RECORD NOS. 16-1270(L); 16-1271

In The

United States Court of Appeals

For The Fourth Circuit

RALEIGH WAKE CITIZENS ASSOCIATION; JANNET B. BARNES; BEVERLEY S. CLARK; WILLIAM B. CLIFFORD; BRIAN FITZSIMMONS; GREG FLYNN; DUSTIN MATTHEW INGALLS; AMY T. LEE; ERWIN PORTMAN; SUSAN PORTMAN; JANE ROGERS; BARBARA VANDENBERGH; JOHN G. VANDENBERGH; AMYGAYLE L. WOMBLE; PERRY WOODS; CALLA WRIGHT; WILLIE J. BETHEL; AJAMU G. DILLAHUNT; ELAINE E. DILLAHUNT; LUCINDA H. MACKETHAN; ANN LONG CAMPBELL; CONCERNED CITIZENS FOR AFRICAN-AMERICAN CHILDREN, d/b/a Coalition of Concerned Citizens for African-American Children,

Plaintiffs – Appellants,

v.

WAKE COUNTY BOARD OF ELECTIONS,

Defendant – Appellee,

and

CHAD BAREFOOT, in his official capacity as Senator and primary sponsor of SB 181; PHILLIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate; TIM MOORE, in his official capacity as Speaker of the North Carolina House of Representatives; STATE OF NORTH CAROLINA,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA AT RALEIGH

BRIEF OF APPELLANTS

Anita S. Earls
George E. Eppsteiner
Allison J. Riggs
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 West Highway 54, Suite 101
Durham, North Carolina 27707
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Counsel for Appellants

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 16-1270 Caption: Raleigh Wake Citizens Association v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Jannet B. Barnes
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Jannet B. Barnes

CERTIFICATE OF SERVICE

****

I certify that on 3/28/2016 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

s/ Anita S. Earls (signature) 3/28/2016 (date)

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No. 16-1270 Caption: Raleigh Wake Citizens Association v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Beverley S. Clark
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Beverley S. Clark

CERTIFICATE OF SERVICE

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No. 16-1270 Caption: Raleigh Wake Citizens Association v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

William B. Clifford
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: William B. Clifford

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No. 16-1270 Caption: Raleigh Wake Citizens Association v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Brian Fitzsimmons
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Brian Fitzsimmons

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s/ Anita S. Earls 3/28/2016

(signature) (date)

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No. 16-1270 Caption: Raleigh Wake Citizens Association v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Greg Flynn
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Greg Flynn

CERTIFICATE OF SERVICE

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No. 16-1270 Caption: Raleigh Wake Citizens Association v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Dustin Matthew Ingalls
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Dustin Matthew Ingalls

CERTIFICATE OF SERVICE

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(signature) (date)

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No. 16-1270 Caption: Raleigh Wake Citizens Association v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Amy T. Lee
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Amy T. Lee

CERTIFICATE OF SERVICE

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(signature) (date)

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No. 16-1270 Caption: Raleigh Wake Citizens Association v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Ervin Portman
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Ervin Portman

CERTIFICATE OF SERVICE

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(signature) (date)

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No. 16-1270 Caption: Raleigh Wake Citizens Association v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Susan Portman
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Susan Portman

CERTIFICATE OF SERVICE

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No. 16-1270 Caption: Raleigh Wake Citizens Association v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Raleigh Wake Citizens Association
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Raleigh Wake Citizens Association

CERTIFICATE OF SERVICE

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No. 16-1270 Caption: Raleigh Wake Citizens Association v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Jane C. Rogers
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Jane C. Rogers

CERTIFICATE OF SERVICE

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s/ Anita S. Earls
(signature)

3/28/2016
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

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No. 16-1270 Caption: Raleigh Wake Citizens Association v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Barbara D. Vandenbergh
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Barbara D. Vandenbergh

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s/ Anita S. Earls
(signature)

3/28/2016
(date)

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No. 16-1270 Caption: Raleigh Wake Citizens Association v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

John G. Vandenbergh
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: John G. Vandenbergh

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No. 16-1270 Caption: Raleigh Wake Citizens Association v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Amy Womble
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Amy Womble

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No. 16-1270 Caption: Raleigh Wake Citizens Association v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Perry Woods
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Perry Woods

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No. 16-1271 Caption: Wright v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Willie J. Bethel
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Willie J. Bethel

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No. 16-1271 Caption: Wright v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Ann Long Campbell
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Ann Long Campbell

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No. 16-1271 Caption: Wright v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Concerned Citizens for African-American Children
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

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If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Concerned Citizens for African-American Children

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No. 16-1271 Caption: Wright v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Ajamu G. Dillahunt
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Ajamu G. Dillahunt

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No. 16-1271 Caption: Wright v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Elaine E. Dillahunt
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Elaine E. Dillahunt

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(signature) (date)

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No. 16-1271 Caption: Wright v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Lucinda H. Mackethan
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

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If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Lucinda H. Mackethan

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(signature) (date)

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No. 16-1271 Caption: Wright v. Wake Cnty. Bd. of Elections

Pursuant to FRAP 26.1 and Local Rule 26.1,

Calla Wright
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
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If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Anita S. Earls Date: 3/28/2016

Counsel for: Calla Wright

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s/ Anita S. Earls (signature) 3/28/2016 (date)

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JURISDICTIONAL STATEMENT

Plaintiffs-Appellants filed these consolidated actions pursuant to 42 U.S.C. § 1983, seeking declaratory and injunctive relief for the violation of their equal protection rights under the Fourteenth Amendment and North Carolina Constitution. The district court exercised subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and 1357, and 42 U.S.C. §§ 1983 and 1988. Supplemental jurisdiction over Appellants' state constitutional claims is authorized by 28 U.S.C. § 1367. The district court entered final judgment against Appellants on February 26, 2016 on all claims. On March 14, 2016, Appellants filed timely notices of appeal. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1292(a)(1).

STATEMENT OF ISSUES

I. Whether the District Court erred as a matter of law in failing to properly apply the standard of liability in a one-person, one-vote case under the Equal Protection Clause to the Fourteenth Amendment as articulated by the Fourth Circuit in *Wright v. North Carolina*.

II. Whether the District Court erred as a matter of law in holding that Appellants did not establish a violation of Article I, Section 19 of the North Carolina Constitution.

III. Whether the District Court erred as a matter of law in concluding that District 4 in the 2015 Wake County Board of County Commissioners redistricting plan was not an unconstitutional racial gerrymander.

IV. Whether, on review of the entire record, the definite and firm conviction of the reviewing court is that the district court's judgment in favor of Appellees on all claims was based on clearly erroneous fact-finding and is mistaken.

STATEMENT OF CASE

On August 22, 2013, thirteen individual citizens and voters, together with two civic organizations, filed suit in the United States District Court for the Eastern District of North Carolina challenging the constitutionality of the districts established by North Carolina General Assembly Session Law 2013-110, enacted on June 13, 2013, to elect members of the Wake County Board of Education (hereinafter "Wake County School Board"). The complaint alleged that the plan unevenly weighted the votes of citizens in the county for impermissible reasons, thus violating the one-person, one-vote guarantee of the federal and state constitutions. On March 17, 2014, the court below dismissed the suit for failure to state a claim and because the Eleventh Amendment precluded suit against the state defendants. In *Wright v. North Carolina*, 787 F.3d 256, 269-70 (4th Cir. 2015), this Court reversed in part, holding that Appellants had stated an equal protection

claim upon which relief could be granted against the Wake County Board of Elections.

On April 2, 2015, after the argument in *Wright* but before this Court's decision had been issued, the General Assembly enacted Session Law 2015-4, which established an electoral system for the Wake County Board of County Commissioners (hereinafter, "Wake County BOCC") identical to the system created for the Wake County School Board in S.L. 2013-110. On April 19, 2015, the Raleigh Wake Citizens Association and fourteen Wake County voters filed suit, challenging the plan for the Wake County BOCC as also violating the one-person, one-vote guarantees of the state and federal constitutions. Appellants in that case further alleged that District 4 in the Wake County BOCC plan was an unconstitutional racial gerrymander.

After the reversal in *Wright*, with the agreement of both Appellants and Appellee Wake County Board of Elections, an expedited discovery and trial schedule was set. Joint Appendix [J.A.] at 105. Because the state actors responsible for enacting the laws had been dismissed from the lawsuit, Appellants issued subpoenas to four legislators ("Legislators") and one member of legislative staff, seeking information that could shed light on the reasons for the significant deviations in both challenged plans, as well as evidence relating to racial predominance in the construction of District 4. Legislators moved to quash the

subpoena on November 4, 2015. J.A. at 107. On December 3, less than two weeks before trial, the court below ordered Legislators to produce a privilege log by December 11, 2015, but did not otherwise order compliance with the subpoenas. J.A. at 111. In light of the upcoming trial and filing deadlines for the Wake County BOCC elections, both Appellants and Legislators agreed, without waiving any legislative privilege or other objections or, in Appellants' case, arguments that legislative privilege did not bar production of the relevant documents, that Legislators would produce a narrow category of documents between Legislators and third parties (i.e., non-legislators or non-legislative staff). *See* J.A. at 12 (ECF No. 71). No internal communications, studies or analyses were produced. *See generally* J.A. at 1113-22, 1136-40 (representing Legislators' production).

The court below held a bench trial on the consolidated actions on December 16-18, 2015. Although the trial was conducted over three days, each side was limited to nine hours of trial time, and Defendant presented no evidence and conducted only minimal cross examination. *See* J.A. at 192-514.

1. Facts Relating To Appellants' One-Person, One-Vote Claims

The individual Appellants are registered voters in Wake County who live in one or more of the election districts that, under the two state laws challenged here, are overpopulated relative to other districts. J.A. at 28-29, 69-70. They seek relief

because their votes carry less weight than those of voters living in underpopulated districts. *Id.*

Prior to the enactment of the challenged laws, members of the Wake County School Board were elected from nine single-member districts previously established by S.L. 1975-717. 1975 N.C. Sess. Laws 717 §§ 5-6. Those elections are non-partisan elections. *See id.* Election of members of the Wake County BOCC was set by S.L. 1981-983, which established a system of partisan elections with seven residency districts. J.A. at 75, 170. That it is, while voters in the county voted on all of the Wake County BOCC candidates, one member had to be elected from each of the seven residency districts covering the county. 1975 N.C. Sess. Laws 717.

The 2010 census showed that Wake County's population grew 43.51% over the decade, increasing from 627,846 in 2000 to 900,993 in 2010. J.A. at 155-56. As a result, in 2010 the overall population deviation among the existing nine school board districts was 47.89%. J.A. at 158. Thus, in 2011, pursuant to the statutory authority granted to it under N.C. Gen. Stat. § 155C-37(i), the Wake County School Board redrew its nine single-member districts to comply with the one-person, one-vote requirement. *Id.* The redistricting plan it adopted had an overall population deviation of just 1.75% and no single district had a deviation above 1%. J.A. at 879.

Likewise, although not required to do so by law, the Wake BOCC redrew its residency district lines after the 2010 census to more evenly distribute the population among the residency districts. J.A. at 170-71.

In 2013, just two years after the Wake County School Board spent $35,000 to pay a law firm to redraw its district lines, J.A. at 209-10, 235, 420, the North Carolina General Assembly re-redistricted the Board by local legislation, S.L. 2013-110, changing to a structure with seven single-member districts and two "super" districts. The super districts consisted of an urban core district and an outer rural/suburban ring district that completely encircles it. J.A. at 159-61. This hybrid plan has an overall deviation of 9.8% for the two super districts and 7.11% for the seven numbered districts. J.A. at 165. The local bill was enacted over the vociferous opposition of the majority of the School Board, the public, and every Democratic and African-American member of the General Assembly. *See* J.A. at 63-64, 66-68, 69, 258, 275-76, 325, 329.

In 2015, again via local legislation, the General Assembly, over the objection of the majority of the Wake County BOCC, the public, a majority of Wake County voters scientifically polled, and every African-American member of the General Assembly, enacted S.L. 2015-4 and dramatically changed the structure of the BOCC. *See* J.A. at 178, 376, 403-05. Members would now be elected from

the single-member and super-district hybrid system that elected members of the School Board. *See* J.A. at 172, 1077.

The uncontested and unrebutted evidence at trial and in the record on appeal demonstrates that S.L. 2013-110 and S.L. 2015-4 systematically underpopulate and overpopulate certain districts, thus creating inequality in the weight of votes. In the super district plans, the urban core district is 4.9% overpopulated. *See* J.A. at 165, 683-84. The outer "doughnut" district, comprised primarily of non-Raleigh and unincorporated areas, is 4.9% underpopulated. *See id.* This pattern continues in the seven single-member part of the plan. For example, District 3, comprised primarily of Raleigh and other urban areas, is 3.63% overpopulated. J.A. at 165, 1031. In comparison, District 7, which is comprised of parts of Apex, Fuquay-Varina and Morrisville, is 3.48% underpopulated. *Id.*

The unrebutted evidence also supported Appellants' claims that the deviations were caused by an attempt to favor Republican voters over Democratic voters. Undisputed factual evidence presented at trial demonstrated that in the last three presidential elections, five of the nine districts in the enacted 7-2 plan would have elected the Republican candidate. J.A. at 305. All the districts that are overpopulated in the enacted 7-2 plan are Democrat-leaning or Democrat-performing. *Id.* Unrebutted expert testimony demonstrated that this advantaging of Republican voters could not have been accomplished without increasing the

population deviations to what they were in the enacted plans. J.A. at 467. Dr. Jowei Chen, a renowned political scientist at the University of Michigan, has developed computer simulation programming techniques that allow him to randomly produce a large number of alternative districting plans in a given jurisdiction to test for electoral bias or racial gerrymandering. J.A. at 450-54. Dr. Chen's analysis showed that when keeping deviations at the benchmark level seen in the 2011 redistricting plans for both boards, it was not possible to produce a redistricting plan that had the same partisan distribution of seats. J.A. at 463, 466-67.

The large deviations in the Wake County School Board plan were also designed to disadvantage School Board incumbents who were registered Democrats. At the time that S.L. 2013-110 was enacted, there were five registered Democrats, three registered Republicans, and one registered unaffiliated member serving on the Wake County School Board. J.A. at 156-57. After the enactment, all incumbents who were registered Republicans were drawn into Republican-leaning districts while three Democratic incumbents were drawn into Republican-leaning districts with Republican incumbents. For example, in District 6, a district in which the Republican candidate for president solidly won in the 2004, 2008 and 2012 presidential elections, two registered Democrat incumbents, Susan P. Evans and Dr. Jim Martin, were drawn into that district with incumbent Republican

member Bill Fletcher. *See* J.A. at 285-86. Independent Kevin Hill, who had supported Wake County's socioeconomic diversity plan, was drawn into a district with registered Republican John Tedesco, again a district in which the Republican candidate solidly won the prior three presidential elections. *See id.*

Finally, the unrebutted evidence demonstrated that the alleged justifications for the changes in methods of election for both boards were either pretextual, impermissible on their face, not advanced by the legislation, or could have been accomplished without systematically under- or overpopulating certain districts. For example, proponents alleged that the change in the School Board plan was motivated by a desire to better align school assignment zones with electoral districts, but a cursory comparison of assignment zone maps with electoral district maps reveals that the new plan actually worsens alignment between the two. J.A. at 236-42. Likewise, proponents of the BOCC plan also claimed that a move to single-member districts was necessary because of the cost of running for election countywide. J.A. at 1007. The evidence in the record contradicts that claim. J.A. at 258, 912-43. Even if it did not, though, the desire to move to single-member districts did not explain or justify why the single-member districts had such large deviations.

2. Facts Relating to Appellants' Racial Gerrymandering Claim

In S.L. 2015-4, which created seven single-member and two super districts for electing members of the Wake BOCC, District 4 was drawn to be more than 54% in black voting age population. J.A. at 1033. Under the at-large elections used to elect members of the Wake County BOCC prior to the enactment of S.L. 2015-4, African-American representatives had regularly been elected to the county commission, often by significant margins even though the county is only approximately 20% African-American. J.A. at 170, 1082-83, 1086-87. In order to create District 4 with the enacted concentration of black voting age population (54.3%), the district had to be drawn as a non-compact district that disregarded traditional redistricting criteria such as keeping precincts and communities of interest whole. J.A. at 471-74. One of the lead proponents of S.L. 2015-4, Rep. Paul Stam, explained that District 4 and the new plan for electing members of the BOCC was justified by a racial reason—to avoid the use of at-large elections, which allegedly submerged minority voters and diluted minority voting strength. J.A. at 733, 735, 980, 1002.

Unrebutted evidence at trial demonstrated that race predominated in dictating the lines of District 4. District 4 split ten precincts, the most in any district by far. J.A. at 796. Whereas racial data is available on the sub-precinct level, there is no reliable political data on the sub-precinct level, which means that

partisan interests could not have guided the decision on where to split precincts. *Compare* J.A. at 741 *with* J.A. at 1045. Unrebutted expert testimony established that under a race neutral redistricting process, even if District 4 was drawn to have the same level of political performance, it could not have been drawn at the level of black voting age population concentration in the enacted district, meaning that race, not politics, was the predominant consideration. J.A. at 450, 468-69, 471-74. Testimony from a resident of the district and a racial density map of the district provided additional unrebutted factual evidence that in split precincts in District 4, the more heavily African-American communities were put in District 4 and the more white communities were put in adjacent districts. J.A. at 513, 781.

3. Ruling of the Court Below

The court below granted judgment after trial to Defendant-Appellee, holding that (1) Appellants had not established a prima facie case of invidious discrimination in the enactment of S.L. 2013-110 and S.L. 2015-4; (2) Appellants failed to prove a violation of the North Carolina Constitution because the same federal equal protection analysis was applicable to the state constitutional claims; and (3) Appellants failed to prove that race predominated in the creation of District 4 and thus did not establish that the district was an unconstitutional racial gerrymander. The court below further dismissed the credibility of each of the fifteen witnesses presented by Appellants, on various unexplained grounds.

Central to the district court's holdings in this case was an attempt to argue that *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga.), *aff'd* 124 S. Ct. 2086 (2004), was not instructive, despite the *Wright* court's indication to the contrary. J.A. at 539-40. Citing Justice Scalia's dissent to the summary affirmance of *Larios*, the trial court emphasized that "it was not obvious [] that a legislature goes too far when it stays within the 10% disparity in population our cases allow. . . . To say that it does is to invite allegations of political motivation whenever there is a population disparity, and thus to destroy the 10% safe harbor our cases provide." J.A. at 540.

Moreover, the court below focused its opinion on endorsing general reasons that the legislature offered for the changes in methods of elections, without questioning or understanding what justifications actually caused the imbalance in population deviations. Thus, for example, the court held that the desire to reduce campaign costs in BOCC elections justified the enacted law, without questioning at all whether that justification was what caused the deviations or whether that goal could have been accomplished without having a nearly 10% deviation. J.A. at 568.

Finally, the court found that "so long as a redistricting plan does not substantially dilute the voting strength of residents in more populated portions of a county, a legislature may account for communities of interest within urban, rural and suburban areas of a county when enacting a redistricting plan so that the

resulting government reflects a 'détente.'" J.A. at 570. Thus, the trial court seemed to indicate that with deviations below 10%, Appellants would never be able to prove "substantial dilut[ion]," regardless of the systematic over- and underpopulation of districts based on geographic location. J.A. at 535.

SUMMARY OF ARGUMENT

I. The Challenged Plans Violate the One Person, One Vote Guarantee of the Fourteenth Amendment.

When some voters are placed in overpopulated districts, and some are placed in underpopulated districts, the voters in overpopulated districts have their electoral power diminished relative to their neighbors in underpopulated districts. This injustice is further exacerbated when the voters are placed in overpopulated districts because of their political preferences or because of the characteristics of the community in which they live (*i.e.*, a urban neighborhood rather than a suburban one).

The North Carolina General Assembly re-redistricted the Wake County School Board and created districts, mid-decade, for the Wake County BOCC that did just that—gave more political power to voters in underpopulated rural and suburban districts, at the expense of those in overpopulated urban districts. Now voters like Appellants who care about local government and who want to have their voice heard on issues that affect their children and their county governance have to do that on a very uneven playing field. The Equal Protection Clause to the

Fourteenth Amendment prohibits this, instead demanding that "full and effective participation by all citizens in [] government requires, therefore, that each citizen have an equally effective voice in the election of members" who represent them. *Reynolds v. Sims*, 377 U.S. 433, 565 (1964).

In contravention of this constitutional demand, the proponents of the challenged legislation in the General Assembly increased population deviations in the Wake County School Board plan from 1.66% to 9.8%, in the process drawing districts that gave more political power to rural and suburban areas of the county, and disadvantaged urban areas. The districts also favored Republican voters over Democratic voters by concentrating Republican voters in underpopulated districts and Democrats in overpopulated districts. The legislature enacted the same plan and created the same population inequalities for the Wake County BOCC electoral districts. None of the allegedly legitimate motivations for the changes to elections for these two Boards required deviations approaching 10%, and effectuation of these alleged legitimate justifications did not cause the deviations.

Just last year, this Court in *Wright*, relying on the Supreme Court's affirmance in *Larios v. Cox*, 124 S. Ct. 2806, affirmed the constitutional prohibition on using arbitrary or illegitimate reasons to create population differences between electoral districts. *Wright v. North Carolina*, 787 F.3d 256, 267 (4th Cir. 2015). The *Wright* court specifically noted that should the desire to

favor rural over urban have "caused the vote of Plaintiffs living in those overpopulated districts to be weighted less than votes of citizens in districts that are unjustifiably underpopulated," Appellants would succeed in their one person, one vote claim. *Id*. at 265. The court below erred in its understanding of the *Wright* case and in its analysis of Appellants' federal equal protection claims.

II. The Challenged Plans Violate the North Carolina Constitution's Equal Protection Guarantee.

The equal protection guarantees of the North Carolina constitution are substantially more expansive than those in the federal constitution. *Northampton Cty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 746, 392 S.E.2d 352, 355 (1990) (holding that in North Carolina, "the right to vote on equal terms is a fundamental right"); *see also Dean v. Leake*, 550 F. Supp. 2d 594, 598 n.7 (E.D.N.C. 2008). As such, North Carolina state constitutional jurisprudence requires the application of strict scrutiny review to any laws like the ones challenged in this case that impinge on the equal valuation of each citizen's vote. *Northampton*, 326 N.C. at 747, 392 S.E.2d at 356. The North Carolina Supreme Court has held that population deviations that unfairly weight the vote of one citizen more than another must be justified by neutral and legitimate state or federal redistricting principles. *Stephenson v. Bartlett*, 355 N.C. 354, 382-83, 562 S.E.2d 377, 396-97 (2002). In a number of cases, the state's highest court has held that Article I, Section 19 provides more protection than its federal counterpart,

including by: prohibiting the use of multimember and single-member districts in the same statewide plan, while recognizing the federal constitution does not prohibit that; applying the one person, one vote requirement to state judicial elections, while recognizing that the federal one person, one vote requirement does not apply to those elections; and several others. The court below erroneously applied the same standard used in the federal one person, one vote analysis to Appellants' claims under the North Carolina Constitution.

III. District 4 in the County Commission Redistricting Plan Is an Unconstitutional Racial Gerrymander.

As recently as last year, the United States Supreme Court reaffirmed its distaste for the excessive use of race in redistricting. *Ala. Legis. Black Caucus v. Alabama*, 135 S. Ct. 1257, 1274 (2015). When race is a predominant motivating factor in the drawing of electoral lines, a reviewing court must apply strict scrutiny. *Id.* at 1272. The Supreme Court has said challengers can meet their burden in showing racial predominance "either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose." *Id.* at 1267 (internal citations omitted).

Once challengers prove that race predominated, the burden shifts to the defending party to demonstrate that the district was narrowly tailored to advance a compelling state interest. *See Shaw v. Hunt*, 517 U.S. 899, 908 (1996); *Abrams v. Johnson*, 521 U.S. 74, 91 (1997); *Miller v. Johnson*, 515 U.S. 900, 920 (1995).

Here, where a jurisdiction makes unjustified racial assumptions about the voting patterns of its residents, and this restricts African-American residents' ability to more widely participate in county elections by packing them into a single district, this offends the Fourteenth Amendment.

In addition to direct evidence, Appellants in this case also produced a wealth of circumstantial evidence on the statistical impossibility of the district being constructed based on partisan considerations alone, on the racial density of census blocks included in the district, and on the race of the voters moved in and out of the district when precincts along the edge were split. *E.g.*, J.A. at 450, 467-69, 513.

IV. The District Court's Fact-Finding Relating to Both the One Person, One Vote and Racial Gerrymandering Claims Was Clearly Erroneous.

While the fact-finding role of the trial court is usually due deference, it is not "sacrosanct." *Jiminez v. Mary Washington Coll.*, 57 F.3d 369, 379 (4th Cir. 1995). If that were the case, the ability of the appellate court to correct wrongs would be paralyzed. Instead, Fed. R. Civ. P. 52(a) requires a trial court to "do more than announce statements of ultimate fact" and, instead, "support its rulings by spelling out the subordinate facts on which it relies," so that the appellate court can engage in meaningful review. *U.S. for Use of Belcon, Inc. v. Sherman Const. Co.*, 800 F.2d 1321, 1324 (4th Cir. 1986).

Appellants offered testimony of fifteen live witnesses—two experts, four legislators, four elected county officials, and five plaintiffs and lay witnesses—in addition to a voluminous evidentiary record. Both of Appellants' experts were qualified by the court without objection from Appellee, and their testimony was unrebutted. Appellee called no live witnesses and provided no deposition testimony. Legislative proponents of the enacted plans resisted Appellants' requests for testimonial or documentary evidence as to the reasons for the deviations in the enacted plans or the instructions given to the mapdrawer who drew District 4. This left no reasonable basis on which the court below could conclude that Appellants were not entitled to judgment in their favor, and given the dismissal of a substantial amount of evidence in the record that contravenes the final decision, *Jiminez*, 57 F.3d at 379, the fact-finding was clearly erroneous.

ARGUMENT

I. UNDER THE PROPER LEGAL STANDARD OF LIABILITY ARTICULATED IN *WRIGHT*, APPELLANTS ARE ENTITLED TO JUDGMENT IN THEIR FAVOR BECAUSE THE CHALLENGED PLANS VIOLATE THE ONE PERSON, ONE VOTE GUARANTEE OF THE FOURTEENTH AMENDMENT.

A. Standard of Review

The Fourth Circuit reviews "judgments resulting from a bench trial under a mixed standard of review: factual findings may be reversed only if clearly erroneous, while conclusions of law are examined de novo." *Nat'l Fed'n of the*

Blind v. Lamone, 813 F.3d 494, 502 (4th Cir. 2016). If a trial court "bases its findings upon a mistaken impression of applicable legal principles, the reviewing court is not bound by the clearly erroneous standard" of Rule 52(a) of the Federal Rules of Civil Procedure. *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 855 n.15 (1982).

B. To Establish a Violation of the One Person, One Vote Guarantee, Appellants Need Only Demonstrate that the Deviations Were Caused by Improper Motivations

In its decision reversing the district court's dismissal of this case last year, this Court clearly articulated the standard for proving a violation of the one person, one vote guarantee of the Fourteenth Amendment to the United States Constitution. Central to the constitutional guarantee of equal protection of the law is not only the protection of the initial allocation of the franchise, but an assurance of evenhandedness in laws that affect "the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Wright*, 787 F.3d at 263 (citing *Bush v. Gore*, 531 U.S. 98, 104-05 (2000)).

Thus, the Fourteenth Amendment, via the principle known as "one person, one vote," demands that every voter, no matter where that voter lives or how that voter votes, will be on equal footing with his or her fellow citizens when it comes to electing representatives. *Reynolds*, 377 U.S. at 563, 565. This principle applies

to county commissions and school boards with the same weight that it does to state legislative redistricting. *Wright*, 787 F.3d at 264 (citing *Avery v. Midland Cnty.*, 390 U.S. 474 (1968)).

Last year, this Court emphasized that while "mathematical exactness" is not a workable standard for local government redistricting, governments must nonetheless "make an honest and good faith effort to construct districts as close to equal population as is practicable." *Wright*, 787 F.3d at 264 (internal quotations omitted). Consistent with the Fourth Circuit standard first articulated in *Daly v. Hunt*, 93 F.3d 1212 (4th Cir. 1996), this Court in *Wright* explained that a district apportionment plan with a maximum population deviation of under 10% will not, standing alone, support an equal protection claim. *Wright*, 787 F.3d at 264. However, neither does staying below that 10% threshold insulate the plan from constitutional attack. Indeed, in reversing the motion to dismiss, this Court categorically rejected the arguments that Appellants would not be able to prove an equal protection violation on the case as pleaded, noting that "the Supreme Court has not created a 10% maximum population deviation threshold, below which all redistricting decisions are inherently constitutional." *Id*. at 267.

Instead, plaintiffs challenging a plan with an overall deviation of less than 10% must demonstrate that the population deviations in the challenged plan are not the result of an effort to further any legitimate, consistently applied state policy.

Larios, 300 F. Supp. 2d at 1338. Specifically, the *Wright* court noted that should the desire to favor rural over urban have "caused the vote of Plaintiffs living in those overpopulated districts to be weighted less than votes of citizens in districts that are unjustifiably underpopulated," Plaintiffs would have established a one person, one vote claim. *Wright*, 787 F.3d at 265. The same was true for proof that partisan or incumbent favoritism motivated the deviations. *Id.* at 265, 267. That is consistent with the *Larios* court's conclusion that the desire to allow Democratic rural southern Georgia and inner-city Atlanta to maintain a disproportionate share of political power, coupled with the desire to favor Democratic incumbents and disfavor Republican incumbents, are not justifications for deviations that withstand Equal Protection scrutiny. *Larios*, 300 F. Supp. 2d at 1338. Evidence that "the apportionment process had a taint of arbitrariness or discrimination" which would be sufficient to allow a one person, one vote claim to survive summary judgment would certainly be relevant to determining whether the reasons for the population deviations were "legitimate, consistently applied state policy," but the *Wright* standard did not require that Appellants prove that the challenged plans were enacted with invidious discrimination.

Importantly, this Court instructed the court below that *Larios v. Cox* is persuasive authority when reviewing a case such as this one, where departures from population equality are driven by systematic geographic favoritism and a

desire to create disadvantage for political opponents. *Wright*, 787 F.3d at 267. This Court believed *Larios* to be the only case squarely on point, even if not controlling. *Id*. And while acknowledging the limitations in a summary affirmance as in the Supreme Court disposition in *Larios*, the *Wright* court nonetheless concluded that "[t]he Supreme Court necessarily believed to be correct the district court's rejection of discriminatory treatment of incumbents from one party over those of another, the district court's rejection of allowing citizens in certain areas to have disproportionate electoral influence, or both, since the lower court's ruling relied on those bases in striking the redistricting as unconstitutional." *Id.*

Looking more closely at the analysis employed in the *Larios* case that the Fourth Circuit found helpful, it is clear that challengers can establish a one person, one vote violation in a plan with a deviation under 10% through either direct and circumstantial evidence. *Larios*, 300 F. Supp. 2d at 1327, 1329-31. The district court in *Larios* was presented with testimony from both proponents and opponents of the challenged redistricting plans, and it derived conclusions from the testimony of both. *E.g.*, *id.* at 1327-28.

The *Larios* court further looked to "a study of the patterns of deviation population" to understand "how the population deviations were created." *Id.* at 1329. A review of the entire record also led the district court in *Larios* to conclude

that "the other major cause of the deviations in both plans was an intentional effort to allow incumbent Democrats to maintain or increase their delegation, primarily by systematically underpopulating the districts held by incumbent Democrats, overpopulating those of Republicans, and by deliberately pairing numerous Republican incumbents against one another. *Id.* Given the *Wright* court's approval of the *Larios* logic, such an analysis is the one that governed the challenges in the instant case.

C. The Court Below Misapplied the *Wright* Standard and Misapplied Several Other Applicable Precedents, Resulting in a Legally Incorrect Outcome

Despite this Court's holding just last year that "[i]nherent in the equal protection of voting is the requirement that all citizens' votes be weighted equally," *Wright*, 787 F.3d at 264, the court below failed to apply the standard articulated by this Circuit, and also committed other legal errors that warrant reversal and entry of judgment for Appellants.

On the most basic level, the court below erred in two central ways: by failing to understand and apply the standard articulated in *Wright*, and by trying to distinguish *Larios* on grounds that are not legally significant.

First, with respect to its misapplication of the *Wright* standard, the district court concluded that Appellants failed to "prove a prima facie case of invidious discrimination," J.A. at 542. It also concluded that "plaintiffs have not proven that

the 2013 Wake County School Board Plan substantially dilutes the individual voting strength of voters in Wake County's more populated districts" and "have not proven that the 2015 Wake County Commissioners Plan substantially dilutes the voting strength of voters in the more populated districts or Wake County's urban voters." J.A. at 565, 569. In fact, the district court references this "substantial dilution" standard at least five separate times in the opinion. *E.g.*, J.A. at 550. Neither of those conclusions reflects the correct legal standard.

As described above, *Wright* directed that Appellants or similarly-situated plaintiffs simply must demonstrate that that the population deviations were not the result of a good faith effort to further any legitimate, consistently applied state policy.[1] The district court claims "[t]he Supreme Court has used arbitrariness and invidious discrimination interchangeably in equal-protection analysis. *See, e.g.*, *City of New Orleans v. Dukes*, 427 U.S. 297, 303-04 (1976) (applying rational-basis review under the Equal Protection Clause and noting that 'it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment')." J.A. at 543. That case was not a one person, one vote case, and that is not the standard articulated in *Wright*. Appellants need not prove that the entire legislative process and the legislature as a

[1] Finding that the legislature acted in good faith in enacting the legislation is not the same thing. *See* J.A. at 566, 573. The legislature can enact super-districts that separate Raleigh voters from non-voters. It cannot, under the Fourteenth Amendment, do that and weight the votes of those communities differently.

whole—or two legislative processes and legislatures in this case—were driven by invidious discrimination. While Appellants' evidence that the legislative process was tainted by arbitrariness or discrimination is relevant to analyzing whether impermissible motives caused the increased deviations challenged, it is not central to Appellants' case or burden of proof. Under *Wright* and *Larios*, Appellants plainly should not be held to the exacting standard required in proving an invidious racial discrimination case, which is what the opinion of the court below repeatedly suggests. J.A. at 566, 567, 569. Of course, Appellants could, and did, provide ample evidence to support a conclusion that the legislature intentionally discriminated against urban and Democratic voters, but *Wright* only required the lower threshold of Appellants. The District Court badly misapprehended that.

In applying the demanding standard of proving intentional and invidious discrimination, the trial court dismissed the testimony of the four legislators who appeared live before the court. Those legislators testified on a number of subjects, including: departures from the normal legislative process in the enactment of the two laws, J.A. at 346-47, 348-49, 355, 357-58; the effect that the changes in methods of election would have on the Wake County electorate, particularly in the form of split municipalities, J.A. at 216-17, 361-63, 431-32; the presentation and rejection of an alternative proposal with drastically lower population deviations at the time the General Assembly was considering the plans, J.A. at 331-33; the

history of electoral success of both Democratic and Republican candidates in Wake County elections, J.A. at 156-57, 169, 427; and the history of electoral success of candidates of choice of African-American voters in countywide elections, J.A. at 170, 210-11, 213-14, 218-19, 334.

Despite this broad range of testimony, the court below discredited their testimony not because it judged their demeanor or behavior to be unworthy of crediting, nor because there was sworn testimony in the record to contradict their accounts, nor because their testimony was internally inconsistent, but because of a "line of precedent giving no weight to statements made by opponents of legislation." J.A. at 594 (citing *Shell Oil Co. v. Iowa Dep't of Revenue*, 488 U.S. 19, 29 (1998); *NLRB v. Fruit & Vegetable Packers*, 377 U.S. 58, 66 (1964); *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 394-95 (1951); *Veasey v. Abbott*, 796 F.3d 487, 502 (5th Cir. 2015)); *see also* J.A. at 562-63, 568. The first three cases cited deal with questions of statutory interpretation, and are thus not informative here. The fourth case has been vacated pending a rehearing en banc and is no longer good law.[2] Absent a finding that the legislators

[2] Additionally, a three judge panel in the Middle District of North Carolina recently struck down two of North Carolina's congressional districts as racial gerrymanders, and in its opinion credited heavily the testimony of Sen. Dan Blue, a legislator who opposed the redistricting plan. *Harris v. McCrory*, No. 1:13-cv-949, 2016 U.S. Dist. LEXIS 14581 (M.D.N.C. Feb. 5, 2016).

were not credible for articulated reasons, the cases cited do not require the court to dismiss the evidence they presented.

Second, in misapplying the *Wright* standard, the district court credited all of the Republican legislators' statements on the floor and in committee, *see* J.A. at 568—legislators who refused to testify at trial, *see* J.A. at 107—yet failed to understand a key concept: all of the justifications put forward by the bill proponents, even if true, could have been met with a plan that accomplished the same goals without more heavily weighting the votes of some Wake County voters over others.

So for example, if the General Assembly wished to have a super-district system with a doughnut outer district and an urban inner district, it could have drawn such a plan with minor deviations. During the 2015 legislative process, Representative Rosa Gill introduced a 7-2 plan that created an identical election system with almost zero deviation, meaning that it did not favor any set of voters over another. J.A. at 738-40; *see also* J.A. at 1124-27. If the General Assembly wanted to have single-member district elections because of the cost of running countywide, it could have created a single-member district plan that did not have a nearly 10% deviation. This is not to say all of the alleged justifications offered to support the challenged plans were remotely plausible, because they were not. *E.g.*, J.A. at 258-60, 423-24. But ultimately, even if they were, they do not explain the

deviations from one-person, one-vote. The only explanations that can be demonstrably shown to cause the deviations are the same kinds seen in *Larios*, which this Court in *Wright* said were not legitimate reasons for population deviations. *Larios*, 300 F. Supp. 2d at 1327-29 (favoring certain geographic interests), 1329-31 (pairing certain incumbents).

Finally, with respect to its misapplication of the *Wright* standard, the court below again continued to rely heavily on an inapplicable case to reject the one person, one vote challenges. In *Wright*, this Court rejected the district court's reliance on *Gaffney v. Cummings*, 412 U.S. 735 (1973), in deciding to dismiss the first of the consolidated cases. *Wright*, 787 F.3d at 266 & n.6. Despite this, the trial court in the instant appeal relied heavily on *Gaffney* in arriving at its conclusion that Appellants failed to establish a violation of the Equal Protection Clause. The court below noted, "*Gaffney* permitted the General Assembly to consider that the party registration data in the 2015 Wake County Commissioners Plan shows that Democrats are a majority in 5 of the 9 districts" rather than party voting data that indicated that Republicans controlled five of the nine districts. J.A. at 573. The court also claimed that the "rough political fairness" that motivated the deviations in *Gaffney* controlled in the instant case. J.A. at 564-65. This represents a fundamental misunderstanding of the facts and conclusions in *Gaffney*.

The case in *Gaffney* involved redistricting after a decennial census, not mid-decade redistricting. The state legislative plans developed in *Gaffney* had an overall deviation of 1.81% in the Senate and 7.83% in the House, 412 U.S. at 737, thus significantly lower than the overall deviations in the instant case. The redistricting Board responsible for redistricting in *Gaffney* explained that they followed a "policy of 'political fairness,' which aimed at a rough scheme of proportional representation of the two major political parties." *Id*. at 738. Moreover, the Board explained that they "took into account *the party voting results* in the preceding three statewide elections, and, on that basis, created what was thought to be a proportionate number of Republican and Democratic legislative seats." *Id.* (emphasis added). Importantly, in *Gaffney* there was no allegation or evidence presented that in order to achieve that goal, the Board systematically under- or overpopulated districts controlled by one political party. Indeed, there was no evidence or discussion of any motivation other than the one described, which all parties agreed was actually achieved. *Id*. at 752.

Even if *Gaffney* were instructive law, it is inapplicable to the instant case. It is unrebutted that "the party voting results" for the past three presidential election cycles demonstrate that voters have preferred Democratic candidates by significant margins. J.A. at 887, 897, 906. Thus, the benchmark School Board plan that, according to the court below, provided Democratic control in five of the nine

districts, J.A. at 564, already achieved the political fairness that the legislature in *Gaffney* sought—based on voting patterns, Democrats should have controlled even more seats. The newly enacted plan here subverts political fairness by having the minority party control five of the nine districts, and as the Supreme Court has noted, "to sanction minority control of [a legislative body] would appear to deny majority rights in a way that far surpasses any possible denial of minority rights that might otherwise be thought to result." *Reynolds*, 377 U.S. at 565. Moreover, the Court in *Gaffney* endorsed looking at election results rather than registration data, the very basis on which the court below discredited Appellants' witness Anthony Fairfax. *See infra* at 33.

Beyond its misapplication of *Wright*, in its second major category of legal error, the district court attempted to distinguish *Larios* from the instant case on a number of grounds, none of which were legally significant or even factually accurate. The district court said that unlike in *Larios*, Appellants did not prove that the General Assembly believed that a maximum population deviation under 10% provided an absolute safe harbor, and they failed to do so. J.A. at 566. Neither this Court in *Wright* nor the district court in *Larios* demanded proof of that belief as a necessary element in establishing one person, one vote liability. But even if it had, transcripts from the legislative debate indicated that bill supporters did believe

that the deviations were constitutional so long as they remained under 10%. J.A. at 683-84, 1008-10.

The court below further tried to distinguish *Larios* in asserting that, unlike in *Larios*, Appellants here had not proven that the General Assembly disregarded all districting principles, which the court below concluded was necessary. J.A. at 566. That is actually not a distinguishing factor at all. Instead, what the *Larios* court concluded was that "the population deviations in the Georgia House and Senate were not driven by any traditional redistricting criteria." *Larios*, 300 F. Supp. 2d at 1341-42. One could easily imagine a redistricting plan with perfectly compact districts that still unconstitutionally under- or over-populated the districts. Unlike a racial gerrymandering case, where there does need to be some finding that traditional redistricting criteria were subordinated to racial considerations, the only relevant question in this analysis is what reasons caused the deviations. If those reasons are improper, regardless of whether the plans respect traditional redistricting criteria, the plan is unconstitutional.

Additionally, with respect to distinguishing *Larios*, the court below erred in concluding that recognizing the differences in interest between the Raleigh and non-Raleigh communities in Wake County alone justified the enacted plan. J.A. at 569-70. Appellants are not arguing that the constitutional flaw derives from that distinction, but simply that population deviations cannot be used to afford

differential electoral power between two different communities of interest. That is, having districts that centered on Raleigh and separate districts for non-Raleigh areas is fine as long as the districts representing one interest are not systematically under- or over-populated. As this Court noted in *Wright*, the Supreme Court necessarily endorsed the *Larios* district court's holding that such favoritism could not justify population deviations. *Wright*, 787 F.3d at 267.

For that matter, that conclusion from *Larios*—that the consistent use of population deviations to favor a geographic area violates equal protection—is consistent with other federal court determinations. The Supreme Court has cautioned against "apportionment structures that contain a built-in bias tending to favor particular geographic areas or political interests or which necessarily will tend to favor, for example, less populous districts over their more highly populated neighbors." *Abate v. Mundt*, 403 U.S. 182, 185-86 (1971). Citing *Abate*, a New York district court, when faced with a defendant's arguments that the population deviations in the New York City Board of Estimate were legitimate because they wanted to ensure that the smaller boroughs had equal voting power on the board, the court stated, "[t]he one borough, one vote proposition clashes with the one person, one vote rule. The Constitution does not mandate identical votes for boroughs with widely disparate populations." *Morris v. Board of Estimate*, 647 F. Supp. 1463, 1470 (1986).

Lastly in this category of legal error, the district court failed to recognize one significant distinction between this case and *Larios*, and it was one that weighed even more strongly in favor of Appellants' arguments: the redistricting process in *Larios* was not mid-decade redistricting, but instead the regular redistricting following the release of decennial census data. *Larios*, 300 F. Supp. 2d at 1335. This factor lends further credence to Appellants' evidence that the motivation behind the increase in population deviations was not a legitimate rationale for population inequality among districts.

The misapplication of *Wright* and the faulty distinguishing of *Larios* were the two biggest sources of legal error in the district court's decision, but they were not the only errors as a matter of law. The lower court's analysis was infected with legal error that led it to incorrectly discredit unrebutted facts. For example, the Court discredited Appellants' expert Anthony Fairfax because he "failed to analyze voter registration data in Wake County, including the large number of Unaffiliated voters in Wake County" and "never persuasively explained how using only presidential election data . . . logically would allow this court to draw a reasonably permissible partisan inference or predict voter performance." J.A. at 561. This factual finding is not entitled to review under the "clearly erroneous" standard because it is based on a misapplication of the law.

The Supreme Court, in a series of redistricting cases coming from North Carolina, has repeatedly explained that "data showing how voters actually behave, not data showing only how those voters are registered" are much more helpful to reviewing courts. *Easley v. Cromartie*, 532 U.S. 234, 239 (2001) ("*Cromartie II*"). The Court in *Cromartie II* noted: "As we said before, the problem with this evidence is that it focuses upon party registration, not upon voting behavior. And we previously found the same evidence . . . inadequate because registration figures do not accurately predict preference at the polls." *Id*. at 245 (citing *Hunt v. Cromartie*, 526 U.S. at 550-51 (1999) (explaining that registration data were the least reliable information upon which to predict voter behavior)). This legal approach is due in part to the fact that the court below noted: the large number of unaffiliated voters in North Carolina and Wake County in particular. J.A. at 561. Thus, the district court committed legal error in concluding that only voter registration, not past voting behavior, could demonstrate bias or predict how the districts would operate.

Finally, the "slippery slope" argument that the district court relies upon is deeply problematic and logically inconsistent. The court below reasoned that if deviations below 10% and allegations of partisanship were sufficient to establish a one person, one vote violation, then the door would be open to vast interference by the federal courts in redistricting. J.A. at 547-48. The *Wright* court did not imply

that allegation of partisanship alone would suffice to establish a violation, and the systematic evidence of the overpopulation of Democratic-performing districts and underpopulation of Republican-performing districts is more than a mere allegation. *Wright*, 787 F.3d at 267. The court then follows that argument by saying in a situation like this one, county boards of election—which did not pass the legislation and have no access to evidence to argue that the deviations resulted from an evenhanded attempt to effectuate a legitimate state goal—will frequently be required to bear the brunt of costs and fees when plaintiffs succeed in these lawsuits. This possibility was already considered by this Court in *Wright*, and this Court ruled that the county board of elections was the only necessary party. *Id.* at 263-64. As a result, the lower court ought not have worried about the future implications of finding for Appellants in a case such as this one. In short, the district court builds a straw man just to knock him down, and creates a situation in which a plan with an overall deviation of less than 10% could never be found unconstitutional. That is not the law, and thus the court below must be reversed.

II. UNDER THE CORRECT LEGAL STANDARD TO ESTABLISH A VIOLATION OF THE EQUAL PROTECTION GUARANTEE OF ARTICLE I, § 19 OF THE NORTH CAROLINA CONSTITUTION, APPELLANTS ARE ENTITLED TO JUDGMENT IN THEIR FAVOR.

A. Standard of Review

The Fourth Circuit reviews "judgments resulting from a bench trial under a mixed standard of review: factual findings may be reversed only if clearly erroneous, while conclusions of law are examined de novo." *Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 502 (4th Cir. 2016).

B. The North Carolina Constitution Creates a Requirement That All Voters Enjoy Substantially Equal Voting Power, and More Exacting Scrutiny is Applied to Laws that Do Not Provide Such Equality

With minimal discussion, the trial court also rejected Appellants' claims under the state constitution. While the court below did acknowledge that North Carolina's Constitution includes a one person, one vote guarantee, J.A. at 574 (citing *Blankenship v. Bartlett*, 363 N.C. 518, 521-22, 681 S.E.2d 759, 762-63 (2009); *Stephenson*, 355 N.C. at 382-83, 562 S.E.2d at 396-97), the trial court simply concluded that the Supreme Court of North Carolina's analysis concerning "the State Constitution's Equal Protection Clause generally follows the analysis of the Supreme Court of the United States in interpreting the corresponding federal clause," *id.* (citing *Blankenship*, 363 N.C. at 522, 681 S.E.2d at 762).

The court below failed to acknowledge that in North Carolina, it is well settled that "the right to vote on equal terms is a fundamental right." *Northampton*, 326 N.C. at 746, 392 S.E.2d at 355; *James v. Bartlett*, 359 N.C. 260, 269-70, 607 S.E.2d 638, 644 (2005); *State ex rel. Martin v. Preston*, 325 N.C. 438, 454, 385 S.E.2d 473, 481 (1989); *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 12, 269 S.E.2d 142, 149 (1980). Despite citing the two most relevant state supreme court cases on this point, the trial court failed to realize that the state constitutional one person, one vote guarantee is stronger than the federal one. In *Stephenson*, for example, the North Carolina Supreme Court explicitly declared that the state constitutional equal protection guarantees are a check on partisan considerations in drawing state legislative districts. 355 N.C. at 371-72, 562 S.E.2d at 390. That is not the case with the federal constitution. Furthermore, the court in *Stephenson* concluded that the state constitution prohibits the use of multimember and single-member districts within the same plan, and demands that legislative districts be within plus or minus 5%, which is a more stringent restriction on the state's redistricting authority than is the 10% federal burden-shifting rule. 355 N.C. at 354, 379, 562 S.E.2d 377, 395.

And the conclusion that the state constitution affords more protection than the federal is particularly undeniable in the *Blankenship* case, where the state supreme court applied the North Carolina equal population demand to state judicial

elections, even after acknowledging that "federal courts have articulated that the 'one-person, one-vote' standard is inapplicable to state judicial elections." 363 N.C. at 523-24, 681 S.E. 2d at 763-64. That is explicit confirmation that the state constitutional guarantee goes even further than the federal, and a federal panel in *Dean v. Leake*, 550 F. Supp. 2d 594, 598 n.7 (E.D.N.C. 2008), further confirmed that conclusion.

It follows from these cases that the expansive state constitutional guarantee of substantially equal voting power extends to local governing bodies, *cf. Blankenship*, 363 N.C. at 525, 681 S.E.2d at 765, and that laws that infringe on that guarantee are subject to heightened scrutiny. *Id.* Thus, under the state constitution, geographic favoritism and seeking to establish partisan advantage are not neutral redistricting principles that justify population deviations of nearly 10% among election districts for the Wake County School Board and BOCC. The court below erred in applying the exact same standard used in the federal analysis, and further erred as a matter of law in failing to employ more probing scrutiny to the state analysis.

III. APPELLANTS PRESENTED SUFFICIENT UNREBUTTED EVIDENCE TO ESTABLISH THAT RACE PREDOMINATED IN THE CONSTRUCTION OF BOCC DISTRICT 4 AND ARE ENTITLED TO JUDGMENT IN THEIR FAVOR ON THEIR RACIAL GERRYMANDERING CLAIM.

A. Standard of Review

The Fourth Circuit reviews "judgments resulting from a bench trial under a mixed standard of review: factual findings may be reversed only if clearly erroneous, while conclusions of law are examined de novo." *Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 502 (4th Cir. 2016). If a trial court "bases its findings upon a mistaken impression of applicable legal principles, the reviewing court is not bound by the clearly erroneous standard" of Rule 52(a) of the Federal Rules of Civil Procedure. *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 855 n.15 (1982).

B. The Court Below Erred by Misapplying Racial Gerrymandering Jurisprudence in its Analysis of this Case

The Equal Protection Clause protects against the unjustified use of race in the enactment of laws, including redistricting plans. When race is a predominant motivating factor in the drawing of electoral lines, a reviewing court must apply strict scrutiny. *Ala. Legis. Black Caucus v. Alabama*, 135 S. Ct. 1257, 1272 (2015). If racial predominance is proven, the district must be invalidated unless it is narrowly tailored to advancing a compelling governmental interest. *See id.* at 1262-63. Once challengers prove that race predominated, the burden shifts to the

defending party to demonstrate that the district was narrowly tailored to advance a compelling state interest. *See Shaw v. Hunt*, 517 U.S. 899, 908 (1996); *Abrams v. Johnson*, 521 U.S. 74, 91 (1997); *Miller v. Johnson*, 515 U.S. 900, 920 (1995). And where the defending party produces no evidence of compelling governmental interest or narrow tailoring, challengers have met their burden in proving an unconstitutional racial gerrymander after establishing racial predominance.

In proving that race predominated in the drawing of an electoral district, no category of evidence is solely dispositive; racial predomination may be proved by direct or circumstantial evidence, or a combination of the two. *Miller*, 515 U.S. at 916; *Page v. Va. State Bd. of Elections*, No. 3:13-cv-678, 2015 U.S. Dist. LEXIS 73514, at *32 n.7 (E.D. Va. June 5, 2015). The Supreme Court has described plaintiffs' burden in showing racial predominance as follows:

> We have said that the plaintiff's burden in a racial gerrymandering case is to show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district. *ALBC*, 135 S. Ct. at 1267 (internal citations omitted).

That "more direct evidence" does not have to be smoking gun evidence.

Circumstantial evidence of racial predominance can also include, among other things: oddly-shaped and non-compact districts; use of land bridges to deliberately attempt to bring African-Americans into a district; and districts that

disregard geographic city limits, precincts, and voting tabulation districts (precincts). *Page*, 2015 U.S. Dist. LEXIS 73514, at *20-*21. Here, the facts relevant to the analysis of racial predominance, including the racial composition of the district, the shape and split precincts, and other facts in the record, are almost entirely objective and undisputed—this Court must simply determine whether those facts constitute evidence of predominance, which is a legal question.

The court below erred in asserting that because the shape of District 4 was not as egregious as the unrelated congressional districts tested in *Vera*, *Shaw I*, *Shaw II*, and *Miller*, that race could not have predominated in the drawing of District 4. Comparing the shape of a relatively small county board district to the shape of a much larger congressional district makes no logical sense. The question of racial predominance and racial gerrymandering is a district-by-district analysis, *ALBC*, 135 S. Ct. at 1265-66, and comparing district shapes across states and jurisdictions is not the proper analysis. The application of a legally-improper comparison to hold that the district was not as bizarrely shaped as congressional districts is reversible error.

The trial court further erred by concluding that because in enacted S.L. 2015-4, the General Assembly simply replicated the design of the district constructed for the School Board plan in S.L. 2013-110, race could not have predominated in the construction of the BOCC district. If that proposition were

credible, the court in *Harris* could not have struck down Congressional District 12 as a racial gerrymander. *See Harris v. McCrory*, No. 1:13-cv-949, 2016 U.S. Dist. LEXIS 14581 (M.D.N.C. Feb. 5, 2016). That congressional district was modeled on previously-upheld versions of the district. *Id.*, at *8-*10. Likewise, a federal court in Virginia recently invalidated Congressional District 3 in that state, which was also modeled on a previously upheld configuration of that district. *Page*, 2015 U.S. Dist. LEXIS 73514, at *27-*28, *29-*30, *40-*41. A jurisdiction cannot cleanse a racial gerrymander through subsequent reuse and ratification. Instead, the question is always focused on whether race was the predominant reason for the shape of the particular district at issue.

C. Undisputed and Unrebutted Evidence Demonstrates that Race Predominated in the Construction of District 4

The unrebutted evidence at trial showed that race predominated in the drawing of District 4. First, the district court concluded that the statements made by House Committee on Elections member Rep. Paul Stam, both in committee and on the House floor, on the racial intent behind the move to single-member districts were not direct evidence of racial predominance. That conclusion, legally erroneous as it is, does not make those comments insignificant, though. Rep. Stam repeatedly defended the move to single-member districts in order to prevent potential Voting Rights Act ("VRA") problems, stating: (1) "at large elections submerge the views of any kind of minority," J.A. at 733; (2) "the very reason I

gave that at large districts submerge all types of minorities whether they're political, racial or whatever," J.A. at 735; (3) "[a]t large districts submerge minorities," J.A. at 980; (4) "you will find out what's wrong with at large districts, how they submerge the views of minority people," J.A. at 1002; and (5) "the ACLU, for example, has on its website articles about how they attack at large districts all over the country. For example, in Ferguson, Missouri," J.A. at 735. The statements alone suggest racial considerations drove the change in method of election.

Moreover, even if these statements standing by themselves are not explicit direct evidence of the racial intent in drawing a single majority-black district, the full context in which these statements were made cements the understanding and intent of the legislative proponents. Senator Dan Blue from Wake County testified that he informed his fellow senators that cross-racial coalitions were strong in Wake County, that African-American members were regularly elected to the BOCC in at-large elections, and that there was no need to draw a majority black district. J.A. at 218-19. Representative Gill likewise informed her fellow House members of the same information. J.A. at 333-34. Transcripts from legislative debates confirmed the accuracy of their statements, and that the legislative debate was heavily marked by those explanations, and that, in fact, packing black voters into a single district would limit their ability to elect candidates of choice to the

BOCC. J.A. at 210, 219, 380, 406-08, 441-42. Thus, even in the face of substantial evidence that African Americans did not need a majority black district to elect their candidates of choice, the legislative proponents mindlessly continued to insist that single member districts were needed to prevent vote dilution. That is direct evidence of race being a predominant consideration.

Further, there was substantial unrebutted circumstantial evidence of the racial predominance in District 4's lines, including its shape and its splitting of a significant number of precincts. J.A. at 203-04, 212-13, 303, 450, 456-58, 470. As to precinct-splitting, Appellant Jannet Barnes, a precinct chair who lived in a split precinct in District 4 and who had personal knowledge of the neighborhoods in her precinct, testified about the parts of her precinct that were included or excluded in the district. She explained that her precinct was split to move predominantly black areas into the district, while other more white areas of her precinct were excluded. J.A. at 513. This was not anecdotal opinion testimony—Ms. Barnes was testifying about the actual composition of the district, and which voters were put in the district and which were removed, based on her years of activism and residence within her precinct, and her familiarity with the neighborhoods in it. J.A. at 506-14.

With respect to Dr. Jowei Chen's analysis, the district court wholly ignored the racial density map in Dr. Chen's report (Figure 7) that demonstrated how

District 4's lines traced directly around African-American neighborhoods and how the General Assembly drew District 4 to pack as many black voters in the Southeast Raleigh area into the district as possible. *See* J.A. at 468-69, 781-82. Dr. Chen explained:

> [Y]ou can see just how closely the district boundaries of District 4 follow along radiants of African American population. In other words, it clearly in many areas around the Southeast Raleigh region follows right along the areas where more heavily African American neighborhoods transition into less African American neighborhoods. In other words, it clearly falls along racial boundaries.

J.A. at 468-69.

Dr. Chen's racial density map was not the only evidence he presented on racial predominance. He presented the court with a statistical analysis that demonstrated that race had to have been the predominant factor in the construction of the district. J.A. at 450. While the district court stated that it did not credit Dr. Chen's unrebutted testimony, J.A. at 579-80, the court's finding had nothing to do with the underlying analysis and construction of Dr. Chen's computer simulations and instead was based on a misunderstanding of the expert analysis. What Dr. Chen's simulations show, which the court did not dispute, is that when Dr. Chen used his simulation programming with the goal of achieving the same political performance level attained in enacted District 4 but not taking race into account, *not a single one* of Dr. Chen's 500 simulations produced an African-American majority district that was greater than 53%, let alone as high as 54.3%. J.A. at 472-

74. That is, partisan goals could not explain the shape of the district or have produced that high a black voting age population in the enacted district. Thus, the district court's misapplication of racial gerrymandering jurisprudence and unjustified rejection of critical, unrebutted evidence should result in reversing the trial court and holding that race predominated in the drawing District 4. Because Appellee presented no evidence that the use of race was narrowly tailored to advancing a compelling governmental interest, this Court should instruct the court below to enter judgment in favor of Appellants on their racial gerrymandering claim.

IV. THE DISTRICT COURT'S FACT-FINDING IS SO INCONSISTENT WITH THE EVIDENCE IN THE RECORD TAKEN AS A WHOLE AS TO ESTABLISH WITH CERTAINTY THAT A MISTAKE HAS BEEN MADE AND THE FACT-FINDING WAS CLEARLY ERRONEOUS.

A. Standard of Review

While "[t]he findings of fact by the trial judge are entitled to great weight and are not to be disturbed unless they are clearly erroneous," *Friend v. Leidinger*, 588 F.2d 61 (4th Cir. 1978), findings of fact are not "so sacrosanct as to evade review." *Jiminez v. Mary Washington Coll.*, 57 F.3d 369, 379 (4th Cir. 1995). A district court's finding of fact must be disturbed as clearly erroneous "if no evidence in the record supports it or 'when, even though there is some evidence to support the finding, the reviewing court . . . is left with a definite and firm

conviction that a mistake has been made in the finding.'" *Consolidated Coal Co. v. Local 1643, United Mine Workers of Am.*, 48 F.3d 125 (4th Cir. 1995) (*quoting Pizzeria Uno Corp. v. Temple*, 747 F.2d 1522, 1526 (4th Cir. 1984)).

The Fourth Circuit has highlighted four common mistakes that lead district courts to clearly erroneous fact-finding: "(1) the district court labored under an improper view or misconception of the appropriate legal standard; (2) the district court's factual determinations are not supported by substantial evidence; (3) the district court disregarded substantial evidence that would militate a conclusion contrary to that reached and (4) the district court's conclusion is contrary to the clear weight of the evidence considered in light of the entire record." *Jiminez*, 57 F.3d at 379.

B. Upon Review of the Entire Evidence, This Court Must Be Left with the Definite and Firm Conviction that a Mistake Has Been Committed

In the proceeding below, all the trial evidence was presented by Appellants. Appellee, taking the position that because it did not enact or request the challenged legislation and thus had no insight into the justifications for the deviations or evidence that the district challenged as a racial gerrymander was narrowly tailored to advancing a compelling governmental interest, presented no live testimony. *See* J.A. at 192-514; *Wright*, ECF No. 64 (Dec. 7, 2015)(Defendant's Trial Brief). None of the expert testimony presented by Appellants was rebutted. The legislative proponents of the challenged laws resisted efforts to give testimonial or

documentary evidence as to the reasons for the deviations in the plan or the directions given to the mapdrawer who drew District 4. In short, there was no reasonable basis on which the court below could conclude that Appellants were not entitled to judgment in their favor, and the fact-finding was thus clearly erroneous.

Appellants offered the testimony of fifteen live witnesses—two experts, four legislators, four county elected officials, and five plaintiffs and lay witnesses. J.A. at 519. Incredibly, the court below found each one of those witnesses to be not credible. In order to satisfy Fed. R. Civ. P. 52(a), the trial court must "do more than announce statements of ultimate fact"—it must "support its rulings by spelling out the subordinate facts on which it relies." *U.S. for Use of Belcon, Inc. v. Sherman Const. Co.*, 800 F.2d 1321, 1324 (4th Cir. 1986). Absent that kind of support for its factual and credibility findings, appellate review becomes an "exercise in conjecture." *Id*. "Conclusory findings, illuminated by no subsidiary findings or reason on all the relevant facts" prevent the appellate court from making a "rational determination" and are counterintuitive to the purposes of Rule 52(a). *Equal Employment Opportunity Comm'n v. United Virginia Bank/Seaboard Nat.*, 555 F.2d 403, 406 (4th Cir. 1977). Where objective evidence contradicts a witness' story, or the story itself is "so internally inconsistent or implausible on its face that a reasonable factfinder would not credit it, . . . the court of appeals may well find clear error even in a finding purportedly based on a credibility

determination. *United States v. Hall*, 664 F.3d 456, 462 (4th Cir. 2012) (citing *Anderson*, 470 U.S. at 575). The reverse must logically be true as well. When the objective facts presented by a witness are undeniable, a determination by the trial court that the witness was not credible, absent any further explanation, simply cannot be tolerated. The decision of the court below in this case is awash in such examples.

For example, the court stated that it did not credit the "anecdotal opinion testimony" of Appellant Amy Womble. One of the legislative justifications for the School Board map was that it was an attempt to better align school assignment zones with electoral districts. Ms. Womble, a long-term resident of Wake County and education activist, walked the court through several comparisons of school attendance zones near where she lives and the enacted districts. Through demonstratives, it was clear that rather than better promote alignment between assignment zones and electoral districts, the new districts split assignment zones between districts that were not split between districts in the prior map. J.A. at 236-42. The authenticity of the maps was not disputed by Appellees, and indeed, the court did not find that the maps were inaccurate. This documentary evidence and testimony directly contradicted one of the main justifications offered by legislation proponents in support of S.L. 2013-110. Instead, rather than acknowledging that Appellants had unequivocally demonstrated as pretextual one of the main

justifications for the bill, the court below dismissed Ms. Womble's testimony as opinion testimony and criticized Appellants for only discussing in live testimony five out of the 171 student assignment zones in Wake County.[3] However, all of those 171 maps were admitted into evidence, even though they were not discussed individually, and they further support Appellants' claims.

The same pattern was established with regard to each of Appellants' non-expert witnesses. Their testimony, regardless of content, was dismissed as anecdotal opinion testimony, even when they were describing objective facts based on their own personal knowledge, such as Ms. Barnes describing how her precinct was divided by District 4. J.A. at 509-12. The court discredited the testimony of sitting BOCC members relating to whether, in Wake County, the cost of running in single-member districts is substantially less expensive than the cost of running countywide, instead crediting the conclusory statements made on the legislative floor by proponents of S.L. 2015-4 that countywide BOCC elections were simply too expensive. J.A. 397-400, 568, 677, 736, 1007. But the unrebutted, uncontested, and voluminous campaign finance evidence submitted by Appellants demonstrated that (1) there is no historical trend campaign in increased spending in BOCC elections—that is, election spending varies wildly depending on the year

[3] It is certainly unreasonable that the court below expected Appellants to go through in live testimony 171 student assignment zones in the mere nine hours it was willing to allot to Appellants in trial time.

and the candidate, and is frequently quite low; and (2) the change to super districts in the School Board would essentially require candidates to run countywide, and increase campaign costs for them. J.A. 258, 912-43. Thus, the entire record is inconsistent with the trial court's factual conclusions.

The trial court's treatment of Appellants' experts fares no better, even under a clearly erroneous standard. The court below rejected the testimony and analysis of Dr. Chen based on the court's failure to comprehend the methodology he employed. In *Cromartie v. Easley*, the United States Supreme Court reversed a panel in the Eastern District of North Carolina for clearly erroneous fact-finding in almost precisely the same circumstances. The Court there engaged in clear error review because the trial "was not lengthy and the key evidence consisted primarily of documents and expert testimony. Credibility evaluations played a minor role." *Cromartie II*, 532 U.S. at 243. After the *Cromartie* trial, the district court found that the testimony of the State's primary expert, Dr. Peterson, was "'unreliable' and not relevant." *Id.* at 251. The Supreme Court held that the lower court's rejection of Dr. Peterson's testimony and analysis rested centrally on a misunderstanding of what Dr. Peterson's analysis showed, and that the lower court did not actually dismiss any of the facts upon which Dr. Peterson's expert opinion was based. *Id.* at 251-52. As a result, it concluded that the district court was clearly erroneous in rejecting his expert testimony. *Id.* at 252, 258. The same

principle applies here. The court below failed to understand that Dr. Chen's simulations were not about producing better plans, but rather used to hold several different considerations constant so that he could assess whether the challenged plans could have been produced absent the alleged improper motive, being it race in the case of District 4 or partisan bias in the case of the deviations in the challenged plans. J.A. at 450-54. He concluded that they could not have. J.A. at 449-50.

Aside from the erroneous fact-finding described above, the court below dismissed the entire voluminous record supplied by Appellants in support of their claims. On review of the entire record, such a conclusion is just not plausible, and because the district court "disregarded substantial evidence that would militate a conclusion contrary to that reached," *Jiminez*, 57 F.3d at 379, this was clearly erroneous. These unexplained disregarded pieces of evidence included ignoring scientific polling, presented by the experienced pollster who contemporaneously conducted the poll, that Wake County voters were hugely opposed to S.L. 2015-4. J.A. at 374-77, 568, 751-66. The court below also dismissed as irrelevant emails from Republican operatives to the proponents of the challenged bills, suggesting that the plans should, to the greatest extent possible, favor Republican incumbents and candidates. J.A. at 563, 1120-21. While each of these facts alone might not

support judgment in Appellants' favor, taken as a whole, it is clear that a mistake was made in the fact-finding in the court below.

Finally, the court below credited all the floor statements of legislators who refused to appear or willingly provide evidence in this case, J.A. at 529-32, 553-54, 578-80, but claimed as a matter of law to find not credible all the statements, in the legislative transcripts and the live testimony, of state legislators who opposed the legislation, J.A. at 554, 562-53, 568. These factual findings, and misinterpretation of the law, result in a perverse situation: where challengers like Appellants cannot sue state legislators who enact discriminatory legislation, and where those legislators cloak themselves in legislative privilege and immunity, plaintiffs essentially can never prove discriminatory intent or any intent relating to population deviations in redistricting plans. That simply cannot be the law, and fact-finding that is based on such a misunderstanding of the law easily satisfies the clearly erroneous standard.

CONCLUSION

Because their voting strength will be devalued by the imbalanced districts, Appellants seek a declaratory judgment that the districts as enacted in S.L. 2013-110 and S.L. 2015-4 violate their equal protection rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 19 of the North Carolina Constitution. J.A. at 47-48, 84-86. They further seek a permanent

injunction enjoining the Appellees from implementing the method of election established by these challenged laws. J.A. 48, 85.

For the foregoing reasons, Appellants respectfully request that the Court reverse the decision of the court below and remand with instructions to enter judgment in favor of Appellants.

This the 15th day of April, 2016.

Respectfully submitted,

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Dated: April 15, 2016

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 15th day of April, 2016, I caused this Brief of Appellants and Joint Appendix to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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I further certify that on this 15th day of April, 2016, I caused the required copies of the Brief of Appellants and Joint Appendix to be hand filed with the Clerk of the Court.

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