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

BRIEF OF THE *COMMON CAUSE* PLAINTIFFS
IN RESPONSE TO ORDER OF JUNE 27, 2018

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

The *Common Cause* Plaintiffs in Civil Action No. 1:16-CV-1026 respectfully submit this brief in response to this Court's Order of June 27, 2018, which invited the parties in these two captioned cases to submit briefs addressing the following four issues:

1. What impact, if any, *Gill* has on this Court's holdings that the 2016 Plan violates the First Amendment and Article I of the Constitution;

2. Whether the existing factual record is adequate to address whether Plaintiffs have standing to state a vote dilution claim under the Equal Protection Clause;

3. If a party believes additional factual development is required, what that factual development should entail; and

4. Assuming arguendo that no additional factual development is required, whether, under *Gill*, Plaintiffs have standing to assert a vote dilution claim under the Equal Protection Clause.

In addressing these questions, the parties were directed to include citations to the record supporting their responses.

Answers of the *Common Cause* Plaintiffs to the Court's Questions

The *Common Cause* Plaintiffs respectfully submit the following answers to the Court's questions:

1. *Gill* has no impact on this Court's prior holdings that the 2016 Plan violates both the First Amendment and Article I, §§ 2 and 4 of the Constitution. Indeed, the opinion of the Court took pains to note that it was not expressing a view on anything except the

plaintiffs' Equal Protection claim premised on vote dilution. In light of Justice Kagan's concurrence, however, this Court can and should make further findings, based on the already-existing record in this case, in further support of those holdings.

2. The existing factual record is adequate to support this Court's previous finding of fact that the *Common Cause* Plaintiffs' votes were diluted under the 2016 Plan and its holding that they have standing to bring a vote-dilution claim under the Equal Protection Clause based upon district-specific injuries. The current record is also sufficient to establish the *Common Cause* Plaintiffs' standing to assert challenges against the 2016 Plan (whether as a whole or district-by-district) to redress injuries to their non-dilutionary rights of political association. Finally, the current record is also sufficient to establish the *Common Cause* Plaintiffs' standing to challenge the 2016 Plan (whether as a whole or district-by-district) based on structural harms cognizable under Article I.

3. No supplementation of the record is required to establish the *Common Cause* Plaintiffs' standing to assert an Equal Protection Claim on a vote-dilution injury theory under *Gill*. Nor is additional factual development necessary to support the *Common Cause* Plaintiffs' standing to prove claims under the First Amendment, Article I, §§ 2 or 4 of the Constitution. Nevertheless, in light of the remand by the Supreme Court, this Court can and should make supplemental findings based on the already-existing record in

further support of its previous holding that the *Common Cause* Plaintiffs have established district-specific standing.[1]

4. Under *Gill*, the *Common Cause* Plaintiffs have standing to assert district-specific vote dilution claims under the Equal Protection Clause challenging the apportionment of their respective individual districts. The *Common Cause* Plaintiffs also have standing to assert challenges to the 2016 Plan (whether as a whole or district-by-district) to redress injuries to their non-dilutionary rights of political association. Lastly, the *Common Cause* Plaintiffs have standing to challenge the 2016 Plan (whether as a whole or district-by-district) based on structural harms cognizable under Article I.

ARGUMENT

I. The Two Holdings in *Gill v. Whitford*.

In *Gill v. Whitford*, 138 S. Ct. 1916 (2018), the Supreme Court held:

First, a vote-dilution claim under the Fourteenth Amendment is district-specific and must be supported by a district-specific injury. An individual voter does not have standing to challenge a state-wide state legislative apportionment plan as a whole under the Equal Protection Clause on a vote-dilution injury theory. *See* 138 S. Ct. at 1930–31.

Second, an individual voter has standing to challenge his or her "placement in a 'cracked' or 'packed' district" under the Equal Protection Clause on a vote-dilution

[1] The *Common Cause* Plaintiffs believe that the current record is adequate and does not require supplementation; however, in the event that the Court decides to grant a request by other parties to supplement the record, the Common Cause Plaintiffs respectfully request that they be permitted to file the Declaration of Dr. Jowei Chen, attached as Exhibit B, and discussed *infra* at 21-22.

theory of injury. *Id.* at 1931. The Court in *Gill* remanded the Wisconsin plaintiffs' district-specific claims that their votes had been diluted by their placement in "packed" or "cracked" districts for trial under the Equal Protection Clause. *Id.* at 1934.

Gill addressed a statewide challenge under the Equal Protection Clause to the apportionment of Wisconsin's 99 state senate districts. The plaintiffs alleged standing to assert their statewide challenge based exclusively on a vote-dilution theory of injury. The plaintiffs alleged that the Republican-controlled legislature had wasted the votes of Democratic voters statewide by packing and cracking Democratic voters into districts to enable Republicans to capture a disproportionate share of the seats—e.g., 60 seats (60.6% of the seats) in 2012 with only 48.6% of the statewide vote and 63 seats (63.6% of the seats) in 2014 with only 52% of the statewide vote. Only four of the twelve plaintiffs alleged that they lived "in a district that has been packed or cracked." 138 S. Ct. at 1924. And these plaintiffs did not allege that their placement in packed or cracked districts diluted their votes in their individual districts. They instead alleged that, "regardless of 'whether they themselves reside in a district that has been packed or cracked,' they have been 'harmed by the manipulation of district boundaries' because Democrats statewide 'do not have the same opportunity provided to Republicans to elect representatives of their choice to the Assembly.'" *Id.* Although the Wisconsin plaintiffs cited the First Amendment in their complaint, they based their case at trial solely on the Equal Protection Clause, and relied exclusively on the efficiency gap and other statewide

evidence to prove that the votes of Democratic voters statewide had been diluted in comparison to those of Republican voters statewide.

The Supreme Court held that the individual voters in *Gill* did not have standing to assert a statewide vote-dilution claim under the Equal Protection Clause because vote-dilution is a district-specific injury. *See id.* at 1930. The Court determined that the Wisconsin "plaintiffs' partisan gerrymandering claims turn[ed] on [their] allegations that their votes have been diluted." *Id.* at 1930-1931. "That harm," the Court reasoned, "arises from the particular composition of the voter's own district"—not from the composition of the 99-member Wisconsin Senate as a whole. *Id.* at 1931. The Court explained, "[a]n individual voter in Wisconsin is placed in a single district … [and] votes for a single representative. The boundaries of the district, and composition of its voters, determine whether … a particular voter is packed or cracked." *Id* at 1930. Accordingly, the Court concluded that it is the composition of "the voter's own district, which causes his vote—having been packed or cracked—to carry less weight than it would carry in another, hypothetical district." *Id.* at 1931.

The Court, therefore, rejected the Wisconsin plaintiffs' argument "that their legal injury is not limited to the injury that they have suffered as individual voters" from the packing or cracking of their individual districts, "but extends also to the statewide harm to their interest 'in their collective representation in the legislature.'" *Id.* The Court held that, in the Equal Protection context, the Wisconsin plaintiffs' alleged injury was not an

"individual and personal injury … [as] required for Article III standing," but rather an "undifferentiated, generalized grievance." *Id.* The Court summarized its holding:

> [T]he sum of the standing principles articulated here, as applied to this case, is that the harm asserted by the plaintiffs is best understood as arising from a burden on those plaintiffs' own votes. In this gerrymandering context that burden arises through a voter's placement in a "cracked" or "packed" district.

Id.

The Court pointed out, however, that "four of the plaintiffs [had] … alleged that they lived in State Assembly districts where Democrats have been cracked or packed." *Id.* at 1924. The Court held that, unlike the other plaintiffs in *Gill,* these four "plaintiffs … [had] pleaded a particularized burden along [the] lines" that were required to establish their standing to state a vote-dilution claim under the Equal Protection Clause by "alleg[ing] that Act 43 had 'dilut[ed] the influence' of their votes as a result of packing or cracking of their legislative districts." *Id.* at 1931. The Court nevertheless reversed because "the[se] plaintiffs failed to meaningfully pursue their allegations of individual harm." *Id*. at 1932. Specifically, despite their allegations, "not a single plaintiff sought to *prove* that he or she lives in a cracked or packed district. They instead rested their case at trial – and their arguments before this Court – on their [efficiency gap] theory of statewide injury to Wisconsin Democrats . . . ." *Id.* (emphasis added). The Court refused, however, to dismiss these four plaintiffs' claims based on their failure to prove their allegations that they lived in packed or cracked districts (as Justice Thomas argued in his concurring opinion). The Court instead remanded the case for a new trial "in light

of the plaintiffs' allegations that [four plaintiffs] live in districts where Democrats like them have been packed or cracked … so that the plaintiffs may have an opportunity to prove concrete and particularized injuries . . . ." *Id.* at 1934.

II. *Gill* Does Not Adversely Impact This Court's Holdings that the 2016 Plan Violates the First Amendment and Article I, §§ 2 and 4 of the Constitution (Issue 1).

Gill does nothing to undermine or require reconsideration of this Court's prior holdings that the 2016 Plan violated the First Amendment and Article I, §§ 2 and 4 of the Constitution for at least four reasons:

First, unlike in the *Common Cause* case at bar, Article I, §§ 2 and 4 were not at issue in *Gill*. Those provisions of the Constitution apply only to federal elections for the House of Representatives, and *Gill* concerned a challenge to a gerrymander of state legislative districts only.

Second, unlike the case at bar, *Gill* was not tried or decided under First Amendment principles. In *Gill*, although the Wisconsin plaintiffs' complaint mentioned the First Amendment, the district court tried and decided—and, critically, the Supreme Court reviewed—only an Equal Protection claim.

Third, unlike the *Common Cause* plaintiffs, the Wisconsin plaintiffs based their standing to sue *solely* on a vote-dilution theory of injury. The Wisconsin plaintiffs neither alleged nor proved that the partisan gerrymander of the legislative districts in Wisconsin had caused non-dilutionary injuries to their rights of political association as Democratic voters by making it more difficult for the plaintiffs to recruit candidates, raise

money, and persuade others to volunteer and turn out and vote in support of Democratic candidates—either in their own districts or in other districts. The opinion of the Court went out of its way to make clear that it was "leav[ing] for another day consideration of other possible theories of harm" beyond vote dilution, such as the associational theory discussed in Justice Kagan's concurrence. 138 S. Ct. at 1931; *see id.* at 1938-40 (Kagan, J., concurring).

Fourth, unlike the *Common Cause* case, the state Democratic Party was not a plaintiff in *Gill*. The Wisconsin Democratic Party has standing and could have asserted district-specific vote-dilution claims on behalf of its Democratic members in every packed district and every packed and cracked district in the State of Wisconsin. More importantly, as a statewide political organization, the Wisconsin Democratic Party has standing and could have asserted a statewide Equal Protection based on the "legally cognizable non-dilutionary injuries" to the Party's rights of political association and those of its members. *See, e.g.*, *Common Cause v. Rucho*, 279 F. Supp. 3d 587, 615-16 (M.D.N.C. 2018), *vacated and remanded*, No. 17-1295, 2018 WL 1335403 (U.S. June 25, 2018). The non-dilutionary rights of political association of the Wisconsin Democratic Party are not confined to the boundaries of the particular district in which its members are registered to vote. The state Democratic Party and its members have an associational right to raise money, to recruit volunteers, and to encourage people to vote for Democratic candidates for Congress in every district in the state, and not merely for candidates running in a voter's home district. The injuries to the non-dilutionary rights of

political association of the Wisconsin Democratic Party as a statewide political organization, are, as Chief Justice Roberts described in *Gill*, injuries to the "group political interests" of the Wisconsin Democratic Party. *Id*. at 1933; *see also id.* at 1938 (Kagan, J., concurring).

III. The *Common Cause* Plaintiffs Have Standing to Assert Vote-Dilution Claims, Non-Dilutionary Claims for Injury to Their Rights of Political Association, and Structural Injury Claims (Issues 2 and 3).

***a. Unlike* Gill*, this Court found that the votes of the Democratic and other non-Republican voters in each of the ten cracked districts were diluted by their placement in those districts under the 2016 Plan and, further, that these voters have standing to challenge the apportionment of their districts* (*Issue 2)*.**

Unlike *Gill*, this Court has made an express finding that the votes of the Democratic plaintiffs who live in each of the ten "cracked" districts were diluted by the way in which their districts were drawn under the 2016 Plan, and that these plaintiffs have standing to sue on a vote-dilution injury theory based on this district-specific harm. This Court found that:

> [T]he 2016 Plan diluted the votes of those Plaintiffs who supported non-Republican candidates and reside in the ten ["cracked"] districts that the General Assembly drew to elect Republican candidates ["cracked"]. That dilution constitutes a legally cognizable injury-in fact.

Rucho, 279 F. Supp. 3d at 615.

This finding supports the standing of the ten individual Democratic plaintiffs who live in each of the ten "cracked" districts to assert district-specific challenges under the Equal Protection Clause. The Court's finding also supports the standing of Common Cause, the North Carolina Democratic Party, and the League of Women Voters to assert

district-specific claims of vote-dilution under the Equal Protection Clause on behalf of their members who live in each of the ten districts that the 2016 Plan cracked.

b.* Gill *also supports the standing of Democratic voters in packed districts to assert district-specific claims under the Equal Protection Clause (Issue 3).

The Supreme Court went a step further in *Gill v. Whitford* and held that Democratic voters who were placed in "packed" districts would also have standing to sue on a vote-dilution injury theory. *See Gill*, 138 S. Ct. at 1931 (concluding that the vote dilution harm in challenges to partisan gerrymanders "arises through a voter's *placement* in a "cracked' *or 'packed'* district") (emphasis added). This is because placement in a "packed" district reduces the practical importance of one's vote just as much as placement in a "cracked" district does; either way, one's own personal vote matters less (or not at all). *Gill*, 138 S. Ct. at 1930; *see also id.* at 1936 (Kagan, J., concurring).

In the light of this ruling, counsel respectfully suggest that this Court amend its findings to conform to the holding of *Gill* and hold that the Democratic voters who were placed by the 2016 Plan in one of the three "packed" congressional districts—the 1st, the 4th, and the 12th districts—also have standing to challenge their district's lines under the Equal Protection Clause, as do the organizational plaintiffs with members placed in those districts.

c. Cracking and packing violate the fundamental duty of government under the Equal Protection Clause to govern impartially.

The Supreme Court has held that "the idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative

government." *Bush v. Gore*, 531 U.S. 98, 107 (2000). If the "constitutional conception of 'equal protection of the laws' means anything," it means that a State has a fundamental duty to govern impartially. *Romer v. Evans*, 517 U.S. 620, 634 (1996). "The 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." *Id.* at 633. "In the context of redistricting, that guarantee is of critical importance because the franchise provides most citizens their only voice in the legislative process … [and] the contours of a voting district powerfully may affect citizens' ability to exercise influence through their vote." *Davis v. Bandemer*, 478 U.S. 109, 166 (1986) (Powell, J., concurring) (citing *Reynolds v. Sims*); *Karcher v. Daggett*, 462 U.S. 725, 748 (1983) (Stevens, J.).

The cracking and packing of Democratic voters by the 2016 Plan are merely two sides of the same unconstitutional coin. The 2016 Plan is a classic example of a law with the primary purpose and effect of making it "more difficult for one group of citizens than … others to seek aid from the government [and] is itself a denial of equal protection… in the most literal sense" to both packed voters and cracked voters. *Romer,* 517 U.S. at 633.

A district is cracked when it has been politically cleansed by the removal of a sufficient number of Democratic voters to leave the district in the control of a safe majority of Republican voters. The Democratic voters who are removed from a cracked district must go somewhere. They must either be dumped into another cracked district which has Republican majority that is large enough to absorb the transferees, or they must be packed into a district with a supermajority of Democratic voters. In either case,

the votes of these Democrats will be diluted or wasted, and will no longer be as effective or influential as their votes would have been if the cracking and packing had not occurred. *See Gill*, 138 S. Ct. at 1936 (Kagan, J., concurring)

This Court correctly found that the *Common Cause* Plaintiffs had more than satisfied their burden of proof to demonstrate that cracking and packing and, further, that Plaintiffs established not only that invidious partisanship was *a* motive for the packing and cracking of Democratic voters by the 2016 Plan, but that *the predominant motive* of the 2016 Plan was to preserve the existing Republican "Partisan Advantage," which itself was the product of an earlier, admitted partisan gerrymander in 2011. *Rucho*, 279 F. Supp. 3d. at 654. This Court specifically found that:

> Legislative Defendants [did] not dispute that the General Assembly intended for the 2016 Plan to favor supporters of Republican candidates and disfavor supporters of non-Republican candidates. . . . The General Assembly expressly directed the legislators and consultant responsible for drawing the 2016 Plan to rely on 'political data' … to draw a districting plan that would ensure Republican candidates would prevail in the vast majority [10 of 13] of the state's congressional districts.

Rucho, 279 F. Supp. 3d at 597.

The Supreme Court has held that "[w]hen 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 former group … need not allege [or prove] 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 … is the denial of equal treatment … from the imposition of the barrier, not the ultimate inability to obtain the benefit." *N.E.*

Fla. Chapter, Associated Gen. Contractors v. City of Jacksonville, 508 U.S. 656, 666 (1993) (Thomas, J.) (collecting cases); *Clinton v. City of New York*, 524 U.S. 417, 432-33 (1998).

The Common Cause Plaintiffs satisfied their burden of establishing standing and proving substantive violations of both the Equal Protection Clause and the First Amendment when they proved that the packing and cracking of Democratic voters by the 2018 Plan was motivated by a discriminatory partisan intent on the part of the General Assembly to pack and crack Democratic voters to preserve the Republican majority's 10-3 partisan advantage. The burden of proof then shifted to the Legislative Defendants to prove that the injuries to the *Common Cause* Plaintiffs were not caused by the packing and cracking of their votes under the 2016 Plan. They could do so by showing that the political makeup of the districts in the 2016 Plan were the result of political geography or other legitimate factors and that Democratic voters would have been subject to the same electoral disadvantages if the General Assembly had drawn district lines based purely on legitimate redistricting principles. *See Arlington Heights v. Metropolitan Housing Corp*., 429 U.S. 252, 270-271, n.21 (1977) (equal protection); *Rucho,* 279 F. Supp. 3d at 639 (citing *Arlington Heights*); *see also Mt. Healthy City Bd. of Ed. V. Doyle,* 429 U.S. 274, 287 (1977) (First Amendment); *Lozman v. City of Rivera Beach, Fla*. 138 S. Ct. 1945, 1954-55 (2018) (also First Amendment). Defendants could have argued that the intentional discrimination against Democratic voters was necessary to achieve a compelling state interest and was narrowly tailored. *See, e.g., Reed v. Town of Gilbert,*

135 S.Ct. 2218, 2226 (2015). However, the "Legislative Defendants …[did] not argue—and have never argued—that the 2016 Plan's intentional disfavoring of supporters of non-Republican candidates advances *any* democratic, constitutional, or public interest." *Rucho*, 279 F. Supp. 3d at 597 (emphasis in the original).

Exhibit A contains additional citations to the record and proposed supplemental findings in support of the Court's earlier findings that the 2016 Plan diluted and/or nullified the votes of the *Common Cause* Plaintiffs relative to the votes of Republican voters.

d. The* Common Cause *Plaintiffs also have standing based on the legally cognizable "non-dilutionary injuries" to their rights of political association.

Unlike the Wisconsin plaintiffs in *Gill*, the *Common Cause* Plaintiffs did not base their standing to sue under the Equal Protection Clause solely on vote dilution. The *Common Cause* Plaintiffs also alleged and proved that the 2016 Plan caused "*legally cognizable non-dilutionary injuries*" to the rights of political representation and association of Democratic voters in both the packed districts and the cracked districts, as well as statewide. *Rucho*, 279 F. Supp. 3d at 615 (emphasis added).

Unlike vote-dilution injury, which is inherently district-specific because it stems from the drawing of an individual voter's own district lines, injuries to the *Common Cause* plaintiffs' First Amendment rights are *both* district-specific *and* statewide. A number of the *Common Cause* voter-plaintiffs testified that the packing or cracking of *their* districts made *their* Congresspersons less responsive to *their* concerns, injuring their

First Amendment right to petition their representatives. This is a district-specific injury. Similarly, a number of the *Common Cause* voter-plaintiffs testified that the packing or cracking of *their* districts made it more difficult to recruit candidates to run in *those* districts. This, too, is a district-specific injury, because it stems from the drawing of their own districts' lines.

But First Amendment associational harm need not be district-specific, and the *Common Cause* plaintiffs alleged and proved state-wide harms as well. As Justice Kagan noted in her concurrence, party members have associational interests that transcend the lines of any single district and the outcome of any single district's race. Democratic Party members in *any* district—whether packed, cracked, or otherwise—have an identical shared interest in the party's statewide ability to "fundrais[e], register[] voters, attract[] volunteers, generat[e] support from independents, and recruit[] candidates to run for office." *Gill*, 138 S. Ct. at 1938 (Kagan, J., concurring). The *Common Cause* plaintiffs alleged and proved that "the gerrymander has burdened the ability of like-minded people *across the State* to affiliate in a political party and carry out [these] activities and objects." *Id.* at 1939 (emphasis added). Because these objectives are statewide, each of the *Common Cause* voter-plaintiffs has standing to challenge the 2016 Plan in its entirety. *Id.* ("Because on this alternative [non-dilutionary] theory, the valued association and the injury to it are statewide, so too is the relevant standing requirement.").

The 2016 Plan burdens these legally cognizable non-dilutionary rights of political association of the Democratic–voter plaintiffs irrespective of whether they live in a

packed district or a cracked district. The 2016 Plan makes it harder for a Democratic voter in a packed district to raise money, recruit volunteers, or turn out the vote for a Democratic candidate for Congress who is a shoo-in to be elected whether or not they volunteer, contribute to his campaign or even vote in the general election. The already-existing record establishes this beyond dispute. *See* Exhibit A, ¶¶ 28-31; s*ee also* *Common Cause* Plaintiffs' Post-Trial Findings of Fact and Conclusions of Law ("Post-Trial FOF"), Dkt. 117, 1:16-CV-1026, at ¶¶ 156, 164-67. The 2016 Plan also makes it more difficult for a Democratic voter who lives in a cracked district to recruit a Democratic candidate to run in that voter's home district, to raise money, or to recruit volunteers, from either within the "cracked" district or other parts of North Carolina. The Plan, by design, makes it more difficult to support a Democratic candidate who potential contributors and volunteers know has no chance of being elected because he or she is running in a safe Republican district from which Democratic voters have been deported and transferred to other districts. *See* Exhibit A, ¶¶ 32, 34-35, 38, 41.

This Court has previously found that the *Common Cause* Plaintiffs have standing to sue under the Equal Protection Clause (as well as under the First Amendment and Article I, §§ 2 and 4). That holding was based in part on this Court's prior finding of fact that the 2016 Plan caused "*legally cognizable non-dilutionary injuries* [to] … [the individual] Plaintiffs [who] testified to decreased ability to mobilize their party's base, to attract volunteers, and to recruit strong candidates" and made "[p]laintiffs … feel[] frozen out of the democratic process because 'their vote never counts,' which … affects voter

mobilization." *Rucho*, 279 F. Supp. 3d at 615–16. These findings of fact are fully supported by the record and, further, by the decision of the Supreme Court in *Anderson v. Celebrezze*, 460 U.S. 780, 792 (1983). In that case, the Supreme Court held that an independent presidential candidate, John Anderson, and his supporters had standing to challenge an Illinois ballot access law that made "'volunteers … more difficult to recruit and retain[,] … media . . . more difficult to secure, and voters … less interested in the campaign.'" *Rucho*, 279 F. Supp. 3d at 616.

e. The North Carolina Democratic Party also has standing to assert a statewide claim.

This Court also held that the North Carolina Democratic Party ("NCDP") has standing to sue under the Equal Protection Clause (as well as under the First Amendment and Article I, §§ 2 and 4). This decision was also based on the finding of fact that the 2016 Plan had injured the NCDP as a statewide political association or organization, by "ma[king] it more difficult for the [NCDP] to raise resources and to recruit candidates." *Rucho*, 279 F. Supp. 3d at 616; *see also* Post-Trial FOF, at ¶¶ 156, 164-67.

These "non-dilutionary injuries" to the associational rights of the NCDP are not confined to an individual district, but are statewide injuries that impact the NCDP in every city, county, and congressional district throughout North Carolina. They are sufficient to give the NCDP standing to challenge the 2016 Plan statewide both in its own right and also on behalf of its members, some of whom live in every packed or cracked district in North Carolina.

f. Plaintiffs also have standing to challenge the 2016 Plan as a violation of Article I's structural guarantees.

Because Article I was not at issue in *Gill*, none of the opinions in *Gill* addressed whether a challenge to a partisan gerrymander under Article I is district-specific or statewide in nature. However, the reasoning of Justice Kagan's concurrence suggests that such challenges are statewide in nature. "Standing," the concurrence explained, "turns on the nature and source of the claim asserted." 138 S. Ct. at 1938 (Kagan, J., concurring) (quoting *Warth v. Seldin*, 422 U. S. 490, 500 (1975)).

Article I, § 2 guarantees that members of Congress will be chosen "by the People of the several States." Article I, § 4 limits the power of state legislatures to meddle in Congressional elections, beyond outcome-neutral regulation of the "Times, Places, and Manner" of voting. These clauses were "intended to act as a safeguard against manipulation of electoral rules by politicians and factions in the States to entrench themselves or place their interest over those of the electorate." *Ariz. State Legislature v. Arizona Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2672. When a state legislature acts *ultra vires* by engaging in prohibited "manipulation," *that in itself* is the evil that Article I was intended to protect against—irrespective of how any particular district's lines are drawn or the resulting impact on the voting strength of any particular district's residents. Thus, any North Carolinian who suffers injury-in-fact as a result of the 2016 Plan should have standing to challenge the Plan in its entirety as an *ultra vires* act in violation of Article I. *Cf. Bond v. United States*, 564 U.S. 211, 222 (2011) (in Tenth

Amendment case, recognizing that any person injured-in-fact has "standing to object to a violation of a constitutional principle that allocates power within government" and may challenge a government body's "act[ion] in excess of its lawful powers").

Although we believe that the nature of the Article I injury is statewide in nature, in an excess of caution, we urge the Court to find that, even if it is district-specific, the plaintiffs who have district-specific injuries have standing to complain about the State's decision to cause those injuries and affect the outcome of elections in their districts.

* * *

Thus, although the Supreme Court held in *Gill* that vote-dilution is a district-specific injury that is not *alone* sufficient to support a statewide claim by a single voter, the "legally cognizable non-dilutionary injuries" to the rights of political association of individual Democratic voters, of the members of Common Cause, and of the NCDP and its members are both district-specific *and* statewide injuries that are separate from and additional to their injuries from vote dilution. *Rucho*, 279 F. Supp.3d at 617. The injuries to their rights of political association are therefore sufficient to give both the individual voters and the organizational plaintiffs standing to assert statewide challenges to the 2016 Plan as a whole. Accordingly, this Court was correct in finding that "[b]oth the individual and organizational Plaintiffs have suffered injuries-in-fact attributable to the 2016 Plan, and … have standing to challenge the 2016 Plan as a whole."

Moreover, this Court was also correct in finding, in the alternative, that "[e]ven absent statewide standing, because Plaintiffs reside in each of the state's thirteen districts

and have all suffered [district-specific] injuries-in-fact, Plaintiffs, as a group, have standing to lodge district-by-district challenges to the entire 2016 Plan." *Id.* at 617. That sentence alone fully distinguishes *Common Cause v. Rucho* from the Wisconsin case.

These findings of fact are fully supported by the record and are sufficient to support the standing of the *Common Cause* Plaintiffs to challenge the constitutionality of the 2016 Plan, both on a district-by-district and statewide basis under the First Amendment, the Equal Protection Clause, and Article I, §§ 2 and 4 of the Constitution. Further, and in response to the issues raised by the Court in its June 27, 2018 Order, these findings establish the standing of the *Common Cause* Plaintiffs to assert *both* district-specific and statewide claims under the Equal Protection Clause.

IV. The Sufficiency of These Findings Dictates the Response of the *Common Cause* Plaintiffs With Respect To the Second, Third and Fourth Issues Raised by the Court.

Question 2: Is the existing factual record adequate to address whether Plaintiffs have standing to state a vote dilution claim under the Equal Protection Clause?

The Answer of the *Common Cause* Plaintiffs is "Yes." The current factual record is sufficient to establish the *Common Cause* Plaintiffs' standing to assert a vote-dilution claim under the Equal Protection Clause for the reasons outlined above and following from the record evidence outlined in Exhibit A. Moreover, the current record is also sufficient to establish the *Common Cause* Plaintiffs' standing to assert a claim under the Equal Protection Clause and First Amendment based on the injuries to their non-

dilutionary rights of political association, and under Article I based on the structural harms wrought by the 2016 Plan.

Question 3: If a party believes additional factual development is required, what should that factual development entail?

The *Common Cause* Plaintiffs do not believe that any additional factual development is required to support their standing to assert claims under the Equal Protection Clause, nor is additional factual development necessary to support the *Common Cause* Plaintiffs' standing to prove claims under the First Amendment or Article I, §§ 2 and 4 of the Constitution.

The *Common Cause* Plaintiffs believe that the current record is complete and does not therefore require supplementation with respect to their claims. But, in the event that the Court decides to grant any party's request to supplement the record, the *Common Cause* Plaintiffs are prepared at this time to offer a supplemental Declaration from Dr. Jowei Chen—attached here as Exhibit B—that demonstrates the districts in which the *Common Cause* individual voter-plaintiffs were placed under the 2016 Plan (as evidenced by the pleadings and their individual deposition) as well as under two sets of the simulated districting plans Dr. Chen created, reported, was deposed about, testified to, and was cross-examined about in this case. Dr. Chen has created no new districting simulations for this Declaration, nor has he conducted any new analysis of the enacted plan with respect to any finding appearing in his earlier report.

At the instruction of counsel for the *Common Cause* Plaintiffs, he has merely determined the simulated districts in which plaintiffs would be placed given their residential addresses (already in the record) and reported the political performance of the enacted plan and those simulated districts (already produced over a year ago, subject to deposition and cross-examination, and the basis of his conclusions as to the aggregate partisan distribution of seats under his simulated maps). At most, Dr. Chen's supplemental declaration is a summary of voluminous evidence under Federal Rule of Evidence 1006. More accurately, it is the application of already existing data in this case to a narrow question on which this Court may choose—though it need not do so—to evaluate additional evidence to confirm its earlier, well-supported findings of fact.

Question 4: Assuming *arguendo* that no additional factual development is required, do Plaintiffs, under *Gill,* have standing to assert a vote dilution claim under the Equal Protection Clause?

The answer is "Yes," with the additional note that the *Common Cause* Plaintiffs also have standing to assert both district-specific and statewide claims under the Equal Protection Clause based on the injuries to the *Common Cause* Plaintiffs' "cognizable non-dilutionary rights" of political association, and to assert statewide claims under Article I based on the structural injuries associated with the violation of that Article's guarantees. All of these harms are caused by or "fairly traceable to" the 2016 Plan's invidious cracking and packing of Democratic voters. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 590 (1992).

Conclusion

The *Common Cause* Plaintiffs respectfully submit that nothing in *Gill v. Whitford* undermines this Court's prior holdings that the legally cognizable rights of the *Common Cause* Plaintiffs were injured-in-fact by the 2016 Plan or that these injuries in fact are sufficient to establish the *Common Cause* Plaintiffs' standing to assert district-specific challenges to the 2016 Plan on a vote-dilution theory; district-specific and statewide challenges to the 2016 Plan on a non-dilutionary theory of representational and associational harm; and a statewide challenge to the 2016 Plan under Article I, §§ 2 and 4 of the Constitution.

Finally, The *Common Cause* Plaintiffs point out that time is of the essence. The North Carolina General Assembly has recently moved the filing period for the 2020 congressional elections from February 2020 to December 2019 and has moved the 2020 congressional primaries from May to March 2020. *See* 2018 N.C. Sess. Law 21. The people of North Carolina have been denied the opportunity to elect Members of the House Representative under a constitutionally valid and fair plan for the past four congressional elections—since 2010. The legislative defendants should not be allowed to turn this limited remand from the Supreme Court into a vehicle to delay that would prevent their inevitable appeal from being heard and decided by the Supreme Court on the merits during the October 2018 Term. This Court should not sanction their ongoing efforts to deny Plaintiffs the protection of the Constitution.

Respectfully submitted, this 11th day of July, 2018.

/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, North Carolina 27601
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, Georgia 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 the **Common Cause** ***Plaintiffs***

CERTIFICATE OF COMPLIANCE WITH WORD COUNT

The undersigned hereby certifies that the foregoing brief, exclusive of the case caption and certificate of service, contains less than six thousand two hundred fifty (6,250) words.

This the 11th day of July, 2018.

/s/ Edwin M. Speas, Jr.
Edwin M. Speas, Jr.

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 the 11th day of July, 2018.

/s/ Edwin M. Speas, Jr.
Edwin M. Speas, Jr.

Exhibit A

Proposed Supplemental Findings of Fact Relevant to District-Specific Claims of the *Common Cause* Plaintiffs

TABLE OF CONTENTS

The Relevance of the Districts Drawn for the 2011 Plan

1. In enacting North Carolina's 2016 Congressional Redistricting Plan (the "2016 Plan"), the North Carolina General Assembly expressly required that individual 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 individual districts engineered to maintain the partisan makeup of North Carolina's congressional delegation under the invalidated 2011 Congressional Redistricting Plan (the "2011 Plan").

2. This case and the earlier case invalidating the 2011 plan—*Harris v. McCrory*, 159 F. Supp. 3d 600, 604 (M.D.N.C. 2016)—are inextricably linked. In *Harris*, Representative David Lewis, Senator Robert Rucho, and Dr. Thomas Hofeller manipulated the Voting Rights Act to gain partisan advantage for the Republican Party. They defended particular, individual racially-gerrymandered 2011 districts on the grounds that those individual district lines were drawn for political rather than racial reasons.

3. Indeed, 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 (emphasis added). To be clear, the legislative defendants in this case then argued—to the Supreme Court—that the 2011 Plan relied on the manipulation of individual district lines for partisan advantage.

4. And the partisan effect of drawing these individual districts for partisan advantage was equally clear. 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 (emphasis added).

5. In remedying the racial gerrymander struck down in *Harris*, Rep. Lewis and Sen. Rucho sought to maintain the partisan advantage gained by the unconstitutional 2011 districts. And Dr. Hofeller's role in drawing the 2016 maps was vital to maintaining the partisan advantage obtained by the 2011 plan.

6. Dr. Hofeller served as an expert witness for these same legislative defendants 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.

7. 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.").

8. 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 (emphasis added); 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.

9. All of this testimony makes clear that the statewide goal of the plan—as admitted by the mapdrawer—could only be realized by manipulating individual district lines. And the manipulation of those lines for the purpose of building the districts in the 2011 plan is beyond dispute. Indeed, it formed the core of the legislative defendants' appeal of the *Harris* ruling.

10. Moreover, record evidence in this case shows that this was part and parcel of a broader national effort—Project REDMAP, funded by the Republican State Leadership Committee. The goal of that project—in which both Dr. Hofeller and North Carolina played an integral role—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. 57:14-60:24 (emphasis added); Ex. 2021, p.1; Ex. 2022, p. 6; Ex. 2015, p. 4; Ex. 2016.

11. The mechanism for creating those "new Republican congressional districts" was equally clear and "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 (emphasis added); Ex. 2015, p. 4.

12. In 2011, the legislative defendants in this case (and in *Harris* before it) instructed Hofeller to create an assembly of districts 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, Hofeller 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 (emphasis added).

The Process of Drawing the Districts for the 2016 Plan

13. In 2016, the legislative defendants instructed Dr. Hofeller to create an assembly of districts that would maintain the partisan advantage the Republican Party and Republican candidates had established under the invalidated 2011 plan. Lewis Depo. 38:15-40:4; Rucho Depo. 33:6-23.

14. To address this goal, 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 individual districts that would likely yield a statewide partisan result of ten Republican seats and three Democratic seats. In keeping with that instruction as to the drawing of

individual districts, the legislators also instructed Dr. Hofeller that he was to try to avoid the pairing of the incumbents elected in 2014 under the invalidated 2011 Plan (ten of whom identified as Republicans). Lewis Depo. 116:8-117:13; 55:7-57:19.

15. As to the mechanism by which these individual districts were drawn, Dr. Hofeller testified that he viewed these past election results when using commercial software—Maptitude—on his personal computer to draw congressional districts. That software—loaded with the results of past elections—enabled 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." This "thematic" represented—according to various and adjustable metrics determined by Dr. Hofeller at his discretion—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.

16. Indeed, legislative defendants admit to viewing past election results for the exact purpose of determining the political fortunes of ***individual districts*** Dr. Hofeller was drafting for the 2016 Plan. Lewis Depo 49:13-51:21 (evaluating the "likely partisan outcome" of the newly-drawn 12th District); *id.* at 135:20-136:7 (same); *id.* at 62:11-65:1 (using the 2014

Tillis-Hagan Senate race results to evaluate political performance within Buncombe County); *id.* at 129:18-131:9 (admitting to "evaluat[ing] the likely outcome of congressional races in the newly designed districts" prior to presenting the plan to the General Assembly); *id. at* 126:19-128:9 (same); *id.* at 151:1-157:1 (discussing, at length, the partisan strength of individual districts based on the review of past election results used for the drawing of those same districts by Dr. Hofeller).

17. The evidence that Dr. Hofeller built individual districts for partisan advantage is overwhelming. Even if it were not, however, the Adopted Criteria used by the North Carolina expressly directed the drawing of individual districts for partisan advantage. 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 2016 districts. As Sen. Rucho told the Senate Committee on February 18: "I'll be clear, the criteria that Representative 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.

18. At least two, and more accurately three, of the seven criteria adopted by the Joint Committee on February 16, 2016 are explicitly partisan in the direction given to the mapmaker as to how he should "construct" individual districts: (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 in individual districts gained under the then-just-invalidated 2011 Plan and (c) the decision to avoid pairing 2014 incumbents where 77% of the incumbents identify as Republicans.

19. By their own language, 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 constructed*** in the 2016 Contingent Congressional Plan.

Ex. 1007 (emphasis added).

20. Further, 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—when constructing individual districts—to protect the Republicans' 10-3 partisan advantage. Ex. 1007.

21. Amendments that would have made it more difficult to construct an assembly of individual districts that would 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. *Id.* at p. 23. Others would have required the preservation of communities of interest. *Id.* at pp. 25 and 27. Such criteria would, however, have prevented Dr. Hofeller from constructing individual districts that split Democratic population centers, such as Asheville, and would have thwarted that partisan goal, as Defendants' expert Dr. Hood acknowledged. Tr. T. Vol. IV, pp.42:6-43:4.

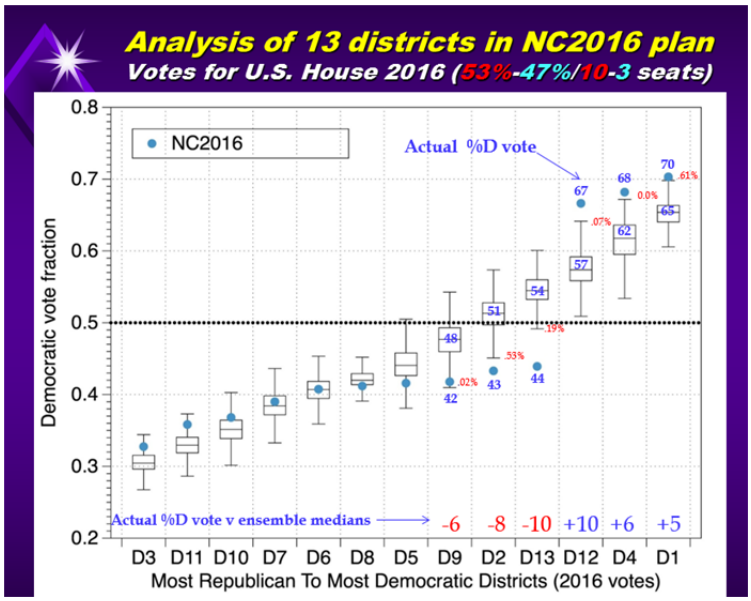
22. And we know from the record that Dr. Hofeller in fact rejected alternative maps that constructed individual districts with less partisan bias. *See*, e.g., Ex. 4023-24 (showing draft plans created by Dr. Hofeller in 2016 that would have—relative to the 2016 enacted plan—cracked and packed fewer North Carolina voters).

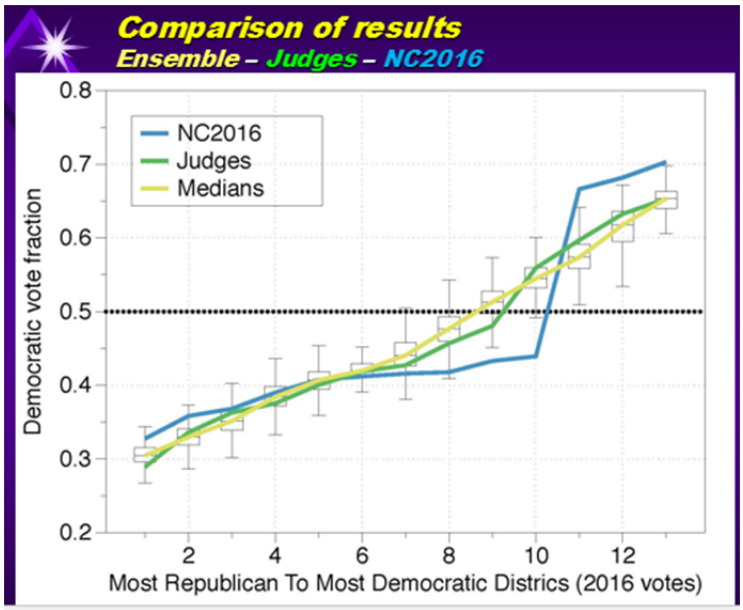
23. Prior to passage of the 2016 Plan by the General Assembly, Rep. Lewis even explained *how* political data would be used in the construction of individual districts to gain partisan advantage. He said: "[I]f you are trying to give a partisan advantage, you would want to ***draw the lines*** so that 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 (emphasis added). 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." *Id.* at p. 50:7-10.

24. And, again, we know from the record that Dr. Hofeller did just that in 2016. Though there is some dispute as to precisely how Dr. Hofeller evaluated moving single VTDs from district to district (his testimony on the issue is not the model of candor), there is no dispute that Dr. Hofeller in fact viewed "thematics" in Maptitude to evaluate the partisan effect of particular county-line splits. *Compare* Exs. 4066-4077, 4081 (declaration of and maps created by Timothy Stallman) *with* Exs. 5104-5116 (declaration of and maps created by Dr. Thomas Hofeller).

25. Sen. Rucho's comments similarly establish the partisan intent of the constructing the districts that would ultimately make up 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 (emphasis added).

The Clear Partisan Effect of The Districts Drawn for the 2016 Plan





(Ex. 3040 pp. 29-30)

26. From his ensemble of 24,000+ simulated redistricting maps, Dr. Jonathan Mattingly produced a box plot that reveals the most likely election outcomes *by district* from the most Republican district in each simulated map to the most Democratic district. The box plot reveals the median and range of Democratic vote fractions for each of the 13 districts arrayed from most Republican to most Democratic. Tr. T. Vol. I, pp. 50:12-51:24. On the first Power Point slide above, Dr. Mattingly also plotted the *actual* Democratic vote fraction in each of the enacted plan's 13 districts in the 2016 general election, arrayed from most Republican (CD 3) to most Democratic (CD 1). By doing so, he was able to demonstrate how the three most Democratic districts in the enacted plan were packed with Democratic voters far beyond the Democratic vote fraction in the most Democratic districts in his ensemble of simulated maps; he was also able to demonstrate how Democratic vote fractions in the fourth, fifth, and sixth most Democratic districts in the enacted plan were significantly diluted—or cracked—as compared to the fourth, fifth, and sixth most Democratic districts in the 24,000+ simulated maps in his ensemble. Tr. T. Vol. I, p. 70:1-9. The first Power Point slide above demonstrates that the fourth, fifth, and sixth most Democratic districts in Dr. Mattingly's ensemble were competitive districts, with the median Democratic vote fraction ranging from 48% to 54%; in contrast, the fourth, fifth, and sixth most Democratic

districts in the 2016 enacted plan were not at all competitive, with the Democratic vote fraction in these three districts ranging from 42-44%.

27. On the second Power Point slide above, the blue "S curve" (representing the 2016 general election results under the enacted plan) demonstrates the packing and cracking of numerous congressional districts—particularly CD 13, CD 2, and CD 9—where the blue line deviates sharply from the yellow line connecting the medians of the Democratic vote fractions in the 13 districts—arrayed from most Republican to most Democratic—in each of Dr. Mattingly's 24,000+ simulated maps. Tr. T. Vol. I, pp. 76:13-77:5.

28. Dr. Mattingly's box plot establishes that the enacted plan packed Democratic voters into CD 1, CD 4, and CD 12 far beyond what could have resulted from North Carolina's political geography or the application of neutral, non-partisan redistricting criteria. Those three districts resulted in approximately 750,000 total Democratic votes in the 2016 general election. Tr. T. Vol. I, pp. 72:7-73:14. In contrast, not a single simulated map in Dr. Mattingly's ensemble of 24,000+ simulated maps would have had as many Democratic votes in its three most Democratic districts combined. Tr. T. Vol. I, p. 71:2-12. As a result of the packing of Democratic voters into these three districts, Democratic voters assigned to CD 1, CD 4, and CD 12

have had their votes diluted and suffered and injury in fact. That is because these three districts are so packed with Democratic voters that a Democratic candidate is assured of winning in landslide elections no matter how low the level of Democratic voter turnout, resulting in large numbers of Democratic votes being wasted, just as Defendants intended.

29. As the direct—and intended—result of the packing Democratic voters into CD 1, CD 4, and CD 12, the number of Democratic voters assigned to the next most Democratic districts, CD 13, CD 2, and CD 9, has been diluted far below what could have resulted from North Carolina's political geography or application of neutral, non-partisan redistricting criteria. Each of these three districts were cracked by the 2016 enacted plan, which resulted in less than 600,000 total Democratic votes in those districts in the 2016 general election. Tr. T. Vol. I, pp. 71:2-72:2. In contrast, not a single simulated map in Dr. Mattingly's ensemble of 24,000+ simulated maps would have had as few Democratic votes in its fourth, fifth, and sixth most Democratic districts combined. Tr. T. Vol. I, p. 71:13-20. As a result of the cracking of these three districts, Democratic voters assigned to CD 13, CD 2, and CD 9 have had their votes diluted and suffered an injury in fact. That is because these three districts have been so diluted of Democratic

voters that a Democratic candidate has virtually no chance of winning no matter how high the level of Democratic voter turnout.

30. Dr. Mattingly's analysis thus confirms that Dr. Hofeller succeeded as he testified he intended in diluting the votes of the Democratic plaintiffs who reside in CD 1, 2, 3, 4, 6, 7, 8, 11, 12 and 13. *See supra* ¶ 7.

31. Common Cause Plaintiff Larry Hall, a Democratic voter, resided at 1526 Southwood Drive in Durham, Durham County, which placed him in CD 1 in the enacted plan. Hall Dep. p. 12:6-9. Larry Hall testified at his deposition that the impact of his vote was reduced based on the design of his district. Hall Dep. pp. 15:8-10; 17:12-24. CD 1 received the highest Democratic vote fraction of all 13 congressional districts in the 2016 general election with a Democratic vote fraction of 70.3%. CD 1 had a higher Democratic vote fraction than 99.39% of the districts that had the highest Democratic vote fraction in each of the 24,000+ simulated maps in Dr. Mattingly's ensemble, Tr. T. Vol. I, p. 72:10-13, and had a 5% higher Democratic vote fraction (70% vs. 65%) than the median Democratic vote fraction for the districts that had the highest Democratic vote fraction in Dr. Mattingly's ensemble. Plaintiff Larry Hall's vote was diluted as the result

of the packing of Democratic voters into CD 1 and he has suffered an injury in fact.

32. Common Cause Plaintiff Alice Bordsen, a Democratic voter, resided at 706 Copperline Drive, #202, in Chapel Hill, Orange County, which placed her in CD 4 in the enacted plan. Bordsen Dep. p. 12:10-12.[1] Plaintiff Bordsen testified at her deposition about the harms of hyper-partisanship, and the stifling effect on voters caused by the packing of her district. Bordsen Dep. pp. 17:7-17; 19:3-7 ("For Democrats, you know, you're just packed in there. What difference if you go vote or not: A Democrat is going to win. For a Republican, why would they go vote: They're never going to win."). CD 4 received the second highest Democratic vote fraction of all 13 congressional districts in the 2016 general election with a Democratic vote fraction of 68.2%. CD 4 had a higher Democratic vote fraction than 100% of the districts that had the second highest Democratic vote fraction in each of the 24,000+ simulated maps in Dr. Mattingly's ensemble, Tr. T. Vol. I, p. 72:13-15, and had a 6% higher Democratic vote fraction (68% vs. 62%)

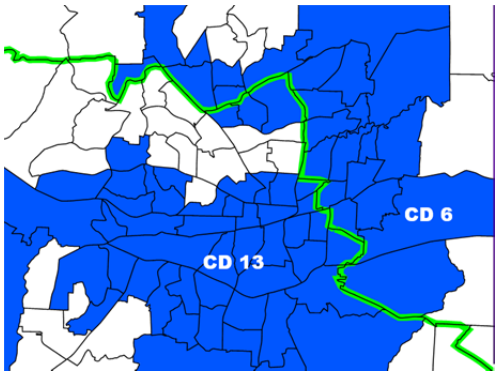
[1] Plaintiff Borsden recently moved her residence from CD 4 to CD 6. Likewise, Plaintiff Morgan recently moved his residence from CD 6 to CD 4. *See Common Cause* Plaintiffs' Post-Trial Findings of Fact and Conclusions of Law ("Post-Trial FOF"), Dkt. 117, 1:16-CV-1026, at ¶ 158.

than the median Democratic vote fraction for the districts that had the second highest Democratic vote fraction in Dr. Mattingly's ensemble. Plaintiff Alice Bordsen's vote was diluted as the result of the packing of Democratic voters into CD 4 and she has suffered an injury in fact.

33. Common Cause Plaintiff Morton Lurie, a Republican voter, resided at 4112 Landfall Court, Raleigh, Wake County, which placed him in CD 4 in the enacted plan. Lurie Dep. p. 19:14-16. Plaintiff Lurie testified at his deposition that his vote is diluted because there is no chance of a Republican winning CD 4. Lurie Dep. p. 25:15-24. CD 4 received the second highest Democratic vote fraction of all 13 congressional districts in the 2016 general election with a Democratic vote fraction of 68.2%. CD 4 had a higher Democratic vote fraction than 100% of the districts that had the second highest Democratic vote fraction in each of the 24,000+ simulated maps in Dr. Mattingly's ensemble, Tr. T. Vol. I, p. 72:13-15, and had a 6% higher Democratic vote fraction (68% vs. 62%) than the median Democratic vote fraction for the districts that had the second highest Democratic vote fraction in Dr. Mattingly's ensemble. Plaintiff Morton Lurie's vote was diluted as the result of the dilution of Republican voters in CD 4 that resulted from the packing of CD 4 with Democratic voters and he has suffered an injury in fact.

34. Common Cause Plaintiff John Gresham, a Democratic voter, resided at 717 E. Kingston Ave., Charlotte, Mecklenburg County, which placed him in CD 12 in the enacted plan. Gresham Dep. p. 8:16-18. Mr. Gresham testified that his district was packed with Democratic voters in order to give Republicans a 10-3 statewide advantage. Gresham Dep. p. 25:3-6. The packing of CD 12 harmed Plaintiff Gresham by diluting the impact of his vote and also by taking away his ability to ever elect a qualified Republican candidate in the district, should he choose to support such a candidate. Gresham Dep. p. 34:17-22. CD 12 received the third highest Democratic vote fraction of all 13 congressional districts in the 2016 general election with a Democratic vote fraction of 66.6%. CD 12 had a higher Democratic vote fraction than 99.93% of the districts that had the third highest Democratic vote fraction in each of the 24,000+ simulated maps in Dr. Mattingly's ensemble, Tr. T. Vol. I, p. 72:15-18, and had a 10% higher Democratic vote fraction (67% vs. 57%) than the median Democratic vote fraction for the districts that had the third highest Democratic vote fraction in Dr. Mattingly's ensemble. Plaintiff John Gresham's vote was diluted as the result of the packing of Democratic voters into CD 12 and he has suffered an injury in fact.

35. Common Cause Plaintiff Russell G. Walker, Jr., a Democratic voter, resided at 104 Jordan Ridge Way, Jamestown, Guilford County, which placed him in CD 13 in the enacted plan. Walker Dep. p. 12:7-9. Judge Walker testified that his vote is diluted because no candidate he supports has any chance of winning CD 13. Walker Dep. p. 28:14-17. CD 13 received the fourth highest Democratic vote fraction of all 13 congressional districts in the 2016 general election with a Democratic vote fraction of 43.9%. CD 13 had a lower Democratic vote fraction than 99.81% of the districts that had the fourth highest Democratic vote fraction in each of the 24,000+ simulated maps in Dr. Mattingly's ensemble, Tr. T. Vol. I, p. 72:19-23, and had a 10% lower Democratic vote fraction (44% vs. 54%) than the median Democratic vote fraction for the districts that had the fourth highest Democratic vote fraction in Dr. Mattingly's ensemble. Plaintiff Russell G. Walker, Jr.'s vote was diluted as the result of the dilution of Democratic voters in CD 13 and he has suffered an injury in fact.



(Ex. 3042 p. 13)

36. Further proof of the cracking of CD 13 is evident from the literal cracking of the naturally occurring Democratic cluster in Greensboro—which was split into two different congressional districts, CD 6 and CD 13, each of which had overwhelming Republican majorities in the 2016 general election. As Dr. Hood described in his testimony, the natural clustering of partisans often leads to the placement of such a cluster into a single congressional district. Tr. T. Vol. IV, pp. 44:22-45:1. He admitted that had this occurred with the Greensboro Democratic cluster, the partisan composition of the resulting district would have been more Democratic than either CD 6 or CD 13. Tr. T. Vol. IV, pp. 45:24-46:5. Consequently, the cracking of the Greensboro partisan cluster in the enacted plan—resulting in only a portion of Greensboro being placed into CD 13—resulted in the dilution of the voting power of Democratic voters in CD 13. Plaintiff Russell G. Walker, Jr.'s vote was diluted as the result of the

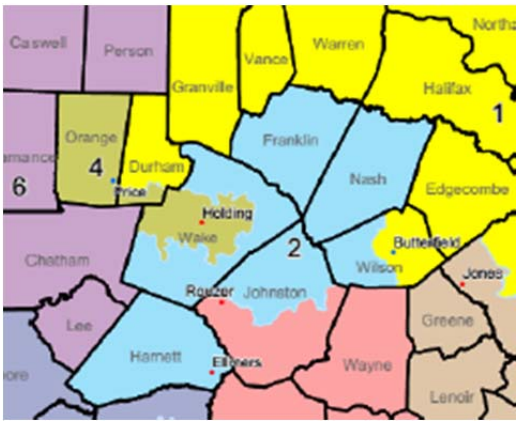
dilution of Democratic voters in CD 13 and he has suffered an injury in fact.

37. The cracking of the Greensboro partisan cluster in the enacted plan also resulted in the dilution of the voting power of Democratic voters in CD 6 by removing Democratic voters from CD 6 that were part of the partisan cluster. Plaintiff Melzer Morgan, who resided at 1607 Courtland Ave., Reidsville, Rockingham County, who was placed into CD 6, testified that he does not have much voice in speaking to his congressman and that he has difficulty encouraging others to vote or support a candidate in his district. Morgan Dep. pp. 5:11-14; 22:16-19.[2] Plaintiff Morgan therefore suffered from the dilution of his vote by being placed into a cracked district and has suffered an injury in fact.

38. Common Cause Plaintiff Douglas Berger, a Democratic voter, resided at 125 Hunters Lane, Youngsville, Franklin County, which placed him in CD 2 in the enacted plan. Berger Dep. p. 29:6-9. Plaintiff Berger testified at his deposition that he would not contribute money to a congressional campaign under the current plan because the districts are not competitive,

[2] *See supra* n.1 regarding the fact that Plaintiff Morgan now resides in CD 4 and Plaintiff Borsden now resides in CD 6.

Berger Dep. p. 7:7-13, and even though his district was the "secondmost competitive" in 2016, the winning candidate had a 13-percentage point win. Berger Dep. p. 6:10-20. CD 2 received the fifth highest Democratic vote fraction of all 13 congressional districts in the 2016 general election with a Democratic vote fraction of 43.3%. CD 2 had a lower Democratic vote fraction than 99.47% of the districts that had the fifth highest Democratic vote fraction in each of the 24,000+ simulated maps in Dr. Mattingly's ensemble, Tr. T. Vol. I, pp. 72:23-73:1, and had an 8% lower Democratic vote fraction (43% vs. 51%) than the median Democratic vote fraction for the districts that had the fifth highest Democratic vote fraction in Dr. Mattingly's ensemble. Plaintiff Douglas Berger's vote was diluted as the result of the dilution of Democratic voters in CD 2 and he has suffered an injury in fact.



(Ex. 1001)

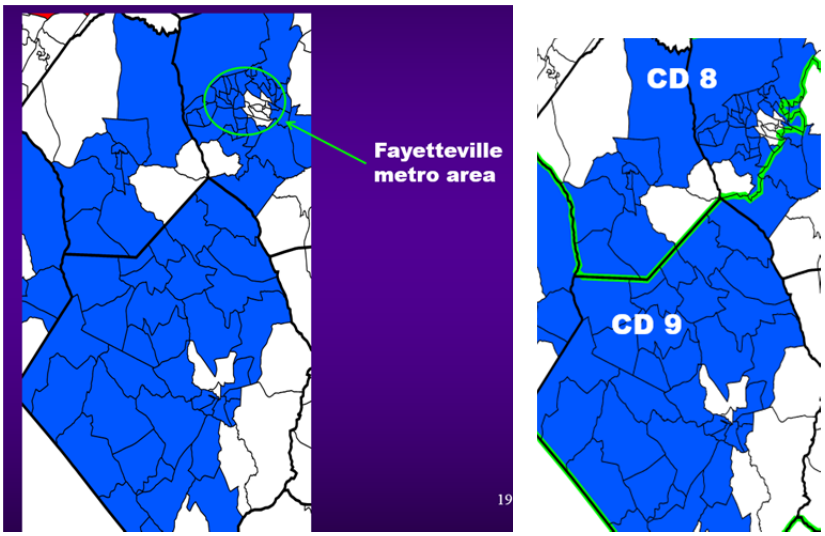
39. Further proof of the cracking of CD 2 is the large swath of Wake County that was excised from that district and placed instead into CD 4. Nearly 64% of the voters in the swath of Wake County that was placed into CD 4 cast votes for the Democratic candidate for Governor in 2008, as compared to just 41.5% of the Wake County voters assigned to CD 2. 2008 Election Returns, Part 2, *available at* http://www.ncleg.net/GIS/Download/District-Plans/DB_2016/Congress/2016_Contingent_Congressional_Plan_Corrected/Reports/VTD_Statewide/rptVTDElec2008_2.pdf. Consequently, the effect of placing this swath of Wake County into CD 4, rather than CD 2, was to pack CD 4 with Democratic voters and dilute Democratic voting power in CD 2, thereby resulting in the cracking of that district. Plaintiff Douglas Berger's vote was diluted as the result of the dilution of Democratic voters in CD 2 and he has suffered an injury in fact.

40. Common Cause Plaintiff John Morrison McNeill, a Democratic voter, resided at 225 East Third Ave., Red Springs, Robeson County, which placed him in CD 9 in the enacted plan. McNeill Dep. p. 8:16-19. CD 9 received the sixth highest Democratic vote fraction of all 13 congressional districts in the 2016 general election with a Democratic vote fraction of 41.8%. CD 9 had a lower Democratic vote fraction than approximately

99.98% of the districts that had the sixth highest Democratic vote fraction in each of the 24,000+ simulated maps in Dr. Mattingly's ensemble, Tr. T. Vol. I, pp. 72:23-73:1, and had a 6% lower Democratic vote fraction (42% vs. 48%) than the median Democratic vote fraction for the districts that had the sixth highest Democratic vote fraction in Dr. Mattingly's ensemble. Plaintiff John Morrison McNeill's vote was diluted as the result of the dilution of Democratic voters in CD 9 and he has suffered an injury in fact.

41. At his deposition, Mr. McNeill testified that he was harmed "[b]ecause the districts have been packed with more Democratic voters in a few districts that those of us who are not living in those packed districts have less of a chance of our candidate of being elected and consequently my vote counting toward the candidate, if I chose a Democratic Party candidate." McNeill Dep. pp. 21:23–22:4. Mr. McNeill provided the following example of how the absence of a reasonable opportunity to elect a candidate who shares his 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 Dep. 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." McNeill Dep. pp. 26:24-27:8. Congressman Pittenger from Charlotte, however, "voted in favor of doing away with" that important program for Robesonians. McNeill Dep. p. 26:23. Because CD 9 has been engineered to elect a Republican candidate, Congressman Pittenger faces no electoral accountability for that policy position.



(Ex. 3042 pp. 19-20)

42. Further proof of the cracking of CD 9 is evident from the literal cracking of the naturally occurring Democratic cluster in Cumberland, Hoke, and Robeson Counties—which was split into two different congressional districts, CD 8 (which contained highly Democratic Fayetteville) and CD 9, each of which had overwhelming Republican majorities in the 2016 general

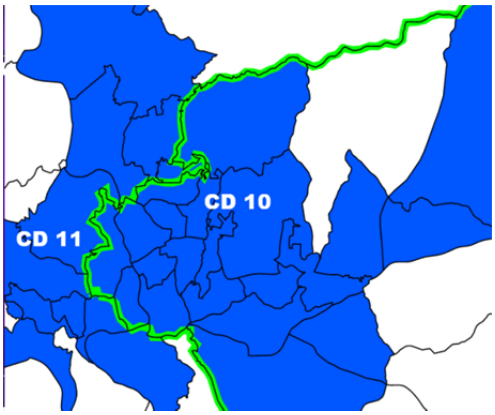
election. As Dr. Hood described in his testimony, the natural clustering of partisans often leads to the placement of such a cluster into a single congressional district. Tr. T. Vol. IV, pp. 44:22-45:1. He admitted that had this occurred with the Cumberland/Hoke/Robeson Democratic cluster, the partisan composition of the resulting district would have been more Democratic than either CD 8 or CD 9. Tr. T. Vol. IV, p. 50:12-24. Consequently, the cracking of the Cumberland/Hoke/Robeson partisan cluster in the enacted plan—which deliberately removed Fayetteville from CD 9—resulted in the dilution of the voting power of Democratic voters in CD 9. Plaintiff John Morrison McNeill's vote was diluted as the result of the dilution of Democratic voters in CD 9 and he has suffered an injury in fact.

43. The division of Mecklenburg County along partisan lines in the enacted 2016 plan further illustrates the cracking of CD 9. The most Republican parts of Mecklenburg County were assigned to CD 9 to assure Republican dominance in that district and the most Democratic parts of Mecklenburg County were assigned to CD 12 to assure Democratic dominance in the district. In the 2008 election for Governor, 25.24% of the Mecklenburg County voters assigned to CD 9 voted for the Democratic candidate; by contrast, 56.46% of Mecklenburg County voters assigned to CD 12 voted

for the Democratic candidate. 2008 Election Returns, Part 2, *available at* http://www.ncleg.net/GIS/Download/District-Plans/DB_2016/Congress /2016_Contingent_Congressional_Plan_Corrected/Reports/VTD_Statewide /rptVTDElec2008_2.pdf.

44. Similarly, the cracking of the naturally occurring Democratic cluster in Cumberland, Hoke, and Robeson Counties into CD 8 and CD 9 resulted in the dilution of the voting power of Democratic voters in CD 8, including Plaintiff Coy E. Brewer, Jr., who resided at 909 Calamint Lane, Fayetteville, Cumberland County. Brewer Dep. p. 10:23 – 11:1. CD 8 was constructed using a string of seven counties in a band from Fayetteville in Cumberland County all the way to Salisbury in Rowan County. Five of those seven counties were kept whole (Cabarrus, Stanly, Montgomery, Moore, and Hoke); two were divided (Rowan and Cumberland). To achieve his partisan goal for this district, Thomas Hofeller submerged the strong Democratic vote in Cumberland and Hoke Counties (each of which had vote totals for the 2008 Democratic candidate for Governor in excess of 63%) into the strong Republican vote in Cabarrus, Rowan, Moore, and Stanly Counties, which together accounted for nearly 57% of the district's population. These four counties had the following results for the 2008 Democratic candidate for Governor: Rowan 28.77%, Stanly 31.46%,

Cabarrus 34.77%, Moore 39.08%. 2008 Election Returns, Part 2, *available at* http://www.ncleg.net/GIS/Download/District-Plans/DB_2016/Congress/2016_Contingent_Congressional_Plan_ Corrected/Reports/VTD_Statewide/rptVTDElec2008_2.pdf. Plaintiff Brewer testified about the harms caused by the dilution of his vote. Brewer Dep. pp. 24:16-24 ("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."). Plaintiff Coy E. Brewer, Jr.'s vote was diluted as the result of the dilution of Democratic voters in CD 8 and he has suffered an injury in fact.



(Ex. 3042, P. 7)

45. In the enacted plan, the naturally occurring Democratic cluster in Asheville was split into two different congressional districts, CD 10 and CD 11, each

of which had overwhelming Republican majorities in the 2016 general election. As Dr. Hood described in his testimony, the natural clustering of partisans often leads to the placement of such a cluster into a single congressional district. Tr. T. Vol. IV, pp. 44:22-45:1. He admitted that had this occurred with the Asheville Democratic cluster, the partisan composition of the resulting district would have been more Democratic than either CD 6 or CD 13. Tr. T. Vol. IV, pp. 42:6-43:3. Consequently, the cracking of the Asheville partisan cluster in the enacted plan resulted in the dilution of the voting power of Democratic voters in CD 10 and CD 11, including Plaintiff Robert Warren Wolf, who resided at 238 Knollwood Drive, Forest City, Rutherford County, who was placed into CD 10, Wolf Dep. p. 7:22-25, and Plaintiff Jones P. Byrd, who resided at 89 Edgelawn Drive, Asheville, Buncombe County, who was placed into CD 11. Byrd Dep. pp. 19:22 – 20:2. Plaintiff Byrd testified that as a Democrat, there is no candidate for whom he can vote that would be elected and his vote does not really mean anything. Byrd Dep. p. 27:2-4. Mr. Byrd also testified how the mapdrawer split the population center of Asheville to take the Democratic population out of CD 11 and into CD 10 to dilute the Democratic vote in both districts. Byrd Dep. pp. 31:10 – 32:18. These plaintiffs have therefore suffered an injury in fact.

Exhibit B

Declaration of Dr. Jowei Chen

July 11, 2018

In connection with my March 1, 2017 expert report in this litigation, I turned over all data concerning 1,000 North Carolina congressional maps created as Simulation Set 1, produced using a computer simulation process following only the non-partisan portions of the Adopted Criteria used for the 2016 Plan. I also turned over all data concerning 1,000 additional congressional maps created as Simulation Set 2, produced using a simulation process following the non-partisan portions of the Adopted Criteria and avoiding the pairing of any incumbents.

On July 4, 2018, Counsel for Common Cause plaintiffs gave to me a list of the fifteen individual plaintiffs in this litigation and their respective residential addresses. I geocoded these addresses, determining the latitude and longitude coordinates of each plaintiff's residence.

I used these geocoded addresses in the following ways. For each plaintiff, I first identified the district from the enacted 2016 Plan (SB 2) in which the plaintiff was placed. Next, I identified the district from each of the 1,000 plans in Simulation Set 1 and each of the 1,000 plans in Simulation Set 2 in which each plaintiff is located. I then compared the partisan composition of the enacted district and the 2,000 computer-simulated districts in which each plaintiff resides. I describe these comparisons below.

Figure 1 compares the partisanship of each plaintiff's district in the enacted 2016 Plan to the partisanship of the plaintiff's district in each of the 1,000 plans in Simulation Set 1. In this Figure, the partisanship of each district is measured as the Republican vote share of all votes cast in North Carolina's 20 statewide elections held during 2008-2014 (the elections specified by the Adopted Criteria). This Figure contains a separate row for each plaintiff; Plaintiffs Richard and Cheryl Lee Taft are listed on the same row because they reside at the same address. Within each row, the red star denotes the partisanship of the plaintiffs' district in the enacted 2016 Plan, while the 1,000 gray circles depict the partisanship of plaintiff's district in each of the 1,000 plans in Simulation Set 1. Hence, for example, the bottom row in Figure 1 illustrates that in the enacted 2016 Plan, Plaintiff Larry Hall resides in a district with a Republican vote share of 29.2%; by contrast, most of the Simulation Set 1 plans would have placed this plaintiff into a district with a Republican vote share of 35% to 40%.

Figure 2 also compares the partisanship of each plaintiff's enacted plan district to the partisanship of the plaintiff's district in each of the 1,000 Simulation Set 1 plans. However,

Figure 2 measures the partisanship of each district using Dr. Thomas Hofeller's seven-election formula (the "Hofeller formula"), which calculates the Republican share of votes cast in seven statewide elections held during 2008-2014.

Next, Figure 3 compares the partisanship of each plaintiff's district in the enacted 2016 Plan to the partisanship of the plaintiff's district in each of the 1,000 plans in Simulation Set 2, with district partisanship measured as the Republican vote share of all votes cast in North Carolina's 20 statewide elections held during 2008-2014. Finally, Figure 4 again compares the partisanship of each plaintiff's enacted plan district to the partisanship of the plaintiff's district in each of the 1,000 Simulation Set 2 plans. However, Figure 4 measures the partisanship of each district using the Hofeller formula.

Figure 1:

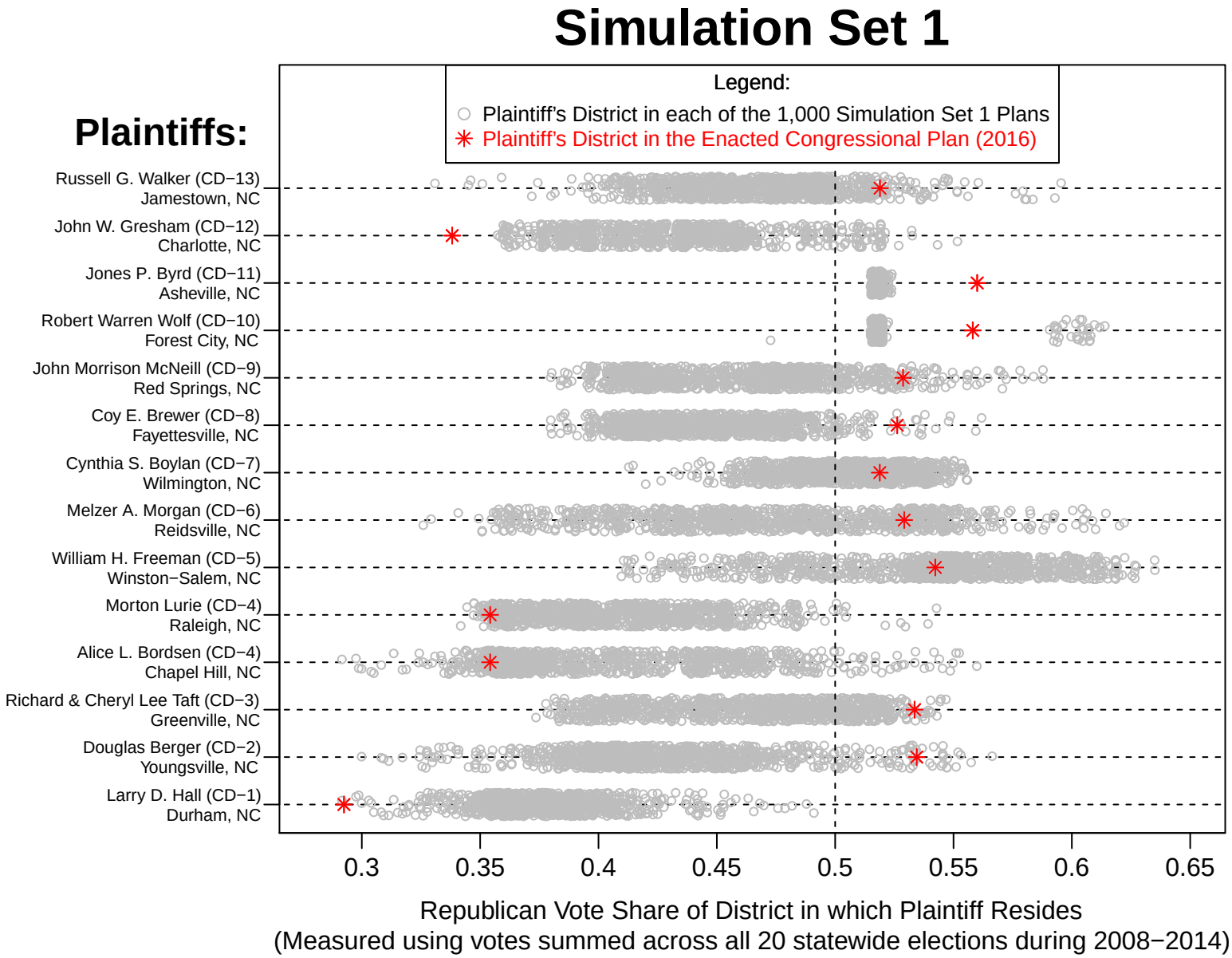

Simulation Set 1
Legend:
Plaintiff's District in each of the 1,000 Simulation Set 1 Plans
Plaintiff's District in the Enacted Congressional Plan (2016)
Plaintiffs:
Russell G. Walker (CD−13)
Jamestown, NC
John W. Gresham (CD−12)
Charlotte, NC
Jones P. Byrd (CD−11)
Asheville, NC
Robert Warren Wolf (CD−10)
Forest City, NC
John Morrison McNeill (CD−9)
Red Springs, NC
Coy E. Brewer (CD−8)
Fayettesville, NC
Cynthia S. Boylan (CD−7)
Wilmington, NC
Melzer A. Morgan (CD−6)
Reidsville, NC
William H. Freeman (CD−5)
Winston−Salem, NC
Morton Lurie (CD−4)
Raleigh, NC
Alice L. Bordsen (CD−4)
Chapel Hill, NC
Richard & Cheryl Lee Taft (CD−3)
Greenville, NC
Douglas Berger (CD−2)
Youngsville, NC
Larry D. Hall (CD−1)
Durham, NC
0.3
0.35
0.4
0.45
0.5
0.55
0.6
0.65
Republican Vote Share of District in which Plaintiff Resides
(Measured using votes summed across all 20 statewide elections during 2008−2014)

Figure 2:

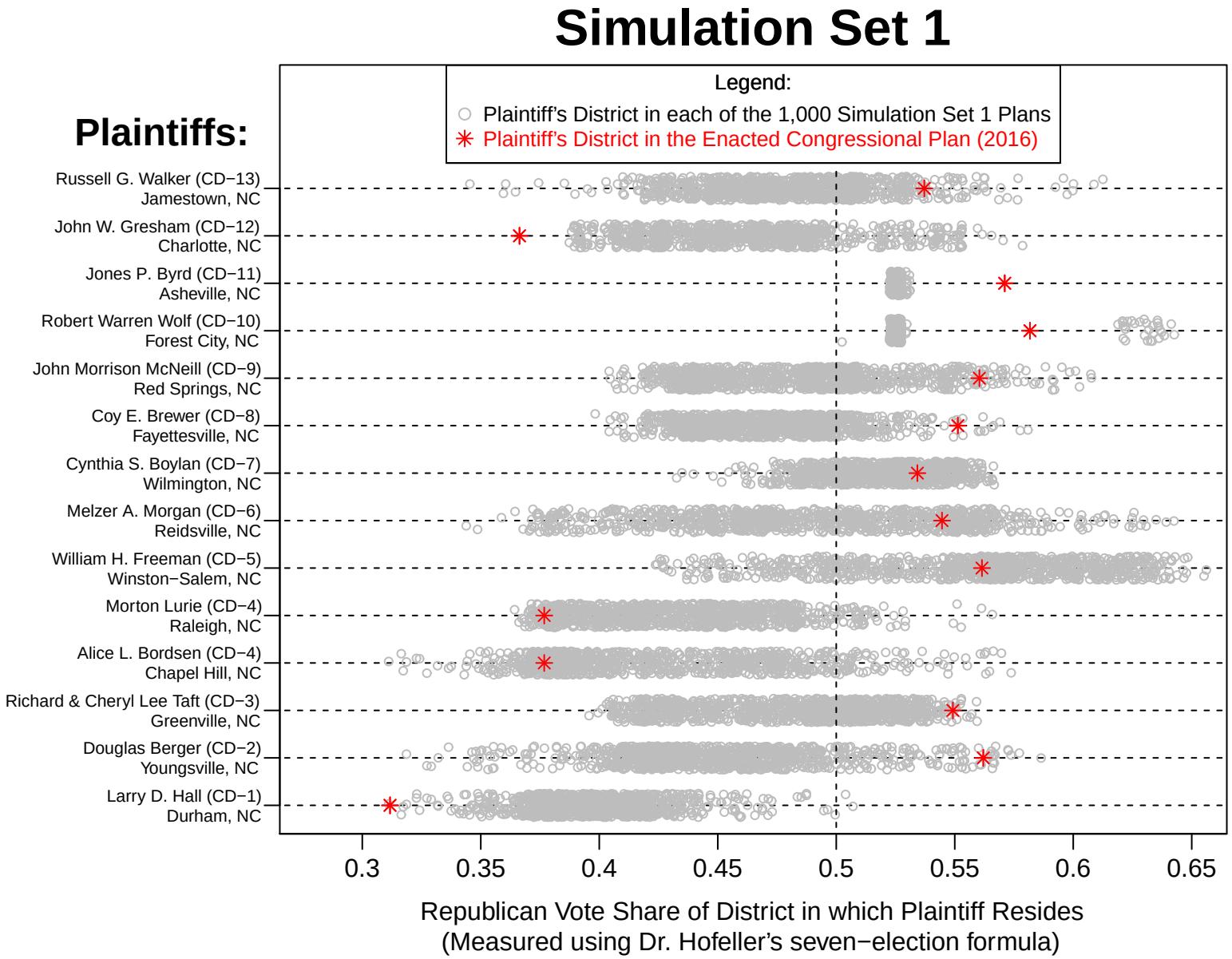

Simulation Set 1
Legend:
Plaintiff's District in each of the 1,000 Simulation Set 1 Plans
Plaintiff's District in the Enacted Congressional Plan (2016)
Plaintiffs:
Russell G. Walker (CD−13)
Jamestown, NC
John W. Gresham (CD−12)
Charlotte, NC
Jones P. Byrd (CD−11)
Asheville, NC
Robert Warren Wolf (CD−10)
Forest City, NC
John Morrison McNeill (CD−9)
Red Springs, NC
Coy E. Brewer (CD−8)
Fayettesville, NC
Cynthia S. Boylan (CD−7)
Wilmington, NC
Melzer A. Morgan (CD−6)
Reidsville, NC
William H. Freeman (CD−5)
Winston−Salem, NC
Morton Lurie (CD−4)
Raleigh, NC
Alice L. Bordsen (CD−4)
Chapel Hill, NC
Richard & Cheryl Lee Taft (CD−3)
Greenville, NC
Douglas Berger (CD−2)
Youngsville, NC
Larry D. Hall (CD−1)
Durham, NC
0.3
0.35
0.4
0.45
0.5
0.55
0.6
0.65
Republican Vote Share of District in which Plaintiff Resides
(Measured using Dr. Hofeller's seven−election formula)

Figure 3:

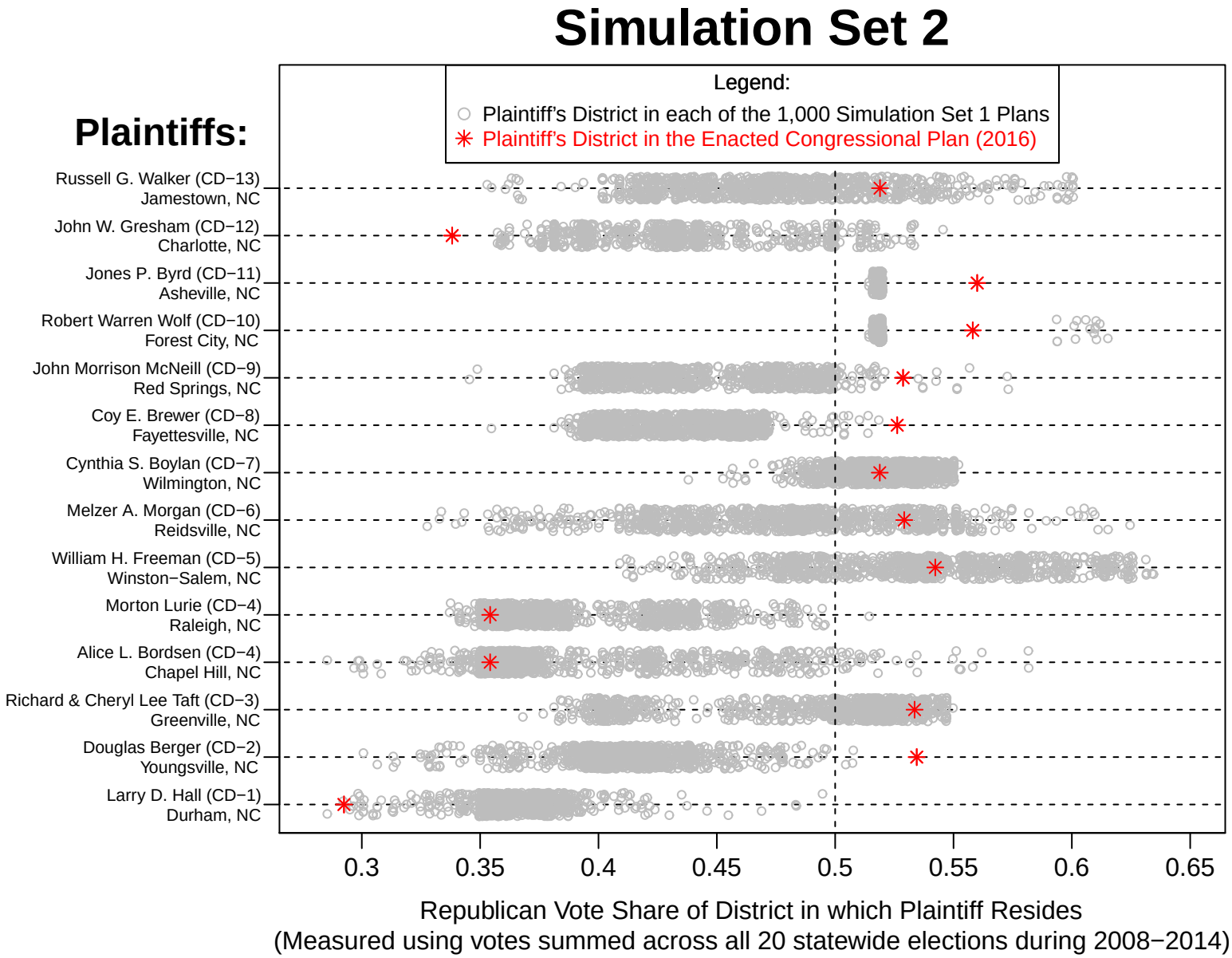
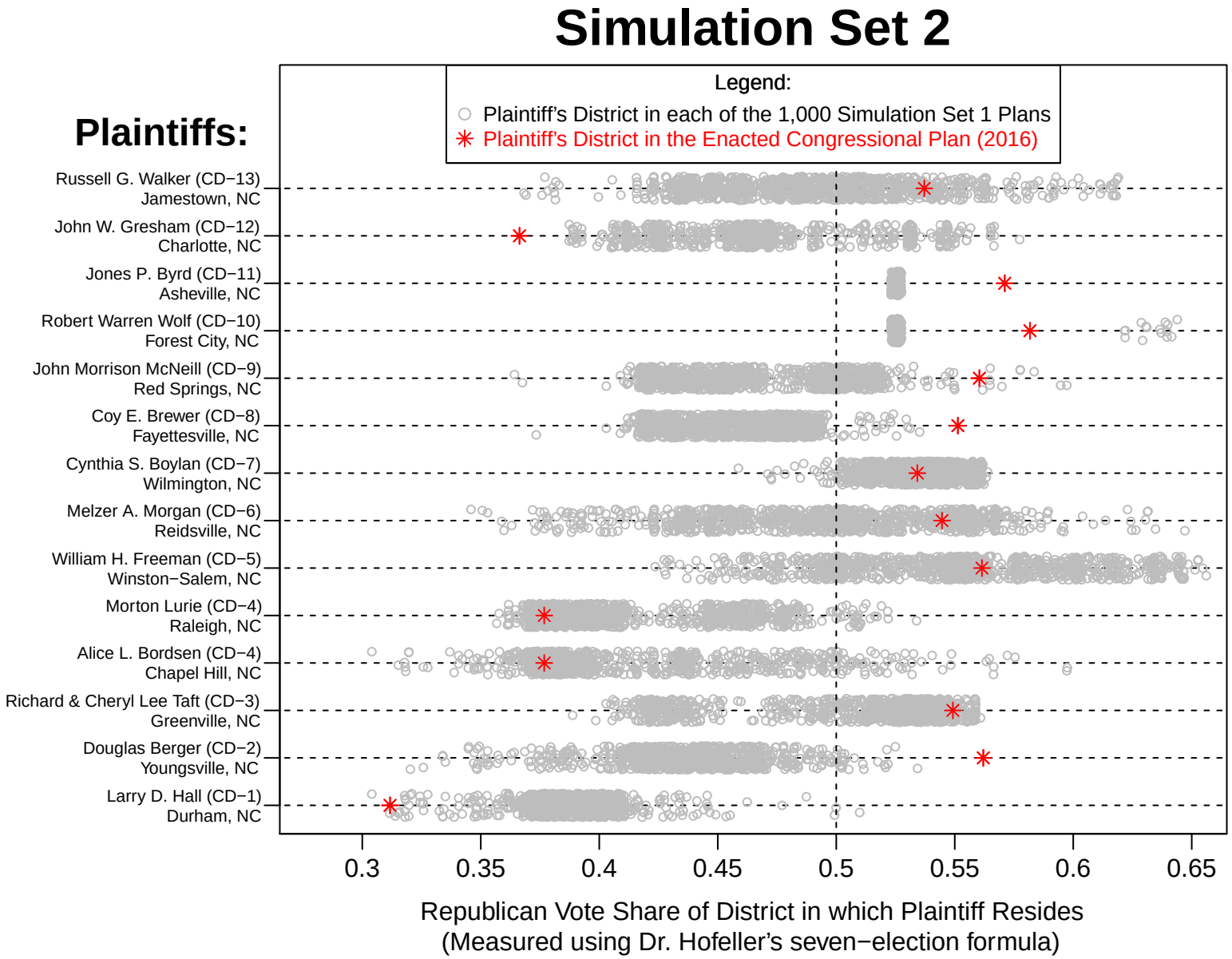

Simulation Set 2
Legend:
Plaintiff's District in each of the 1,000 Simulation Set 1 Plans
Plaintiff's District in the Enacted Congressional Plan (2016)
Plaintiffs:
Russell G. Walker (CD−13)
Jamestown, NC
John W. Gresham (CD−12)
Charlotte, NC
Jones P. Byrd (CD−11)
Asheville, NC
Robert Warren Wolf (CD−10)
Forest City, NC
John Morrison McNeill (CD−9)
Red Springs, NC
Coy E. Brewer (CD−8)
Fayettesville, NC
Cynthia S. Boylan (CD−7)
Wilmington, NC
Melzer A. Morgan (CD−6)
Reidsville, NC
William H. Freeman (CD−5)
Winston−Salem, NC
Morton Lurie (CD−4)
Raleigh, NC
Alice L. Bordsen (CD−4)
Chapel Hill, NC
Richard & Cheryl Lee Taft (CD−3)
Greenville, NC
Douglas Berger (CD−2)
Youngsville, NC
Larry D. Hall (CD−1)
Durham, NC
0.3
0.35
0.4
0.45
0.5
0.55
0.6
0.65
Republican Vote Share of District in which Plaintiff Resides
(Measured using votes summed across all 20 statewide elections during 2008−2014)

Figure 4:


Simulation Set 2
Legend:
Plaintiff's District in each of the 1,000 Simulation Set 1 Plans
Plaintiff's District in the Enacted Congressional Plan (2016)
Plaintiffs:
Russell G. Walker (CD−13)
Jamestown, NC
John W. Gresham (CD−12)
Charlotte, NC
Jones P. Byrd (CD−11)
Asheville, NC
Robert Warren Wolf (CD−10)
Forest City, NC
John Morrison McNeill (CD−9)
Red Springs, NC
Coy E. Brewer (CD−8)
Fayettesville, NC
Cynthia S. Boylan (CD−7)
Wilmington, NC
Melzer A. Morgan (CD−6)
Reidsville, NC
William H. Freeman (CD−5)
Winston−Salem, NC
Morton Lurie (CD−4)
Raleigh, NC
Alice L. Bordsen (CD−4)
Chapel Hill, NC
Richard & Cheryl Lee Taft (CD−3)
Greenville, NC
Douglas Berger (CD−2)
Youngsville, NC
Larry D. Hall (CD−1)
Durham, NC
0.3
0.35
0.4
0.45
0.5
0.55
0.6
0.65
Republican Vote Share of District in which Plaintiff Resides
(Measured using Dr. Hofeller's seven−election formula)

Comparison of Enacted and Simulated Districts for Individual Plaintiffs:

Plaintiff Larry Hall resides in Congressional District 1 of the Enacted 2016 Plan, and this enacted district has a 31.2% Republican vote share, as measured by the Hofeller formula. In Simulation Set 1, 999 of 1,000 simulated plans (99.9%) placed this plaintiff into a less Democratic-leaning district, as measured by the Hofeller formula. In Simulation Set 2, 998 of 1,000 simulated plans (99.8%) placed this plaintiff into a less Democratic-leaning district, as measured by the Hofeller formula.

Plaintiff Douglas Berger resides in Congressional District 2 of the Enacted 2016 Plan, and this enacted district has a 56.2% Republican vote share, as measured by the Hofeller formula. In Simulation Set 1, 986 of 1,000 simulated plans (98.6%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula. In Simulation Set 2, all 1,000 simulated plans (100%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula.

Plaintiffs Richard and Cheryl Taft reside in Congressional District 3 of the Enacted 2016 Plan, and this enacted district has a 54.9% Republican vote share, as measured by the Hofeller formula. In Simulation Set 1, 988 of 1,000 simulated plans (98.8%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula. In Simulation Set 2, 938 of 1,000 simulated plans (93.8%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula.

Plaintiff Alice Bordsen resides in Congressional District 4 of the Enacted 2016 Plan, and this enacted district has a 37.7% Republican vote share, as measured by the Hofeller formula. In Simulation Set 1, 829 of 1,000 simulated plans (82.9%) placed this plaintiff into a less Democratic-leaning district, as measured by the Hofeller formula. In Simulation Set 2, 770 of 1,000 simulated plans (77.0%) placed this plaintiff into a less Democratic-leaning district, as measured by the Hofeller formula.

Plaintiff Morton Lurie resides in Congressional District 4 of the Enacted 2016 Plan, and this enacted district has a 37.7% Republican vote share, as measured by the Hofeller formula. In Simulation Set 1, 959 of 1,000 simulated plans (95.9%) placed this plaintiff into a less Democratic-leaning district, as measured by the Hofeller formula. In Simulation Set 2, 864 of 1,000 simulated plans (86.4%) placed this plaintiff into a less Democratic-leaning district, as measured by the Hofeller formula.

Plaintiff William Freeman resides in Congressional District 5 of the Enacted 2016 Plan, and this enacted district has a 56.1% Republican vote share, as measured by the Hofeller formula. In Simulation Set 1, 425 of 1,000 simulated plans (42.5%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula. In Simulation Set 2, 606 of 1,000 simulated plans (60.6%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula.

Plaintiff Melzer Morgan resides in Congressional District 6 of the Enacted 2016 Plan, and this enacted district has a 54.5% Republican vote share, as measured by the Hofeller formula. In Simulation Set 1, 768 of 1,000 simulated plans (76.8%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula. In Simulation Set 2, 790 of 1,000 simulated plans (79.0%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula.

Plaintiff Cynthia Boylan resides in Congressional District 7 of the Enacted 2016 Plan, and this enacted district has a 53.4% Republican vote share, as measured by the Hofeller formula. In Simulation Set 1, 765 of 1,000 simulated plans (76.5%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula. In Simulation Set 2, 514 of 1,000 simulated plans (51.4%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula.

Plaintiff Coy Brewer resides in Congressional District 8 of the Enacted 2016 Plan, and this enacted district has a 55.1% Republican vote share, as measured by the Hofeller formula. In Simulation Set 1, 989 of 1,000 simulated plans (98.9%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula. In Simulation Set 2, 1,000 of 1,000 simulated plans (100%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula.

Plaintiff John McNeill resides in Congressional District 9 of the Enacted 2016 Plan, and this enacted district has a 56.0% Republican vote share, as measured by the Hofeller formula. In Simulation Set 1, 959 of 1,000 simulated plans (95.9%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula. In Simulation Set 2, 990 of 1,000 simulated plans (99.0%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula.

Plaintiff Robert Wolf resides in Congressional District 10 of the Enacted 2016 Plan, and this enacted district has a 58.2% Republican vote share, as measured by the Hofeller formula. In

Simulation Set 1, 970 of 1,000 simulated plans (97.0%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula. In Simulation Set 2, 985 of 1,000 simulated plans (98.5%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula.

Plaintiff Jones Byrd resides in Congressional District 11 of the Enacted 2016 Plan, and this enacted district has a 57.1% Republican vote share, as measured by the Hofeller formula. In Simulation Set 1, 1,000 of 1,000 simulated plans (100%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula. In Simulation Set 2, 1,000 of 1,000 simulated plans (100%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula.

Plaintiff John Gresham resides in Congressional District 12 of the Enacted 2016 Plan, and this enacted district has a 36.6% Republican vote share, as measured by the Hofeller formula. In Simulation Set 1, 1,000 of 1,000 simulated plans (98.6%) placed this plaintiff into a less Democratic-leaning district, as measured by the Hofeller formula. In Simulation Set 2, 1,000 of 1,000 simulated plans (100%) placed this plaintiff into a less Democratic-leaning district, as measured by the Hofeller formula.

Plaintiff Russell Walker resides in Congressional District 3 of the Enacted 2016 Plan, and this enacted district has a 53.7% Republican vote share, as measured by the Hofeller formula. In Simulation Set 1, 1,000 of 1,000 simulated plans (100%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula. In Simulation Set 2, 1,000 of 1,000 simulated plans (100%) placed this plaintiff into a more Democratic-leaning district, as measured by the Hofeller formula.

Partisanship of Plaintiffs' Districts in Plan 297 of Simulation Set 2:

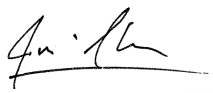
At the instruction of counsel for the Common Cause plaintiffs, I report in Table 1 below the partisanship of the districts from Plan 297 of Simulation Set 2 in which each of the 15 Common Cause plaintiffs reside. Table 1 contains one row for each plaintiff. The fifth column of this table reports the partisanship of the Plan 297 district in which each plaintiff resides. The third column of this table reports the partisanship of the district in the Enacted 2016 Plan in which each plaintiff resides. As before, district partisanship is measured in this table using the Hofeller formula.

Table 1: Partisanship of Plaintiffs' Districts in Plan 2-297 and in the Enacted Plan

Plaintiff:	Plaintiff's District in Enacted Plan (SB 2):	Republican Vote Share of Plaintiff's District in Enacted Plan (Hofeller Formula):	Plaintiff's District in Plan 297 of Simulation Set 2:	Republican Vote Share of Plaintiff's District in Plan 297 of Simulation Set 2 (Hofeller Formula):
Larry D. Hall	1	31.17%	11	36.78%
Douglas Berger	2	56.20%	12	40.84%
Richard & Cheryl Lee Taft	3	54.92%	13	54.43%
Alice L. Bordsen	4	37.68%	11	36.78%
Morton Lurie	4	37.68%	11	36.78%
William H. Freeman	5	56.15%	6	49.30%
Melzer A. Morgan	6	54.46%	7	51.49%
Cynthia S. Boylan	7	53.42%	9	52.18%
Coy E. Brewer	8	55.13%	8	46.43%
John Morrison McNeill	9	56.04%	8	46.43%
Robert Warren Wolf	10	58.17%	1	52.62%
Jones P. Byrd	11	57.11%	1	52.62%
John W. Gresham	12	36.63%	3	45.82%
Russell G. Walker	13	53.71%	6	49.30%

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

This 11th day of July, 2018.



Jowei Chen