

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

COMMON CAUSE, *et al.*,

PLAINTIFFS,

v.

ROBERT A. RUCHO, in his official capacity as
Chairman of the North Carolina Senate
Redistricting Committee for the 2016 Extra
Session and Co-Chairman of the Joint Select
Committee on Congressional Redistricting,
et al.,

DEFENDANTS.

CIVIL ACTION
NO. 1:16-CV-1026-WO-JEP

THREE-JUDGE COURT

LEAGUE OF WOMEN VOTERS OF NORTH
CAROLINA, *et al.*,

PLAINTIFFS,

v.

ROBERT A. RUCHO, in his official capacity as
Chairman of the North Carolina Senate
Redistricting Committee for the 2016 Extra
Session and Co-Chairman of the 2016 Joint
Select Committee on Congressional
Redistricting, *et al.*,

DEFENDANTS.

CIVIL ACTION
NO. 1:16-CV-1164-WO-JEP

THREE JUDGE PANEL

**COMMON CAUSE PLAINTIFFS' POST-TRIAL FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

TABLE OF CONTENTS

FINDINGS OF FACT 1

I. Introduction 1

II. The Construction of the 2016 Congressional Map..... 1

 A. The context of the 2016 map-drawing process 1

 B. Republicans had complete control of the 2016 map-drawing process 3

 C. Dr. Hofeller drew the 2016 map to maintain the continued partisan advantage of the 2011 racially-gerrymandered map and as part of a national strategy to ensure Republican majorities in Congress throughout the decade 4

 D. Enactment of the map drawn by Dr. Hofeller 8

 E. Direct evidence of the legislature’s partisan intent 11

 F. Results of the 2016 Congressional elections confirm the scheme 12

III. One method Defendants used to achieve their partisan goal was to split naturally-occurring concentrations of Democratic voters. 13

IV. Dr. Mattingly’s analysis confirms that the 2016 map is an extreme partisan outlier that had significant electoral consequences. Defendants’ explanations for the map are a pretext..... 17

V. Dr. Chen’s analysis likewise confirms that the 2016 map is an extreme partisan outlier that had significant electoral consequences, and Defendants’ explanations for the map are a pretext. 26

VI. Many districts in the 2016 map are themselves illegal partisan gerrymanders 28

VII. Defendants’ attempt to defend their partisan gerrymander by comparing it to the 2001 Congressional map falls flat..... 36

VIII. Plaintiffs have been Harmed by the 2016 Map	37
A. The Harm of Partisan Dominance	39
B. The Harm of Non-Competitive Districts.....	41
CONCLUSIONS OF LAW	42
I. The Common Cause Plaintiffs Have Standing To Sue.	42
II. The Claims Presented Are Justiciable.	44
III. The 2016 Plan Violates the Constitution Under Each Theory Presented By The Common Cause Plaintiffs.....	45
A. The First Amendment.....	45
B. The Equal Protection Clause of the Fourteenth Amendment.....	48
C. The Elections Clause	50
D. Article I, § 2 of the Constitution	50
CERTIFICATE OF SERVICE.....	54

FINDINGS OF FACT

Plaintiffs in the matter of *Common Cause v. Rucho*, 1:16-cv-1026 (hereinafter the “Common Cause Plaintiffs”), submit the following post-trial proposed findings of fact and conclusions of law.

I. Introduction

1. In enacting North Carolina’s 2016 Congressional Redistricting Plan (the “2016 Plan”), the North Carolina General Assembly expressly required that the districts be drawn to give the Republican Party and its voters a “partisan advantage” over the Democratic Party and its voters. The map drawer followed this express instruction and drew district lines that would, based on the reliable results of a set of past elections, achieve the intended partisan effect: an assembly of districts engineered to maintain the partisan makeup of North Carolina’s congressional delegation under the invalidated 2011 Congressional Redistricting Plan (the “2011 Plan”).
2. The plain language of the 2016 Plan’s “Adopted Criteria” shows that Defendants intended the plan to be a partisan gerrymander in favor of the Republican Party, Republican candidates, and Republican voters. That is further confirmed by: (1) the public records of the North Carolina General Assembly; (2) Defendants’ own statements—in public legislative sessions and during committee hearings approving the Adopted Criteria—regarding the political purpose and intended effect of the 2016 Plan; (3) the sworn testimony of Senator Robert Rucho and Representative David Lewis, who issued the instructions for drawing the 2016 Plan’s congressional districts; and (4) the sworn testimony of Dr. Thomas Hofeller, who drew these districts based on those instructions.

II. The Construction of the 2016 Congressional Map

A. The context of the 2016 map-drawing process

3. On February 5, 2016, a panel of three federal judges held that two districts established by the 2011 Plan constituted racial gerrymanders in violation of the Equal Protection Clause. *Harris v. McCrory*, 159 F. Supp. 3d 600, 604 (M.D.N.C. 2016). The court ordered the North Carolina legislature to correct the racial gerrymander by enacting a new congressional plan.

4. This case and *Harris* are inextricably linked. In *Harris*, Representative Lewis, Senator Rucho, and Dr. Hofeller manipulated the Voting Rights Act to gain partisan advantage for the Republican Party. They defended the racially-gerrymandered 2011 map on the grounds that it was driven by politics, rather than race.
5. In briefing before the Supreme Court in *Harris*, the lawyers for Rep. Lewis and Sen. Rucho told the Court:

Dr. Hofeller's second priority, as instructed by the Republican Chairmen, was to 'draw maps that were more favorable to Republican candidates' and in particular 'to weaken Democratic strength in Districts 7, 8, and 11...by concentrating Democratic voting strength in Districts 1, 4, and 12.

Ex. 2043, pp. 33-34.

6. This scheme proved successful. As the lawyers for Rep. Lewis and Sen. Rucho also told the Supreme Court:

The results of the 2012 election—the first under the new plan—underscored the political motivations in the redrawing of CD 12 and the surrounding districts. Republicans turned a 7-6 Democratic advantage into a 9-4 Republican advantage—a majority that included four of the five districts that they designed the 2011 plan to make more competitive. That trend continued in 2014, when Republicans added the fifth district, CD 7, to their ledger.

Ex. 2043, p. 34.

7. The partisan advantage that Hofeller, Lewis, and Rucho obtained under their 2011 map bore little relation to the statewide electoral strength of the Republican Party in the two sets of congressional elections held under the 2011 Plan. Combining the two-party results of all congressional elections in 2012 and 2014, Republican candidates gained 51% of votes to Democratic candidates' 49%. Of the 26 House seats determined by those elections, Republicans took 19 and Democrats took 7.

Year	North Carolina State-wide Votes in U.S. House Elections				Representatives Elected to U.S. House for North Carolina			
	Number of Democratic ("DEM") Votes	DEM Votes as % of Total Votes	Number of Republican ("GOP") Votes	GOP Votes as % of Total Votes	Number of DEM Repre- sentatives ("Reps")	DEM Reps. as % of Total Reps.	Number of GOP Reps.	GOP Reps. as % of Total Reps.
2012	2,218,357	51%	2,137,167	49%	4	31%	9	69%
2014	1,361,695	44%	1,596,942	55%	3	23%	10	77%
Total	3,580,052	49%	3,734,109	51%	7	27%	19	73%

First Amended Complaint ("FAC") [Dkt. 12] ¶¶ 7-8; Defs' Answer [Dkt. 49] ¶¶ 7-8.

8. Following the *Harris* court's determination that the 2011 plan constituted an illegal racial gerrymander, the court ordered the drawing of new congressional districts to be used in future elections. *Harris*, 159 F. Supp. 3d at 627. The court ordered that a new map be drawn no later than February 19, 2016. *Id.*
 9. In remedying the racial gerrymander, Rep. Lewis and Sen. Rucho sought to maintain the partisan advantage gained by the unconstitutional 2011 districts.
- B. Republicans had complete control of the 2016 map-drawing process**
10. During the 2016 redistricting process, Republicans made up a majority of the North Carolina legislature. Thirty-five of the fifty Senators were Republican, while seventy-four of the 120 Representatives were Republican.
 11. Over two-thirds of the Joint Redistricting Committee members were Republican. Thirty-seven legislators served on the Joint Committee, and twenty-five of those legislators were Republican. FAC ¶ 10; Answer ¶ 10; Ex. 1006, p. 6.
 12. North Carolina's governor had no veto power or other role with respect to the redistricting process. N.C. Const. Art. II sec. 22.

- C. Dr. Hofeller drew the 2016 map to maintain the continued partisan advantage of the 2011 racially-gerrymandered map and as part of a national strategy to ensure Republican majorities in Congress throughout the decade**
13. Rep. Lewis and Sen. Rucho quickly hired Dr. Hofeller to draw the new map as ordered by the *Harris* court. Lewis Depo. 44:2-4; Ex. 2043, p. 11. Dr. Hofeller's engagement was key to continue the partisan advantage obtained by the 2011 plan and as part of a broader national effort to elect Republicans to Congress.
 14. Dr. Hofeller's role in drawing the 2016 maps was vital in continuing the Republicans' advantage obtained by the 2011 plan. Dr. Hofeller also served as an expert witness in *Harris*. At deposition in this case, Dr. Hofeller affirmed several opinions he earlier offered as an expert. First, Dr. Hofeller affirmed that "[p]olitics was the primary policy determinant in drafting of the [2011] Plan." Hofeller Depo. 115:20-21, 116:5-10; Ex. 2035, p. 8. Second, Dr. Hofeller affirmed that the new Republican majority in control of both houses of the North Carolina General Assembly in 2011 intentionally gerrymandered North Carolina's congressional districts by packing as many Democratic voters as possible into three districts, thereby also strengthening the Republican majorities in the remaining districts by removing Democratic voters from those districts. Ex. 2035, p. 8.
 15. Specifically, Dr. Hofeller stood by his earlier expert testimony that "[t]he General Assembly's goal [in 2011] was to increase Republican voting strength in New Districts 2, 3, 6, 7 and 13" and that "[t]his could only be accomplished by placing all the strong Democratic [Voter Districts] in either New Districts 1 or 4." Hofeller Depo. 116:19-117:25; Ex. 2035, p. 12; *see also* Hofeller Depo. 126:9-127:12; Ex. 2036, p. 4 ("The Republican strategy was to weaken Democratic strength in Districts 7, 8 and 11; and to completely revamp District 13, converting it into a competitive GOP District.").
 16. In sum, and in Dr. Hofeller's own words, "[t]he General Assembly's overarching goal in 2011 was to create as many safe and competitive districts for Republican incumbents or potential candidates as possible." Hofeller Depo. 118:19-119:23; Ex. 2035, p. 23. Dr. Hofeller admitted that this not only entailed drawing "districts in which Republicans would have an opportunity to elect Republican candidates" but necessarily also required "minimiz[ing] the number of districts in which Democrats would have an opportunity to elect a Democratic candidate." Hofeller Depo. 127:14-22.

He also admitted that the opportunities of Democratic voters that remained in the districts in which he had increased Republican voting strength to elect a Democratic candidate of their choice would be diminished. Hofeller Depo. 128:17-21.

17. Dr. Hofeller, as “one of the GOP’s pre-eminent redistricting experts” and a longtime employee of the Republican National Committee (“RNC”), also played a central role in the broader effort for Republican control over redistricting following the 2010 census. Hofeller Depo. 28:2-30:21; Ex. 2014, p. 6; Ex. 2015, p. 3. In February of 2010, the Republican State Leadership Committee (“RSLC”) announced its REDMAP project “to win[] Republican control of state legislatures that ... have the most impact on Congressional redistricting in 2011.” Hofeller Depo. 56:6-19; Ex. 2021, p. 1; Ex. 2015, p. 4. The goal was explicit: to solidify Republican control of the US House of Representatives for the next decade by “creat[ing] 20 to 25 new Republican congressional districts through the redistricting process over the next five election cycles.” Hofeller Depo. 57:14-60:3-24; Ex. 2021, p.1; Ex. 2022, p. 6; Ex. 2015, p. 4; Ex. 2016.
18. “The rationale” of REDMAP “was straightforward: Controlling the redistricting process in these states would have the greatest impact on determining how . . . congressional district boundaries would be drawn.” Ex. 2026, p. 2; Ex. 2015, p. 4.
19. North Carolina was one of the states targeted by REDMAP. The RSLC spent \$1.2 million in North Carolina in the 2010 elections. Ex. 2025, Ex. 2027. The Republican Party took control of both houses of the North Carolina General Assembly in 2010, allowing it to control the 2011 redistricting process.
20. REDMAP was successful. In North Carolina, Republican candidates for Congress captured 49% of the two-party congressional votes in the 2012 election but took 9 of 13 (69%) of the seats. Democratic candidates, by contrast, captured 51% of the two-party congressional votes but only 4 seats (31%). Ex. 1020; FAC ¶¶ 7-8; Answer ¶¶ 7-8.
21. In 2011, the legislators instructed Hofeller to draft a plan that would maximize the number of Republican seats and minimize the number of seats held by Democrats. Hofeller Depo. 120:17-121:9, 123:1-124:3, 125:7-13. At that time, he believed it was possible “to draw ten districts in which the Republicans would either be most likely to win or would have an opportunity to win.” Hofeller Depo. 121:19-22. Though only nine Republican candidates secured election in 2012, CD7 (which a Democratic

incumbent held by only hundreds of votes in 2012) became a Republican seat in 2014. Ex. 1028, p. 7; Ex. 1027, p. 7.

22. In 2014, Republican candidates for Congress in North Carolina captured 55% of the two-party vote to take control of 77% (10 of 13) congressional seats. FAC ¶¶ 7, 8; Answer ¶¶ 7, 8.
23. Following the Harris court's invalidation of the 2011 congressional map, Sen. Rucho and Rep. Lewis immediately again hired REDMAP's "seasoned redistricting expert" Hofeller to redraw the lines. Ex. 2043, p. 11; Lewis Depo. 44:2-4; Ex. 2023, Ex. 2024.
24. Dr. Hofeller got to work quickly, beginning his work on February 8 or 9 and completing a near-final map the following week. Lewis Depo. 77:7-24, 138:15-139:2; Ex. 2008, p. 1. Dr. Hofeller began drawing the plan prior to any meeting of the redistricting committees and prior to the adoption of any criteria. Rucho Depo. 35:16-21; Ex. 2043, p. 13.
25. Dr. Hofeller drew the map at his home, on his personal computer, based on oral instructions he received from Rep. Lewis and Sen. Rucho. No record of these instructions exists for the period in which Dr. Hofeller was actually drawing the map. Ex. 2043, pp. 11-12, 14-15.
26. Those oral instructions explicitly presented two goals: (1) cure the racial gerrymander in the 2011 plan, and (2) maintain the partisan advantage the Republican Party and Republican candidates had established under the 2011 plan. Lewis Depo. 38:15-40:4; Rucho Depo. 33:6-23.
27. To address the first goal, Sen. Rucho and Rep. Lewis gave a simple but critical oral instruction: the race of voters was not to be considered in drawing districts. Lewis Depo. 53:21-24. From the deposition testimony of the Defendants and Dr. Hofeller, which is the only evidentiary record of the exceptionally secretive process by which the map was drawn, this oral instruction was issued without caveat or condition. The legislators further instructed Dr. Hofeller to dismantle CD 12, the "serpentine" nature of which had been criticized by the *Harris* court, and separately to avoid certain tell-tale possible indicators that race had been somehow considered—as with visually non-compact districts splitting a large number of counties (particularly in the area of CD1) or the use of certain elections that could be read as a means of considering race (like the Obama-McCain Presidential election, on which Dr. Hofeller had exclusively relied in 2011). Lewis Depo. 53:25-54:3; 54:8-55:2; Hofeller Depo. 180:17-181:11.

28. To address the second goal—partisan advantage—Sen. Rucho and Rep. Lewis orally instructed Dr. Hofeller to use political data, specifically election results from a basket of statewide elections, to assign voters to new districts likely to yield a partisan result of ten Republican seats and three Democratic seats. The legislators also instructed Dr. Hofeller that he was to try to avoid the pairing of the incumbents elected in 2014 under the 2011 Plan (ten of whom identified as Republicans). Lewis Depo. 116:8-117:13; 55:7-57:19.
29. The choice of elections to be used in assigning voters to districts was left to Hofeller. Lewis Depo. 96:19-22; Rucho Depo 88:2-7. Dr. Hofeller used the results of 7 statewide two-party elections to meet the 10-3 goal. He created a formula with those 7 election results to help him predict the voting patterns of the voter tabulation districts (VTDs) he assigned to the districts. Hofeller Depo. 265:8-267:16; Ex. 2043, pp. 7-8.
30. Though not entirely perfect, Dr. Hofeller has acknowledged that past election results are the “best predictor of how a particular geographical area is likely to vote” and that this would be the “most important information” a political party could use to gain “a partisan advantage in the redistricting process.” Hofeller Depo. 14:25-15:3, 16:8-12; *see also* Hofeller Depo. 131:22-132:13; *see also* Ex. 2035.
31. Dr. Hofeller testified at his deposition that he believes, based on his experience, that the underlying political nature of a precinct does not change no matter which race is used to analyze it. A strong Democratic precinct is going to act as a strong Democratic precinct in subsequent elections. Thus, a conglomeration of elections would end with the same result. Hofeller Depo. 153:2-10.
32. Dr. Hofeller has also testified as to how he would view these past election results when using commercial software—Maptitude—on his personal computer to draw congressional districts. That software would be loaded with the results of past elections, enabling Dr. Hofeller to view voting history data (for a single election or a set of elections) and to display that data by assigning it a color “thematic” representing—according to various and adjustable metrics determined by Dr. Hofeller—the partisan voting history of a given unit of geographical area, most importantly at the level of a single voter district (VTD). Hofeller Depo. 101:19-107:4.
33. Dr. Hofeller’s role in drawing the 2016 map was concealed from other members of the General Assembly, particularly Democrats. Once Hofeller’s identity was learned, efforts of Democratic legislators to have

Dr. Hofeller explain his work to them were rejected. Ex. 1014, pp. 44:23 to 45:15.

34. Dr. Hofeller completed the map (save for one minor incumbency modification) on either Friday, February 12 or Saturday, February 13. Rep. Lewis reviewed the map with Dr. Hofeller at that time. Lewis Depo. 77:7-24; Ex. 2043, p. 14. At this point, there had been no public hearings, no committee meetings, and no legislative debate over criteria. Ex. 2043, p. 13.

D. Enactment of the map drawn by Dr. Hofeller

35. Rep. Lewis and Sen. Rucho were formally placed in charge of the 2016 redistricting process on Friday, February 12 (the same day or the day before the map was completed by Dr. Hofeller). Ex. 2009; Lewis Depo. 73:7-13; 74:1-2.
36. On February 15, 2016, the General Assembly held public hearings ostensibly for the purpose of receiving the views of citizens about the values their congressional map should express. Dr. Hofeller did not attend any of these hearings, and neither Sen. Rucho nor Rep. Lewis communicated any information from those hearings to Dr. Hofeller. Ex. 1004; Lewis Depo. 81:11–82:19; Rucho Depo. 55:3-56:13; 58:14-60:5.
37. On February 16, 2016, the map drawn by Dr. Hofeller was loaded onto the legislative computer. Lewis Depo. 138:6-10, 21-25; Ex. 2008, p. 1.
38. On February 16, 2016, Sen. Rucho and Rep. Lewis convened a meeting of the Joint Congressional Redistricting Committee (the “Joint Committee”) established by the Speaker of the House and President Pro Tem of the North Carolina Senate. Lewis Depo. 106:13-108:8; Ex. 1005, p. 3.
39. At this Joint Committee meeting, Rep. Lewis presented and advocated for the adoption of a set of written criteria ostensibly to guide the development of a new map. Ex. 1005, p. 12:8 *et seq.* Neither Rep. Lewis nor Sen. Rucho informed the committee that a complete map already existed and in fact had already been loaded onto the legislative computer, that such a map had been drawn according to the oral instructions of Sen. Rucho and Rep. Lewis, or that proposed amendments to the adopted criteria would be rejected in order to retain the Hofeller-drawn map. Ex. 2043, p. 14.
40. Rep. Lewis, aided by Sen. Rucho, presented seven criteria to the Joint Committee for adoption. Ex. 1005, pp. 12-104; Ex. 1007. These

“proposed” criteria mirrored the oral instructions Dr. Hofeller had received from Sen. Rucho and Rep. Lewis before and as he drew the map. As Sen. Rucho told the Senate Committee two days later on February 18: “I’ll be clear, the criteria that Rep. Lewis has submitted is the criteria that was used to draw the maps, and probably that’s as much as we need to know.” Ex. 1009, p. 24:1-4.

41. At least two, and more accurately three, of the seven criteria adopted by the Joint Committee on February 16, 2016 are explicitly partisan: (a) the use of that “political data”—past election results—to determine the population included in a given district; (b) the explicit goal of preserving the 10-3 Republican seat advantage gained under the then-just-invalidated 2011 Plan and (c) the decision to avoid pairing incumbents where 77% of the incumbents identify as Republicans.¹

42. These three criteria specifically provide:

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.

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.

Incumbency

Candidates for Congress are not required by law to reside in a district they seek to represent. However, reasonable efforts shall be made to ensure that incumbent members of Congress are not paired with another incumbent in one of the new districts construed in the 2016 Contingent Congressional Plan.

Ex. 1007.

¹ Even purportedly non-partisan criteria draw partisan distinctions. Within Compactness,” for example, the map drawer was authorized—and in fact did—split counties for reasons of “political impact.” Ex. 1007, p. 2.

43. To preserve the 10-3 partisan advantage, the criteria directed that the districts be constructed using only the results of 20 statewide partisan elections and forbade the pairing of the 10 Republicans and 3 Democrats elected in 2014. Ex. 1007.
44. To assure that these 20 statewide election results accurately reflected the partisan preferences of voters, the criteria forbade the division of precincts except to assure population equality. Ex. 1007.
45. To eliminate the racial gerrymander, the criteria forbade the use of race in the construction of the districts and also directed the dismantling of CD 12. Ex. 1007.
46. The criteria also generally called for a reduction in the 40 counties split in the 2011 map but preserved Dr. Hofeller's discretion to divide counties to protect the Republicans' 10-3 partisan advantage. Ex. 1007.
47. Retention of the cores of the 2011 districts was not one of the adopted criteria. Ex. 1007.
48. Amendments that would have made it more difficult to meet the 10-3 partisan advantage goal were rejected on party line votes. Ex. 1006, pp. 24, 26 and 28. One of these would have prohibited the division of counties for any reason other than population equality. Ex. 1006, p. 23. Others would have required the preservation of communities of interest. Ex. 1006, pp. 25 and 27. Such criteria would, however, have prevented Dr. Hofeller from splitting Democratic population centers, such as Asheville, and would have thwarted that partisan goal, as Defendants' expert Dr. Hood acknowledged. Trial Tr. Vol. IV, pp.42:6-43:4.
49. Dr. Hofeller's map was presented to and approved by the Joint Committee on Wednesday, February 17 on a party-line vote. FAC ¶ 19; Answer ¶ 19; Ex. 1008, p. 72.
50. The full House and Senate convened on Thursday, February 18 and Friday, February 19. FAC ¶ 21; Answer ¶ 21. In response to questions from a Democratic Senator, Sen. Rucho made public the fact that Dr. Hofeller had drawn the map and that Hofeller's work was "how we actually got the [written] criteria [adopted on February 16] established." Ex. 1011, p. 34. He informed the Senate that Dr. Hofeller "fully understood" the "limitations" imposed on him by the oral directions Lewis and Rucho had given him. Ex. 1011, p. 42.

51. The Senate Redistricting Committee approved the map 12-5 by a party-line vote. Ex. 1009, p. 63. The House Redistricting Committee approved the map 12-6 by a party-line vote. Ex. 1014, p. 51.
52. The 2016 map was adopted on straight party-line votes and because the Governor has no power to veto redistricting legislation, it became law on February 19, 2016 without any action by the Governor. FAC ¶ 21; Answer ¶ 21; N.C. Const. Art. II sec. 22.

E. Direct evidence of the legislature’s partisan intent

53. Perhaps the clearest statements of partisan intent come from Defendant Lewis himself. In response to questions from a Democratic member of the Redistricting Committee at the February 16 Joint Committee meeting, Lewis repeatedly emphasized his intention to use political data to obtain partisan advantage. He said:

[W]e want to make clear that we to the extent are going to use political data in drawing this map, it is to gain partisan advantage.

...

I want that criteria to be clearly stated and understood.

...

I’m making clear that our intent is to use ... the political data we have to our partisan advantage.

Ex. 1005, pp. 53:24-54:5; 54:13-15.

54. Lewis even explained *how* political data would be used—and in fact had already been used—to gain partisan advantage. He said: “[I]f you are trying to give a partisan advantage, you would want to draw the lines so that more of the whole VTDs (voter tabulation districts) voted for the Republican on the ballot than they did the Democrat.” Ex. 1005, p. 57:12-16. Perhaps most tellingly, Rep. Lewis stated: “I propose that we 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.” Ex. 1005, p. 50:7-10.
55. When the map came before the full House for final approval on February 19, Rep. Lewis affirmed those earlier statements. Asked if the 2016 Plan

was “essentially a political gerrymander,” Rep. Lewis responded: “[p]olitical data did play a part in drawing the map. We did seek partisan advantage in drawing the map.” Ex. 1016, p. 29:11-13.

56. In his deposition, Rep. Lewis testified about his view of the role partisanship plays in redistricting. He testified: “I think electing Republicans is better than electing Democrats. So I drew this [2016] map to help foster what I think is better for the country.” Lewis Depo. 171:17-20. Similarly, he testified that all discretionary decisions about the map were made “through the lens of a Republican.” Lewis Depo. 176:23–177:9.
57. Sen. Rucho’s comments similarly establish the partisan intent of the 2016 Plan. In speaking to the full Senate, Sen. Rucho informed the Senate that his goal in drawing the new plan was to preserve the partisan advantage Republicans had obtained through the illegal 2011 plan. Ex. 1011, p. 81. And at a Senate Committee meeting following that floor session, Rucho told his colleagues that the election data they had been provided was to “build[] these districts.” Ex. 1009, p. 10.

F. Results of the 2016 Congressional elections confirm the scheme

58. The results of the 2016 congressional elections confirm the effectiveness of Dr. Hofeller’s use of past election results to assign plaintiffs and other voters to districts based on their voting patterns, and thereby meet his instructions to maintain the 10-3 Republican advantage and protect 10 Republican incumbents.
59. As planned, ten Republicans and three Democrats were elected to Congress from North Carolina in 2016, even though Republicans received only 53% of the statewide congressional vote and Democrats received 47% of that vote. Had the statewide totals been reversed, Democratic candidates would not have fared so well. Ex. 1018, pp. 2-4. Had partisan fortunes been reversed (with Democratic candidates taking 53% of the vote), only one seat would have shifted from Republican to Democratic control. Ex. 3022 (vote share), 3023 (applying simple mean-medium analysis).
60. The district-level results explain this asymmetry, revealing how Plaintiffs and other voters were effectively assigned to districts by Dr. Hofeller in a manner that would preserve the 10 to 3 Republican advantage gained from the invalid 2011 Plan. Democratic voters were packed into CDs 1, 4 and 12 so that the Democratic candidate won by margins in excess of 29% in each of those districts: 68.62% to 28.96% margin in CD 1; 68.22% to 31.78% margin in CD 4 and 67.02% to 30.58% margin in CD 12. The remaining

Democratic voters were dispersed across the other 10 districts so that Republican candidates won by lesser, but still comfortable, margins. The Republican margin of victory in CD 2 was 56.71% to 43.29%; in CD 3 was 67.20 to 32.80%; in CD 5 was 58.10% to 41.60%; in CD 6 was 59.23% to 40.77%; in CD 7 was 60.91 to 39.09%; in CD 8 was 58.77% to 41.23%; in CD 9 was 58.18% to 41.82%; in CD 10 was 63.14% to 36.86%; in CD 11 was 64.09% to 35.91%; and in CD 13 was 56.10% to 43.90%. Ex. 1018, pp. 2-4.

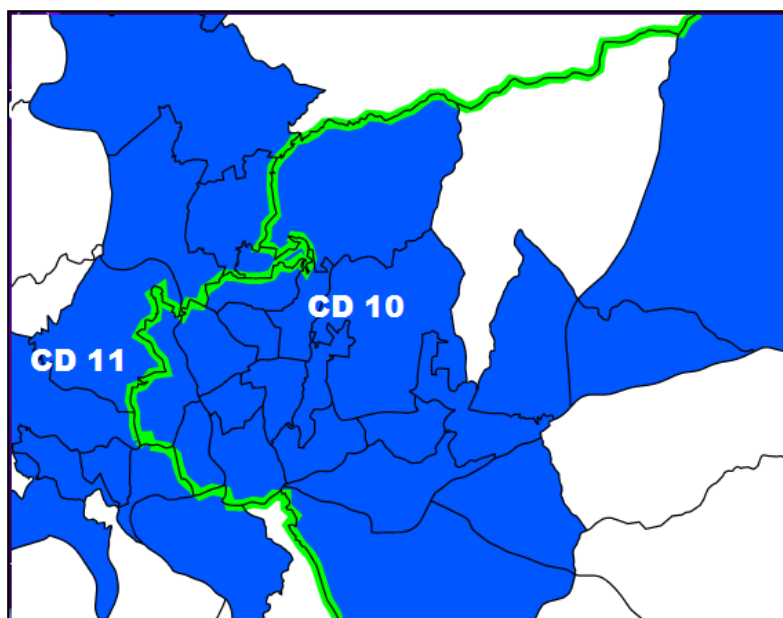
61. The manner in which the General Assembly in February 2016 drew ten of North Carolina's congressional districts—all but CD 1, 4, and 12—gave a significant and inherent advantage to Republicans running in those districts. Trial Tr. Vol. IV, pp. 56:25-57:8. That redistricting advantage is the primary reason why bona fide Democratic challengers did not emerge in those districts and why the Republican candidates in those districts enjoyed a sizeable fundraising advantage. Trial Tr. Vol. IV, p. 59:9-13. Consequently, the manner in which those ten districts were drawn is the predominant reason why Republican candidates prevailed by significant margins in each of those districts. The advantage incumbency provided to these Republican candidates did not factor as significantly in their success as did the redistricting advantage the General Assembly afforded them.
62. The advantage of incumbency does not, by itself, explain the outcome of North Carolina's 2016 congressional elections. Whether an incumbent has an advantage over a challenger is significantly affected by the manner in which the incumbent's district is drawn. The legislature can draw an incumbent's district in a manner that makes it so unlikely for a challenger to prevail that a bona fide challenger never emerges and that makes it very difficult for any challenger to raise significant political contributions. Trial Tr. Vol. IV pp. 55:21-56:7. On the other hand, the legislature can draw an incumbent's district in a manner that makes it very likely for a challenger to prevail such that a bona fide challenger emerges who is able to raise significant political contributions. Trial Tr. Vol. IV, p. 55:17-20. Simply put, there is a symbiotic relationship between the advantage of incumbency and the redistricting process. Trial Tr. Vol. IV, p. 56:8-14.

III. One method Defendants used to achieve their partisan goal was to split naturally-occurring concentrations of Democratic voters.

63. There are several "partisan clusters" in North Carolina in which a geographic area of the state tends to vote highly Democratic or highly Republican. These partisan clusters are likely to be placed together in the

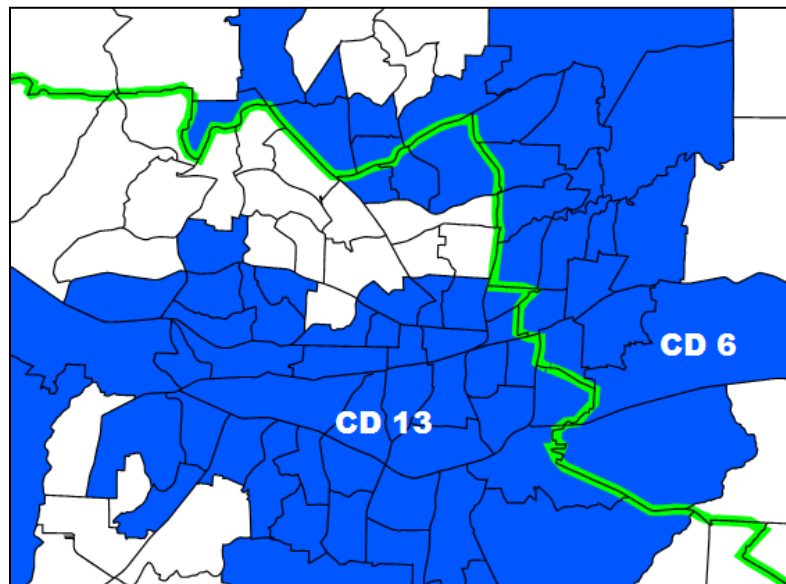
same district during the redistricting process. This phenomenon is sometimes referred to as “natural packing.” Ex. 5058, pp. 10, 13; Trial Tr. Vol. IV pp. 37:12-15, 38:5-12.

64. Democratic partisan clusters are located in Charlotte, Asheville, Winston-Salem, Greensboro, Durham, Raleigh, in the northern coastal plain, and in the southern coastal plain where Cumberland, Hoke, and Robeson Counties are located. Ex. 5058, p. 10.
65. During the February 2016 redistricting process, rather than placing the Democratic partisan cluster in Asheville into a single congressional district, in which Democratic voting strength would have been maintained, the General Assembly divided that partisan cluster between CD 10 and CD 11, thereby cracking it into two districts, as is depicted below. Ex. 3042, p. 7; Trial Tr. Vol. IV pp. 41:12-42:5.



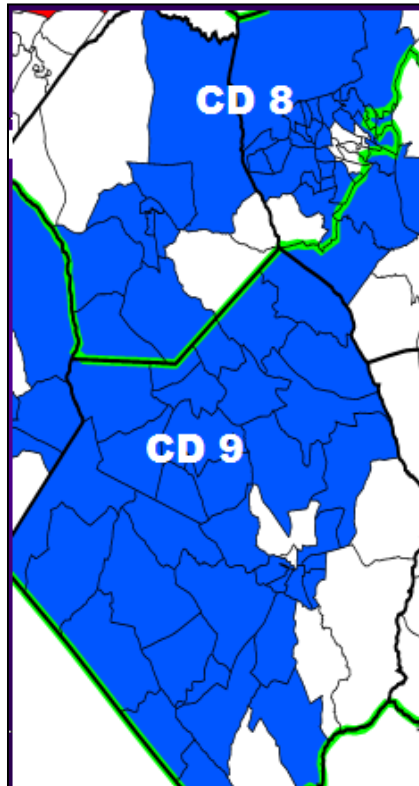
66. The two cracked pieces of the Asheville Democratic partisan cluster were submerged into districts in which the votes of persons favoring Democratic candidates were nullified. As a result, the Republican candidates won the 2016 election in CD 10 by a margin of 63.2% to 36.8% and in CD 11 by a margin of 64.2% to 35.8%. Had the General Assembly placed the Asheville Democratic partisan cluster into a single congressional district, that district would have been significantly more competitive than the results that occurred in CD 10 and CD 11. Ex. 3042, p. 10; Trial Tr. Vol. IV pp. 42:6-43:4.

67. The General Assembly's cracking of the Asheville Democratic partisan cluster during the February 2016 redistricting process significantly diluted Democratic voting strength in this geographic area.
68. During the February 2016 redistricting process, rather than placing the Democratic partisan cluster in Greensboro into a single congressional district, in which Democratic voting strength would have been maintained, the General Assembly divided that partisan cluster between CD 6 and CD 13, thereby cracking it into two districts, as is indicated below. Ex. 3042, p. 13; Trial Tr. Vol. IV. p. 45:2-8.



69. The two cracked pieces of the Greensboro Democratic partisan cluster were submerged into districts in which the votes of persons favoring Democratic candidates were nullified. As a result, the Republican candidates won the 2016 election in CD 6 by a margin of 59.3% to 40.7% and in CD 13 by a margin of 56.1% to 43.9%. Had the General Assembly placed the Greensboro Democratic partisan cluster into a single congressional district, that district would have been significantly more competitive than the results that occurred in CD 6 and CD 13. Ex. 3042, p. 16; Trial Tr. Vol. IV pp. 45:9-15;46:1-5.
70. The General Assembly's cracking of the Greensboro Democratic partisan cluster during the February 2016 redistricting process significantly diluted Democratic voting strength in this geographic area.
71. During the February 2016 redistricting process, rather than placing the Democratic partisan cluster in Cumberland, Hoke, and Robeson Counties

into a single congressional district, in which Democratic voting strength would have been maintained, the General Assembly divided that partisan cluster between CD 8 and CD 9, thereby cracking it into two districts, as is indicated below. Ex. 3042, p. 20; Trial Tr. Vol. IV p. 46:6-11; 48:4-12.



72. The two cracked pieces of the Cumberland/Hoke/Robeson Democratic partisan cluster were submerged into districts in which the votes of persons favoring Democratic candidates were nullified. As a result, the Republican candidates won the 2016 election in CD 8 by a margin of 58.8% to 41.2% and in CD 9 by a margin of 58.2% to 41.8%. Had the General Assembly placed the Cumberland/Hoke/Robeson Democratic partisan cluster into a single congressional district, that district would have been significantly more competitive than the results that occurred in CD 8 and CD 9. Ex. 3042, p. 23; Trial Tr. Vol. IV pp. 49:20-50:11.
73. The General Assembly's cracking of the Cumberland/Hoke/Robeson Democratic partisan cluster during the February 2016 redistricting process significantly diluted Democratic voting strength in this geographic area.

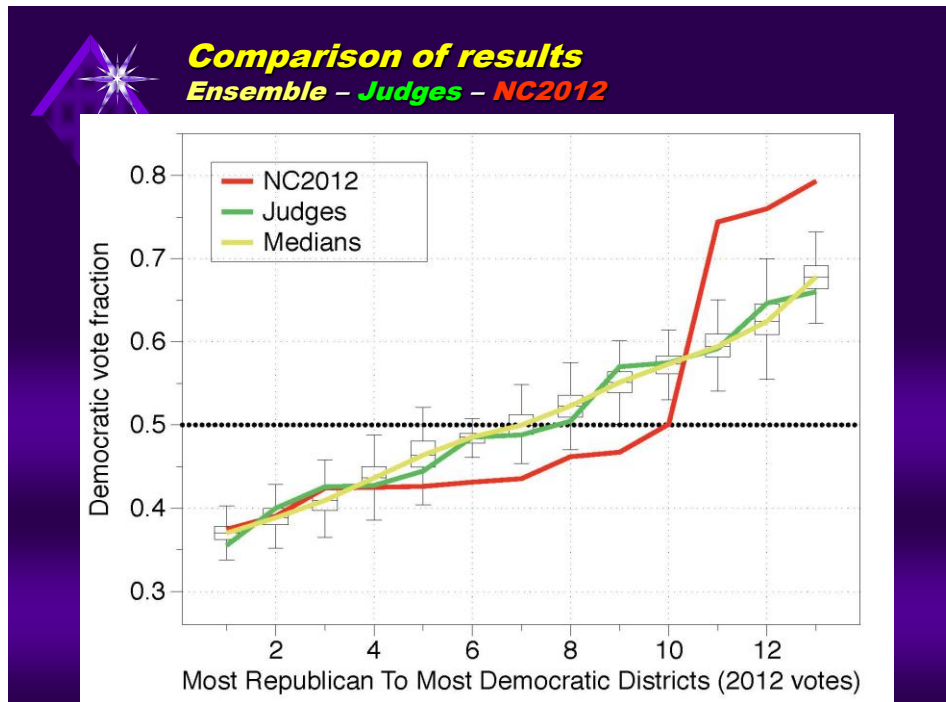
IV. Dr. Mattingly's analysis confirms that the 2016 map is an extreme partisan outlier that had significant electoral consequences. Defendants' explanations for the map are a pretext.

74. It is feasible and relatively simple to utilize computer algorithms to generate simulated redistricting maps which employ only non-partisan criteria such as contiguity, equal population, compactness, minimizing county and VTD splits, and compliance with the Voting Rights Act. Thousands of simulated redistricting maps can be created using this process. By creating simulated redistricting maps in this fashion, a baseline may be established against which to assess the degree of partisanship a legislature employs in adopting an actual redistricting map. Ex. 3002, pp. 2-3.
75. Dr. Jonathan C. Mattingly is a Full Professor of Mathematics and Statistical Science at Duke University and serves as Chair of the Mathematics Department. Trial Tr. Vol. I pp. 21:12-24:12; Ex 3001. He is an expert in applied Computational mathematics. *Id.* 24:13-18.
76. Prior to becoming involved in this case, and with the assistance of his students, Dr. Mattingly ran a Markov chain Monte Carlo computer algorithm to generate a collection of 24,518 simulated redistricting maps for North Carolina's 13 congressional districts. Ex. 3003; Trial Tr. pp. 26:13-28:10. The Markov chain Monte Carlo algorithm is a commonly used method employed by mathematicians to make sense of seemingly random phenomena and is often used to study weather, predict hurricanes, and forecast likely damage from the use of an atomic bomb. Trial Tr. Vol. I p. 41:4-8.
77. Dr. Mattingly programmed the algorithm to create the simulated maps by employing only non-partisan criteria such as contiguity, equal population, compactness, minimizing county and VTD splits, and compliance with the Voting Rights Act. The simulated maps in his collection were created without regard to the partisan affiliation or voting history of any voters in North Carolina. Trial Tr. Vol. I pp. 34:12-35:4 and 38:13-49:5; Ex. 3040, p 2.
78. Dr. Mattingly and his students created this collection of simulated maps as part of the Beyond Gerrymandering project which was spearheaded by Thomas W. Ross, the former president of Davidson College and of the UNC System. Mr. Ross was a visiting professor at the Sanford School of Public Policy at Duke when the Beyond Gerrymandering project was undertaken. Trial Tr. Vol. I p. 28:11-25. The primary function of that

project was to assemble a simulated redistricting commission composed of 10 retired North Carolina justices and judges to draw a new congressional redistricting map. Five of its members were former chief justices of the North Carolina Supreme Court; five commission members were Democrats and five were Republicans. Trial Tr. Vol. I p. 29:3-30:4. The criteria utilized by this simulated redistricting commission were entirely non-partisan: contiguity, equal population, compactness, minimizing county and VTD splits, and compliance with the Voting Rights Act. Trial Tr. Vol. I p. 34:20-35:4. The congressional redistricting map adopted by the Beyond Gerrymandering project was unveiled on August 29, 2016.

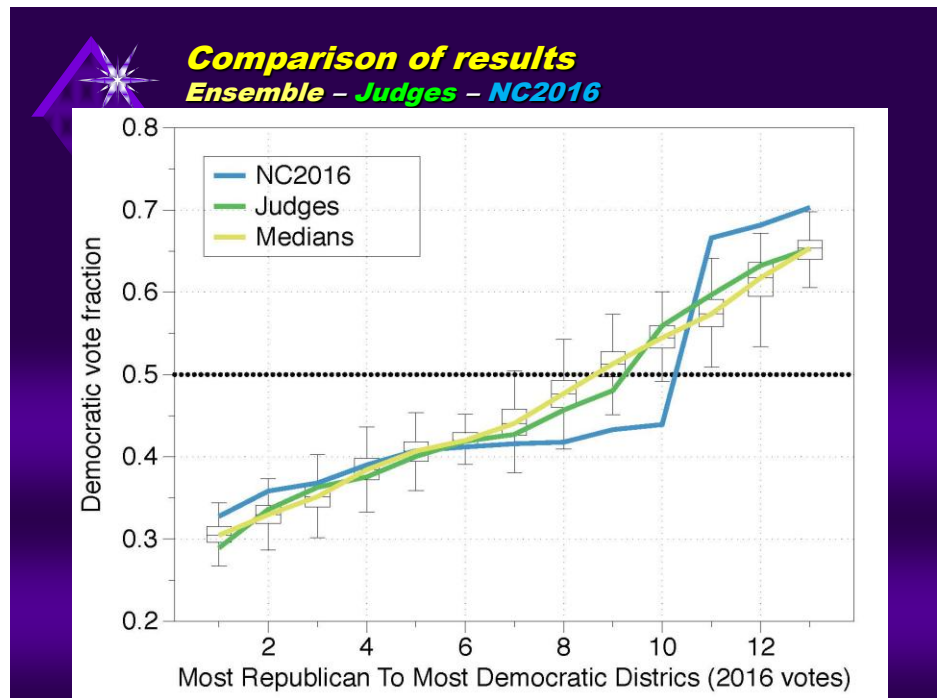
79. Dr. Mattingly and his students utilized the 24,518 simulated redistricting maps created by the computer algorithm as a baseline against which to evaluate the congressional redistricting map adopted by the retired justices and judges who served on the Beyond Gerrymandering project's simulated redistricting commission. In addition, Dr. Mattingly and his students utilized that same baseline to evaluate the redistricting maps enacted by the General Assembly in 2011 and 2016. Ex. 3004 and 3005; Trial Tr. Vol. I pp. 34:20-35:4
80. Based on the work undertaken by Dr. Mattingly and his students, it is evident that congressional districts which are drawn by employing only non-partisan redistricting criteria such as contiguity, equal population, compactness, minimizing county and VTD splits, and compliance with the Voting Rights Act will demonstrate a gradual, "stair-stepping" slope from the most Republican to the most Democratic district (if Republicans control the redistricting process) when the percentage of votes cast for the Democratic candidate in each district is plotted on a graph. That slope will be relatively linear and will not resemble the shape of an "S." Trial Tr. Vol. I pp. 49:12-51:4; Ex. 3040, pp. 11 and 23
81. As Dr. Mattingly's work established, extreme partisan gerrymandering can best be ascertained when the actual partisan outcomes for each district in any given congressional election are plotted on a graph from the most Republican to the most Democratic district (if Republicans control the redistricting process). Extreme partisan gerrymanders will result in an "S" curve which distinguishes the most Democratic districts from the other districts. That "S" curve demonstrates the packing of Democratic voters into the most Democratic districts and the dilution of Democratic voters from the next most Democratic districts.

82. The median 2012 and 2016 Democratic vote share for congressional candidates in the collection of 24,518 simulated redistricting maps created by Dr. Mattingly's computer algorithm demonstrated a gradual, "stair-stepping" slope from the most Republican to the most Democratic district when the percentage of votes for the Democratic candidate in each district is plotted on a graph. The slope connecting those Democratic vote shares, from most Republican to most Democratic district, is relatively linear and does not resemble the shape of an "S." Ex. 3040, pp. 12 and 24.
83. The congressional redistricting map adopted by the retired justices and judges affiliated with the Beyond Gerrymandering project largely conformed with the baseline created by the 24,518 simulated redistricting maps created by the computer algorithm Dr. Mattingly utilized. The Democratic vote share for 2012 and 2016 congressional candidates in the 13 districts comprising that redistricting map demonstrated a gradual, "stair-stepping" slope from the most Republican to the most Democratic district when the percentage of votes for the Democratic candidate in each district is plotted on a graph. The slope connecting those Democratic vote shares, from most Republican to most Democratic district, is relatively linear and does not resemble the shape of an "S." Ex. 3040, pp 18 and 30; Ex. 3040, p.39.
84. The 2011 and 2016 redistricting maps enacted by the General Assembly were extreme outliers when compared to (1) the baseline established by Dr. Mattingly's 24,518 simulated redistricting maps and (2) the redistricting map adopted by the Beyond Gerrymandering project's simulated redistricting commission. Over 99% of the redistricting maps created by Dr. Mattingly's computer algorithm would likely have produced more than four wins for Democratic candidates in 2012 (as actually occurred) and more than three wins for Democratic candidates in 2016 (as actually occurred). Trial Tr. Vol. I pp. 47:25-48:3 and 63:20-64:2; Ex. 3040, pp. 7-10 and 19-22. The redistricting map created by the simulated redistricting commission would likely have produced six wins for Democratic candidates in 2012 and four wins for Democratic candidates in 2016. Ex. 3040, pp. 8 and 20.
85. The significant difference between the likely 2012 partisan results of Dr. Mattingly's collection of simulated redistricting maps (yellow line) and the map created by the simulated redistricting commission (green line) on the one hand, and the actual results of the 2012 congressional elections (red line), is best illustrated by the graph below:



Ex. 3040, p. 18. This is “the signature of gerrymandering.” Trial Tr. Vol. I, p 63:2-3.

86. The significant difference between the likely 2016 partisan results of Dr. Mattingly’s collection of simulated redistricting maps (yellow line) and the map created by the simulated redistricting commission (green line) on the one hand, and the actual results of the 2016 congressional elections (blue line), is best illustrated by the graph below:



Ex. 3040, p. 30; Ex. 3040, p. 39. This too is the “signature of a gerrymander.” Trial Tr. Vol. I p. 76:24.

87. These graphs illustrate that the 2011 and 2016 redistricting maps enacted by the General Assembly were extreme partisan gerrymanders. As compared to the gradually sloping line connecting the likely Democratic vote share in all thirteen districts in Dr. Mattingly’s collection of 24,518 simulated redistricting maps, and in the map adopted by the simulated redistricting commission, the line connecting the actual Democratic votes shares in both the 2012 and 2016 congressional elections is an “S” curve which distinguishes the most Democratic districts from the other districts. That “S” curve demonstrates the packing of Democratic voters into the most Democratic districts and the dilution of Democratic voters from the next most Democratic districts.

88. Based on the work undertaken by Dr. Mattingly and the retired justices and judges in the Beyond Gerrymandering project, had the General Assembly enacted a redistricting map prior to the 2012 congressional elections which employed only non-partisan criteria such as contiguity, equal population, compactness, minimizing county and VTD splits, and compliance with the Voting Rights Act, Democratic candidates would likely have won six to seven of the thirteen elections. And based on that same work, had the General Assembly enacted a redistricting map prior to the 2016 congressional elections which employed only non-partisan criteria such as

contiguity, equal population, compactness, minimizing county and VTD splits, and compliance with the Voting Rights Act, Democratic candidates would likely have won four to five of the thirteen elections. Ex. 3040, pp.7 and 19.

89. The 2011 and 2016 redistricting maps were precisely engineered and tuned to achieve the partisan goal of increasing the number of Republican candidates who were elected; the components of those maps were not randomly chosen. Trial Tr. Vol. I p. 73:3-14.
90. In the General Assembly's 2011 enacted redistricting map, Democratic voters were packed into the three most Democratic districts (CD 1, CD 4, CD 12) in proportions which far exceeded the number of Democratic voters that would have been placed in the three most Democratic districts had the General Assembly enacted a redistricting map which employed only non-partisan criteria such as contiguity, equal population, compactness, minimizing county and VTD splits, and compliance with the Voting Rights Act (as did Dr. Mattingly's collection of 24,518 redistricting maps and the map adopted by the simulated redistricting commission); this packing of Democratic voters into those three districts significantly depleted the number of Democratic voters in several other districts, thereby reducing the likelihood that a Democrat could prevail in those districts. This packing of Democratic voters resulted in the Democratic candidate winning between 74-79% of the votes in CD 1, CD 4, CD 12, thereby leaving only one additional district, CD 7, with a sufficient number of Democratic voters for the Democratic candidate to prevail. The depletion of Democratic voters in CD 8, CD 9, CD 10, and CD 13 resulted in Democratic candidates obtaining only 43-47% of the vote in those districts even though the work undertaken by Dr. Mattingly revealed that Democratic candidates should have won between 49%-55% of the vote in those districts—had only non-partisan criteria been used to draw them—and should have prevailed in at least two of them. Ex. 3040, p. 16; Trial Tr. Vol. I, pp. 58:22-61:7
91. In the General Assembly's 2016 enacted redistricting map, Democratic voters were packed into the three most Democratic districts (CD 1, CD 4, CD 12) in proportions which far exceeded the number of Democratic voters that would have been placed in the three most Democratic districts had the General Assembly enacted a redistricting map which employed only non-partisan criteria such as contiguity, equal population, compactness, minimizing county and VTD splits, and compliance with the Voting Rights Act (as did Dr. Mattingly's collection of 24,518 redistricting maps and the map adopted by the simulated redistricting commission); this packing of

Democratic voters into those three districts significantly depleted the number of Democratic voters in several other districts, thereby reducing the likelihood that a Democrat could prevail. This packing of Democratic voters resulted in the Democratic candidate winning between 67-70% of the votes in CD 1, CD 4, CD 12, thereby leaving an insufficient number of Democratic voters for the Democratic candidate to prevail in any of the remaining districts. The depletion of Democratic voters in CD 2, CD 9, and CD 13 resulted in Democratic candidates obtaining only 42-44% of the vote in those districts even though the work undertaken by Dr. Mattingly revealed that Democratic candidates should have won between 48%-54% of the vote in those districts—had only non-partisan criteria been used to draw them—and should have prevailed in at least two of them. Ex. 3040, p. 28; Trial Tr. Vol. I pp.68:14-72:2.

92. It would have been virtually impossible for the redistricting maps enacted by the General Assembly in 2011 and 2016 to produce these election results in 2012 (9 Republican wins) and 2016 (10 Republican wins) if they had been drawn by employing only non-partisan redistricting criteria such as contiguity, equal population, compactness, minimizing county and VTD splits, and compliance with the Voting Rights Act (as were Dr. Mattingly's collection of 24,518 redistricting maps and the map adopted by the simulated redistricting commission). These election results were not obtained unintentionally. Rather, they were the intended result of the General Assembly employing partisan criteria in the redistricting process which were specifically designed to produce the very election results that occurred. Trial Tr. Vol. I pp. 62:1-12; 71:24-72:2.
93. The boundaries established by the redistricting maps enacted by the General Assembly in 2011 and 2016 are not explained by the need to respect North Carolina's political geography, i.e., the swaths of the state in which Democratic voters tend to predominate and/or Republican voters tend to predominate. Rather, the criteria utilized by both Dr. Mattingly's computer algorithm and the simulated redistricting commission already took into account North Carolina's political geography and yet those maps had a partisan composition that is significantly different from the partisan composition of the General Assembly's enacted maps. Trial Tr. Vol. I pp. 91:20-92:19.
94. The boundaries established by the redistricting maps enacted by the General Assembly in 2011 and 2016 are not explained by the need to comply with the Voting Rights Act and/or to create two congressional districts with relatively high "black voting age populations." Rather, the

criteria utilized by both Dr. Mattingly's computer algorithm and the simulated redistricting commission already took into account the need to comply with the Voting Rights Act and/or to create two congressional districts with relatively high "black voting age populations" and yet those maps had a partisan composition that is significantly different from the partisan composition of the General Assembly's enacted maps. Trial Tr. Vol. I pp. 90:19-91:19.

95. The boundaries established by the redistricting maps enacted by the General Assembly in 2011 and 2016 are not explained by the need to minimize the splitting of whole counties. Rather, the criteria utilized by both Dr. Mattingly's computer algorithm and the simulated redistricting commission already took into account the desire to minimize the splitting of whole counties and yet those maps had a partisan composition that is significantly different from the partisan composition of the General Assembly's enacted maps. Trial Tr. Vol. I pp. 79:22-83:19; Ex. 3040, pp. 35-38.
96. The boundaries established by the redistricting maps enacted by the General Assembly in 2011 and 2016 are not explained by the need to maximize the compactness of the congressional districts. Rather, the criteria utilized by both Dr. Mattingly's computer algorithm and the simulated redistricting commission already took into account the desire to maximize the compactness of congressional districts and yet those maps had a partisan composition that is significantly different from the partisan composition of the General Assembly's enacted maps. Trial Tr. Vol. I p. 86:7-24.
97. The boundaries established by the redistricting maps enacted by the General Assembly in 2011 and 2016 are not explained by the need to equalize the population in all 13 congressional districts. Rather, the criteria utilized by both Dr. Mattingly's computer algorithm and the simulated redistricting commission already took into account the desire to equalize the population in all 13 congressional districts and yet those maps had a partisan composition that is significantly different from the partisan composition of the General Assembly's enacted maps. Trial Tr. Vol. I pp. 85:2-86:6.
98. With respect to his criticism that Dr. Mattingly set his equal population threshold at 1% population deviation—rather than 0.0%—Dr. Hood conceded that, as discussed in Dr. Mattingly's article, *Redistricting: Drawing the Line*, the mean population deviation among the 312,000

districts in his 24,518 simulated maps was only 0.16%, compared with a population deviation of 0.68% in the General Assembly's 2016 enacted map before VTDs were split in order to achieve equal population. Trial Tr. Vol. IV, p. 66:15-20. Furthermore, Dr. Hood conceded that it is typical for map drawers to draw a plan within a close percentage of equal population among its districts and to then zero out the deviation with small splits of VTDs that would not have any significant effect on the outcome of any election. Trial Tr. Vol. IV, p. 67:15-18, 68:3-8.

99. With respect to his criticism that Dr. Mattingly set thresholds for one congressional district with a black voting age population ("BVAP") in excess of 40%, and for another district with BVAP in excess of 30%—even though the criteria adopted by the General Assembly did not include such requirements—Dr. Hood conceded that by doing so, Dr. Mattingly made his simulated maps consistent with the plan actually enacted by the General Assembly, which also had one district with BVAP in excess of 40% and another district with BVAP in excess of 30%. Trial Tr. Vol. IV, p. 69:2-16. Dr. Hood further agreed that he had no basis to challenge Dr. Mattingly's opinion that applying these BVAP thresholds did not alter his ultimate results. Trial Tr. Vol. IV, p. 70:2-9.
100. With respect to his criticism that Dr. Mattingly's use of actual congressional votes to determine the likely outcomes among his 24,518 simulated maps assumed that the actual candidates running in each district would not matter, Ex. 5059, p. 3, Dr. Hood conceded that his "partisan index" made the same assumption when it graded the likely outcome among VTDs based on results from 11 statewide elections, Trial Tr. Vol. IV, p. 71:10-20; he further conceded that Dr. Hofeller's use of seven statewide elections to assist him in drawing the map that the General Assembly actually enacted relied on the same assumption that the actual candidates running in those districts would not matter. Trial Tr. Vol. IV, p. 72:7-20.
101. With respect to his criticism of the number of counties split among Dr. Mattingly's 24,518 simulated maps, Dr. Hood conceded that he had failed to note that the median number of county splits among Dr. Mattingly's simulated maps was only 21, which essentially cut in half the number of counties the General Assembly had split when it adopted the 2011 redistricting map. Dr. Hood agreed that splitting only 21 counties would represent a "marked improvement" over the 2011 enacted map, just as the General Assembly's 2016 enacted map splitting only 13 counties

represented a “marked improvement” in that regard. Trial Tr. Vol. IV, p. 73:10-12, p. 74:12-17, p. 75:1-7.

V. Dr. Chen’s analysis likewise confirms that the 2016 map is an extreme partisan outlier that had significant electoral consequences, and Defendants’ explanations for the map are a pretext.

102. Dr. Jowei Chen also utilizes computer algorithms to generate simulated redistricting maps which employ specified criteria in the drawing of districts. Thousands of simulated redistricting maps can be created using this process. By creating simulated redistricting maps in this fashion, a baseline may be established against which to assess where the enacted map falls in a distribution of the simulated maps. From this baseline, Dr. Chen is also able to evaluate whether: (1) whether partisanship predominated over other districting specified considerations; and (2) the degree to which these other considerations were actually met by the enacted plan. Dr. Chen evaluated both of questions in evaluating the 2016 Plan. Ex. 2010; Trial Tr. Vol. I, p. 157:11-21.
103. Dr. Chen is an Associate Professor in the department of Political Science at the University of Michigan. Ex. 2012; Trial Tr. Vol. I, p. 153. Dr. Chen has previously provided expert reports and been qualified to testify as an expert in this area. Ex. 2010, p. 1; Trial Tr. Vol. I, p. 156:2-18. His approach to simulation is described in a recent Fourth Circuit opinion favorably discussing the approach as applied in that case. *See Raleigh Wake Citizens Ass’n v. Wake County Board of Elections*, 827 F.3d 333, 344 (4th Cir. 2016).
104. In this case, Dr. Chen programmed the algorithm to create simulated districting maps using only the non-partisan portions of the Adopted Criteria used in the 2016 Plan. Ex. 2010, p. 6-7; Trial Tr. Vol. I, pp. 170:5-174:18. Dr. Chen applied the Adopted Criteria as they defined the explicit goals of the General Assembly. Trial Tr. Vol. I, pp. 174:19-176:7.
105. To test several possibilities, Dr. Chen created three sets of 1,000 alternative redistricting simulations using all of the traditional redistricting criteria reflected in the General Assembly’s Adopted Criteria. In the first set, Dr. Chen generated maps that matched or exceeded the 2016 Plan on all criteria excluding consideration of partisan data and protection of incumbents. Ex. 2010, p. 10.
106. In a second set, Dr. Chen did the same thing except that he ensured that incumbents were protected in the maps (more effectively than the 2016

Plan did, by ensuring that none of the 13 incumbents was paired with another incumbent). For this set, he applied the precise rule for incumbency protection used in the 2016 Plan, which seeks to avoid placing incumbents in the same district. Ex. 2010, p. 15; Trial Tr. Vol. I, p. 181:19-23.

107. In a third set, Dr. Chen once again excluded partisan data and protected incumbents, but rather than exceeding the 2016 Plan's performance, these maps only matched the enacted plan with respect to two of the formal Adopted Criteria. Just like the enacted plan, all maps in the third set pair 2 of the 13 incumbents and include 13 county splits. Ex. 2010, p. 19; Trial Tr. Vol. I, pp. 181:24-182:5.
108. For each of the three sets of 1,000 maps, Dr. Chen then evaluated the partisan distribution of seats under both elections specified in the Adopted Criteria and in the seven elections actually evaluated by Dr. Hofeller. Ex. 2010, p. 9. Among the 3,000 simulated maps generated by Dr. Chen among these three simulation sets, zero result in a partisan distribution of 10 Republican and 3 Democratic seats.
109. From this, Dr. Chen is able to conclude that the 2016 Plan—in creating 10 Republican seats—is an extreme statistical outlier in terms of its partisanship. It creates a partisan distribution of seats entirely outside the range of the simulation sets specifically built to reflect the non-partisan criteria actually used in the 2016 Plan and reflecting North Carolina's unique political geography. Trial Tr. Vol. I, pp. 213:19-214:2.
110. Dr. Chen's report includes figures demonstrating the partisan distribution of seats for the simulation sets and the enacted map for each of these simulation sets. Ex. 2010, pp. 13 (fig. 2), 16 (fig. 4), 21 (fig. 6). These figures demonstrate that zero simulated maps yield 10 Republican seats, and that 7 Republican seats is the most likely outcome. These results across the simulation sets are shown in Table 1 of Dr. Chen's report. Ex. 2010, p. 12.
111. Separately, Dr. Chen is able to conclude that the 2016 Plan deviated from certain non-partisan portions of the Adopted Criteria in relation to pursuit of that partisan goal. Ex. 2010, pp. 11, 14 (fig. 3), 17 (fig. 5), 22 (fig. 7). Rather than criticize Dr. Chen for this analysis, Defendants' basic response is to argue that there are other legitimate considerations—not found in the Adopted Criteria—that he should have considered. Because Dr. Chen understood—and Defendants also have admitted—the Adopted Criteria

reflected the actual constraints governing the drawing of the 2016 map, Dr. Chen did not evaluate these.

112. Similarly, Dr. Chen did not evaluate the relevance of any statements from Rep. Lewis regarding the purpose of the plan. Trial Tr. Vol. II, pp. 16:17-18:23. Dr. Chen sought to determine whether the enacted map could have been the product of something other than the explicit pursuit of partisan advantage. By holding constant the non-partisan criteria setting the rules that governed the plan, he determined it could not. Ex. 2010, p. 2. To the extent Defendants' experts have addressed Dr. Chen's analysis at all, they certainly have put forth no evidence that any redistricting criteria—whether in the Adopted Criteria or not—can be shown to explain the 2016 Plan's extreme result.
113. And the result is extreme. The net effect of the enacted plan is the creation of at least 2 or 3 more Republican seats than what would have been achievable under a map-drawing process that reflected only the non-partisan portions of the Adopted Criteria. Ex. 2010, pp. 2-3. Even controlling for incumbency protection as the Adopted Criteria did, Dr. Chen can conclude with overwhelmingly high statistical certainty that the process would not yield a 10-3 result. Ex. 2010, pp. 18-19.

VI. Many districts in the 2016 map are themselves illegal partisan gerrymanders

114. Numerous districts within the 2016 map were precisely engineered for partisan advantage. The evidence for each of these districts is catalogued below.
115. CD 2 is one of the 10 districts Hofeller drew to maintain the 10-3 partisan advantage for Republicans gained under the 2011 map. The 2016 version of CD 2 incorporates pieces of CD 1, 2, 3, 7 and 13 from the 2011 map. *Compare* Ex 1001 and 2001. It is formed from three whole counties (Franklin, Nash and Harnett) and pieces of three other counties (Wake, Wilson and Johnston). *See* Ex 1001.
116. Hofeller maintained the 10-3 Republican advantage in CD 2 by assigning the Democratic parts of Wake to the strongly Democratic CD 4 and by assigning the Republican parts of Wake to the Republican leaning CD 2. At the 2008 elections for Governor 63.66% of the persons in Wake Hofeller assigned to CD 4 voted Democratic. At the 2008 elections for Governor 41.49% of the persons in Wake Hofeller assigned to CD 2 voted Democratic. 2008 Election Returns, Part 2, *available at* http://www.ncleg.net/GIS/Download/District_Plans/DB_2016/Congress/20

[16 Contingent Congressional Plan - Corrected/Reports/VTD Statewide/rptVTDElec2008 2.pdf](#) (last visited Nov. 6, 2017) (hereinafter “2016 NCGA Website Elections Data”).²

117. This division of Wake enabled Hofeller to offset and dilute the Democratic vote in two other counties he assigned to CD 2, Nash and Franklin. For example, at the 2008 election for Governor the Democratic candidate received 52.37% of the vote in Franklin County and 54.93% of the vote in Nash County. 2016 NCGA Website Elections Data.
118. The extreme partisan purpose and effect of these splits is revealed by Dr. Mattingly’s analysis. The district with the fifth most Democratic votes in the 2016 elections was CD 2, with a 43% vote total for the Democratic candidate. Using the 2016 election results, approximately 99.47% of the 24,518 simulated maps in Dr. Mattingly’s collection had a Democratic vote total greater than 43% in the fifth most Democratic district. Trial Tr. 71:2-72:2; Ex 3040.
119. CD 9 is one of the 10 districts Hofeller drew to maintain the 10-3 partisan advantage for Republicans gained under the 2011 map. The 2016 version of CD 9 incorporates pieces of CD 2, 7, 8 and 9 from the 2011 map. Ignoring communities of interest, the 2016 version of CD 9 begins in part of Bladen County and runs along the South Carolina border all the way to downtown Charlotte. As plaintiff John McNeill, a resident of Robeson County and Mayor of Red Springs, testified: “I love going to Charlotte, but it has little in common with Robeson county and what our needs are.” McNeill Depo. 26:16-18.
120. Hofeller accomplished his partisan goal for this district by submerging a string of 6 Democratic counties (Anson, Richmond, Scotland, Robeson, Cumberland and Bladen) into two more populous, Republican areas, Union

² Federal Rule of Evidence 201(b)(2) provides for judicial notice of facts that are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” These documents meet that test. Judicial notice of election results posted on a government website is appropriate under Federal Rule of Evidence 201(b)(2). *Martinez v. Bush*, 234 F. Supp. 2d 1257, 1307 n.36 (S.D. Fla. 2002) (taking judicial notice of election results from the Florida Department of State website); *Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 454 n. 174 (S.D.N.Y.) (three-judge court), *summarily aff’d*, 543 U.S. 997 (2004) (taking judicial notice of results posted on New York State Board of Elections website).

County and the southern part of Mecklenburg, including downtown Charlotte. Hofeller's strategy is illustrated by the percentage of votes received by the Democratic candidate at the 2008 election results for Governor in the counties and parts of counties he combined to construct CD 9. 2016 NCGA Website Elections Data.

CD 9	Population	08 Governor
Mecklenburg	186,130	25.24%
Union	201,252	29.49%
Anson	26,948	63.23%
Richmond	46,639	56.74%
Scotland	36,157	63.32%
Robeson	134,168	70.60%
Bladen	26,209	61.47%
Cumberland	75,955	58.22%
Total	733,499	41.79%

121. Hofeller's division of Mecklenburg County along partisan lines further illustrates how he met the partisan goal assigned to him. The most Republican parts of Mecklenburg were assigned to CD 9 to assure Republican dominance in that district and the most Democratic parts of Mecklenburg were assigned to CD 12 to assure Democratic dominance in that district. At the 2008 election for Governor 25.24% of the persons in Mecklenburg Hofeller assigned to CD 9 voted Democratic. By contrast, at the 2008 elections for Governor 56.46% of the persons in Mecklenburg Hofeller assigned to CD 12 voted Democratic. 2016 NCGA Website Elections Data.
122. The extreme partisan purpose and effect of these splits is revealed by Dr. Mattingly's analysis. The district with the sixth most Democratic votes in the 2016 elections was CD 9, with a 42% vote total for the Democratic candidate. Using the 2016 election results, more than 99% of the 24,518 simulated maps in Dr. Mattingly's collection had a Democratic vote total greater than the Democratic vote total of 42% in the sixth most Democratic district. Trial Tr. Vol. I, pp.7:2-72:2; Ex. 3040.

123. CD 13 is one of the 10 districts Hofeller drew to maintain the 10-3 partisan advantage for Republicans gained under the 2011 map. The 2016 version of CD 13 incorporates pieces of CD 5, 6, 9 and 12 from the 2011 map. It is formed from two whole counties (Davie and Davidson) and pieces of three counties (Guilford, Rowan and Iredell). Ex. 1001 and 2001.
124. To accomplish his partisan goal for this district Hofeller submerged the strong Democratic vote in Guilford in the Republican vote in the remaining counties and parts of counties in the district. The 2008 election results for Governor in the counties and pieces of counties Hofeller assigned to CD 13 illustrate this strategy. 2016 NCGA Website Elections Data.

CD 13	Population	08 Governor
Davie	41,240	35.05%
Davidson	162,878	32.71%
Iredell	153,395	33.02%
Rowan	49,998	49.23%
Guilford	325,988	58.37%
Total	733,499	47.20%

125. The extreme partisan purpose and effect of these splits is revealed by Dr. Mattingly's analysis. The district with the fourth most Democratic votes in the 2016 elections was CD 13, with a 44% vote total for the Democratic candidate. Using the 2016 election results, 99.81% of the 24,518 simulated maps in Dr. Mattingly's collection had a Democratic vote total greater than the fourth most Democratic district. Trial Tr. Vol. I p. 7:2-72:2; Ex 3040.
126. Collectively CD 1, 4 and 12 are the three districts with the fourth, fifth, and sixth most Democratic votes in the 2016 elections with approximately 590,000 Democratic votes combined. Using the 2016 election results, not a single simulated map in Dr. Mattingly's collection of 24,518 simulated maps produced as few as 590,000 Democratic votes in the districts with the fourth, fifth, and sixth most Democratic votes combined. Trial Tr. Vol. I, pp 71:2-72:2.
127. CD 8. Hofeller constructed CD 8 using a string of 7 counties extending in a band from Fayetteville in Cumberland all the way to Salisbury in Rowan. He kept five of these seven counties whole (Cabarrus, Stanly, Montgomery, Moore and Hoke) and divided the other two 2 counties

(Rowan and Cumberland). To accomplish his partisan goal for this district, Hofeller submerged the strong Democratic vote in Cumberland and Hoke counties into the strong Republican vote in the remaining counties. The 2008 election results for Governor in the counties and pieces of counties Hofeller used to construct CD 8 illustrate this strategy. 2016 NCGA Website Elections Data.

CD 8	Population	08 Governor
Rowan	88,430	28.77%
Cabarrus	178,011	34.77%
Stanly	60,585	31.46%
Montgomery	27,798	50.18%
Moore	88,247	39.08%
Hoke	46,952	64.23%
Cumberland	243,476	63.16%
Total	733,499	45.30%

128. CD 7. The 2001 congressional map was the product of an informal agreement to draw 6 Democratic seats, 6 Republican seats and 1 competitive seat. Ex. 3010 and 3011.
129. Under the 2001 map, CD 7 was located in the southeastern part of the State. At all elections under that map, the Democratic candidate, Mike McIntyre prevailed. Ex. 1021-25
130. The 2011 map was drawn by Thomas Hofeller. He testified that “the General Assembly’s overarching goal in 2011 was to create as many safe and competitive districts for Republican incumbents or potential candidates as possible.” Ex. 2034, p. 1. Part of Hofeller’s strategy included weakening Democratic strength in CD 7. *Id.*, p.2.
131. Hofeller weakened Democratic strength in CD 7 by removing Robeson County, the home county of the Democratic incumbent from the district, and extending the district from its historic base in southeastern North Carolina into Republican areas in the center of the State in Johnston County. Ex 2001.

132. At the 2012 election the Democratic incumbent held on to his seat by the slim margin of 654 votes. Ex 1020. At the 2014 election, Hofeller's scheme succeeded and the Republican candidate prevailed. Ex. 1019.
133. In redrawing the 2016 congressional map Hofeller was instructed to maintain the 10-3 partisan split produced by his 2011 map. Ex. 1007. Hofeller complied with that instruction (a) by maintaining the basic structure of his 2011 version of CD 7 (*Compare* Ex. 1001 and 2001) and (b) by excluding the naturally occurring concentration of Democratic voters in the southeastern part of the State in Hoke, Robeson and Cumberland counties from CD 7, as Defendants' expert Dr. Hood confirmed. Trial Tr. Vol. IV, pp. 45:24-46:5.
134. CD 11. The 2001 congressional map was the product of an informal agreement to draw 6 Democratic seats, 6 Republican seats and 1 competitive seat. Ex. 3010 and 3011.
135. Buncombe County is the largest and most Democratic county in western North Carolina. 2016 NCGA Website Elections Data. Defendants' expert Dr. Hood described the Buncombe area as a naturally occurring Democratic area that ordinarily would be kept together in the same district in the redistricting process. Trial Tr. Vol. IV, pp. 42:6-43:4.
136. In the 2001 map all of Buncombe was assigned to CD 11. At the 2006, 2008 and 2010 elections under the 2001 map the Democratic candidate in CD 11 prevailed. Ex. 1021, 1022 and 1023.
137. The 2011 map was drawn by Thomas Hofeller. He testified that "the General Assembly's overarching goal in 2011 was to create as many safe and competitive districts for Republican incumbents or potential candidates as possible." Ex. 2034, p. 1. Part of Hofeller's strategy included weakening Democratic strength in CD 11. *Id.*, p.2.
138. Hofeller weakened Democratic strength in CD 11 by splitting Buncombe between CD 10 and 11 and assigning the least Democratic parts of Buncombe to CD 11 and the most Democratic parts of Buncombe to Republican leaning CD 10. As measured by the 2008 election for Governor 52.17% of the Buncombe citizens Hofeller assigned to CD 11 voted for the Democratic candidate. By contrast 62.26% of the Buncombe citizens Hofeller assigned to CD 10 voted for the Democratic candidate. 2016 NCGA Website Elections Data.

139. At the 2012 and 2014 elections in CD 11, the Republican candidate prevailed as Hofeller had planned. Ex 1019 and 1020.
140. In redrawing the 2016 congressional map Hofeller was instructed to maintain the 10-3 partisan split produced by his 2011 map. Ex. 1007. Hofeller complied with that instruction by maintaining his 2011 version of CD 11 without any significant change from his 2011 version. Compare Ex. 1001 and 2001.
141. CD 1, 4 and 12. Hofeller has testified that he was able to gain a 10-3 advantage for the Republicans in his 2011 map “by concentrating Democratic voting strength in Districts 1, 4 and 12.” Ex 2034, p. 2.
142. Dr. Mattingly’s analysis reveals the extraordinary degree to which Hofeller achieved that goal in his 2011 map. The three districts with the greatest number of Democratic votes in the 2012 elections were CD1, CD4, and CD12, with approximately 765,000 Democratic votes combined. Using the 2012 election results, not a single simulated map in Dr. Mattingly’s collection of 24,518 simulated maps produced as many as 765,000 Democratic votes in the three districts with the greatest number of Democratic votes combined. Trial Tr. Vol. I, pp. 60:24-61:18.
143. In 2016 Hofeller was told to maintain the 10-3 Republican advantage he had gained through his 2011 map. He again sought to achieve this goal by concentrating Democratic voters in CDs 1, 4 and 12.
144. Dr Mattingly’s analysis again reveals the extraordinary degree to which Hofeller again achieved that goal in his 2016 map. The three districts with the greatest number of Democratic votes in the 2016 elections were CD1, CD4, and CD12, with approximately 746,000 Democratic votes combined. Using the 2016 election results, not a single simulated map in Dr. Mattingly’s collection of 24,518 simulated maps produced as many as 746,000 Democratic votes in the three districts with the greatest number of Democratic votes combined. Trial Tr. Vol. I, pp. 72:7-73:14
145. CD 1. Hofeller constructed CD 1 by stringing together a series of 14 counties extending from the shores of the Albemarle Sound in Washington County to the Research Triangle in Durham County. Ex. 1001. Assigning the voters in these diverse counties to CD 1 allowed Hofeller to collect large numbers of persons who had supported Democratic candidates into one district. In fact, the voters in each of the 11 whole counties Hofeller assigned to CD 1 strongly favored Democratic candidates as the following

chart listing the percentage of votes they cast for President and Governor in 2008 illustrates:

County	2008 Governor
Granville	55.74%
Vance	67.66%
Warren	71.43%
Halifax	71.08%
Northampton	72.88%
Hertford	77.23%
Gates	60.27%
Bertie	76.39%
Washington	73.53%
Martin	69.50%
Edgecombe	72.81%

2016 NCGA Website Elections Data.

146. Hofeller’s decision to assign voters to districts based on the policy preferences they had expressed by the votes they cast is also illustrated by the lines he drew to divide the 3 partial counties he included in CD 1. In each divided county the people in the piece included in CD 1 voted for Democratic candidates at higher rates than the people excluded from CD 1. Here are the percentages of votes cast for Governor in 2008 in the split counties in CD 1 compared to the percentages of votes cast for that office in the part of the county excluded from CD 1:

County	CD 1 part Governor	Other part Governor
Durham	71.11%	66.60%
Wilson	63.14%	43.05%
Pitt	68.94%	51.99%

2016 NCGA Website Elections Data.

147. CD 4. Hofeller constructed CD 4 by connecting Orange County to Wake County by means of a string of 4 Durham county precincts. Ex. 1001. Orange and Durham are among the most heavily Democratic counties in the state. At the 2008 elections for President, 71.83% of Orange voters and 74.14% of Durham voters supported President Obama and at the 2008 election for Governor 65.06% of Orange voters and 66.60% of Durham voters supported Governor Perdue. 2016 NCGA Website Elections Data.
148. Hofeller completed CD 4 by dividing Wake County on partisan grounds. In the part of Wake in CD 4 Gov. Perdue received 63.66% of the votes cast. By contrast in the part of Wake in CD 2, Governor Perdue received 41.49% of the vote. 2016 NCGA Website Elections Data.
149. CD 12. As he did in CD 4, Hofeller constructed CD 12 by separating people based on the way they voted. People in the northern part of Mecklenburg County who voted for Democratic candidates were concentrated in CD 12. People in the southern part of the county who voted for Republican candidates were assigned to CD 9. Gov. Perdue received 56.46% of votes cast by CD 12 voters in 2008. By contrast Gov. Perdue received only 25.24% on the votes cast by people Hofeller assigned to CD 9. 2016 NCGA Website Elections Data.

VII. Defendants' attempt to defend their partisan gerrymander by comparing it to the 2001 Congressional map falls flat

150. Defendants often assert that their 2011 and 2016 maps should be upheld because they are no less gerrymandered than the congressional map enacted by the General Assembly in 2001 when Democrats controlled both the Senate and House. This kind of tit-for-tat argument has no place in assessing the constitutionality of 2016 map, but in any event, it is not factually correct.
151. It is true that on December 5, 2001, following the 2000 Census, the General Assembly was controlled by Democrats and did enact a new congressional redistricting map. Unlike the three congressional redistricting maps enacted during the 1990s that were the subject of decade-long litigation, the 2001 Plan was used without interruption or modification for each of the five congressional elections between 2002 and 2010.
152. Documents filed by the General Assembly in the United States Department of Justice seeking preclearance of the 2001 Plan establish that the 2001 Plan, unlike the 2011 and 2016 Plans, reflected a bi-partisan effort to draw the 13 districts in that map to seek partisan balance in the state's

congressional delegation. *See* Ex. 5050 (noting that Republican Edwin McMahan co-chaired the House Congressional Redistricting Committee).

153. And, as the chart below reveals, the 2001 Plan in fact achieved partisan balance rather than partisan dominance. The 50.1% to 49.9% partisan split in the total statewide congressional vote for Republican and Democratic candidates in the five elections from 2002 through 2010 resulted in the election of 34 Democrats and 31 Republicans.

Year	North Carolina State-wide Votes in U.S. House Elections				Representatives Elected to U.S. House for North Carolina			
	Number of Democratic ("DEM") Votes	DEM Votes as % of Total Votes	Number of Republican ("GOP") Votes	GOP Votes as % of Total Votes	Number of DEM Repre- sentatives ("Reps")	DEM Reps. as % of Total Reps.	Number of GOP Reps.	GOP Reps. as % of Total Reps.
2002	970,716	45%	1,209,033	54%	6	46%	7	54%
2004	1,669,864	49%	1,743,131	51%	6	46%	7	54%
2006	1,026,915	53%	913,893	47%	7	54%	6	46%
2008	2,293,971	54%	1,901,517	45%	8	62.5%	5	38.5%
2010	1,204,635	45%	1,440,913	54%	7	54%	6	46%
Total	7,166,101	49.9%	7,208,487	50.1%	34	52%	31	48%

FAC ¶ 6, Answer ¶ 6.

VIII. Plaintiffs have been Harmed by the 2016 Map

154. Plaintiffs are a diverse group. There are two institutional plaintiffs and fourteen individual plaintiffs—fifteen registered Democrats and one registered Republican—who reside from Asheville to Wilmington.
155. The first institutional plaintiff is Common Cause. Common Cause is a non-partisan 501(c)(3) organization with over 450,000 members in 35 states. It has 2,000 dues paying members in North Carolina and 15,000 members who provide other forms of support. Dues paying members reside in all 13 congressional districts. Some of the members of Common Cause in North Carolina are Democrats, some are Republicans and others are unaffiliated voters. Deposition of Bob Phillips ("Phillips Depo.") at 13-14. Further,

Common Cause opposes (and its organizational mission is harmed by) partisan gerrymandering without respect to the political party engaged in the practice. Common Cause has filed amicus brief in both the United States Supreme Court and the federal district court challenging the Democratic Party-led gerrymander of Maryland's congressional map.

156. The other institutional plaintiff is the North Carolina Democratic Party (NCDP). It is “the collective name for the people who call themselves Democrats” 30(b)(6) Deposition of North Carolina Democratic Party (“NCDP Depo.”) at 59:8-14 and also a political party as defined by North Carolina law, N.C. Gen. Stat. 163-96. The NCDP is organized on the principle that “it is the right of the people to associate with other people who share similar positions” and organize to advance their common interests. NCDP Depo. 20:15-19. Consistent with this principle, the NCDP has three major purposes: (a) to bring people together to develop public policies and positions favorable to NCDP members and the public generally; (b) to identify candidates who will support and defend these policies and positions; and (c) to persuade voters to cast their ballots for those candidates. FAC ¶ 2(c).
157. The individual plaintiffs include 15 registered voters, all of whom cast their ballots at the 2012, 2014 and 2016 congressional elections. Ex. 3014-3038. One or more of these individual plaintiffs resides in each of the State's thirteen congressional districts. Fourteen of these Plaintiffs are registered Democrats (Ex. 3014-3031 and 3033-3038); one, Morton Lorie, is a registered Republican who resides in CD 4. Ex 3032.
158. Three of the Democratic plaintiffs reside in the three congressional districts (1, 4 and 12) drawn by Defendants to give Democratic candidates a significant electoral advantage. The other eleven Democratic Plaintiffs reside in the ten congressional districts (2, 3, 5, 6, 7, 8, 9, 10, 11 and 13) drawn by Defendants to give Republican candidates a significant electoral advantage. FAC ¶ 2(d)-(q), Answer ¶ 2(d)-(q). In early October 2017 Plaintiff Melzer Morgan moved from Reidsville, which Defendants assigned to CD 6, to Chapel Hill, which Defendants assigned to CD 4.
159. The fifteenth individual plaintiff is a registered Republican who also regularly expresses his political and policy preferences by the votes he casts at congressional and other elections. He resides in CD 4 which, as noted above, was drawn by Defendants to give Democratic candidates a significant electoral advantage.

160. All individual Plaintiffs have described the representational and other harms they have suffered as a consequence of Defendants' use of election results to assign them to congressional districts engineered to elect 10 Republicans and 3 Democrats to North Carolina's congressional delegation. Those harms include the dilution of the worth of their votes based on the opinions expressed by the votes they cast at past elections. Hall Dep. 14:21-17:24; Berger Dep., Ex 1; Boylan Dep. 17:5-18:9; Bordsen Dep. 26:9-27:19; Morgan Dep., Ex. 1; Byrd Dep. 45:4; McNeill Dep. 34:20; R. Taft Dep. 23:21-24:22; Lurie Dep. 25:8-20; Walker Dep., Ex 1; Freeman Dep., Ex 1.
161. Defendants' adoption of the 2016 congressional redistricting plan caused two forms of concrete harm to these diverse plaintiffs. The first form of injury resulted from Defendants' deliberate decision to separate voters into congressional districts based on their political and policy preferences for the purpose of obtaining partisan dominance disproportionate to the electoral strength of the Republican Party. The second form of injury resulted from Defendants' deliberate decision to gain partisan dominance by constructing non-competitive congressional districts, ten of which provided Republican voters and candidates a distinct advantage and three of which provide solely Democratic voters and candidates with a distinct advantage.
- A. The Harm of Partisan Dominance**
162. The partisan dominance engineered by the 2016 Plan impacted the Plaintiffs in a number of ways, some overlapping and some distinct.
163. With regard to Common Cause, its central mission of accessible, open, and accountable government can hardly co-exist with districting designed to insulate representatives (of both parties) from true electoral accountability.
164. With regard to the NCDP, Defendants' deliberate decision to draw the districts in a manner to achieve partisan dominance (10 Republicans in a 13 member congressional delegation) greatly disproportionate to the Republicans' electoral strength (typically around 50% of the statewide vote) has effectively thwarted the NCDP's capacity to achieve the very purposes for which it exists.
165. Wayne Goodwin, Chair of the North Carolina Democratic Party, has explained that the NCDP "is an association of individuals who have publically declared themselves Democrats." NCDP Depo. p. 59:9-12. Its purpose for congressional elections is to associate and empower persons

sharing policy preferences on federal issues, such as health care, and to elect representatives to Congress who share those views. As Mr. Goodwin, further explained, political parties are structured to effectuate “the right of the people to associate with other people who share similar positions and principles and what they hope will become the public policies for a given community or a state or a nation.” NCDP Depo. p. 20:15-19.

166. Defendants’ aim in enacting the 2016 plan was to make it more difficult for the Democratic party to recruit and elect candidates who share the party’s policy preferences in 10 of North Carolina’s congressional districts.
167. As Mr. Goodwin, Chairman of the NCDP, testified, Defendants’ decision to “stack [] the deck” against Democrats and the NCDP in drawing the 2011 and 2016 congressional maps had a “domino effect” successively imperiling each of the major purposes for which the NCDP is organized. NCDP Depo. pp. 29:19-22; 56:16-17. As he explained, when districts are drawn so that there is no reasonable prospect of victory, candidates cannot be recruited to speak for Democrats; funds cannot be raised to persuade voters to endorse the policies and positions favored by members of the NCDP; and voters are discouraged from coming together to develop policies and practices for their common good. *Id.* 42:3-6; 44:17-24; 56:9-57:10; 66:1-8; 97:22-98:9. When “legislative leaders dictate the outcomes before people have even gone to the polls,” good candidates will choose not to run and voters will not have viable candidates who share their policy preferences. *Id.* 41:20-42:20; 60:23-61:16. These are practical and concrete injuries experienced—statewide and in each district in which it would otherwise compete—by the NCDP.
168. With regard to the 12 individual Democratic plaintiffs residing in the 10 districts where the deck was stacked in favor of Republicans, Defendants’ actions dispersed their votes in a Republican sea, effectively nullifying the value of their votes and depriving them of the opportunity to elect a candidate of their choice and responsive to their needs. Plaintiff John McNeill, for example, lives in Red Springs in Robeson County. He has served on the Red Springs Town Council for more than 40 years. Deposition of John McNeill (“McNeill Depo.”) at 8:10-19; 11:17-19. Robeson is a Democratic County and, until 2012, Robesonians had the opportunity to elect, and did elect, Democrats to Congress from CD 7 and 8. Under the 2016 map, citizens in Robeson and several other poor and rural counties along the South Carolina border have been artificially grafted onto CD 9 (where they are substantially outnumbered by highly Republican, wealthy, suburban voters in Union and Mecklenburg counties).

169. When asked how this configuration harmed him, Mr. McNeill responded: “I’ve lived in Robeson County all my life, a poor county, and, again, my feelings is for my neighbors and other communities as well. So if they suffer, I suffer. So, yes, I’ve been harmed.” McNeill Depo. 26:4-8. Mr. McNeill then gave an example of how the absence of a reasonable opportunity to elect a candidate who shares their policy preferences views harmed him and his neighbors. “I love going to Charlotte, but it has little in common with Robeson County and what our needs are.” McNeill Depo. 26:16-18. CD 9 is represented by a businessman from Charlotte who has no concern for the needs of persons in the poor, rural counties joined with Charlotte. “Robeson county... was one of the lead counties in people signing up for Obama Care” and that opportunity was “very beneficial” to people “[i]n a low-income, rural community.” *Id.* at 26:24-27:8. Congressman Pittenger from Charlotte, however, “voted in favor of doing away with” that important program for Robesonians. Because CD 9 has been engineered to elect a Republican candidate, Congressman Pittenger faces no electoral accountability for that policy position.
170. Likewise, the vote of the Republican plaintiff Morton Lurie, who resides in CD 4, has been diluted and his opportunity to elect a candidate who shares his policy preferences has been effectively nullified. As part of their scheme, Defendants stacked CD 4 with Democrats. That stacking diluted the value of Mr. Lurie’s vote and resulted in his representation in Congress by David Price, with whom he has many policy disagreements. Deposition of Morton Lurie (“Lurie Depo.”) at 25:8-24; 12:4-13:14. Because CD 4 has been engineered to elect a Democratic candidate, Congressman Price need not meaningfully consider his policy differences with Republicans like Mr. Lurie who are assigned to that district. Victory in any Democratic primary will be sufficient to ensure election over a Republican challenger.

B. The Harm of Non-Competitive Districts

171. All parties agree that none of the 13 districts drawn by Defendant in 2016 is competitive. See, e.g., Deposition of Douglas Berger (“Berger Depo.”) at 6:18-20 (“[W]e really don’t have any competitive [congressional] districts in the state of North Carolina.”). Defendants’ expert Gimpel agrees. Deposition of James Gimpel 85:23-87:5.
172. These congressional districts were made non-competitive by Defendants to facilitate their partisan dominance scheme. This caused a different form of harm than the partisan dominance scheme itself, and impacts all plaintiffs and every North Carolinian in the same manner. Plaintiff Coy Brewer, who

was assigned by Defendants to CD9, explained this harm at his deposition as follows:

“In [non-competitive] districts, congressmen of both parties are not required to reach out to voters in the other party or even truly independent voters. By truly independent voters, I’m not talking about voters who are registered unaffiliated but who have a voting pattern that is certainly independent.”

“The congressmen representing those districts can rely upon their party’s partisan advantage in getting elected, and therefore truly independent voters or voters of the other party tend, in my opinion, to be poorly represented because their views and their potential votes are not fairly considered by the congressmen of either party in these highly partisan districts in making decisions.”

“It tends to create a legislature that is fiercely partisan. It undermines the process of collaborative legislation. And in each of those districts, whether the partisan pattern is Democratic or Republican, voters of the other districts votes is diluted and does not have a meaningful impact in the electoral process.

Deposition of Coy Brewer at 24:8 to 25:6.

173. All plaintiffs, regardless of the district to which they are assigned or their partisan affiliation, suffer when their representatives in Congress can turn a deaf ear to them and ignore their votes.

CONCLUSIONS OF LAW

I. The *Common Cause* Plaintiffs Have Standing To Sue.

1. Article III of the United States Constitution “gives federal courts jurisdiction only over cases and controversies, and the doctrine of standing identifies disputes appropriate for judicial resolution.” *Miller v. Brown*, 462 F.3d 312, 316 (4th Cir. 2006) (internal quotation marks and citations omitted).

2. “To establish Article III standing, an injury must be concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” *Clapper v. Amnesty Int'l USA*, ___ U.S. ___, 133 S. Ct. 1138, 1147 (2013).
3. These requirements exist to ensure plaintiffs have “alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.” *Baker v. Carr*, 369 U.S. 186, 204 (1962).
4. The *Common Cause* individual-voter and associational Plaintiffs meet the requirements of Article III standing. Plaintiffs show injury-in-fact. Targeted by the 2016 Plan by reason of their views, they are classified vis-à-vis other voters and their right to core protected expression is thereby burdened. *Baker v. Carr*, 369 U.S. at 207 (recognizing “injury” when “classification disfavors [certain] voters,” “placing them in a position of constitutionally unjustifiable inequality vis-à-vis [other] voters.”). The individual voter-plaintiffs have demonstrated in the record evidence a variety of concrete, individualized harms arising from that classification. The injury is fairly—indeed, entirely—traceable to the action of Defendants. The burden exists solely by virtue of the State’s decision to target Plaintiffs by reason of their views. The injury is redressable. A favorable decision that enjoined and required Defendants to remedy the constitutional harm would end the ongoing injury.
5. “An organization . . . can assert standing either in its own right or as a representative of its members.” *S. Walk at Broadlands Homeowner’s Ass’n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 182 (4th Cir. 2013); *see also Warth v. Seldin*, 422 U.S. 490, 511 (1975) (“There is no question that an association may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy.”).
6. Here, both the North Carolina Democratic Party and Common Cause have standing in both respects. They have members across the state with interests identical to the individual voter-plaintiffs.
7. The North Carolina Democratic Party, moreover, presents a remarkably clear claim in its own right. A principal target of Defendants’ use of the state for partisan ends, it faces clear fiscal and strategic burdens by virtue of this state action and undeniably has an associational interest in each of the districts and statewide.

II. The Claims Presented Are Justiciable.

8. Partisan Gerrymandering claims have been justiciable under controlling Supreme Court precedent since *Davis v. Bandemer*, 478 U.S. 109, 118-28 (1986); Dkt. 50 (Memorandum Denying Motion to Dismiss) at 21; *Vieth v. Jubelirer*, 541 U.S. 267 (2004) (five Justices maintaining *Bandemer*'s holding as to justiciability); *LULAC v. Perry*, 548 U.S. 399, 413-14 (2006) (“[w]e do not revisit the justiciability holding” in *Davis*); *Shapiro v. McManus*, ___ U.S. ___, 136 S. Ct. 450, 456 (2015) (reversing jurisdictional dismissal of claim that gerrymander of single Maryland congressional district violates the First Amendment).
9. The current absence of a settled standard for evaluating such claims does not render them non-justiciable. Applying presently-existing legal principles to new facts “is of the very essence of judicial duty.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803); *INS v. Chadha*, 462 U.S. 919, 943 (1983) (“[C]ourts cannot reject ... a bona fide controversy as to whether some action denominated as ‘political’ exceeds constitutional authority.”).
10. Courts have regularly undertaken that duty with regard to previously unreached claims by applying existing “judicial standards. . . [that] are well developed and familiar . . . to determine [the applicability of such standards] on the particular facts.” *Baker v. Carr*, 369 U.S. at 226.
11. The anti-democratic nature of partisan gerrymandering warrants particular concern. “Partisan gerrymanders ... are incompatible with democratic principles.” *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, ___ U.S. ___, 135 S. Ct. 2653, 2658 (2015); *see also Benisek v. Lamone* ___ F. Supp. 3d ___, 2017 WL 3642928, at *16 (D. Md. Aug. 24, 2017) (Niemeyer, J., dissenting) (describing partisan gerrymandering as “cancerous, undermining the fundamental tenets of our form of democracy”).
12. The fundamental objective of redistricting is to “establish ‘fair and effective representation for all citizens.’” *Vieth*, 541 U.S. at 307 (quoting *Reynolds v. Sims*, 377 U.S. 533, 565-66 (1964)).
13. Because the right to vote “is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.” *Reynolds v. Sims*, 377 U.S. at 561-62.

14. Accordingly, the law protects not only whether a ballot may be cast, but the effectiveness of that ballot. “Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature.” *Id.* at 565.
15. The *Common Cause* Plaintiffs have presented judicially manageable standards for determining whether the 2016 Plan has unconstitutionally burdened the Plaintiffs’ right to an equally effective voice.

III. The 2016 Plan Violates the Constitution Under Each Theory Presented By The *Common Cause* Plaintiffs.

A. The First Amendment

16. Partisan gerrymandering may implicate the First Amendment by “burdening or penalizing citizens because of their participation in the electoral process, their voting history, their association with a political party, or their expression of political views.” *Vieth*, 541 U.S. at 314 (Kennedy, J., concurring in the judgment).
17. This accords with long-standing and fundamental First Amendment principles.
18. The First Amendment prohibits government from “prescrib[ing] what shall be orthodox in politics,” *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).
19. “[No] right [is] more basic in our democracy than the right to participate in electing our political leaders.” *McCutcheon v. FEC*, 134 S. Ct. 1434, 1440 (2014). The right of “constituents [to] support candidates who share their beliefs [is] a central feature of democracy” and is protected by the First Amendment. *Id.* at 1441. Other constitutional rights, even the most basic, “are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).
20. The right to join a political party and to support candidates of one’s choice without fear of penalty or retaliation are also protected by the right to “peaceably assemble” in the First Amendment and are also “core ... activities protected by the First Amendment.” *Elrod v. Burns*, 427 U.S. 347, 356 (1976).

21. Separately, the First Amendment subjects to strict scrutiny content-based laws that “restrict expression because of its message, its ideas, its subject matter or its content.” *Police Dep’t. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).
22. The First Amendment strictly regulates laws drawing content-based distinctions with respect to protected expression. *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015) (“[C]ontent-based laws—[laws] that target speech based on its communicative content—are presumptively unconstitutional [under the First Amendment] and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.”; *United States v. Alvarez*, 567 U.S. 709, 716-17 (2012) (“[T]he Constitution demands that content-based restrictions ... be presumed invalid ... and that the Government bear the burden of showing their constitutionality.”).
23. Plaintiffs have shown that the 2016 Plan targets expression on the basis of its content. Past voting data was used to favor Republican voters and interests and disfavor Democratic voters and interests—to gain advantage on the map.
24. Viewpoint discrimination draws even harsher scrutiny. “[D]iscrimination among viewpoints ... based on ‘the specific motivating ideology or the opinion or perspective’ ... [is] a ‘more blatant’ and ‘egregious form of content discrimination.’” *Reed*, 135 S. Ct. at 2230 (quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)).
25. “At its most basic, the test for viewpoint discrimination is whether—within the relevant subject category—the government has singled out a subset of messages for disfavor based on the views expressed.” *Matal v. Tam*, 137 S. Ct. 1744, 1766 (2017).
26. Where the State is granted some discretion regarding content, it may not exercise “that discretion ... in a narrowly partisan or political manner.” *Bd. of Educ. v. Pico*, 457 U.S. 853, 870-71 (1982) (“If a Democratic school board, motivated by party affiliation, ordered the removal of all books written by or in favor of Republicans, few would doubt that the order violated” the First Amendment.).
27. Defendants discriminated on the basis of viewpoint when they exercised discretion to favor Republican candidates, voters, and views and singled out Democratic candidates and voters for disfavor based on their views. The sorting of voters using political data was the mechanism by which a certain

political message was favored and another political message was disfavored. The inclusion of the “Partisan Advantage” criteria and the statements of the legislative drafters confirm this legislative intent beyond dispute.

28. The plaintiffs’ experts’ alternative maps also demonstrate that the 2016 Plan had the effect of disadvantaging and burdening Democrats, because the actual map that was generated to preserve a 10-3 Republican advantage (and did in fact preserve that advantage) was far outside of the range of reasonable maps that could have been drawn without partisan considerations. In other words, the alternative maps demonstrate that the General Assembly’s prioritization of partisan advantage had the effect of generating a map that disadvantages Democrats in a way that could not have been achieved but for those partisan considerations. This further proves Plaintiffs have met the requirement of showing discriminatory intent.
29. Once the intent of the legislature to discriminate against a political party or individual voters has been established—as it has in this case—the apportionment plan must be presumed to be unconstitutional under the First Amendment, and the burden of proof shifts to the State to prove that the viewpoint discrimination is justified by a compelling state interest, and is narrowly tailored. *Reed*, 135 S. Ct. at 2236; *Mt. Healthy City Sch. Dist. Bd. v. Doyle*, 429 U.S. 274, 287(1977).
30. Defendants have not met this high standard. Indeed, Defendants have articulated no purpose for the specific partisan purpose of the 2016 Plan beyond the right to exercise that discretion.
31. Defendants’ targeting of Plaintiffs is a clear burden to their First Amendment rights. “The harm is not found in any particular election statistic, nor even in the outcome of an election, but instead on the intentional and targeted burdening of the effective exercise of a First Amendment representational right.” *Benisek v. Lamone*, 2017 WL 3642928, at *17 (Niemeyer, J., dissenting).
32. That burden exists, in part, because the statute itself imposes an obstacle to their protected expression.

When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the [disadvantaged] group ... need not

allege that he would have obtained the benefit but for the barrier in order to establish standing. *The “injury in fact” in an equal protection case [or a First Amendment case]...is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit.*

Ne. Fla. Chapter of AGC of Am. v. City of Jacksonville, 508 U.S. 656, 666 (1993).

33. First Amendment challenges to partisan gerrymandering are not foreclosed by any Supreme Court Precedent. *Shapiro v. McManus*, 136 S. Ct. 450 at 456 (reviving First Amendment claim based on “on a legal theory put forward by a Justice of this Court” that is “uncontradicted by the majority in any of our cases.”).

B. The Equal Protection Clause of the Fourteenth Amendment

34. “[T]he principle that government ... remain open on *impartial terms* [is] ... [c]entral both to the idea of the rule of law and to our own Constitution’s guarantee of equal protection.” *Romer v. Evans*, 517 U.S. 620, 633 (1996) (emphasis added).
35. The most fundamental duty of a government under the Equal Protection Clause is to govern impartially. *Id.*; *Lehr v. Robertson*, 463 U.S. 248, 265 (1983) (“The concept of equal justice under law requires the State to govern impartially.”); *New York City Transit Auth. v. Beazer*, 440 U.S. 568, 587 (1979); *Karcher v. Daggett*, 462 U.S. 725, 748 (1983) (Stevens, J. concurring).
36. State laws that are intended to make it “more difficult for one group of citizens than ... others to seek aid from the government [are] ... a denial of equal protection ... in the most literal sense.” *Romer v. Evans*, 517 U.S. at 633.
37. This duty applies in the context of redistricting. As Justice Powell explained in *Davis*, the classification of voters inherent in the application of “Partisan Advantage” criteria violates this fundamental right:

In the context of redistricting, [the duty to govern impartially] is of critical importance because the franchise provides most citizens their only voice in the legislative process. *Reynolds v. Sims*, 377 U.S. at 561-62, 565-66. Since the contours of a voting district

powerfully may affect citizens' ability to exercise influence through their vote, district lines should be determined in accordance with neutral and legitimate criteria.... [T]he State should treat its voters as standing in the same position, regardless of their political beliefs or party affiliation.

Davis v. Bandemer, 478 U.S. at 166 (Powell, J. concurring in part and dissenting in part).

38. The alternative would be to allow discrimination without limit. Justice Stevens explained the same principle:

When a State adopts rules governing its election machinery or defining electoral boundaries, those rules must serve the interests of the entire community. If they serve no purpose other than to favor one segment—whether racial, ethnic, religious, economic or political—that may occupy a position of strength ... or to disadvantage a politically weak segment ... they violate the constitutional guarantee of equal protection.

Karcher v. Daggett, 462 U.S. at 748 (Stevens, J. concurring).

39. The 2016 Plan violates this core principle of equal protection by classifying favored and disfavored voters in the construction of congressional districts.
40. Defendants can assert no legitimate justification—under any level for scrutiny—for a classification that depends on the party in power exercising that power “to harm a politically [weak or] unpopular group’ and cannot be justified by ‘a *legitimate* governmental interest.’” *Romer*, 517 U.S. at 634-35 (1996) (emphasis in original) (quoting *Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)).
41. Even under rational basis review under the Equal Protection Clause, the 2016 Plan fails constitutional muster. *See, e.g., Whole Woman’s Health v. Hellerstedt*, 579 U.S. ___, 136 S. Ct. 2292, 2309 (2016) (holding that it is “wrong to equate the judicial review applicable to the regulation of a constitutionally protected personal liberty with the less strict review applicable where ... economic legislation is at issue”). The Supreme Court has also held that “[t]he word ‘rational’ ... includes elements of legitimacy and neutrality that must always characterize the performance of the sovereign’s duty to govern impartially.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 452 (1985). The 2016 Plan, therefore, fails even

rational basis review under the Equal Protection Clause, because it violates the duty of government to govern impartially.

C. The Elections Clause

42. States have only the power delegated to them by the Elections Clause to “regulate the [t]imes, [p]laces and [m]anner of holding elections” of members of the House of Representatives. Art. I, § 4.
43. States have no sovereign, inherent, or reserved powers over the apportionment of congressional districts or the drawing of congressional district lines. *Cook v. Gralike*, 531 U.S. 510 (2001); *U.S. Term Limits v. Thornton*, 514 U.S. 779 (1995); *Wesberry v. Sanders*, 376 U.S. 1 (1964).
44. The Elections Clause is only “a grant of authority to issue *procedural regulations*” for the conduct of congressional elections, and is “*not [] a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade [other] important constitutional restraints.*” *Cook*, 531 U.S. at 523-24 (quoting *Term Limits*, 514 U.S. at 833-34) (emphasis added).
45. “A State is not permitted to interpose itself between the people and their National Government ... [and] ‘simply lack[] the power’” under the Elections Clause “to impose any conditions on the election of Senators or Representatives, *save neutral provisions* as to the time, place and manner of elections pursuant to Article I, § 4.” *Id.* at 527 (Kennedy, J. concurring) (emphasis added).
46. The 2016 Plan exceeds the authority granted under Article I, § 4. It is intended to (1) “dictate electoral outcomes” by ensuring that a Republican will be elected in ten districts and a Democrat will be elected in the three remaining districts; (2) favor one class of candidates (Republicans) and disfavor another class of candidates (Democrats); and (3) “evade [other] important constraints,” including those imposed by the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the requirement in Article I, § 2 that Representatives be chosen “by the people,” and not chosen *for* the people by the legislature.

D. Article I, § 2 of the Constitution

47. In *Wesberry v. Sanders*, the Supreme Court held that the unequal apportionment of congressional districts that was the result of a *failure* of a state legislature to reapportion the districts after each decennial census

“‘defeats the principle solemnly embodied in the Great Compromise’ by making elected congressmen dependent on state legislatures, rather than the people,” and “by allowing ‘legislatures [to] draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others.’” Dkt. 87 p. 12 (quoting *Wesberry v. Sanders*, 371 U.S. at 13-14).

48. The 2016 Plan violates Article I, § 2. The entire purpose and intent of a partisan gerrymander of congressional districts is to “draw [district] lines ... in such a way as to give some voters a greater voice in choosing a Congressman than others” and to “mak[e] elected congressmen dependent” for their offices and chances for re-election on the majority party in the state legislature. Dkt. 87 p. 12 (quoting *Wesberry*, 371 U.S. at 13-14).
49. The 2016 Plan thus violates “the core principle of republican government ... that the voters should choose their representatives, not the other way around.” *Arizona Indep. Redistricting Comm’n*, 135 S. Ct. at 2677 (internal quotations omitted). In a partisan gerrymander, the state legislature takes from the voters in each district the power to decide for themselves whether they will be represented in Congress by a Republican or a Democrat. The legislature makes that decision *for* the people in each district by drawing district lines and assigning sufficient numbers to ensure that a Republican or a Democrat will be elected to represent the people of the district in the House of Representatives and dictate the electoral outcome of the general election in each district to voters in each district.

For these reasons, as well as those discussed in Plaintiffs’ post-trial brief, Plaintiffs respectfully request that the Court enter the above findings of fact and conclusions of law, hold the 2016 Plan violates Plaintiffs’ constitutional rights, and order the General Assembly to redraw the districts.

This the 6th day of November, 2017.

/s/ Edwin M. Speas, Jr.

Edwin M. Speas, Jr.
North Carolina Bar No. 4112
Steven B. Epstein
North Carolina Bar No. 17396
Caroline P. Mackie
North Carolina Bar No. 41512
POYNER SPRUILL LLP
301 Fayetteville Street, Suite 1900
Raleigh, NC 27601
Telephone: 919-783-6400
Facsimile: 919-783-1075
espeas@poynerspruill.com
sepstein@poynerspruill.com
cmackie@poynerspruill.com

/s/ Emmet J. Bondurant

Emmet J. Bondurant
Georgia Bar No. 066900
Jason J. Carter
Georgia Bar No. 141669
Benjamin W. Thorpe
Georgia Bar No. 874911
BONDURANT, MIXSON
& ELMORE, LLP
1201 W. Peachtree Street, NW, Suite 3900
Atlanta, GA 30309
Telephone (404) 881-4100
Facsimile (404) 881-4111
bondurant@bmelaw.com
carter@bmelaw.com
bthorpe@bmelaw.com

/s/ Gregory L. Diskant

Gregory L. Diskant

New York Bar No. 1047240

Peter A. Nelson

New York Bar No. 4575684

PATTERSON BELKNAP WEBB &
TYLER LLP

1133 Avenue of the Americas

New York, New York 10036

Telephone: (212) 336-2000

Facsimile: (212) 336-2222

gldiskant@pbwt.com

pnelson@pbwt.com

COUNSEL FOR PLAINTIFFS IN
COMMON CAUSE V. RUCHO, NO.
1:16-CV-1026

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel and parties of record.

This 6th day of November, 2017.

s/ Edwin M. Speas, Jr.

Edwin M. Speas, Jr.