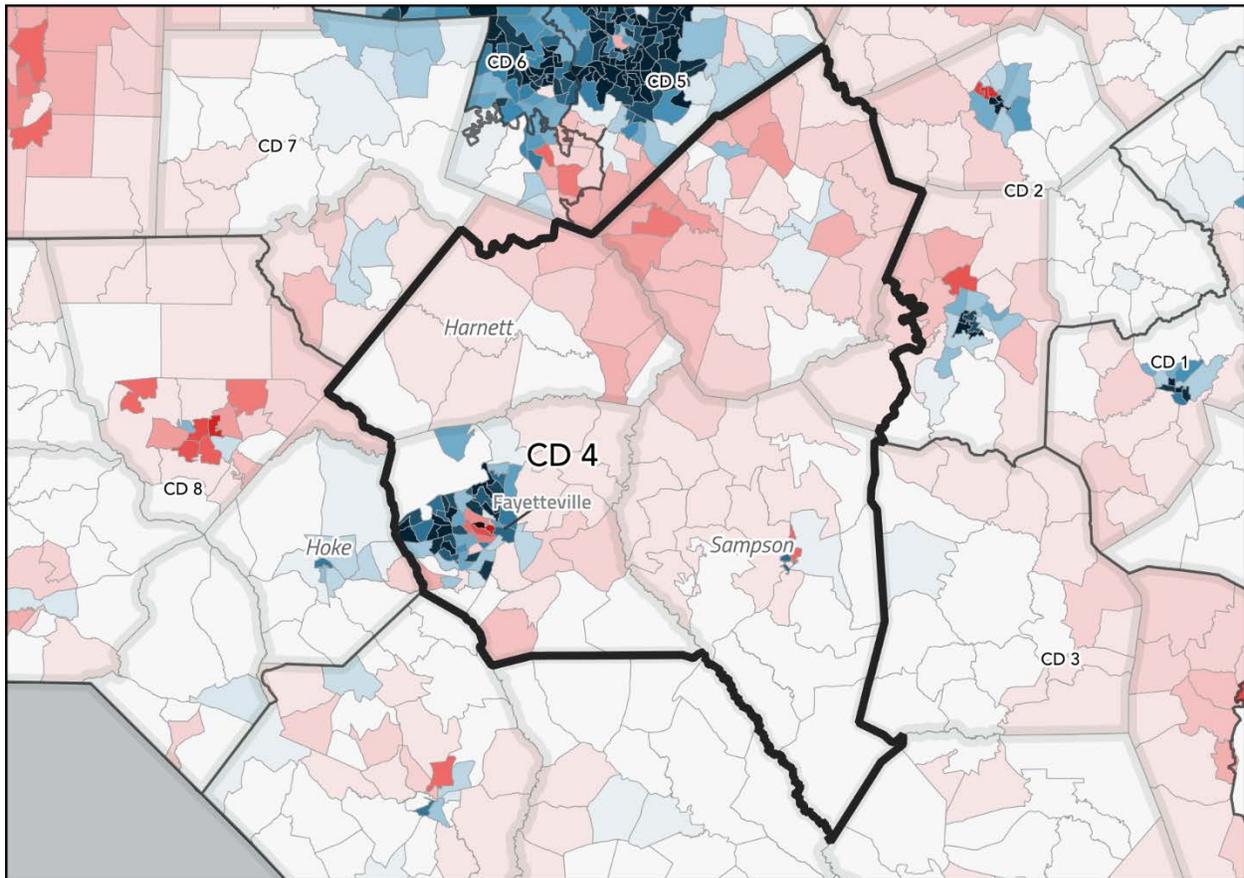
112. Ignoring the overwhelming calls of constituents to place the competitive Sandhills region in a single congressional district, the 2021 Plan splits it across Districts 3, 4, and 8. The plan creates a safe Republican seat in District 3 by combining the eastern part of the region with counties along the southeastern coastline. The eastern boundary hews around the relatively Democratic city of Jacksonville, which is instead placed in District 1 where its residents have no realistic prospect of electing a Democratic candidate.



113. District 3 is indeed a safe Republican seat: President Biden won only 41.5% of the vote in this district in the 2020 election.

Congressional District 4

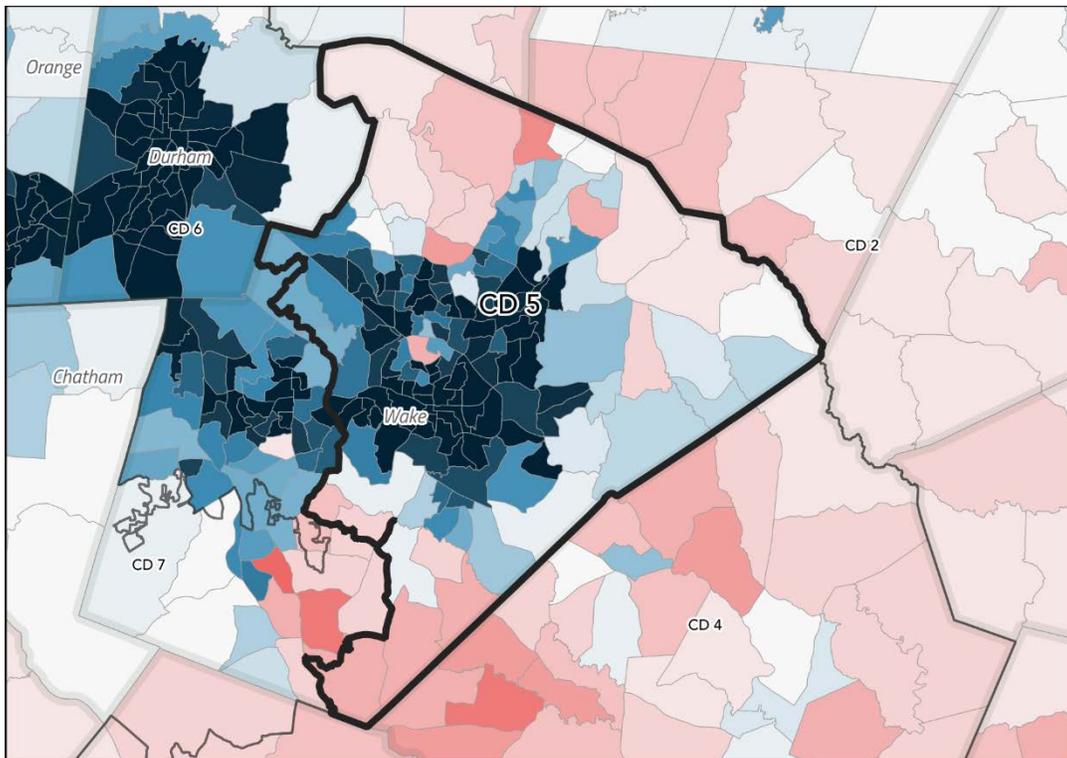
114. Legislative Defendants likewise engineered District 4 to be a safe Republican seat that destroys the voting power of Democrats in Cumberland County—home to Fayetteville and Fort Bragg. District 4 combines the Democratic stronghold of Cumberland County with the three overwhelmingly Republican counties of Sampson, Johnston, and Harnett. The district also picks up heavily Republican VTDs in Wayne County.



115. As expected, the new District 4 performs as a Republican district. In the 2020 presidential election, President Biden received only 46.5% of the vote.

Congressional District 5

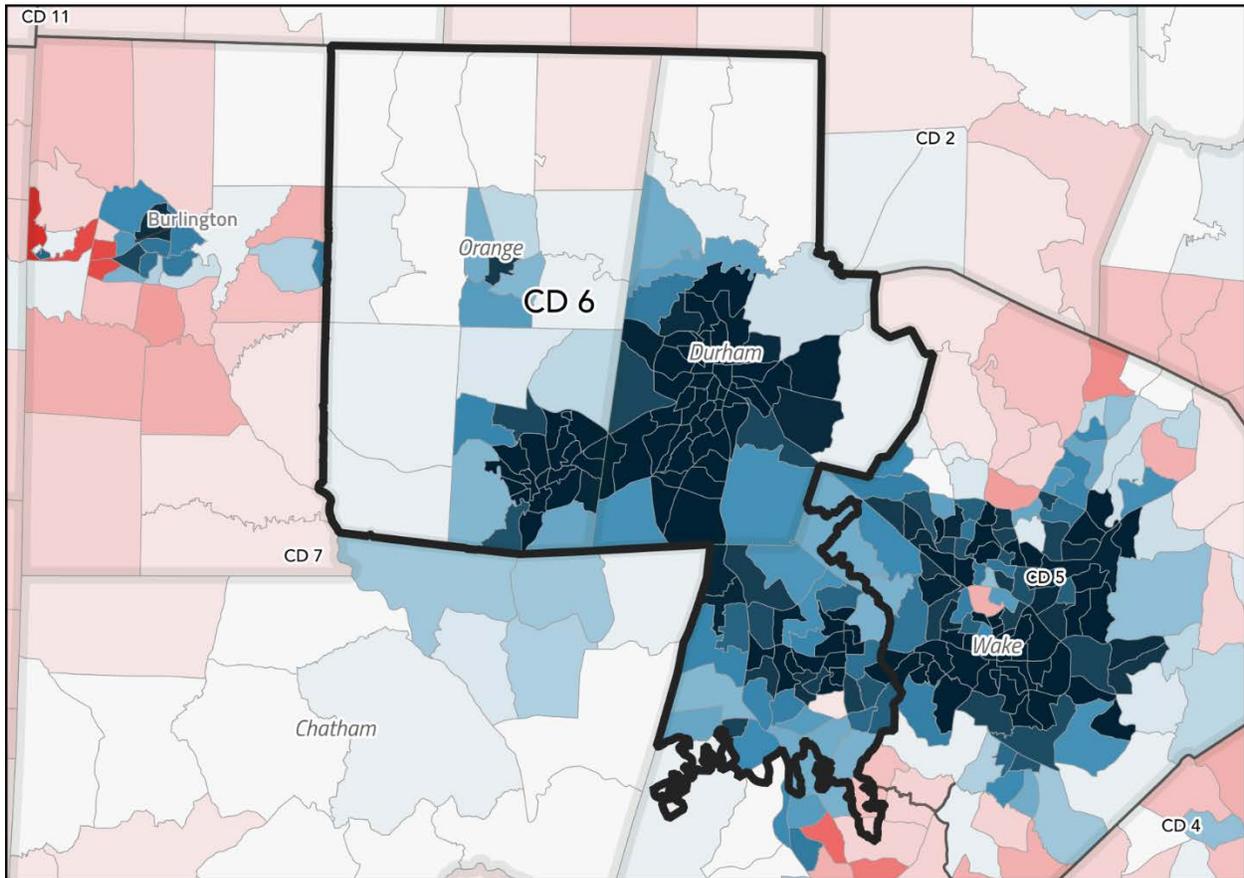
116. District 5 is the result of flagrant packing and cracking of Democratic voters in the largest Democratic stronghold in the state—Wake County. The 2021 Plan packs these voters by creating a single, safe Democratic district—District 5—out of most of Wake County, including all of its most Democratic VTDs. It then splits the remaining Wake County Democratic voters into two neighboring districts to dilute their power: Voters in Cary and Apex are packed into the safe Democratic District 6, which contains heavily Democratic Orange and Durham Counties, while the remaining population is roped into the overwhelmingly Republican District 7, which stretches west across the state to pick up heavily Republican Randolph and parts of Davidson and Guilford Counties.



117. Legislative Defendants succeeded in creating a safe Democratic district: President Biden won an overwhelming 65.5% of the vote in the new District 5 in the 2020 presidential election.

Congressional District 6

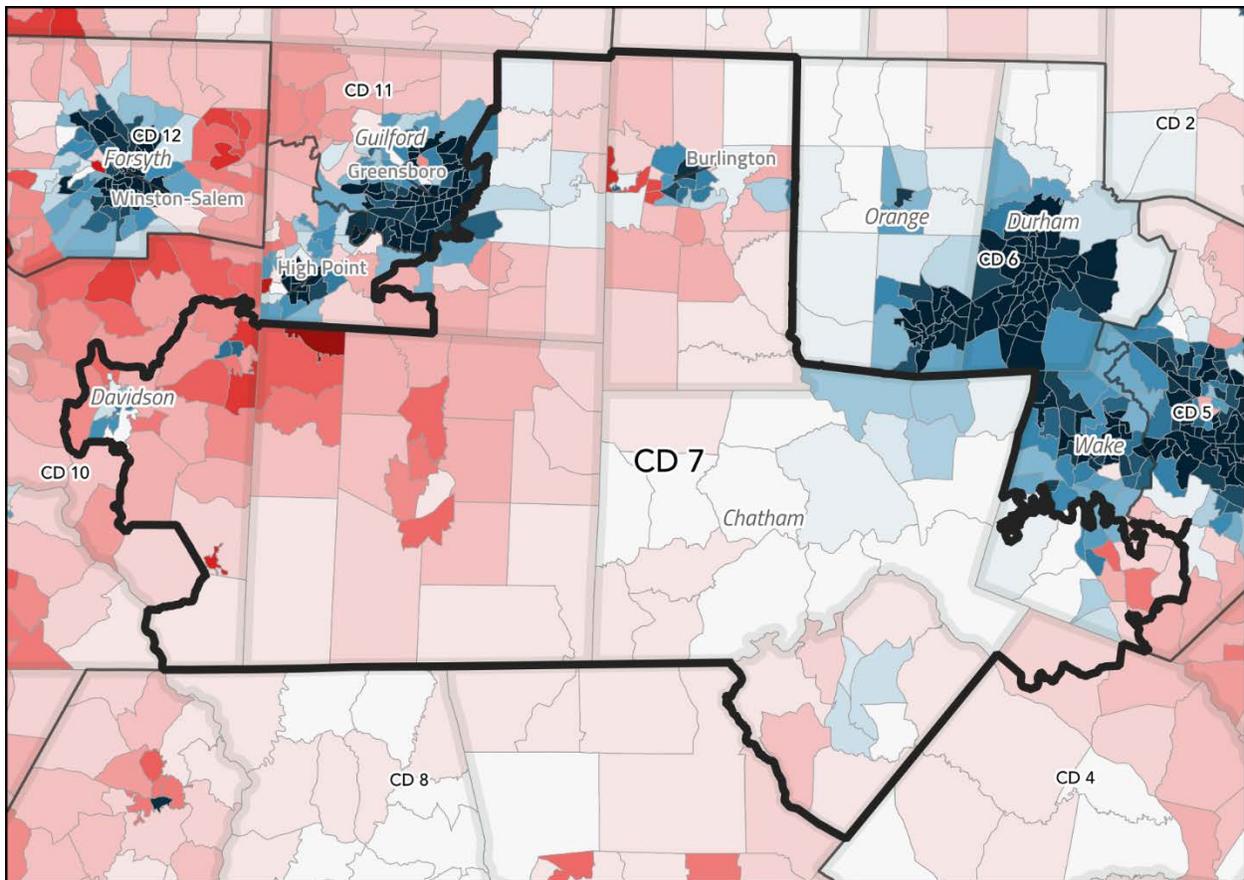
118. Legislative Defendants packed Democratic voters into District 6 to create a safe Democratic seat. They did so by combining the heavily Democratic Orange and Durham Counties into a single district. District 6 also includes a heavily Democratic swath of voters from the fractured Wake County. This pairing is comparable to the way in which these areas were packed in the 2016 plan.



119. As expected, District 6 is an overwhelmingly Democratic district where Democrats' votes are wasted: President Biden won 73.3% of the vote in the new District 6.

Congressional District 7

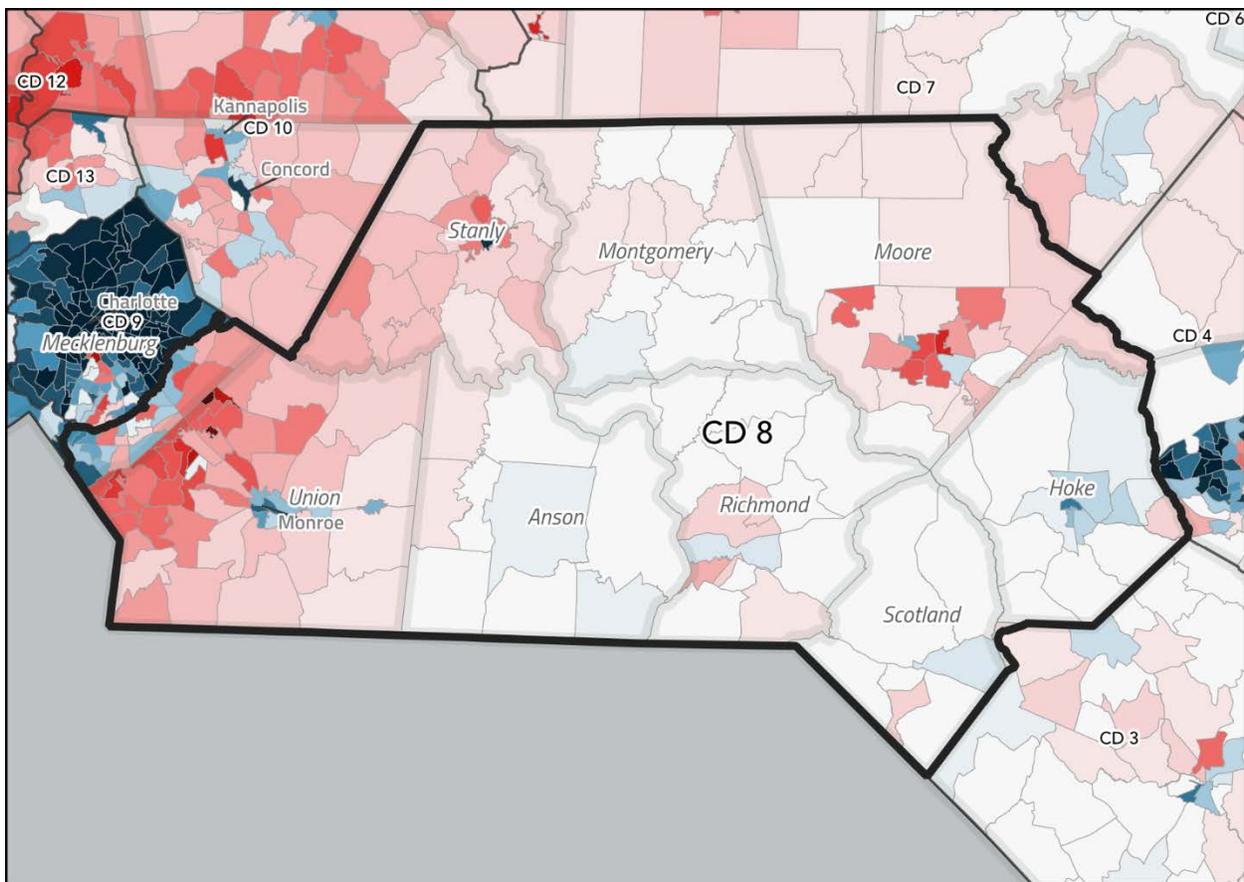
120. Legislative Defendants created a safe Republican seat in District 7 by fracturing the Democratic stronghold of Guilford County. District 7 stitches together Democratic voters from the southeastern portion of Greensboro and Guilford County, along with Democratic-leaning Chatham County and Democratic-leaning voters from the fractured Wake County, with heavily Republican Randolph, Alamance, and Lee Counties. District 7 also borrows heavily Republican VTDs from Davidson County in the western part of the district.



121. Democrats have no meaningful chance of electing a candidate of their choice in the new District 7: President Biden won only 41.1% of the vote in this district during the 2020 presidential election.

Congressional District 8

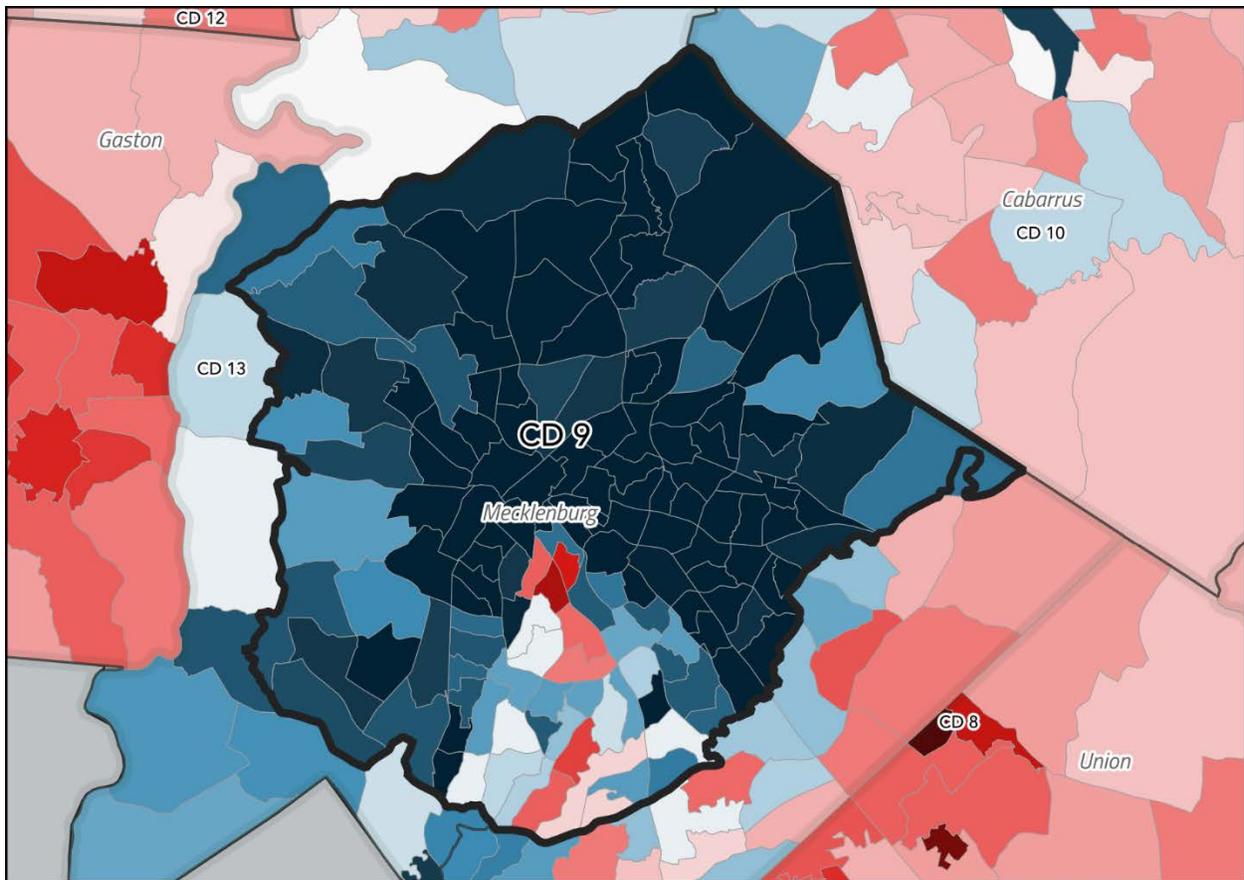
122. Legislative Defendants created a safe Republican seat in District 8 by combining Democratic-leaning Hoke and Anson Counties with heavily Republican Union, Moore, Montgomery, and Stanly Counties. As discussed in greater detail below, Legislative Defendants also included portions of heavily Democratic Mecklenburg County in District 8, splitting Charlotte and ensuring that Democratic votes in that county would be wasted in this safe Republican seat.



123. District 8 performs as expected: President Biden won only 41.1% of the vote in the new District 7.

Congressional District 9

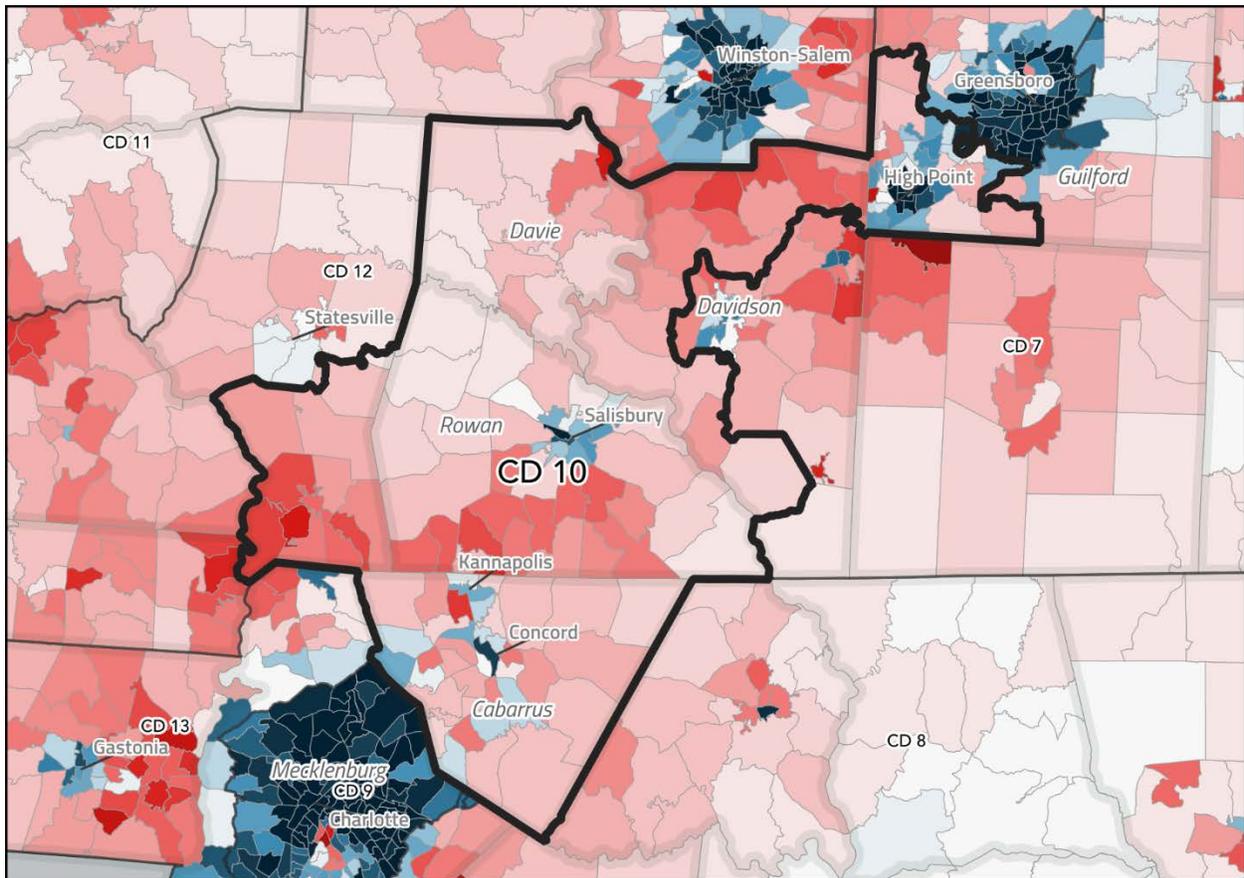
124. District 9, a guaranteed Democratic district capturing a carefully hewn chunk of Charlotte, reflects flagrant packing of Democratic voters in heavily Democratic Mecklenburg County. As discussed earlier, Legislative Defendants divided this Democratic stronghold into three districts: many (but not all) of Mecklenburg County's most Democratic VTDs are packed into District 9. The rest of Mecklenburg's Democratic voters are meticulously cracked between District 8 and District 13.



125. Legislative Defendants inarguably succeeded in wasting Democrats' votes by packing them into this district: President Biden won an overwhelming 75.8% of the vote in this district in the 2020 presidential election, an increase from 71.5% under the Charlotte-based District 12 in the 2019 Plan.

Congressional District 10

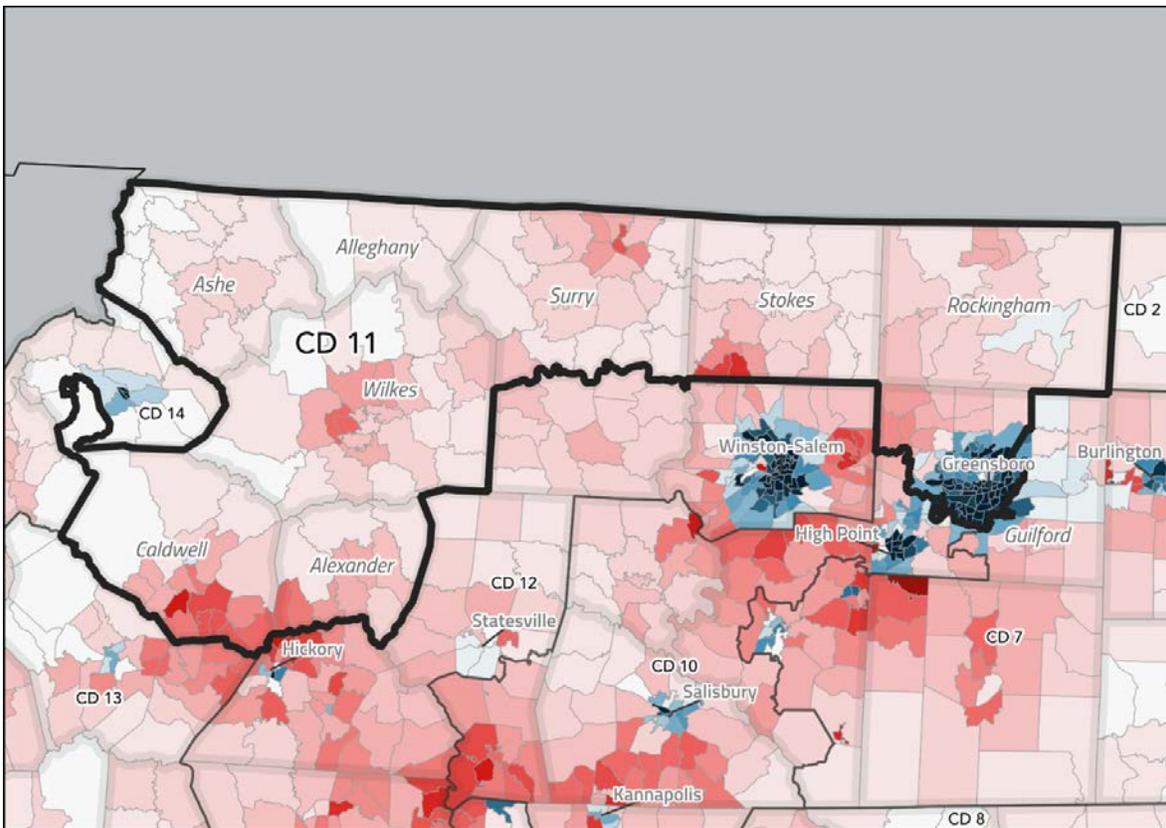
126. As discussed, Legislative Defendants cracked Guilford County—one of the largest Democratic counties in the state—among three different districts, ensuring that all Democratic votes in Guilford County are wasted. District 10, the southeastern district in the tripartite split, groups the heavily Democratic voters in High Point with the overwhelmingly Republican neighboring counties of Davidson, Cabarrus, Rowan, and Davie. District 10 in the 2021 Plan thus closely resembles District 13 in the 2016 Plan, which similarly paired High Point and other Democratic Guilford County voters with several of the same Republican counties to the west.



127. Legislative Defendants succeeded in creating another safe Republican seat here: President Biden won only 39.5% of the vote in the new District 10 in the 2020 election.

Congressional District 11

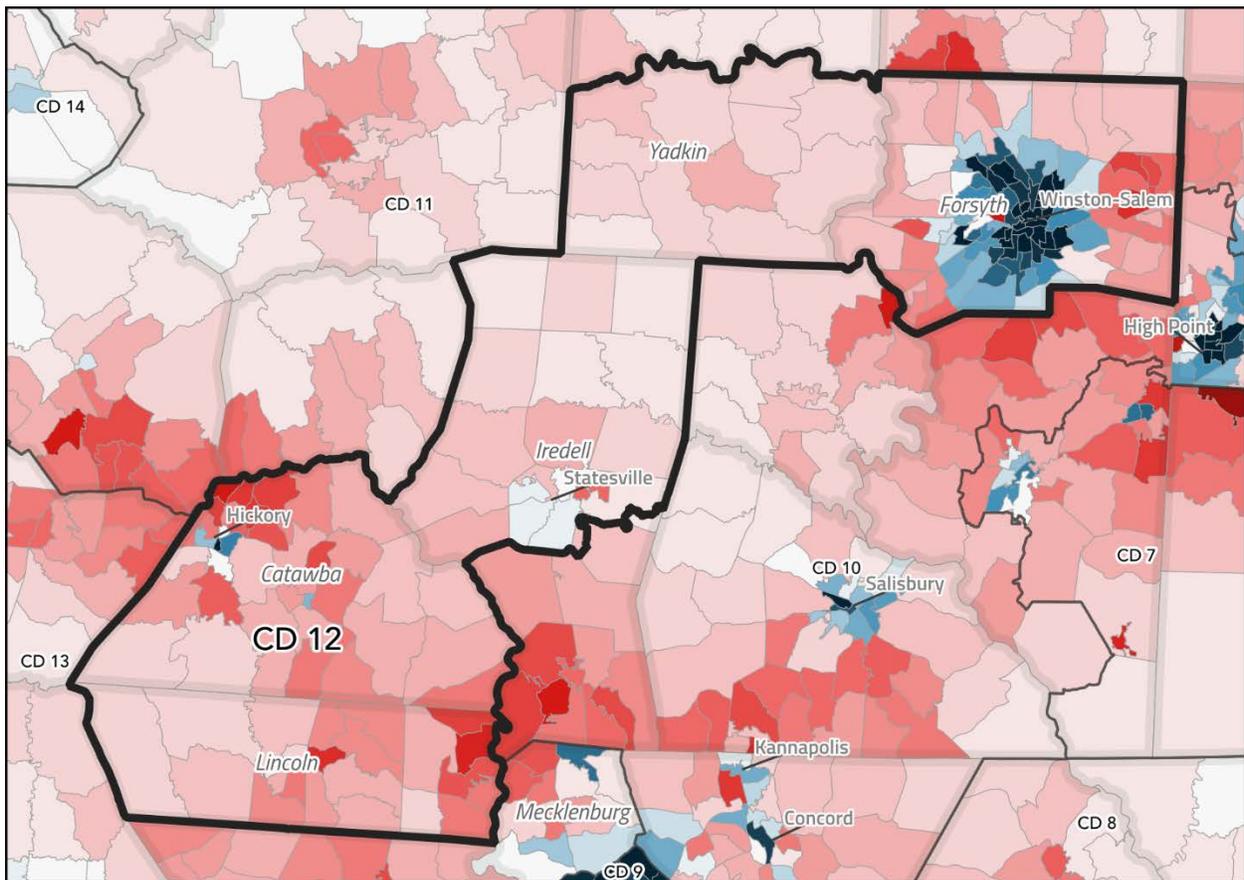
128. Evoking a handgun aiming eastward, District 11 takes the third portion of the fractured Guilford County—including much of the heavily Democratic city of Greensboro—and combines it with heavily Republican counties in the northwestern part of the state, ensuring that Greensboro’s Democratic voters have no influence in a safe Republican district. District 11 also cuts out a bizarre, boot-like bit of Watauga County to encompass the residential address of Republican incumbent Congresswoman Virginia Foxx, in a seemingly intentional effort to place her in the same district as Congresswoman Manning. District 11 thus takes the same basic approach to splitting apart the Triad area as District 5 did in the 2016 Plan, but swaps Guilford’s Democratic voters in for those in Forsyth County.



129. As expected, the new District 11 is a safe Republican seat: President Biden won a mere 42.9% of the vote here in 2020.

Congressional District 12

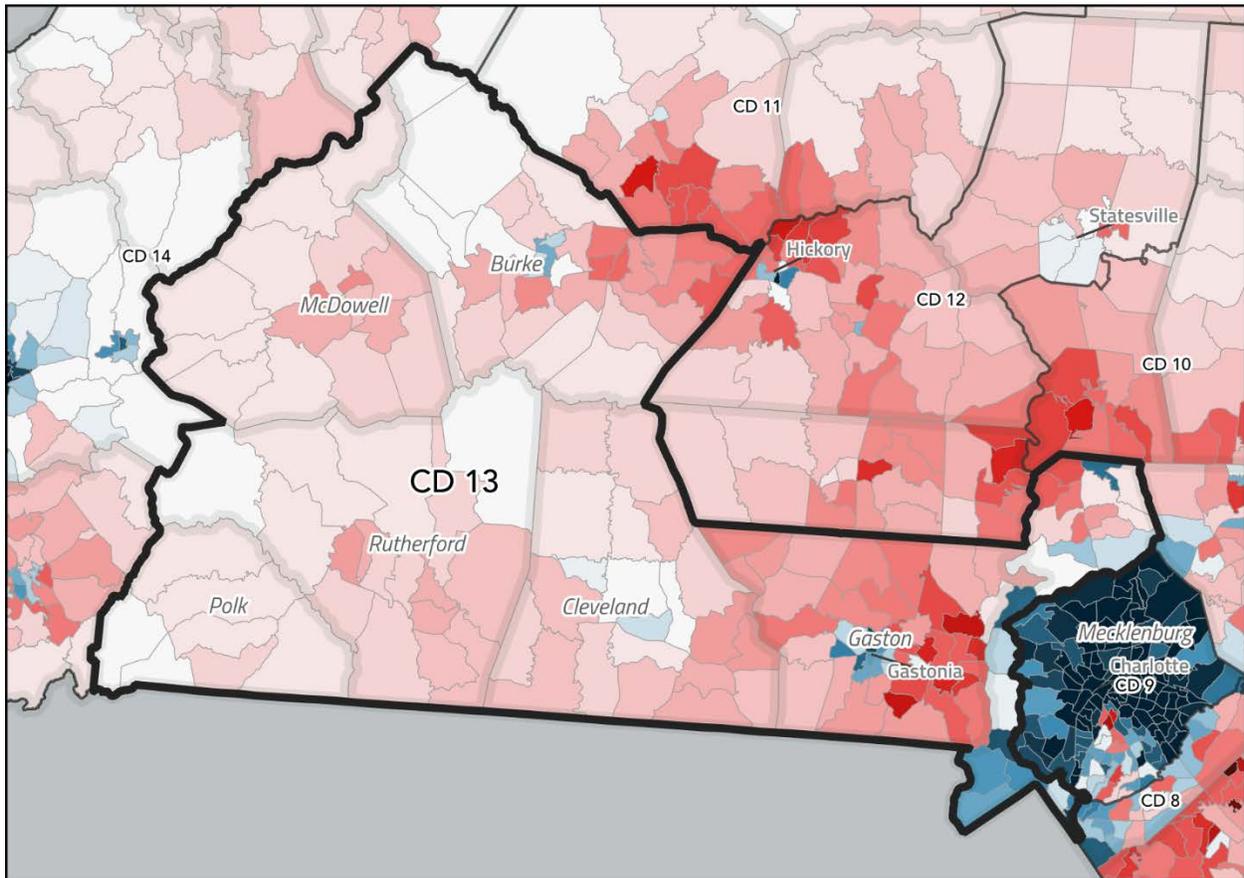
130. District 12 pieces together heavily Democratic Forsyth County, including Winston-Salem, with four heavily Republican counties to the south and west. District 12 also splits Iredell County in half with District 10, and fences in the Democratic cities of Statesville and Hickory. The result is a safe Republican district that effectively guarantees that Democratic voters in Winston-Salem, Statesville, and Hickory cannot elect a candidate of their choice.



131. In the 2020 presidential election, President Biden won only 43.4% of the vote in this new district.

Congressional District 13

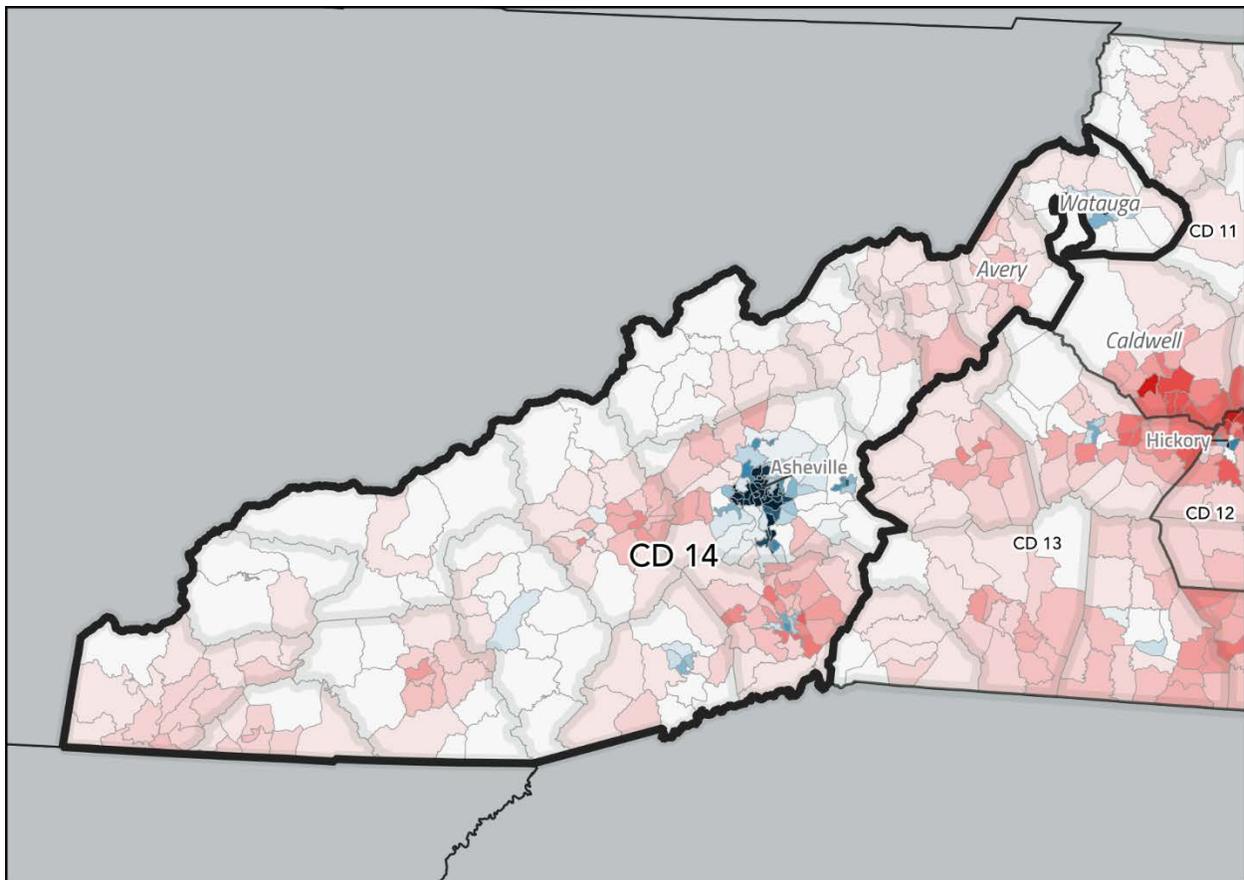
132. Akin to District 10 in the 2016 Plan, Legislative Defendants created a safe Republican seat in District 13 by combining voters from the cracked Mecklenburg County and from Gastonia with heavily rural and Republican counties to the west. While two incumbents are double bunched in neighboring District 11, no incumbent resides in District 13, which includes Defendant Speaker Moore’s residence.



133. The new District 13 performs as expected: President Biden won 39.2% of the vote here in the 2020 election.

Congressional District 14

134. Finally, similar to District 11 in the 2016 Plan, Legislative Defendants created a safe Republican seat in District 14 by capturing heavily Republican counties in the western part of the state, pairing them with Asheville's Democratic voters to ensure that they cannot elect a candidate of their choice. District 14 pairs Watauga County and Buncombe for the first time since the 1870s and meticulously avoids the Watauga County boot covering Republican incumbent Virginia Foxx.



135. Democrats have little chance of electing a candidate of their choice here:
President Biden won 46.3% of the vote here in 2020.

COUNT ONE
Violation of the North Carolina Constitution's
Free Elections Clause, Art. I, § 10

136. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

137. Article I, Section 10 of the North Carolina Constitution, which has no counterpart in the U.S. Constitution, provides that “All elections shall be free.”

138. North Carolina’s Free Elections Clause traces its roots to the 1689 English Bill of Rights, which declared that “Elections of members of Parliament ought to be free.” Bill of Rights 1689, 1 W. & M. c. 2 (Eng.); *see* John V. Orth, *North Carolina Constitutional History*, 70 N.C. L. Rev. 1759, 1797–98 (1992).

139. This provision of the 1689 English Bill of Rights was a product of the king’s efforts to manipulate parliamentary elections, including by changing the electorate in different areas to achieve “electoral advantage.” J.R. Jones, *The Revolution of 1688 in England* 148 (1972). The king’s efforts to maintain control of parliament by manipulating elections led to a revolution. After dethroning the king, the revolutionaries called for a “free and lawful parliament” as a critical reform. Grey S. De Krey, *Restoration and Revolution in Britain: A Political History of the Era of Charles II and the Glorious Revolution* 241, 247-48, 250 (2007).

140. North Carolina has strengthened the Free Elections Clause since its adoption to reinforce its principal purpose of preserving the popular sovereignty of North Carolinians. The original clause, adopted in 1776, provides that “elections of members, to serve as Representatives in the General Assembly, ought to be free.” N.C. Declaration of Rights, VI (1776). Nearly a century later, North Carolina revised the clause to state that “[a]ll elections ought to be free,” thus expanding the principle to include all elections in North Carolina. N.C. Const. art. I, § 10 (1868). And another century later, North Carolina adopted the current version which provides that “[a]ll elections *shall* be free.” As the North Carolina Supreme Court later

explained, this change was intended to “make [it] clear” that the Free Elections Clause and the other rights secured to the people by the Declaration of Rights “are commands and not mere admonitions” to proper conduct on the part of the government. *N.C. State Bar v. DuMont*, 304 N.C. 627, 635, 639 (1982) (internal quotations omitted).

141. Based on the text and history of North Carolina’s Free Elections Clause, “the meaning of the Free Elections Clause is that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” Order on Inj. Relief at 6. “[E]xtreme partisan gerrymandering—namely redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others—is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 7.

142. “[P]artisan gerrymandering . . . strikes at the heart of the Free Elections Clause.” *Common Cause v. Lewis*, 18-CVS-014001, slip op. at 305. “[E]xtreme partisan gerrymandering—namely redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others—is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 302. Simply put, “[e]lections are not free when partisan actors have tainted future elections by specifically and systematically designing the contours of the election districts for partisan purposes and a desire to preserve power.” *Id.* at 305.

143. The 2021 Plan violates the Free Elections Clause in the same way as the

invalidated 2016 Plan and 2017 state legislative plans. In creating the 2021 Plan, Legislative Defendants “specifically and systematically design[ed] the contours of the election districts for partisan purposes and a desire to preserve power.” *Id.* at 305. The 2021 Plan “unlawfully seek[s] to predetermine election outcomes in specific districts” and across the state as a whole. *Id.* Because of Legislative Defendants’ extreme partisan gerrymandering of the 2021 Plan, congressional elections in North Carolina are not “conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 302. In particular, the 2021 Plan takes the three largest Democratic counties in the state and trisects each one among different congressional districts, effectively diluting Democratic voting power throughout the state. And it packs the remaining Democratic strongholds into a handful of congressional districts, resulting in a map that produces 10 safe Republican seats, 3 safe Democratic seats, and 1 competitive seat.

COUNT TWO
Violation of the North Carolina Constitution’s
Equal Protection Clause, Art. I, § 19

144. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

145. Article I, Section 19 of the North Carolina Constitution provides in relevant part that “[n]o person shall be denied the equal protection of the laws.”

146. North Carolina’s Equal Protection Clause affords broader protections to its citizens in the voting rights context than the U.S. Constitution’s equal protection provisions. *See Stephenson v. Bartlett*, 355 N.C 354, 376–81 & n.6 (2002); *Blankenship v. Bartlett*, 363 N.C. 518, 523–24, (2009).

147. Irrespective of its federal counterpart, North Carolina’s Equal Protection Clause protects the right to “substantially equal voting power.” *Stephenson*, 355 N.C. at 379. “It is well settled in this State that the right to vote on equal terms is a fundamental right.” *Id.* at 378 (internal quotation marks omitted). Thus, the North Carolina Supreme Court has enforced the

State’s Equal Protection Clause to invalidate other redistricting schemes, such as the combined use of single-member and multi-member districts in a redistricting plan that “impermissibl[y] distin[guished] among similarly situated citizens” and thus “necessarily implicate[d] the fundamental right to vote on equal terms.” *Id.* at 377–78.

148. Partisan gerrymandering violates North Carolina’s Equal Protection Clause. “[P]artisan gerrymandering runs afoul of the State’s obligation to provide all persons with equal protection of law because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party.” Order on Inj. Relief at 8.

149. The 2021 Plan violates North Carolina’s Equal Protection Clause in the same ways as the invalidated 2016 Plan and 2017 state legislative plans. In drawing the new congressional map, Legislative Defendants “acted with the intent, unrelated to any legitimate legislative objection, to classify voters and deprive citizens of the right to vote on equal terms.” *Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 312. Legislative Defendants drew and enacted a congressional map that systematically discriminates against Democratic voters, and that cannot be explained in any other way. Legislative Defendants’ intent is laid bare by the packing and cracking of particular Democratic communities described above.

150. And, as with the 2016 Plan and 2017 state legislative plans, these efforts have produced discriminatory effects for Plaintiffs and other Democratic voters. On a statewide basis, Democrats will continue to receive far fewer congressional seats than they would absent the gerrymander. The grossly disproportionate number of seats that Republicans have won and will continue to win in the congressional delegation relative to their share of the statewide vote

cannot be explained or justified by North Carolina’s political geography or any legitimate redistricting criteria. The packing and cracking of Democratic voters under the 2021 Plan burdens the representational rights of Democratic voters individually and as a group, and discriminates against Democratic candidates and organizations individually and as a group. “[P]acking dilutes the votes of Democratic voters such that their votes, when compared to the votes of Republican voters, are substantially less likely to ultimately matter in deciding the election results.” *Common Cause*, 18-CVS-014001, slip. op. at 314. And “the entire purpose of cracking likeminded voters across multiple districts is so they do not have sufficient ‘voting power’ to join together and elect a candidate of their choice.” *Id.* Legislative Defendants can offer no legitimate justification for their overriding partisan intent in drawing the 2021 Plan.

COUNT THREE
Violation of the North Carolina Constitution’s
Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14

151. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

152. Article I, § 12 of the North Carolina Constitution provides in relevant part: “The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.”

153. Article I, § 14 of the North Carolina Constitution provides in relevant part: “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.”

154. “There is no right more basic in our democracy than the right to participate in electing our political leaders—including, of course, the right to vote.” Order on Inj. Relief, *Harper I*, at 9. “Political belief and association constitute the core of those activities protected by the First Amendment.” *Id.* And in North Carolina, “the right to assembly encompasses the right of association.” *Id.* “[F]or elections to express the popular will, the right to assemble and consult

for the common good must be guaranteed.” *Id.* (quoting John V. Orth, *The North Carolina State Constitution* 48 (1995)).

155. Irrespective of the U.S. Constitution, the 2021 Plan violates Article I, § 14 of the North Carolina Constitution by “burden[ing] protected expression based on viewpoint by making Democratic votes less effective.” *Common Cause*, 18-CVS-014001, slip. op. at 322. Legislative Defendants “identified certain preferred speakers (e.g., Republican voters), while targeting certain disfavored speakers (e.g., Democratic voters) because of disagreement with the views they express when they vote.” Order on Inj. Relief, *Harper I*, at 10. Legislative Defendants singled out Democratic voters for disfavored treatment by packing and cracking them into districts with the aim of diluting their votes and, in the case of cracked districts, ensuring that these voters are significantly less likely, in comparison to Republican voters, to be able to elect a candidate who shares their views. “The fact that Democratic voters can still cast ballots under gerrymandered maps changes nothing. The government unconstitutionally burdens speech where it renders disfavored speech *less effective*, even if it does not ban such speech outright.” *Common Cause*, 18-CVS-014001, slip. op. at 323.

156. Irrespective of the U.S. Constitution, the 2021 Plan independently violates Article I, § 12 because it “severely burden[s]—if not outright preclude[s]”—the ability of Democratic voters to associate by eroding their ability to “instruct” and “obtain redress” from their members of Congress on issues important to them. *Common Cause*, 18-CVS-014001, slip. op. at 326-27.

157. Irrespective of the U.S. Constitution, the 2021 Plan independently violates Article I, Sections 12 and 14 of the North Carolina Constitution by retaliating against Plaintiffs and other Democratic voters based on their exercise of political speech. The 2021 Plan takes adverse action against Plaintiffs and other Democratic voters, retaliates against their protected speech and

conduct, and would not have taken the adverse action but for Legislative Defendants' retaliatory intent to pack and crack Democratic voters because of their prior political speech and associations.

158. There is no legitimate state interest in discriminating and retaliating against Plaintiffs because of their political viewpoints, voting histories, and affiliations. Nor can the 2021 Plan be explained or justified by North Carolina's geography or any legitimate redistricting criteria.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendants, and

a. Declare that the 2021 Plan is unconstitutional and invalid because it violates the rights of Plaintiffs and all Democratic voters in North Carolina under the North Carolina Constitution's Free Elections Clause, Art. I, § 10; Equal Protection Clause, Art. I, § 19; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14;

b. Enjoin Defendants, their agents, officers, and employees from administering, preparing for, or moving forward with the 2022 primary and general elections for Congress using the 2021 Plan;

c. Establish a new congressional districting plan that complies with the North Carolina Constitution, if the North Carolina General Assembly fails to enact a new congressional districting plan comporting with the North Carolina Constitution in a timely manner;

d. Enjoin Defendants, their agents, officers, and employees from using past election results or other political data in any future redistricting of North Carolina's congressional districts to intentionally dilute the voting power of citizens or groups of citizens based on their political beliefs, party affiliation, or past votes;

e. Enjoin Defendants, their agents, officers, and employees from otherwise intentionally diluting the voting power of citizens or groups of citizens in any future redistricting of North Carolina's congressional districts based on their political beliefs, party affiliation, or past votes; and

f. Grant Plaintiffs such other and further relief as the Court deems just and appropriate.

Dated: November 18, 2021

By: _____



PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
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

ELIAS LAW GROUP LLP

Marc E. Elias*
Aria C. Branch*
Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White*
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
MElias@elias.law
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore*
R. Stanton Jones*
Samuel F. Callahan*
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Plaintiffs

* *Pro hac vice* application forthcoming