STATE OF NORTH CAROLINA

COUNTY OF WAKE

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

COMMON CAUSE, et al.,

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON REDISTRICTING, et al.,

Defendants.

PLAINTIFFS' OBJECTIONS TO REMEDIAL PLANS

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INTRODUCTION

This Court gave Legislative Defendants clear and simple instructions for drawing remedial districts. The Court ordered that "Legislative Defendants and their agents shall conduct the entire remedial process in full public view," and that, "[t]o the extent that Legislative Defendants wish to retain one or more individuals who are not current legislative employees to assist in the map-drawing process, Legislative Defendants must seek and obtain prior approval from the Court to engage any such individuals." Decree ¶ 8, 9. The Court ordered that "partisan considerations and election results data shall not be used in the drawing of legislative districts in the Remedial Maps," Judgment COL ¶ 169, and "no effort may be made to preserve the cores of invalidated 2017 districts," Decree ¶ 6. And the Court made clear that any efforts to protect incumbents must be "reasonable" and limited to avoiding pairing incumbents into the same district. Judgment COL ¶ 168.

One of the two chambers of the General Assembly violated every one of these commands. In violation of the Court's transparency requirements, the House Redistricting Committee secretly engaged two of Legislative Defendants' experts, including a political consultant who specializes in elections data analytics and who helped Legislative Defendants in drawing the unconstitutional 2011 Plans, to analyze Dr. Chen's maps and data before the House moved forward with its process. Legislative Defendants' counsel also emailed partisanship data on Dr. Chen's maps to every member of the House Redistricting Committee, just hours after the announcements that each chamber would use one of Dr. Chen's simulations as its base map. The House then permitted the incumbents of each relevant county grouping to revise their own districts to their personal liking, and to do so largely outside of public earshot.

These procedural violations would provide ample grounds to throw out the House's remedial plan (the "Proposed House Plan") in its entirety, but in an effort to limit the scope of

relief the Court must grant, Plaintiffs focus their objections here on five House county groupings where the House's procedural violations led to the most significant substantive violations of the Court's Decree. These five groupings are: (1) Columbus-Pender-Robeson; (2) Forsyth-Yadkin; (3) Cleveland-Gaston; (4) Brunswick-New Hanover; and (5) Guilford. Incumbents in these groupings acted with partisan intent and impermissibly sought to preserve the cores of their prior districts, in violation of the Court's mandates. Indeed, as detailed in Dr. Chen's new expert report attached as Exhibit A, Dr. Chen has created new simulations for these five groupings that avoid pairing the current incumbents, and he finds that in four of the five groupings the Proposed House Plan is an extreme, pro-Republican partisan outlier. Two of the groupings are 100% outliers—the adopted map, as amended by the incumbents, is more favorable to Republicans than all 1,000 of Dr. Chen's simulations for that grouping. Dr. Chen also finds that the only grouping that is not a partisan outlier, Guilford County, nonetheless replicates the prior version of one of the districts in the grouping. Dr. Chen further finds that the amendments to the base map in Guilford County and several of the other groupings significantly subordinated compactness in service of partisan advantage.

This Court gave the General Assembly an opportunity to draw remedial maps and cure their prior constitutional violations. Although its process was not without flaws, the Senate has done so. But the House has not. The Court should pay no heed to the threats in Legislative Defendants' most recent filing and should direct the Referee to redraw these five House groupings.

SUMMARY OF LEGISLATIVE PROCEEDINGS

A. Legislative Defendants Fail to Explain When, How, and Why They Chose Dr. Chen's Simulated Maps to Serve as the Base Maps for the Remedial Plans

On September 9, six days after this Court's Judgment, Legislative Defendants held their first hearings. Senator Newton, who now serves as a co-chair of the Senate Redistricting Committee, announced that he and his co-chairs had decided to select one of Dr. Chen's simulated maps from the litigation to serve as the "base map" for the new Senate plan. Several hours later at the opening hearing of the House Redistricting Committee, Representative Lewis stated that he independently had decided also to use one of Dr. Chen's simulations as the base map for the new House plan. 9/9/19 House Comm. Tr. at 16:21-17:21; see also id. at 45:20-23 (Representative Lewis claiming he had not been "aware of exactly what approach the Senate was going to take until this morning"). Neither the House nor Senate Committee leadership explained who was involved in the decision to use Dr. Chen's simulated plans (e.g., whether it included outside counsel or consultants), when those discussions took place, or what analysis was done of Dr. Chen's maps before deciding to use them as the base maps. Legislative Defendants' most recent filings still do not provide any of this information. Legislative Defendants have not indicated whether they, their counsel, or their consultants analyzed the partisan attributes of Dr. Chen's simulated maps in deciding to use them as a central foundation of the remedial process. When Representative Hawkins asked the leadership of the House Committee whether they had consulted with counsel who had access to partisanship data on Dr. Chen's maps, Representative Hall, who was serving as Chair of the House Redistricting Committee, invoked attorney-client privilege. 9/10/19 House Comm. Tr. at 85:19-86:4.

There is reason to believe that partisan considerations did factor into Legislative

Defendants' choice of Dr. Chen's maps. Whereas the Senate used Dr. Chen's Simulation Set 2

that sought to avoid pairing the incumbents in place at the time each relevant district was drawn in 2011 or 2017, the House ultimately used Dr. Chen's Simulation Set 1 that did not consider incumbency at all. Legislative Defendants have not explained why the House and Senate pulled their base maps from different simulation sets. Notably, the set chosen by each chamber is the one that is relatively more favorable to Republicans. Based on the 2010-2016 statewide elections that Dr. Chen employed to measure partisanship, House Simulation Set 1 produces a distribution of seats more favorable to Republicans than House Simulation Set 2. *See* PX1 at 27 (final row listing distribution of seats in House Simulation Sets 1 and 2). In contrast, Senate Simulation Set 2 produces a distribution of seats slightly more favorable to Republicans than Senate Simulation Set 1. *Id.* at 58 (listing distribution of seats in Senate Simulation Set 1 and 2).

B. Legislative Defendants' Counsel Sends Partisanship Data on Dr. Chen's Maps to the Entire House Redistricting Committee and Political Staff

Shortly after the leaders of the House and Senate Committees announced their intent to use Dr. Chen's simulated plans, legislative staff emailed counsel for Plaintiffs and Legislative Defendants requesting shapefiles and block assignment files for Dr. Chen's simulated maps as well as an Excel spreadsheet listing scores for compactness, split VTDs, and split municipalities for each map. Ex. B (9/9/19 3:10 PM email from Churchill). Plaintiffs' counsel responded that they would send the requested information later that day. *Id.* (9/9/19 3:22 PM email from Jones). Nonetheless, Legislative Defendants' counsel proceeded send emails to both the House and Senate Committees with a link to a repository containing all of Dr. Chen's backup files that Plaintiffs had transmitted to all Defendants with his opening expert report on April 8, 2019. *Id.* (9/9/19 3:50 PM and 4:24 PM email from Riggins); Ex. C (9/9/19 4:21 email from Riggins). Legislative Defendants' counsel's emails containing the link to these backup files went to dozens of recipients, including *all* members of the House and Senate Redistricting Committees, several

political staffers for Representative Lewis, and career staff. Ex. B; Ex. C. All of these recipients were also able to forward the link to anyone else, and any subsequent recipient could have downloaded the files available through the link.

The files that Legislative Defendants distributed—on the first day of the legislative process, within hours after the announcements that Dr. Chen's simulated maps would serve as the base maps—contained extensive partisanship data on every district in every one of Dr. Chen's simulated plans. That is because Dr. Chen analyzed the partisan characteristics of his simulated plans in his opening expert report. The screenshots copied below show some of the partisanship data that was in the files that Legislative Defendants' counsel sent. In these files, which relate to one of Dr. Chen's 2,000 simulated House maps, the numbers in Column A (e.g., "G1.1") represent the label for each district in the plan, the next two columns contain the compactness scores for each district, and the numbers in the columns to the right represent the number of votes received by the Democratic ("D"), Republican ("R"), and Libertarian ("L") candidates in a particular election for that simulated district (e.g., "EL10G_USS" means the 2010 general election for U.S. Senate). In the fourth-to-last column in the second screenshot below, the column "rshare17" indicates the average Republican vote share in the given simulated districts using the ten statewide elections from 2010 to 2016 that Dr. Chen used to measure partisanship in his report.

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39 G17.3	37 G17.1	0.378661	0.435931	17	83299	67798	18240	6589	446	13	25288	34318	10761	485	4	69	4563	7 3135	1231	7 1348		0 3	21 450	045 3332	1078	5 44112	5876	23519	596	32 30	023 717	9 40152	1384	915	49630	9656	38637	1042	49335 40	1409 8	8118	827
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41 G19.1 G19	39 G17.3	0.424919	0.412725	17	82632	64482	17075	13312	676	11	31074	26944	19441	488	0	90	4696	3 2451	2087	6 1169		0 :	15 465	574 2644	1918	3 45628	13390	20899	991	33 35	313 1914	3 30711	1492	788	52134	20636	29852	1432	51920 31	878 19	9303	944
42 G192 G192 G193 G193 G193 G193 G193 G193 G193 G193	40 G17.4	0.507148	0.522292	17	81901	60924	17841	3842	260	10	21953	36535	6844	321	2	44	4374	6 3436	808	0 850		0 3	30 433	322 3584	699	5 42841	3699	21223	429	36 25	387 687	7 37629	1082	645	46233	7871	37018	1065	45954 37	708 7	7566	776
43 G19.3	41 G19.1	0.538772	0.564094	19	77200	59268	8406	12510	395	7	21318	13781	20307	297	10	81	3447	6 1323	2060	1 428		0	7 342	274 1449	1891	33405	12377	8972	1112	58 22	519 2220	1 12089	699	290	35279	21457	12116	1263	34836 12	1997 21	1478	596
44 G194	42 G19.2	0.374666	0.311214	19	75824	57892	5050	11896	421	0	17367	10704	21114	368	0	(3218	6 849	2309	3 534		0	4 321	122 1069	2057	7 31273	12173	6055	1001	43 19	272 2362	1 9753	851	322	34547	22685	9727	1683	34095 10	795 22	2722	804
45 G201 0 27596 0 206179 20 8038 6 1917 9 21 14516 476 9 2421 14516 476 9 2421 1450 2 1353 4 1362 2	43 G19.3	0.432778	0.422179	19	75634	57968	6118	14339	489	0	20946	12734	23719	364	0	(3681	7 989	2632	3 561		0 1	10 367	793 1240	2339	6 35802	14500	7888	914	65 23	367 2539	9 13187	1212	503	40301	25426	12689	1777	39892 14	220 25	5014	897
46 G202 0.410266 0.209604 20 8099 59266 7326 7118 217 4 14665 14978 11647 165 0 50 26840 1500 10878 1 14678 149 1651 1 1324 1 14665 14978 1 14678 1 14678 1 14678 1 14678 1 14678 1 14678 1 14678 1 14678 1 14678 1 14678 1 14678 1 14678 1 14678 1 147888 1 147888 1 14788 1 14788 1 14788 1 14788 1 14788 1 14788 1 14788 1 147888 1 14788 1	44 G19.4	0.453982	0.301257	19	75506	56797	6155	9733	356	4	16248	13014	16791	274	3	15	3009	7 1144	1819	5 421		0	7 300	065 1312	1624	9 29373	9651	7122	718	29 17	520 1905	6 11112	533	276	30977	18221	11075	1270	30566 11	810 18	8340	589
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	47 G20.3	0.302713	0.159112	20	83096	61952	8862	7770	238	19	16889	16392	12283	260	0	83	2901	8 1687	1123	0 512		0	9 286	526 1857	937	27943	7045	8898	745	19 16	707 1443	9 12731	462	173	27805	13843	12624	607	27074 12	494 14	4609	281
49 G212 0.547969 0.453525 21 76234 55239 6843 3853 170 6 10872 15121 6474 170 0 48 21813 14085 6775 536 0 6 21402 14904 6256 21160 3559 7568 312 14 11453 6500 13845 638 262 21245 6701 13493 805 20999 13544 6840 596	48 G21.1	0.382393	0.322027	21	82738	60612	8469	10955	338	12	19774	17109	17986	256	3	69	3542	3 1602	1831	7 689		1	5 350	035 1774	1662	34366	11321	9957	848	28 22	154 1904	1 16611	917	329	36898	18950	16299	1176	36425 16	680 19	9094	766
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2 G1.1	14141	1061	30699	14860	14308	883	30051	14616	16105	189	55	30965	9715	7078	147	16940	15144	14222	29366	15530	14181	973	11	30695	4276	4426	62	8764	7683	11258	473	6	19420 16432	9 135116	180215	180789 0	.4992 0.	5488 1802	15 18078	39 FALSE
3 G1.2	16940	1144	33043	14194	17028	1013	32235	14302	18754	247	85	33388	8940	8175	141	17256	14612	16758	31370	15571	16463	1053	8	33095	3992	4934	77	9003	7763	13754	556	19	22092 19326	5 132151	213309	176742 0	.5469 0.	.5939 2133	09 17674	42 TRUE
4 G2.1	18434	1160	34717	13639	19100	1102	33841	11637	22652	329	156	34774	5929	7886	220	14035	13585	19117	32702	14294	19098	1338	11	34741	2506	5063	122	7691	7018	15475	550	4	23047 23476	8 88678	253533	167445 0	.6022 0.	.7258 2535	33 16744	45 TRUE
5 G2.2	20006	1520	36336	13280	20935	1348	35563	11584	24262	385	174	36405	6083	9684	200	15967	13046	21515	34561	14104	20655	1627	18	36404	2500	6639	120	9259	5999	16523	590	6	23118 24921	9 88700	285074	168533 0	.6285 0.	7375 2850	74 16853	33 TRUE
6 G2.3	16557	1309	36622	17642	16797	1277	35716	15914	20660	279	113	36966	9949	7452	222	17623	17321	17287	34608	18158	17022	1456	22	36658	3626	3767	170	7563	7761	13900	689	18	22368 19978	7 132000	230672	219328 0	.5126 0.	.6022 230F	572 21932	28 TRUE
7 G2.4	22101	1014	36774	13223	21354	1229	35806	11565	24711	383	251	36910	5923	8845	206	14974	13302	21207	34509	14203	20929	1606	15	36753	3084	5255	187	8526	7941	16930	719	14	25604 24786	8 93339	277271	167744 0	.6231 0.	.7264 2772	71 16774	44 TRUE
8 G3.1	23181	710	33166	10585	20830	846	32261	11964	21137	215	109	33425	5900	11310	140	17350	11468	19612	31080	12516	19238	1234	18	33006	2480	5980	33	8493	5171	13343	444	13	18971 22794	9 110876	244785	130527 0	.6522 0.	.6728 2447	/85 13052	27 TRUE
9 G3.2	15863	420	29826	14322	14304	530	29156	13816	16004	146	76	30042	10318	6790	115	17223	14745	13571	28316	15028	13845	808	11	29692	4932	3626	62	8620	7733	9852	248	7	17840 16221	6 120910	174479	178679 0	.4941 0.	5729 1744	79 17867	79 FALSE
10 G3.3	23262	646	33027	10323	21007			11865		211	90	33355	5998	10928						12282		1107		32868			55	8093	5304	14089	479		19884 24694							
11 G6.1	13755	784	34191	16828	15908			14903		136	24	34401	10124	6434	131	16689	16284	16374	32658	16325	16854	981	5	34165	4905	3729	91	8725	8783	13981	450		23228 19220							
12 G6.2	13948	755	32225	14062	16717	863	31642	13541	18586	181	95	32403	8651	8163	146	16960	14429	16368	30797	14044	17175	952	14	32185	3745	4795	55	8595	6789	13899	406	9	21103 19344	7 116183	201563	168894 0	.5441 0.	6248 2015	63 16889	94 TRUE
13 G8.1	14286	916	30349	14788	13867	957	29612	13953	16339	201	104	30597	8150	5339	157	13646	15419	13491	28910	15026	14297	1047	16	30386	4179	4306	60	8545	7716	10527	364	8	18615 16257	2 130581	188528	192792 0	.4944 0.	.5546 1885	28 19279	92 FALSE
14 G8.2	16366	763	31218	13804	16017	827	30648	12230	18818	170	86	31304	7667	6711						13891		901	10	31201	3249	4859	63	8171	7629	12449	383		20467 19083							
15 G8.3	17815	598	33267	13789	18037			11197		115	56	33598	7299	8038						12913		735		33322			62	11371	6648		288		22074 21761							
16 G8.4	20200			14112				12884		196		35558	7488	8656						14296		1017		35381				10001	7544		444		23800 24085							
17 G8.5	18428			15126				14422		191		34791	8315	7659						15496		1022		34554				10660	7857		461		22576 22095							
18 G9.1	12173			19579				20735		188		34852		5025							11248			34143				8403			451		22114 15406							
19 G9.2	19971			15733						253		39544	7540	8412						18933		1585		38910			63	-	8369	-	552		25132 22204							
20 G9.3	19054			15714				16925		211		38701	7630	7536						18985		1615	17	38181			79		9012		584		25837 21334							
21 G9.4	20609			15387				15217		251		39621	6812	8835				800.00		18624		1740		39333	,	7267					631		29730 27217							
22 G10.1	15067			22351				23611		312		40981		6732						23959		1604		40588				11296			690		25412 16427							
23 G10.2	16539			20718				22246		261		41030		7534						22627		1603		40548				11332			672		25626 17852							
24 G10.3	15640			22340				23751		306		41634		7237						24081		1540		41144				12312			714		26689 16567							
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27 G12.1	25540			12727						258		37774	6169	9457						15139		1579		37550			68		7098		539		24132 25211							
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29 G12.3	21880			14396				14424		268		38218	7881	9559						15939		1267		37965			108	9888		16348	548	50000	24576 23611							
30 G12.4	15482	691	33950	17821	14399	858	33078	15872	17951	231	134	34188	10286	4892	147	15325	17852	14300	32152	18615	14058	1180		33875			128	7314	10539	11479	418	11	22447 17184	1 140471	182906	230778 0	4421 0	5502 1829	06 23077	78 FALSE
31 G12.5	22918			14991				14447		252		37996	8344	9339						16304		1421		37809			119		8015		483		23964 22940							
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33 G15.1	11022			32685				37075		322		46128		3972			33576			35212		1156		45363				12127			552		26494 7730							
34 G15.2	15304			21941				22276		283		39644		6806						22858		1150		39313				11914			627		26551 17095							
35 G16.1	21161			13276						246		34136	7873	9567						14671		1277		34010				8266	6582		469		20006 19669							
36 G16.2	23768			11908				11800		244		35306	6532							13252		1510		35203				8517	6065	V 40 Page 100	558		21397 23285							
37 G17.1	11089			29776				33308	442.000	223		43367	100.00	3849			30850			31701		976		42610			30				446	-	25288 8938							
38 G17.2	14100			27956				29030		224		43785		5220						28912		966		43413			45	9324			439		27472 12425							
39 G17.3	16790			24607				25843		306		43334								26016		1254		43065				14055			676		31074 18515							
40 G17.4	6430			31724				33137		144		39291		2489			32029				5989	755		38928				9877			260		21953 6684							
41 G19.1	19361			18900				14060		186	-	34987	9003	6341						16961		1128		34705					8406		395	115.00	21318 19226				100		100	
42 G19.2	19425			10522				9969		166		29606	5631	8617						11307		1188		29439				-	5050		421	_	17367 20368				7.5			
43 G19.3	22840			11859				12141		173		34135	6142	9291							19279			33911					6118		489		20946 22912				100000000000000000000000000000000000000			100
44 G19.4	15990			13601				12269		168		28802	8189	6439						13747		1026		28642				7349	6155		356		16248 16253							
45 G20.1	15084			16403				14566		222		34912	9637	7019						17350		1513		34518				10496	9212		476		24213 20805							
46 G20.2	7739			16554				13677		122		25646	_	2498						14501		419		25513				6239		7118	217		14665 10721							
47 G20.3	7504			19066				15775		153		28264		2466			18249			17165		564		28006			93		8862		238		16889 11515							
48 G21.1	14730			17621				16212		130		34081								17611		828		33735				8561	8469		338	1000	19774 16885							
49 G21.2	6857								7502			23459									6906			22990				5770			170		10872 5992							
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Once the House and Senate Redistricting Committees announced the specific Chen base map that was selected for each grouping, any recipient of the backup files that Legislative Defendants' counsel sent on September 9 could have looked up the partisanship data for any given district. At the Committees' request, Dr. Chen had also sent PDFs to the Committees of each simulated House and Senate map, and those PDFs labeled the districts using the same labels of "1.1," "1.2," etc. that appear in Dr. Chen's backup files containing all the partisanship data.

See, e.g., Ex. F (one of the PDFs that Dr. Chen provided to the Committees).

While career staff from the Legislative Services Office stated that they did not complete downloading the backup files that Legislative Defendants' counsel distributed, Legislative Defendants never disclosed whether any other recipients of the email downloaded the files. Several members of the House Redistricting Committee asked Representative Lewis to have the General Assembly's IT staff investigate whether anyone using the General Assembly's network clicked on the link in the email from Legislative Defendants' counsel, and Representative Lewis pledged that he would have the IT staff conduct such an investigation. 9/10/19 House Comm. Tr. at 81:1-82:18. But, to Plaintiffs' knowledge, Representative Lewis never reported back whether IT conducted such an investigation and if so what it found.

Legislative Defendants' failure to conduct such an inquiry is particularly troubling because their counsel failed to take prompt action to prevent recipients of the email from accessing the files. Legislative Defendants' counsel sent the email containing the link at 4:24 p.m. on September 9. Ex. D (9/9/19 4:24 PM email from Riggins). Twenty minutes later, Plaintiffs' counsel replied all to the same email thread notifying all recipients (including all

¹ The findings of any such investigation would not have been conclusive in any event, since the email containing the link could have been forwarded and anyone could have clicked on the link and downloaded the files from a network outside of the General Assembly.

members of the House Redistricting Committee) that the files contained partisanship data and should not have been sent. *Id.* (9/9/19 4:45 PM email from Jones). When Plaintiffs' counsel did not hear back right away, Plaintiffs' counsel sent another email 15 minutes later asking Legislative Defendants' counsel to confirm they had removed all of the files from the link. Ex. E (9/9/19 4:59 PM email from Jacobson). Legislative Defendants' counsel did not respond until over two hours later, at 7:09 p.m., indicating only then that the link was disabled. Ex. D (9/9/19 7:09 PM email from Riggins). Thus, there was a nearly three-hour window between the time when Legislative Defendants' counsel transmitted the link to the partisanship data and when counsel stated that the link was no longer active.

No one, including this Court, has any way of knowing which recipients of the email from Legislative Defendants' counsel downloaded the files and accessed the comprehensive partisanship data collected there about Dr. Chen's simulated maps. And of course, Legislative Defendants, their counsel, and all of their consultants and experts have had unfettered access to the backup files showing the partisanship of every district in Dr. Chen's simulated maps since April 8, when Dr. Chen submitted his opening expert report and accompanying backup files.

C. Legislative Defendants' Counsel and the House Redistricting Committee Likely Gather and Analyze Partisanship Data on Dr. Chen's House Maps

Even beyond the likelihood that individual members of the House Redistricting

Committee downloaded and accessed partisanship data on Dr. Chen's simulated maps, there is
reason to believe that Legislative Defendants' counsel and their experts analyzed partisanship
data on Dr. Chen's House maps and used it to guide the House redistricting process.

As mentioned, on the first day of public hearings, legislative staff asked Plaintiffs' counsel to send the shapefiles, block assignment files, and an Excel spreadsheet for Dr. Chen's maps. Dr. Chen proceeded to assemble this large volume of data, and Plaintiffs' counsel

transmitted the requested materials to legislative staff and Committee members late at night after the first day of hearings.

Whereas the Senate Committee promptly began the process of picking base maps from Dr. Chen's simulations the morning after Plaintiffs' counsel transmitted the necessary data, the House Committee did not. Rather, on September 10 at the first House Committee hearing after receiving the data, Representative Lewis announced that "the defendants' counsel have asked for a chance to review" the data sent by Plaintiffs' counsel to purportedly "make sure, indeed, that this is the same information that was before the Court." 9/10/19 House Comm. Tr. at 4:19-22. Representative Lewis did not explain what exactly Legislative Defendants' "review" would entail. Representative Lewis also did not disclose that Legislative Defendants' counsel were having two outside experts—including a political consultant named Clark Bensen who has previously assisted Legislative Defendants in gerrymandering districts in North Carolina—conduct this review of Dr. Chen's maps and data. See Leg. Defs. Br. at 27.

It was not until late in the evening on Wednesday, September 11—nearly two full business days after the House Committee received Dr. Chen's maps and data from Plaintiffs' counsel—that the House Committee re-commenced its process. Legislative Defendants now say that their outside counsel and consultants were ensuring the "accuracy and authenticity" of the data that Plaintiffs' counsel had sent. Leg. Defs. Br. at 27. But Legislative Defendants have not explained how this review was conducted, let alone why their counsel and consultants needed nearly two full days to conduct this purported review.

It appears likely that Legislative Defendants' counsel or their consultants were instead organizing and/or reviewing partisanship data on Dr. Chen's simulated House maps during this two-day period. When Plaintiffs' counsel sent Dr. Chen's maps and data to the House and

Senate Committees, Plaintiffs' counsel noted in the transmission email that, because Legislative Defendants' counsel had improperly sent the backup files containing partisanship data, Dr. Chen had relabeled the numbers for his 4,000 statewide plans; *e.g.*, he may have changed the map originally labeled "Map 1" to "Map 376." But, unfortunately, this measure could not have prevented Legislative Defendants' counsel or their experts from matching the new map numbers to the old ones. For instance, in the Excel spreadsheet he provided, Dr. Chen reported the statewide Polsby-Popper and Reock compactness scores for each of his 4,000 statewide plans. In his April 8 backup files, Dr. Chen had provided those same Polsby-Popper and Reock scores for each of the 4,000 plans. Hence, Legislative Defendants' counsel or their experts would have needed only to identify the old and new map numbers that had the same compactness scores to know which old map number corresponded to which new number. There are many other ways Legislative Defendants' counsel or their experts could have matched up the maps as well during their two-day review.

In addition, during this two-day gap, Legislative Defendants' outside counsel and consultants may have been comparing the partisanship of the top 5 unique maps in each relevant House grouping in Simulation Set 1 versus Simulation Set 2. On the first two days of the legislative hearings, Representative Lewis insisted that the House Committee would use Simulation Set 2 and not Set 1. *See*, *e.g.*, 9/9/19 House Comm. Tr. at 73:13-21; 9/10/19 House Comm. Tr. at 58:20-24, 61:6-14. But when the House Committee finally re-convened after Legislative Defendants' outside counsel and consultants finished their review, Representative Lewis announced that he had changed his mind and that the House would be using Set 1 instead of Set 2. 9/11/19 House Comm. Tr. at 3:16-18. Given that Dr. Chen had listed his top 5 unique maps in each grouping in Set 1 and Set 2 in the Excel spreadsheet he provided, Legislative

Defendants' counsel and consultants could have analyzed partisanship data for those top 5 unique maps in each grouping and concluded that Simulation Set 1 was better for House Republicans, on net. Representative Lewis' explanation for his change of heart—that he suddenly saw merit in the arguments against Simulation Set 2—is dubious at best. *See id.*

Indeed, Legislative Defendants' reliance on "their non-testifying expert" Clark Bensen raises enormous red flags. Mr. Bensen runs a political consulting firm known as "POLIDATA" that specializes in "collecting election data" at "multiple levels of political geography." Ex. G. In 2011, Legislative Defendants relied on Mr. Bensen to provide political data for them in drawing the 2011 plans. *See* Ex. H at 55-56 (Dale Oldham stating in deposition that Mr. Bensen "provided data" for use in North Carolina's 2011 redistricting); *see also* Ex. I (additional documents produced in discovery in *Dickson* involving Mr. Bensen). Further, according to his resume, Mr. Bensen previously served as the director of "Political Analysis" for the Republican National Committee (RNC), where his duties were to "undertake the collection, compilation, systematization and analysis of politically related data." Ex. J at 4.² Here is a biography that Mr. Bensen himself wrote describing his experience as a political consultant who specializes in analyzing elections data:

An attorney by training and a data analyst by practice, Clark Bensen has been involved in projects related to the art of politics for over thirty years. He has been involved in redistricting and census issues throughout the previous three reapportionment cycles and has developed political and census datasets for every state in the nation. His company, a demographic and political research firm, is also the publisher of the POLIDATA ® DEMOGRAPHIC AND POLITICAL GUIDES.

As a data analyst familiar with both census and political data, he has developed countless political, demographic, and other datasets for analysis. Development of

² Mr. Bensen filed this resume in connection with his service as an expert in *Wilson v. Kasich*, No. 12-0019 (Ohio), *available at* https://moritzlaw.osu.edu/electionlaw/litigation/documents/volume7.pdf/.

election datasets for every level of geography has been a specialty since 1974. For several projects he has been responsible for the establishment of a nationwide database of demographic and political information. Development of block-level datasets with combined census information and estimated political data are the key elements for many analyses related to districting and voting rights litigation.

Clark Bensen has been actively involved in elective politics for the past three decades. His participation has included service at every level of local, state and national politics, moving to Washington following the 1980 elections. He focuses on database development, analysis, and publication while developing political and census datasets for political stakeholders, the press, and academics as well as providing litigation support for politically-related legal actions.

Ex. J at 17.

The notion that Mr. Bensen was not conducting partisanship analysis for Legislative Defendants and their counsel during the remedial process is not credible.

D. House Incumbents Draw Their Own Districts

After the House and Senate Committees picked base maps from Dr. Chen's simulations, each Committee began amending its base for the ostensible purpose of unpairing incumbents. The entire framework of selecting a base map from Dr. Chen's simulations that paired incumbents and then allowing the incumbents to manually unpair themselves was ill-conceived, see infra, but the process was far worse in the House than in the Senate. In the Senate, only two of the seven Senate groupings required unpairing incumbents, and for those two groupings, legislators at least worked together on a bipartisan consensus basis to achieve the unpairing. Moreover, while Senator Hise improperly ejected the public and the press from the mapmaking area in the Senate Committee room while incumbents were developing their amendments, the Senate Committee room was at least small enough that the public in the back of the room could hear most of the discussions amongst the legislators.

That was not true in the House, which carried out the incumbency protection process very differently. In the House, for each county grouping, Representative Lewis called up to the

mapmaking computer terminal the incumbents who lived in that particular grouping, and he allowed those incumbents to redraw the districts to unpair themselves. In other words, incumbents got to pick and choose how they wanted to amend their own districts from the base map, ostensibly in the name of unpairing themselves but in many cases for obvious partisan purposes. *See infra*. Making matters worse, the incumbents made these changes largely outside of public earshot and without explaining each change that was being made. The House Committee room is much larger than the Senate Committee room, and the mapmaking terminals were at the front of the room several hundred feet away from where the public could sit in the back. And the audio of the computer terminal on the live feed was often difficult or impossible to hear. Thus, while the public could see House districts lines being moved on the screen, it could not hear the hushed discussions amongst incumbent legislators—who were huddled around the computer terminal—as those legislators were moving the boundaries of their own districts.

E. The House Map Passes on a Party-Line Vote

The material differences between the House and Senate processes were apparent to legislators and reflected in the final roll call votes. While a number of Democrats voted for the Proposed Senate Plan, every Democrat in both chambers voted against the Proposed House Plan. The Proposed House Plan thus passed both chambers on straight party-line votes.

Legislative Defendants misleadingly quote several statements from Democratic Senators as support for their erroneous assertion that the process used by both chambers "received the support of Democratic members." Legs. Defs. Br. at 5. All of the quotes reproduced in Legislative Defendants' brief related solely to the Senate's process and not the House. Democrats in both chambers consistently expressed opposition to the House Committee's process, actions, and ultimately the House map.

Legislative Defendants also erroneously suggest that Democrats opposed only one particular House grouping (the Columbus-Pender-Robeson grouping). Legislative Defendants assert that, for every other House grouping, the House Committee "adopted the map" unanimously. *See* Leg Defs. Br. at 17-20. What actually happened was that, within minutes of the incumbents of each grouping revising their districts from the base map, Representative Lewis asked whether any Committee members wanted to voice objections. *See*, *e.g.*, 9/12/19 House Comm. Tr. at 34:6-15. This request was made before Committee members even had any time to closely review the revisions from the base map. When the House later called a separate vote on all of the House groupings other than Columbus-Pender-Robeson, all but eight House Democrats voted against it. 9/13/19 House Floor Sess. at 591:1-12.

ARGUMENT

I. The House's Process Violated the Court's Decree

The House's remedial mapmaking process violated this Court's Decree in a host of ways. The violations include that: the House Committee enlisted Legislative Defendants' outside counsel and consultants to assist in the mapmaking process, without securing Court approval and outside of public view; Legislative Defendants provided partisanship data on Dr. Chen's simulated maps to House Committee members; House incumbents sought to preserve "communities of interest," a criterion not permitted by the Court; and House incumbents ignored compactness in amending the maps to protect themselves.

- A. Legislative Defendants Improperly Provided Partisanship Data to House Members and Relied on Outside Counsel with Access to Partisanship Data
- 1. The House Committee violated this Court's Decree by having Legislative

 Defendants' outside counsel and consulting experts assist in the House's remedial process. This

 Court directed that, "[t]o the extent that Legislative Defendants wish to retain one or more

individuals who are not current legislative employees to assist in the map-drawing process, Legislative Defendants must seek and obtain prior approval from the Court to engage any such individuals." Decree ¶ 9. The Court further provided that "Legislative Defendants *and their agents* shall conduct the *entire remedial process* in full public view." *Id.* ¶ 8 (emphases added).

The House Committee violated both of these provisions in having Legislative Defendants' outside counsel and consultants conduct a secret two-day review of the maps and Excel spreadsheet that Dr. Chen provided. Legislative Defendants' outside counsel and consultants are not "current legislative employees," and the Court did not authorize these attorneys and consultants to assist the House Redistricting Committee in its remedial process. Legislative Defendants' outside counsel and consultants, moreover, conducted their two-day analysis of Dr. Chen's maps and data outside of "public view," even though they are "agents" of Legislative Defendants subject to the Court's Decree.³ The House Committee's reliance on Dr. Thornton and Mr. Bensen—two consultants with extensive experience sorting and analyzing elections data—is an especially flagrant violation of the Court's order. See Leg. Defs. Br. at 27. Dr. Thornton analyzed the partisanship of Dr. Chen's maps for her expert report, LDTX286 at 30-33, and Mr. Bensen is a political consultant who specializes in analyzing political data, including for use in redistricting generally and for redistricting in North Carolina specifically. Indeed, in 2011, Mr. Bensen provided granular North Carolina elections data to Legislative Defendants to help them draw the 2011 Plans. See Exs. H, I. Had Legislative Defendants sought

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³ As described previously, unlike the House Committee, the Senate Committee did not have outside counsel or consultants review Dr. Chen's data to purportedly ensure it was "accurate and authentic" before picking a base map. Legs. Defs. Br. at 26. Instead, the Senate Committee immediately began the process of picking a base map the morning after Plaintiffs' counsel transmitted Dr. Chen's maps and data. That the Senate Committee did not need outside counsel or consultants to "review" the data only further calls into question the House Committee's actions.

the Court's permission to have Mr. Bensen and Dr. Thornton assist in the remedial process, as was required by the Court's Decree, Plaintiffs would have vigorously opposed the request.

The House Committee's violations of the Court's Decree are all the more troubling given that Legislative Defendants' outside counsel and consultants have had access to partisanship data on all of Dr. Chen's maps since April 8. As already explained, there are strong indications that counsel and/or the consultants did assemble and analyze partisanship data on the maps, and the mere fact that this Court cannot be certain such did not occur casts an enormous shadow over the House's process and final maps. But in any event, the work performed by Legislative Defendants' outside counsel and consultants during the remedial process violates the Court's Decree no matter the nature of the work, since that work was done outside of "public view" and without approval of the Court. See Decree ¶ 8, 9.

2. Legislative Defendants independently violated the Court's order that "election results data shall not be used in the drawing of legislative districts in the Remedial Maps," Judgment COL ¶ 169, by transmitting "elections data" for each of Dr. Chen's maps to all House Committee members and several political staffers for Representative Lewis on the very first day of hearings. Legislative Defendants will likely claim that there is no direct proof that any recipients of the email downloaded and used the elections data. But Legislative Defendants appear to have not investigated that question and they have provided no accounting to the Court of who accessed the link. The fact that this Court has no way of knowing one way or the other whether House members or staff accessed the data suffices to find a violation of the Court's order. And it provides reason to reject any House grouping where House incumbents exercised significant discretion in amending (or choosing not to amend) the base map.

B. The House's Incumbency Protection Process Violated Multiple Aspects of the Court's Judgment and Decree

This Court ordered that "[t]he mapmakers may take reasonable efforts to not pair incumbents unduly in the same election district." Decree \P 5(g). The House's efforts to avoid pairing incumbents were not "reasonable."

The House's entire approach to incumbency protection—*i.e.*, starting with one of Dr. Chen's maps that paired incumbents and then allowing incumbents to manually unpair themselves—was unreasonable. If Legislative Defendants wanted to use one of Dr. Chen's maps but also to avoid pairing the current incumbents, they could have simply asked Dr. Chen to run a new version of his Simulation Set 2 that avoided pairing the current incumbents (Dr. Chen's Simulation Set 2 avoided pairing the incumbents in office in 2011 or 2017 when the relevant districts were drawn). That would have been straightforward—Dr. Chen has now done so for the five House groupings described in detail below—and it would have allowed for a set of non-partisan simulated maps in which incumbency protection did not subordinate traditional districting criteria and could not be manipulated for partisan gain. Representative Lewis acknowledged on the second day of hearings that this "idea has been floated." 9/10/19 House Comm. Tr. at 62:13-17; *cf.* 9/17/19 Senate Comm. Tr. at 21:25-22:1 (Representative Lewis claiming, "I don't think anyone in the House Committee suggested a Chen Set 3" along these lines).

The House instead started with maps that paired incumbents and had the incumbents contort the district lines to unpair themselves, guaranteeing that the compactness of many groupings would be mangled. This process also opened the door to partisan manipulation, especially because the House entrusted the incumbents from each grouping to amend their own

districts rather than having the whole House Committee perform the unpairing. The House's process took the notion of having "representatives choose their own voters" to the extreme.

As no surprise given this fatally flawed process, the House's incumbency protection efforts led to multiple violations of the Court's Decree. In addition to improperly pursuing partisan goals in the specific House groupings described in the section to follow, the House's incumbency protection efforts violated the following aspects of the Court's order.

1. The House improperly sought to preserve "communities of interest" in amending the base map. Legislative Defendants explicitly state in their September 23 filing that House Committee made changes to the base map not "simply to unpair incumbents," but also "to preserve communities of interest." Leg. Defs. Br. at 16. Representative Hall, the Chair of the House Committee, stated the same after the House's revisions to the base map were complete. He told the Senate Committee that House incumbents "knew their areas as to where particular neighborhoods are and communities of interest," and took this into account in revising their districts. 9/17/19 Senate Comm. Tr. at 17:6-18:3. This violates the Court's Decree. The Court directed that the criteria set forth in Paragraph 5 of its Decree "shall exclusively govern the redrawing of districts in the House and Senate." Decree ¶ 5 (emphasis added). Preserving communities of interest is not one of the exclusive criteria that the Court permitted the House to apply. Indeed, this Court noted in its judgment that "Legislative Defendants expressly declined to include 'communities of interest' as a criterion for the 2017 Plans," Judgment FOF ¶ 200, and the Court did not include communities of interest as a criterion for the remedial process for this reason.

As documented further below, it is apparent that in some cases the House used "communities of interest" as a smokescreen for reverting to the invalidated districts and/or putting incumbents into more politically favorable districts. But regardless, given that the House by its own admission applied a criterion that the Court did not permit, the House's process on its face violates the Court's order.

2. The House entirely ignored compactness in protecting incumbents. There was little, if any, mention of compactness throughout the process of revising the House groupings from the base map. And there were never any calculations presented in the House as to how the revisions to a grouping from the base map affected the compactness scores for that grouping.

As a result, the House subordinated compactness just like it did in the 2017 House Plan. In striking down the 2017 House Plan, this Court credited Dr. Chen's finding that the 2017 House Plan "subordinate[d] the traditional districting criterion of compactness" and produced districts that were "less compact than they would be under a map-drawing process that prioritizes and follows the traditional districting criteria." Judgment FOF ¶ 93. Dr. Chen reached this conclusion after finding that the 2017 House Plan was less compact than all 2,000 of his House plans in Simulation Set 1 and Simulation Set 2. Remarkably, the same is true of the new Proposed House Plan. Dr. Chen compared the compactness of the 14 House groupings that this Court ordered to be redrawn to those same 14 groupings in his House Simulations Set 1 and 2. Dr. Chen found that, across these 14 groupings, the Proposed House Plan has a lower Polsby-Popper score than all 2,000 plans in both House Simulation 1 and House Simulation 2, and has a lower Reock score than the overwhelming majority of the simulated plans as well. Chen 9/27 Report at 63-66. If the 2017 House Plan improperly subordinated compactness, then the Proposed House Plan necessarily does as well.

In the event that Legislative Defendants argue that the Proposed House Plan is good enough on compactness because it is more compact than the 2011 Plan that preceded the 2017

Plan, this Court should reject that argument for the same reasons it did at trial. This Court held that "Dr. Chen's interpretation and application" of the compactness criterion in the 2017 Adopted Criteria—that all else being equal, more compact districts are preferable to less compact districts—"is fully consistent with the guidance provided by Legislative Defendants at the time of the 2017 redistricting." Judgment FOF ¶ 142; see Trial Tr. at 257:14-18. This Court rejected Legislative Defendants' argument that the Adopted Criteria meant that the General Assembly should seek only to meet some minimum compactness threshold tied to the 2011 Plans but do no better. Judgment FOF ¶¶ 142, 143. The House was on full notice of the proper application of the compactness requirement in this Court's Decree and simply ignored it.

All of the above violations of the Court's Decree led to a Proposed House Map that is an extreme partisan outlier. As Dr. Chen details in his attached report and is shown below, based on the ten statewide elections from 2010-2016 that Dr. Chen used to assess partisanship, the Proposed House Map produces more Republican-leaning seats than nearly 95% of Dr. Chen's House Simulation Set 1 plan and nearly 98% of Dr. Chen's House Simulation Set 2 plans.⁴ Chen 9/27 Report at 2-4 (Figures 1 and 2).

⁴ In contrast, the Proposed Senate Plan is not at outlier relative to the distribution of Dr. Chen's simulated Senate plans, although it is at the more Republican-favorable end of the distribution. Chen 9/27 Report at 2, 5-6.

Figure 1:
House Simulation Set 1 (Following Only Non-Partisan Redistricting Criteria):
Democratic-Favoring Districts in HB 1020 House Plan Versus 1,000 Simulated Plans
(Measured Using 2010-2016 Election Composite)

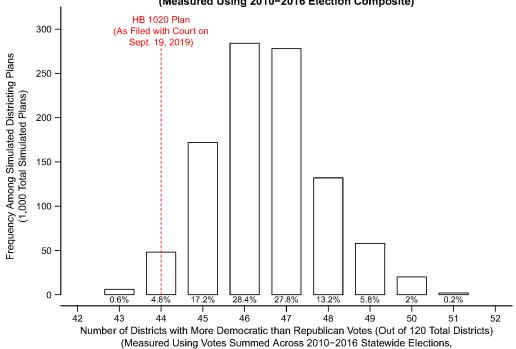
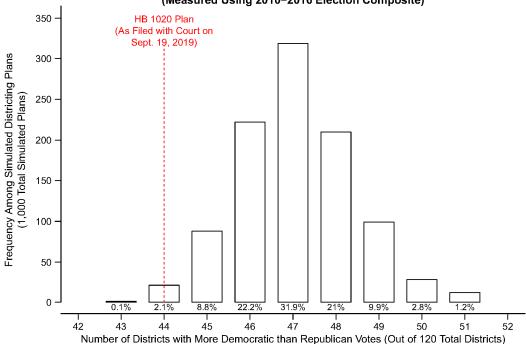


Figure 2:
House Simulation Set 2 (Following Non-Partisan Redistricting Criteria and Avoiding Incumbent Pairings):
Democratic-Favoring Districts in HB 1020 House Plan Versus 1,000 Simulated Plans
(Measured Using 2010–2016 Election Composite)

Which corresponds to a 47.92% Statewide Democratic Vote Share)



15

(Measured Using Votes Summed Across 2010–2016 Statewide Elections, Which corresponds to a 47.92% Statewide Democratic Vote Share)

The 2017 House Plan was "an extreme partisan outlier," Judgment FOF ¶ 102, and that continues to be the case with the Proposed House Plan. The Proposed House Plan cannot stand in its current form.

II. The Court Should Reject Five House Groupings in the Proposed House Plan

For all of the reasons provided above, the Court would be justified in rejecting the entire House Plan. However, to limit the scope of relief sought and facilitate the expeditious adoption of final plans, Plaintiffs focus their objections on the specific House groupings where the above process violations had the most significant substantive effects. Specifically, Plaintiffs focus on the five House groupings where the House's incumbency protection process was carried out with clear partisan intent, significantly subordinated traditional districting criteria, and/or improperly reverted to the prior 2017 version of districts with the grouping. These five House groupings are: (1) Columbus-Pender-Robeson; (2) Forsyth-Yadkin; (3) Gaston-Cleveland; (4) Brunswick-New Hanover; and (5) Guilford.

To aid the Court's evaluation of these groupings, Dr. Chen created a new Simulation Set 3 for these five groupings that avoided pairing the current incumbents in office. Dr. Chen's Simulation Set 3 is identical to his Simulation Set 2 in all respects except Set 3 avoids pairing the current incumbents rather than the incumbents in office in 2011 or 2017. Chen 9/27 Report at 1. Dr. Chen finds that, in four of the five groupings, the Proposed House Plan is an extreme partisan outlier relative to the districts in his Simulation Set 3. In other words, the Proposed House Map in these four groupings is an extreme partisan outlier—in three of the groupings, an over 99% outlier—relative to the possible configurations of the grouping that would emerge under a non-partisan process that applied the traditional districting criteria and avoided pairing the current incumbents. In Guilford County, the only of the five groupings that is not a partisan outlier, the

Proposed House Plan significantly subordinates compactness and creates one district (HD 58) that is nearly identical to the invalidated 2017 version of that district.

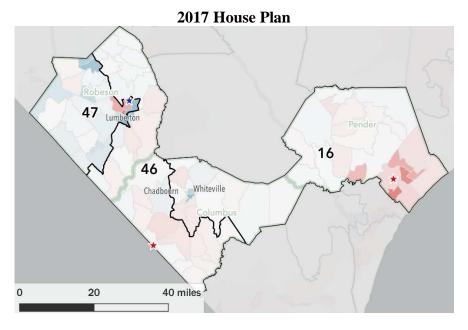
A. Columbus-Pender-Robeson

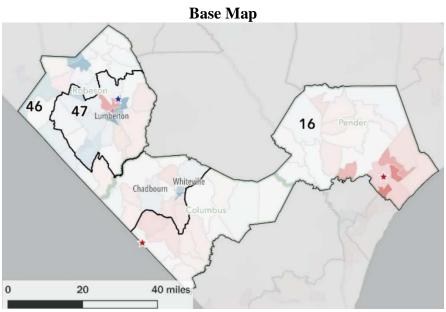
In finding that the 2017 version of this county grouping was an "extreme partisan gerrymander," this Court gave "weight to the analysis of Plaintiffs' experts." Judgment FOF ¶ 333. Plaintiffs' expert Dr. Cooper had explained that the 2017 map not only packed Democratic voters in Robeson County into House District 47, but also cracked Democratic voters in Columbus County across House Districts 46 and 16. In particular, Dr. Cooper explained that "the Democratic areas of Chadbourne [were] cracked from the Democratic voters in and around Whiteville, helping to ensure that neither HD-46 nor HD-16 would elect a Democrat." PX253 at 70 (Cooper Report). This Court highlighted this cracking in its opinion. The Court held that "Legislative Defendants cracked African American voters" in groupings including Columbus-Pender-Robeson "where cracking Democratic voters would maximize Republican victories." Judgment FOF ¶ 688-69. Chadbourn, Whiteville, and their surrounding communities are the heavily African-American areas of Columbus County that the 2017 House Plan cracked.

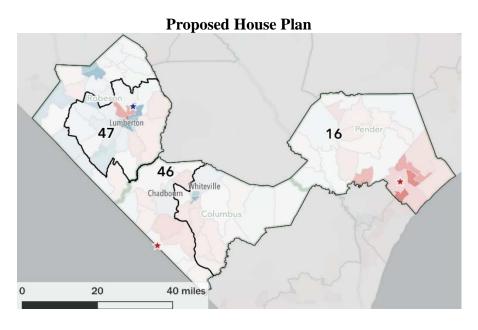
The base map that Legislative Defendants selected from Dr. Chen's simulations cured this cracking, as it kept Whiteville, Chadbourn, and their immediately surrounding areas together in House District 46. But the Republican incumbents in this grouping proceeded to reinstate the prior gerrymander. While the base map paired Republican incumbents Jones and Smith in House District 16, Jones lives in a VTD on the border with House District 46, which had no incumbent under the base map, meaning that unpairing him should not have been difficult. Rather than make minimal, non-partisan changes to unpair the two incumbents, the incumbents swapped a total of 11 VTDs between District 16 and 46 in a blatant effort to make District 46

more favorable for Republicans. The amended map again cracks the Democratic voters of Columbus County, again separating the VTDs in and around Whiteville and Chadbourn.

The below maps show the 2017 House Plan's version of this grouping, the base map, and the amended Proposed House Plan for this grouping. In these maps and all to follow, the color-coding of VTDs represents the Democratic or Republican vote margin in the 2016 Attorney General race, implemented the same way as in Dr. Cooper's opening expert report. The blue star represents the home address of the Democratic incumbents and the red stars represent the home addresses of the Republican incumbents.

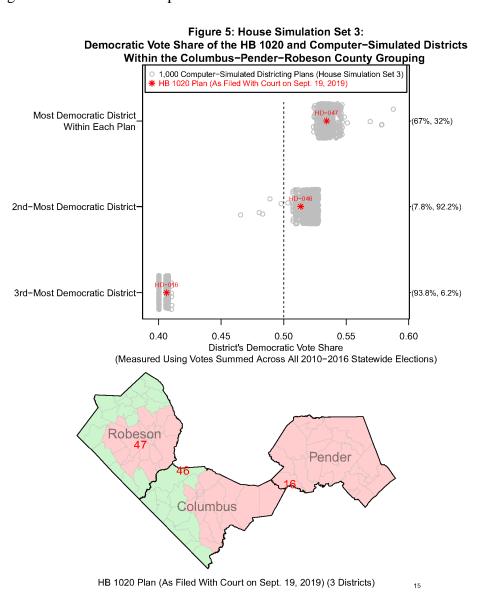






The revisions to the base map cracking Columbus County's Democratic voters anew have significant partisan effects. The revisions made House District 46 roughly two points more Republican than the base map, while House District 16 remained a safe Republican seat despite adding more Democratic voters. Chen 9/27 Report at 13 (Table 2a).

This cracking also rendered House District 46 an extreme outlier relative to the versions of the district found in Dr. Chen's Simulation Set 3. As shown below and in Dr. Chen's report, the Proposed House Plan's version of House District 46 is less Democratic than its corresponding district in over 92% of plans in Dr. Chen's Simulation Set 3.



None of Legislative Defendants' explanations for the amendments that were made to this grouping withstand scrutiny. Legislative Defendants appear to suggest that the amendments were made to preserve communities of interest, as they note that members of the public from Columbus County "expressed the view that Columbus County should be kept as whole as possible." Leg. Def. Br. at 20-21. Communities of interest is not a permissible criterion under the Court's Decree, and this explanation does not make sense anyway. Due to the county traversal rule, this grouping necessarily must split Columbus County between House District 46 and House District 16. No configuration of this grouping can keep Columbus County more "whole" than any other. Legislative Defendants also note that the Proposed House Plan does not pair the incumbents in this grouping, but Representative Darren Jackson proposed two different amendments that would have unpaired the incumbents while making fewer changes to the base map, and Republicans rejected these amendments on a party-line vote. 9/13/19 House Floor Sess. at 539:14-552:4. Dr. Chen's Simulation Set 3 also establishes that there are numerous configurations of this grouping that would avoid pairing the current incumbents.⁵ The House Committee clearly acted with impermissible partisan intent in revising this country grouping.

B. Forsyth-Yadkin

This Court found that the 2017 House Plan version of the Forsyth-Yadkin grouping unlawfully "packed Democratic voters into House Districts 71 and 72" and "then cracked the remaining Democratic voters in this grouping across the remaining districts." Judgment FOF ¶ 405. The Court explained that, "in order to join Republican VTDs, House District 75 traverse[d] an extremely narrow passageway on the border of Forsyth County," and that House

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⁵ Dr. Chen also found that all of his Set 3 simulations for this grouping avoid splitting any VTDs and most do not split any municipalities either. Chen 9/27 Report at 19-20. More than 40% of the simulations are equally or more compact than the Proposed House Plan using Reock, and about a third are using Polsby-Popper. *Id.* at 16-18.

District 75 also "wrap[ped] around the city [of Winston-Salem] to include Republican-dominated VTDs on either side of Forsyth County." *Id.* The Court also relied on Dr. Chen's findings that, compared to Simulation Set 1, "two of the districts in this grouping (House Districts 71 and 75) [were] extreme partisan outliers above the 95% level," and that four districts were outliers above the 94% level compared to Set 2. *Id.* ¶ 409.

The incumbents in this grouping recreated the prior gerrymander and then some. The base map had paired Republican incumbent Donny Lambeth with a Democratic incumbent in southern Forsyth County. At the very onset of making revisions to the base map at the mapmaking terminal, Representative Lambeth instructed staff to "take the 75th out to Kernersville because I've represented it in the past." 9/12/19 House Comm. Hr'g Video at 7:12:00-10.6 Representative Lambeth then reiterated a minute later in proposing a revision: "I've represented Kernersville in the past." *Id.* at 7:13:50-7:13:59. The remainder of the discussion among the incumbents in this grouping is inaudible, but the incumbents from Districts 71 and 75 engaged in lengthy deliberations at the mapmaking terminal.

The Proposed House Plan that emerged from this process is an obvious gerrymander. In particular, in amending the base map, the boundaries of House Districts 71 and 75 were amended to pack three additional heavily Democratic VTDs into House District 71 and move the Republican incumbent Lambeth into a safe Republican district. The House recreated the specific features of the prior gerrymander of House District 75 in the process. Once again, "in order to join Republican VTDs, House District 75 traverses an extremely narrow passageway on the border of Forsyth County," and once again, House District "wrap[s] around the city [of Winston-

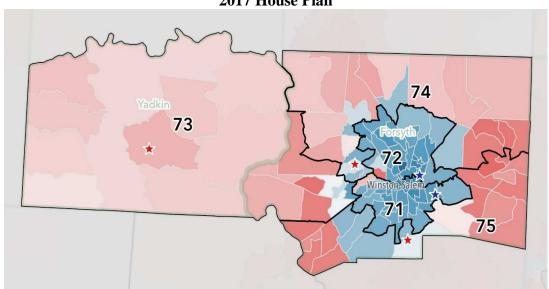
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⁶ Available at Redistricting 2019 Live Stream, https://www.ncleg.gov/Video/Redistricting2019 (at "Legislative Office Building Room 643 feed). Conservations that occurred at the mapmaking do not appear on the transcripts provided by Legislative Defendants but in some instances are audible on the live stream.

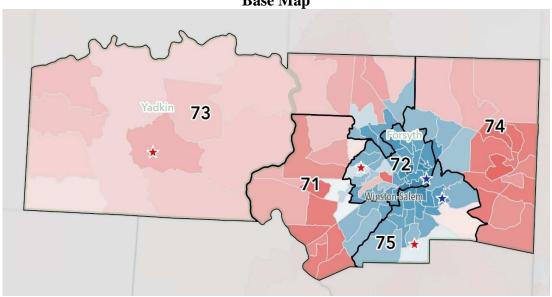
Salem] to include Republican-dominated VTDs on either side of Forsyth County." Judgment FOF \P 405.

The map of the Proposed House Plan for this grouping—including the perfect division of Democratic and Republican voters on the east side of Forsyth County—lays bare the patent gerrymandering of this grouping.

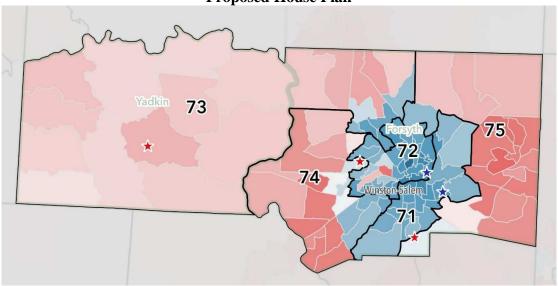
2017 House Plan



Base Map



Proposed House Plan



The House Committee's amendments to the base map inured to the benefit of the incumbents in this grouping and to the Republican Party as a whole. The House Committee amended four districts in this grouping from the base map, and these amendments made the districts of all four affected incumbents more politically favorable for those incumbents than the districts in which they were placed into under the base map. Chen 9/27 Report at 23; *see also supra* (showing district of each incumbent under base map). Most notably, the amendments made House District 75 roughly 3.5 percentage points more Republican and House District 71 over two percentage points more Democratic using the 2010-2016 statewide elections. *Id.*

In making these revisions, the House explicitly violated this Court's Decree that "the invalidated 2017 districts may not be used as a starting point for drawing new districts, and no effort may be made to preserve the cores of invalidated 2017 districts." Decree ¶ 6.

Representative Lambeth openly stated that the revisions he was making to House District 75 were to allow him to regain areas that he has "represented it in the past," *i.e.*, under the unconstitutional 2017 House Plan. 9/12/19 House Comm. Hr'g Video at 7:12:00-10. While the House Committee asked staff to confirm that the revisions to this grouping were "minimal changes" necessary to accommodate incumbents, 9/12/19 House Comm. Tr. at 69:7-11, even a cursory review of the base map reveals that there were several other ways to unpair the incumbents that would have moved fewer VTDs.

The end result of the gerrymandering and core retention efforts in this grouping was to produce four districts that are extreme partisan outliers compared to their corresponding districts in Dr. Chen's Simulation Set 3. As shown below and in Dr. Chen's report, the Proposed House Plan has four districts that are above 98% outliers compared to the Set 3 plans that also avoid pairing the current incumbents. The Proposed House Plan thus is an even more extreme

gerrymander that the unconstitutional 2017 House Plan version of this grouping, which only had one district that was above a 98% outlier compared to Set 1 and two districts that were that level of an outlier compared to Set 2. *Compare* Chen 9/27/19 Report at 26 *with* PX1 at 94, 112.

Figure 11: House Simulation Set 3: Democratic Vote Share of the HB 1020 and Computer-Simulated Districts Within the Forsyth-Yadkin County Grouping 1,000 Computer-Simulated Districting Plans (House Simulation Set 3) HB 1020 Plan (As Filed With Court on Sept. 19, 2019) Most Democratic District (57.2%, 42.8%) Within Each Plan 2nd-Most Democratic District-(99.6%, 0.4%) HD-07 3rd-Most Democratic District-(0.2%, 99.8%) 4th-Most Democratic District-(0%, 100%) 5th-Most Democratic District-(98.1%, 1.9%) 0.3 0.4 0.5 0.6 0.7 8.0 District's Democratic Vote Share (Measured Using Votes Summed Across All 2010–2016 Statewide Elections) Yadkin 75 74

26

HB 1020 Plan (As Filed With Court on Sept. 19, 2019) (5 Districts)

27

The House Committee significantly subordinated compactness in pursuing these partisan ends. The House's amendments to the base map lowered the compactness of each of the four districts that were altered, and significantly lowered the compactness of the grouping as a whole. The amendments lowered the average Reock score of the grouping from 0.464 to 0.415 and lowered the average Polsby-Popper score of the grouping from 0.380 to 0.300. Chen 9/27 Report at 24 (Table 3b). The final Proposed House Plan is an extraordinary outlier in its lack of compactness compared to Dr. Chen's Simulation Set 3. As shown below and in Dr. Chen's report, the Proposed House Plan has a lower Reock score than 99.9% of the plans in Simulation Set 3 and a lower Polsby-Popper than over 99% of the Set 3 plans. *Id.* at 27-29 (Figures 12-14).

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⁷ Almost all of Dr. Chen's Simulation Set 3 plans for this grouping do not split any additional municipalities or VTDs compared to the Proposed House Plan. Chen 9/27 Report at 30-31 (Figures 15-16).

Figure 12: Forsyth-Yadkin County Grouping:
House Simulation Set 3 (Following Non-Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):
Average Reock Score in HB 1020 Plan Versus 1,000 Simulated Plans

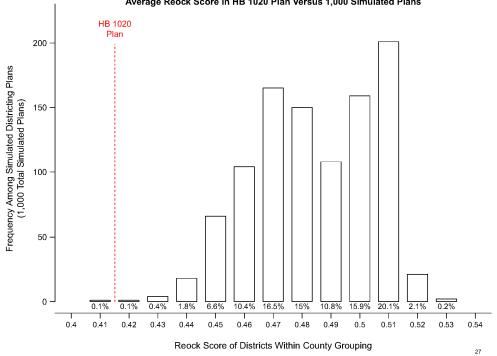
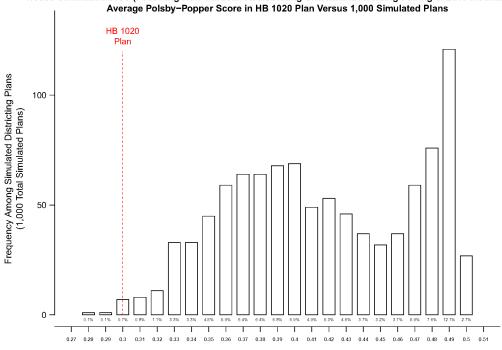


Figure 13: Forsyth-Yadkin County Grouping:
House Simulation Set 3 (Following Non-Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):



Polsby-Popper Score of Districts Within County Grouping

28

The House also split additional municipalities to accomplish its partisan and incumbency protection objections. Whereas the base map split only Winston Salem, the Proposed House Plan additionally splits Walkertown and Kernersville. Chen 9/27 Report at 25 (Table 4). These municipalities were also split under the 2017 House Plan, *id.*, further illustrating the extent to which the House recreated the prior gerrymander.

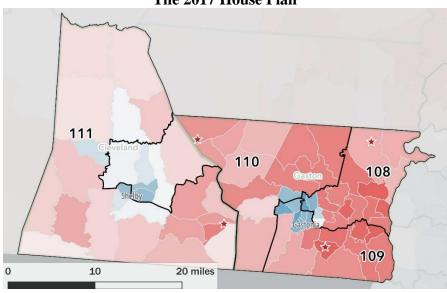
The Proposed House Plan is an extreme gerrymander that improperly seeks to retain the cores of the prior districts and subordinates traditional districting criteria, all in violation of the Court's order.

C. Cleveland-Gaston

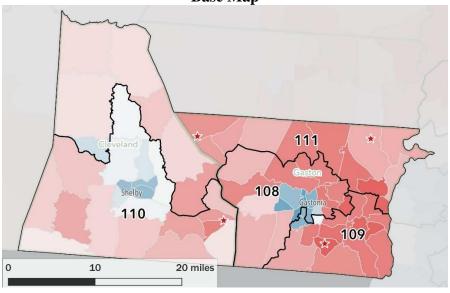
This Court described the 2017 House Plan version of the Cleveland-Gaston grouping as a "textbook example of cracking." Judgment FOF ¶ 485. The Court explained that "[t]he Democratic voters in Gastonia [were] cracked across House Districts 108, 109, and 110," diluting the influence of these Democratic voters. *Id*.

History repeats itself. The base map for this grouping split Gastonia across just two districts, but the Republican incumbents in this grouping substantially altered the districts to again crack Gastonia across three districts (House Districts 108, 109, and 110). The incumbents moved a total of 13 VTDs from the base plan and even split one VTD in the process—the same VTD that was split under the 2017 House Plan. Chen 9/27 Report at 37 (Table 6). The maps below demonstrate this clear return to the prior gerrymander via the cracking of Gastonia. In the second set of maps, the gold shading shows the municipal boundaries of Gastonia.

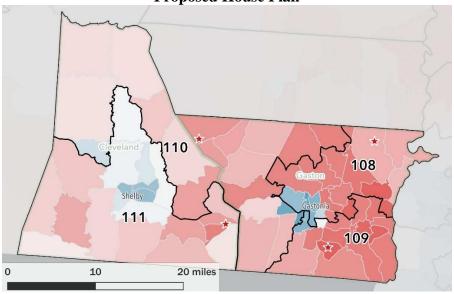
The 2017 House Plan



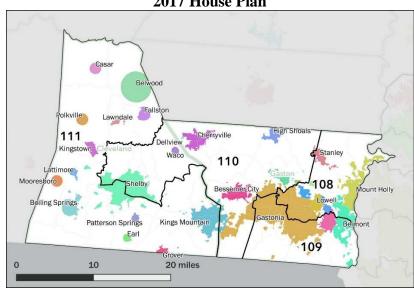




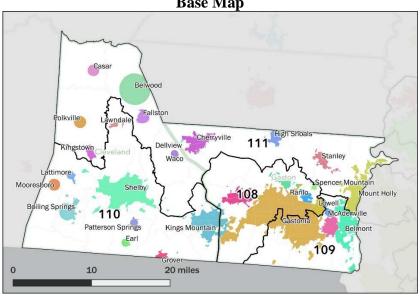
Proposed House Plan



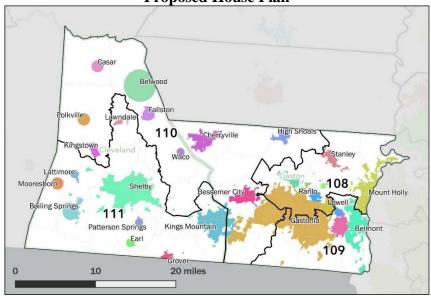
2017 House Plan



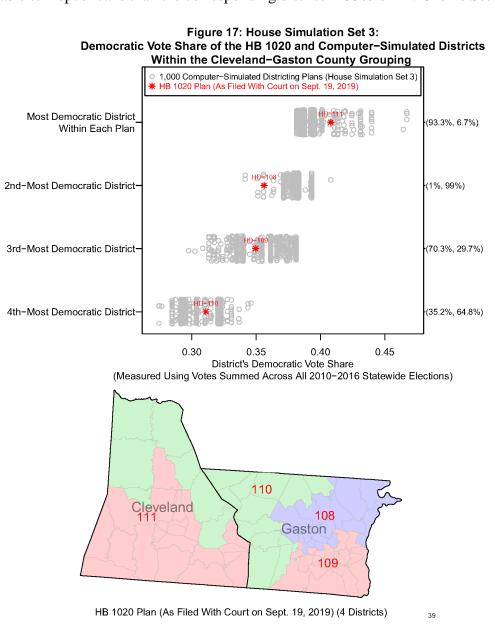
Base Map



Proposed House Plan



The incumbents' amendments to this grouping had substantial partisan effects. The revisions caused House District 108 to become 5.62 percentage points more Republican relative to the base map using the 2010-2016 statewide elections, while House District 110 remained a safe Republican seat despite adding more Democratic voters. Chen 9/27 Report at 35 (Table 5a). Consistent with this swing, Dr. Chen finds that House District 108 is an extreme partisan outlier compared to his Simulation Set 3 plans. The Proposed House Plan's version of District 108 is more favorable to Republicans than the corresponding district in 99% of Dr. Chen's Set 3 plans.



32

The incumbents in the Cleveland-Gaston grouping significantly subordinated compactness in pursuing these partisan ends. The revisions to the base map lowered the average Reock score of the grouping from 0.411 to 0.395 and the average Polsby-Popper score from 0.283 to 256. Chen 9/27 Report at 36 (Table 5b). The Proposed House Plan is now less compact than the invalidated version of this grouping from the 2017 House Plan, and it is an extreme outlier in comparison to Dr. Chen's Simulation Set 3. As shown below and in Dr. Chen's report, the Proposed House Plan has a lower average Reock score for this grouping than 99.6% of the plans in Simulation Set 3 and a lower Polsby-Popper than 98.5% of the plans in Set 3. *Id.* at 39-41 (Figures 18-20).8

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⁸ Most of Dr. Chen's Set 3 plans for this grouping split zero VTDs, whereas the Proposed House Plan splits one. Chen 9/27 Report at 43. Most of the Set 3 plans split one more municipality than the Proposed House Plan, but 11.5% of the Set 3 plans split the same number of municipalities or fewer. *Id.* at 42. This does not reflect when municipalities are split multiple times, such as the Proposed House Plan's splitting of Gastonia across three districts.

Figure 13: Forsyth–Yadkin County Grouping:
House Simulation Set 3 (Following Non–Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):

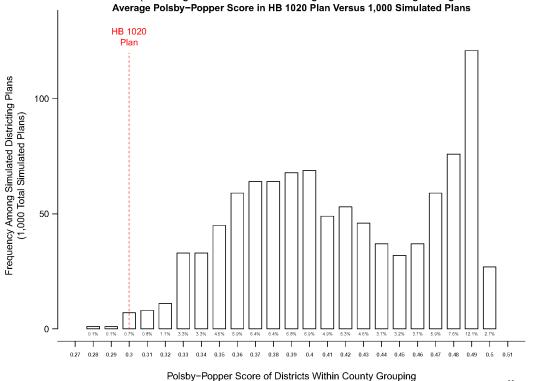
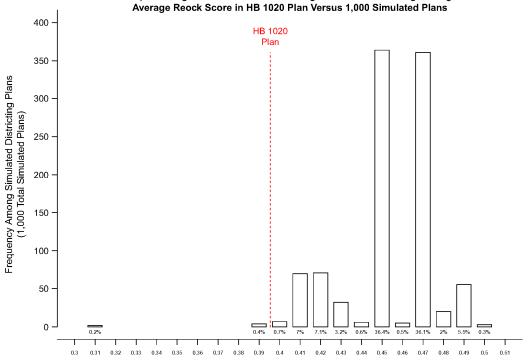


Figure 18: Cleveland–Gaston County Grouping:

House Simulation Set 3 (Following Non–Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):

Average Book Space in HB 1020 Plan Versus 1 000 Simulated Plans



Reock Score of Districts Within County Grouping

39

28

Dr. Chen's Set 3 thus demonstrates that the Proposed House Plan for this grouping is a pro-Republican gerrymander that cannot be explained by an effort to avoid pairing incumbents. The Proposed House Plan is an extreme partisan gerrymander that unnecessarily splits Gastonia across three districts and subordinates compactness, in violation of the Court's order.

D. Brunswick-New Hanover

Unlike the prior groupings, the House acted with impermissible partisan intent in *not* unpairing incumbents in the Brunswick-New Hanover grouping. The base map for this grouping paired two Republicans incumbents in House District 20, Representative Holly Grange and Representative Ted Davis. Representative Lewis asked Representatives Grange and Davis whether they wanted to revise the districts to unpair themselves, like the incumbents in the other groupings were doing. 9/12/19 House Comm. Tr. at 37:2-5. Representative Grange answered that, although she has preliminarily indicated that she intends to "run[] for another office," she had not "filed for any election yet" and wanted to be unpaired from Representative Davis. *Id.* at 37:1-17. Representative Grange stated that it would be an inappropriate "political consideration" to not unpair the current incumbents based on whether she may run for another office. *Id.*

Representative Lewis then agreed that it would be proper for these two incumbents to revise their districts. Representative Lewis stated that the House Committee should attempt to "un-pair these incumbents, *which has been our intent from -- from the start here.*" 9/12/19 House Comm. Tr. at 37:22-23. Representative Lewis thus invited the incumbents in the grouping to the mapmaking terminal to carry out the unpairing process.

The subject of whether to unpair Representatives Davis and Grange again arose while the incumbents were huddled around the mapmaking terminal. Representative Grange reiterated that she believed it was proper, and indeed necessary, to avoid pairing incumbents in this grouping even though she may ultimately run for another office. Representative Grange stated that "I

don't think that what I'm going to do [in terms of running for Governor] should matter at this point because the maps are supposed to be based on incumbency." 9/12/19 House Comm. Hr'g Video at 5:34:20-33. Representative Grange added: "incumbency is supposed to be reflected [inaudible] nobody is officially running for office." *Id.* at 5:28:30-50.

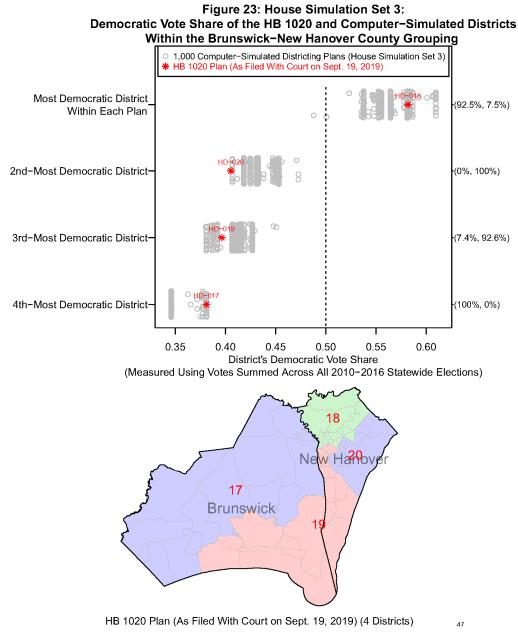
A review of the base map reveals that there were a number of possible ways to unpair Representatives Grange and Davis, and legislative staff explained several of these options to the incumbents huddled around the mapmaking terminal. 9/12/19 House Comm. Hr'g Video at 5:26:30-5:31:30. Representative Davis, however, was dissatisfied with these potential changes. *See id.* He lamented that he would "lose" particular communities if certain changes were made to unpair him and Representative Davis. *Id.* at 5:30:08-15. He stated that he had "been representing for eight years" certain areas that he "no longer [would] be representing" under an option that staff proposed. *Id.* at 5:34:00-12.

After a lengthy discussions at the computer terminal, but during which the incumbents did not actually move any VTDs on the screen to try to unpair the two incumbents, the incumbents took a break. Over the next hour, Representative Grange and Representative Davis each entered and re-entered the hearing room several times, and Representative Davis at one point could be seen talking on his cell phone. 9/12/19 House Comm. Hr'g Video at 6:09-6:17. After nearly an hour passed, Representative Davis returned to the room and whispered something to Representative Lewis. *Id.* at 6:38:55-6:39:18. Several minutes later, Representative Lewis announced that "[t]he Chair has been informed that there are no incumbency changes to make to this map, therefore, no changes to the Chen Map would be in order." 9/12/19 House Comm. Tr. at 46:10-12. Representative Lewis provided no explanation why the incumbents no longer were seeking to be unpaired. Nor did he explain why he was permitting the incumbents to remain

paired, unlike in all other groupings, despite stating earlier that his "intent . . . from the start" was to unpair the incumbents in this and all other groupings. *Id.* at 37:22-23.

Representative Grange did later provide a purported explanation for her change in positions. During a House floor debate on September 13, Representative Grange admitted that the incumbents could have found a "viable solution" to unpairing themselves. 9/13/19 House Floor Sess. at 555:8-556:9. But Representative Grange stated that she "withdrew [her] objection to the [base] map that I was double bunked with Representative Davis for the reason that in the *Covington* case, there was precedent set that an incumbent member that was not running for reelection, that map was thrown out." *Id.* at 560:19-25. It seems apparent that Legislative Defendants' counsel, who were also counsel in *Covington*, directly or indirectly supplied this justification to Representative Grange—in a discussion that was not public. Of course, Legislative Defendants' counsel and their experts had partisanship data on the base map.

The most plausible inference from this sequence of events is that Legislative Defendants or their counsel directed the incumbents in this grouping to not unpair themselves because doing so would be politically disadvantageous to Republicans. Dr. Chen's Simulation Set 3 confirms as much. Dr. Chen finds that all four districts in this grouping are over 92% partisan outliers compared to their corresponding districts in Set 3, and two of the districts are 100% outliers. Chen 9/27 Report at 47-48. As shown below and in Dr. Chen's report, House District 20—the district that pairs Representatives Grange and Davis—is one of these districts that is an 100% outlier, as it is less Democratic than its corresponding district in all of the 1,000 simulations that avoid pairing the current incumbents.



The House's adoption of the base map that pairs incumbents violates this Court's order in at least three respects. First, the decision seems to have been made based on discussions involving Legislative Defendants' counsel behind closed doors. This Court directed that "Legislative Defendants and their agents shall conduct the entire remedial process in full public view," Decree ¶ 9, and the conversations where Legislative Defendants' counsel apparently directed the incumbents to not amend the base map did not occur "in full public view." This

apparent violation of the Court's transparency requirements is highly material because

Legislative Defendants' counsel and their consultants had partisanship data on the base map and
all of the individual VTDs. Legislative Defendants' counsel surely knew that amending the base
map to unpair the two incumbents would produce a less Republican district.

Second, and relatedly, the House violated this Court's prohibition that "partisan considerations . . . shall not be used in the drawing of legislative districts in the Remedial Maps." Judgment COL ¶ 169. While avoiding pairing incumbents was an optional criterion, once the House decided to apply that criterion, it had to do so evenhandedly across-the-board and not only when it served one political party's partisan interests. As detailed throughout this brief, the House repeatedly unpaired incumbents to the detriment of the Democratic Party. The House's decision not to unpair the incumbents in this grouping—and only in this one grouping—was based on impermissible "partisan considerations."

Third, Representative Davis improperly acted "to preserve the core[]" of his prior district under the invalidated 2017 House Plan. Representative Davis rejected an option for unpairing him from Representative Grange because it would cause him to lose certain areas he had "been representing for eight years." 9/12/19 House Comm. Hr'g Video at 5:34:00-12. This House grouping is one that was drawn in 2011 and unchanged in 2017, and thus Representative Davis' reference to areas that he had "been representing for eight years" was a direct reference to the composition of the 2017 House Plan version of this grouping. Representative Davis affirmatively acted to preserve the core of his prior district, contrary to the Court's order.

The pretextual explanation offered for the decision to not unpair the incumbents in this grouping—because of a purported "precedent" set in the *Covington* case—further illustrates that improper considerations were at play. 9/13/19 House Floor Sess. at 560:18-24. Contrary to

Representative Grange's assertion, it is not true that the proposed map in Covington "was thrown out because it was drawn to take incumbency into account when [Representative Larry Bell] had already announced that he was not running for reelection." *Id.* at 560:25-561:2. The *Covington* court rejected the General Assembly's proposed House District 21 because it retained "the very problems that rendered the prior version of the district unconstitutional." Covington v. North Carolina, 283 F. Supp. 3d 410, 440 (M.D.N.C. 2018). "[I]n order to draw Representative Bell's residence into House District 21, the General Assembly retained much of the bizarre shape of the Sampson County portion of the district and divided a precinct and municipality along racial lines." Id. Here, in contrast, unpairing Representatives Grange and Davis would not require retaining the problematic aspects of the 2017 House Plan.⁹ Moreover, Representative Bell in Covington swore under oath that he did "not intend to run for re-election to the General Assembly." Covington, ECF No. 211-1. Representative Grange has made no such assertion; to the contrary, she repeatedly stated during the hearings that she is not "officially running for" another office yet. 9/12/19 House Comm. Hr'g Video at 5:28:30-50; see also 9/12/19 House Comm. Tr. at 37:1-17 ("frankly, nobody has filed for any election yet").

Because improper political considerations and non-public deliberations drove the House's decision to treat this grouping unlike every other grouping, the Court must reject the Proposed House Plan for this grouping.

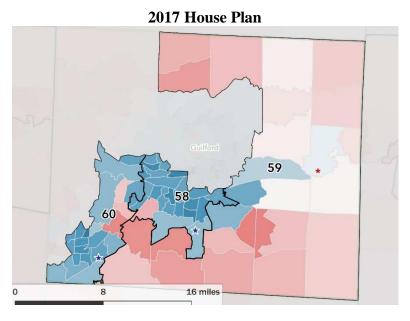
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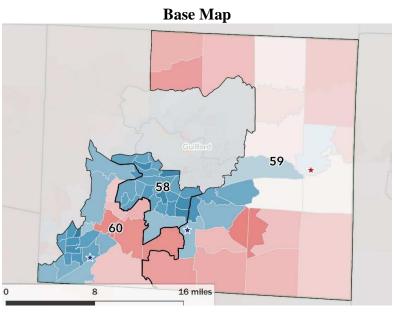
⁹ Dr. Chen's Simulation Set 3 demonstrates that unpairing the incumbents would not subordinate traditional criteria other. All of Dr. Chen's simulations of this grouping in Set 3 split the same number of municipalities as the proposed House Plan, and nearly a quarter of the simulations also do not split any VTDs. Chen 9/27 Report at 50-51 (Figures 27-28). While the simulations have slightly lower Reock scores than the Proposed House Plan, over 80% of the simulations have better Polsby-Popper scores. *Id.* at 47-49 (Figures 24-26).

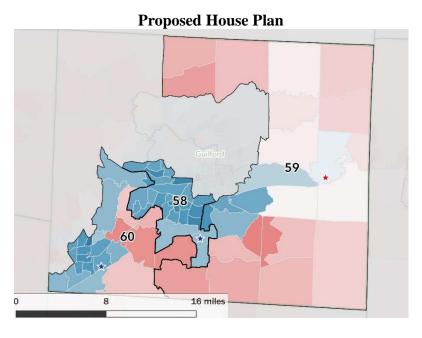
E. Guilford

This Court found that the 2017 House Plan version of the Guilford grouping impermissibly "packed Democratic voters into House Districts 58 and 60 to make House District 59 favorable to Republicans." Judgment FOF ¶ 384. This Court found especially problematic that "House District 58 ha[d] 'boot-like appendages' to grab Democratic VTDs and ensure these voters could not make House District 59 competitive or Democratic-leaning." *Id.* (quoting Dr. Cooper's testimony).

The Proposed House Plan recreates this feature of House District 58—and in fact reverts House District 58 almost entirely to its prior boundaries. As shown below, the base map for this grouping paired two representatives in House District 60, and to unpair these incumbents the House added the "boot-like," heavily Democratic VTD in southern Guilford County back to House District 58. The result is that House District 58 is a near-replica of the 2017 version of the district. Dr. Chen finds that the 86% of the population in the proposed House District 58 overlaps with the invalidated 2017 version of the district. Chen 9/27 Report at 61-62.







While Dr. Chen does not find that the Proposed House Plan for this grouping is an extreme outlier in partisanship relative to his Simulation Set 3, the extraordinarily high overlap between the proposed and old versions of House District 58 violates this Court's prohibition on "preserv[ing] the cores of invalidated 2017 district." Decree ¶ 9. And the consequence of changing House District 58 to recreate its old boundaries was to make House District 59 more favorable to Republicans. Chen 9/27 Report at 54 (Table 7a).

Moreover, Dr. Chen does find that the Proposed House Plan is an extreme outlier in its lack of compactness. The revisions to the base map for this grouping significantly subordinated compactness. The revisions lowered the Reock and Polsby-Popper scores of both House District 58 and House District 59, and for House District 58 in particular. The Reock score of House District 58 fell from 0.445 to 0.334, and the Polsby-Popper score of the district fell from 0.241 to 0.174. Chen 9/27 Report at 55 (Table 7b). The average compactness scores for the grouping correspondingly dropped as well: the average Reock score for the grouping dropped from 0.440 to 0.401, and the average Polsby-Popper score dropped from 0.264 to 0.232. *Id.* And, as shown below and in his expert report, Dr. Chen finds that the Proposed House Plan for Guilford County is less compact than 100% of his Set 3 simulations using Polsby-Popper and 99.8% of the Set 3 simulations using Reock. *Id.* at 56-58 (Figures 29-31).

Figure 29: Guilford County Grouping:
House Simulation Set 3 (Following Non-Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):
Average Reock Score in HB 1020 Plan Versus 1,000 Simulated Plans

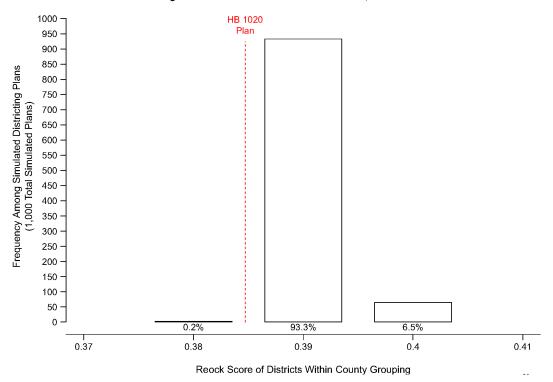
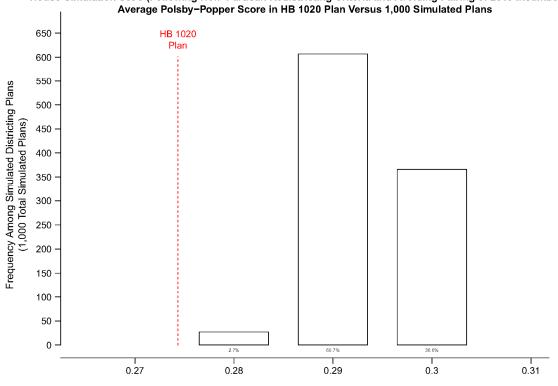


Figure 30: Guilford County Grouping:

House Simulation Set 3 (Following Non-Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):



Polsby-Popper Score of Districts Within County Grouping

44

In short, in the name of unpairing incumbents, the House substantially recreated one of the invalidated 2017 districts in this grouping and rendered this grouping less compact than nearly 100% of the nonpartisan possibilities in Dr. Chen's Simulation Set 3.

III. The Referee Should Redraw the Five House Groupings

The Court should direct the Referee to draw from a blank slate all five of the House groupings described above, following the criteria set forth in the Court's Decree. The Court retained the Referee "to develop remedial maps for the Court should the General Assembly fail to enact lawful Remedial Maps within the time allowed." Decree ¶ 13. The General Assembly failed to enact lawful remedial districts in these five groupings, and accordingly the Referee should now "develop remedial plans" for these groupings as specified in the Court's Decree.

The Court should reject Legislative Defendants' request that the Court adopt the base map for those groupings where the Court finds issue with the revisions that were made. That suggestion should be rejected for at least three reasons. First, it would result in different criteria being applied in different groupings. There would be some groupings (that the Court does not change from the Proposed House Plan) in which an incumbency protection criterion was applied to intentionally unpair incumbents from the base map, but other groupings (where the Court would revert to the base map) where no incumbency protection criterion is applied and incumbents remain paired. The same criteria should apply in all groupings. Allowing otherwise would in fact violate a motion passed by the House Committee "to treat all of the incumbents the same" by unpairing incumbents in every House grouping. 9/12/19 House Comm. Tr. at 12:8-9. Second, the base maps themselves are infected by the House's myriad procedural violations of the Court's Decree, including the apparent reliance on political consultants and partisan data in deciding to switch from Set 2 to Set 1. And third, adopting the base map would not remedy the

violation in Brunswick-New Hanover, since the problem there is that the House adopted the base map for impermissible partisan and core retention reasons.

Legislative Defendants' assertion that "[t]he Court has no guiding principle by which to guide its own line drawing" is false. Leg. Defs. Br at 24. The Court set forth specific criteria to govern the drawing of remedial districts, and those criteria are the ones that the General Assembly itself adopted in 2017. Decree ¶ 5. The Referee's "guiding principle" in redrawing these five groupings will be these General Assembly-endorsed criteria. Legislative Defendants' assertion that having the Referee redraw districts "will necessarily raise questions," Leg. Defs. Br. at 24, is not grounded in law but rather is a thinly-veiled threat that this Court should not countenance.

While Plaintiffs believe that the appropriate course of action is for the Referee to simply redraw these groupings, if it would assist the Court or the Court otherwise deems it appropriate, Plaintiffs would be happy to provide the Court with any relevant data and files from Dr. Chen's Simulation Set 3 for these five House groupings.

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court reject the General Assembly's Proposed House Plan in the Columbus-Pender-Robeson, Forsyth-Yadkin, Cleveland-Gaston, Brunswick-New Hanover, and Guilford groupings, and direct the Referee to draw new remedial districts in these groupings.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing by email, addressed to the following persons at the following addresses which are the last addresses known to me:

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This the 27th day of September, 2019.

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