IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION
Civil Action No. 1:13-CV-00949

DAVID HARRIS, CHRISTINE BOWSER, and SAMUEL LOVE, Plaintiffs, v. PATRICK MCCRORY, in his capacity as Governor of North Carolina, NORTH CAROLINA STATE BOARD OF ELECTIONS, and JOSHUA HOWARD, in his capacity as Chairman of the North Carolina State Board of Elections, Defendants.	**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO STAY, DEFER, OR ABSTAIN**

Defendants Patrick McCrory, North Carolina State Board of Elections, and Joshua Howard (collectively "Defendants") submit this Memorandum of Law in support of their Motion that this Court Stay, Defer, or Abstain from this action because parallel litigation involving the same claims and issues is pending before the North Carolina Supreme Court. In support of their motion, Defendants show the Court as follows:

STATEMENT OF FACTS

I. Summary of the pending state court proceedings regarding the First and Twelfth Congressional Districts

On July 27-28, 2011 the North Carolina General Assembly ("General Assembly") enacted three new redistricting plans for the North Carolina House of Representatives ("State House"), North Carolina Senate ("State Senate"), and the United States House of Representatives ("Congress"). *See* S.L. 2011-404 (State House); S.L. 2011-402 (State

Senate); and S.L. 2011-403 (Congress); (D.E. 30-1, p. 6) (Judgment and Memorandum Decision of Three-Judge State Court in *Dickson et al* v. *Rucho et al*, Nos 11 CVS 16896 and 11 CVS 16940 [Wake County Superior Court July 8, 2013] filed as Ex. A to Def's App. in Opp. to Pls' Motion for a Preliminary Injunction). On November 1, 2011, all three redistricting plans were precleared by the United States Department of Justice under Section 5 of the Voting Rights Act ("VRA"), 42 USC § 1973c. (D.E. 30-1, pp. 6-7.)

Two separate groups of plaintiffs filed lawsuits on November 3 and 4, 2011 challenging the constitutionality of specific districts in all three plans, including the First Congressional District ("First District") and the Twelfth Congressional District ("Twelfth District") (D.E. 30-1, p. 7.) One set of plaintiffs (referred to collectively as the "NAACP Plaintiffs") included the North Carolina State Conference of Branches of the NAACP ("NC NAACP"), the League of Women Voters of North Carolina ("LWV NC"), Democracy North Carolina ("Democracy NC"), the A. Philip Randolph Institute ("Randolph Institute") and forty six individual plaintiffs. (NAACP Plaintiffs Am. Compl. ¶¶ 9- 57) (attached as Ex. 1). The other set of plaintiffs (referred to collectively as the "Dickson Plaintiffs") included 56 individual plaintiffs. (Dickson Plaintiffs Am. Compl. ¶¶ 11-56) (attached as Ex. 2). The three-judge state court consolidated the cases on December 19, 2011. (D.E. 30-1, p. 7.) The consolidated cases are hereinafter referred to collectively as the "*State Redistricting Cases*."

In challenging the 2011 First and Twelfth Districts, both groups of plaintiffs in the *State Redistricting Cases* alleged that: (1) race was the predominant factor used by the General Assembly to draw both of these districts, (2) neither district was sufficiently

compact, and (3) neither district was narrowly tailored to comply with either Section 5 or Section 2 of the VRA. (Ex. 1, NAACP Plaintiffs' Am. Compl. ¶¶ 1-3, 384-98); (Ex. 2, Dickson Plaintiffs' Am. Compl. ¶¶ 78-81, 377-83, 396-401). In addition, both sets of plaintiffs in the *State Redistricting Cases* asked the state court to declare the First and Twelfth Districts unconstitutional under the Fourteenth Amendment of the United States Constitution. (Ex. 1, NAACP Plaintiffs' Am. Compl. ¶¶ 480-86); (Ex. 2, Dickson Plaintiffs' Am. Compl. ¶¶ 515-19). The NAACP Plaintiffs also alleged that, as a result of the districts, "the individual and organizational plaintiffs suffer representational harms, impediments to their mission, activities and interests, a diminution in their ability to participate equally in the political process and inherent harm to their dignity by racial discrimination and denial of equal protection." (Ex. 1, NAACP Plaintiffs' Am. Compl. ¶ 486).

On December 19, 2011, the defendants in the *State Redistricting Cases* moved to dismiss the NC NAACP, the LWV NC, Democracy NC, and the Randolph Institute (collectively the "Organizational Plaintiffs") named in the NAACP Plaintiffs' Amended Complaint on the grounds that these plaintiffs lacked standing to challenge the districts, including the First and Twelfth Districts. The Organizational Plaintiffs filed a memorandum of law in opposition to the motion to dismiss the Organizational Plaintiffs in which they argued that they had alleged in their Amended Complaint "facts sufficient to establish organizational standing under federal law by alleging that their members live throughout the state and would be harmed by the use of redistricting plans unjustifiably based on race." (NAACP Plaintiffs' Mem. in Opp. to Defendants' Motion to Dismiss,

pp. 11) (attached as Ex. 3). In support of this argument, the NAACP plaintiffs quoted the following passage from the United States Supreme Court's decision in *Warth v. Seldin*:

> Even in the absence of injury to itself, an association may have standing *solely as the representative of its members*. . . . The possibility of such representational standing, however, does not eliminate or attenuate the constitutional requirement of a case or controversy. The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit. So long as this can be established, and so long as the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable to proper resolution of the cause, *the association may be an appropriate representative of its members*, entitled to invoke the court's jurisdiction.

(Ex. 3, p.11) (citing and quoting 422 U.S. 490, 511 (1975) (internal citations omitted) (emphasis added)).

On February 6, 2012, the three-judge state court denied the motion to dismiss the Organizational Plaintiffs for lack of standing. (See attached as Ex. 4.) The Organizational Plaintiffs therefore remain parties to the *State Redistricting Cases*.

On July 8, 2013, the three-judge state court unanimously granted the defendants' motion for summary judgment in the *State Redistricting Cases* on the plaintiffs' claims that the First District violated the Fourteenth Amendment. (D.E. 30-1.) The same day, following a two-day trial, the three-judge panel unanimously entered judgment in the favor of the defendants the *State Redistricting Cases* on the plaintiffs' claims that the Twelfth District violated the Fourteenth Amendment. (*Id.*) Both sets of plaintiffs the *State Redistricting Cases* appealed the ruling of the state three-judge court to the North Carolina Supreme Court. The North Carolina Supreme Court heard oral arguments on

the appeal on January 6, 2014. As of this filing, the North Carolina Supreme Court has not issued a decision in the *State Redistricting Cases.*

II. Plaintiffs' allegations and claims in this action regarding the First and Twelfth Districts are identical to those of the plaintiffs in the *State Redistricting Cases*

Like the plaintiffs the *State Redistricting Cases*, the Plaintiffs in this action allege in the Complaint that they have brought "this action to challenge the constitutionality of North Carolina Congressional Districts 1 and 12 in violation of the Equal Protection Clause of the Fourteenth Amendment." (D.E. 1, Compl. ¶ 1.) Plaintiffs contend that the First and Twelfth Districts were "drawn with race as their predominant purpose" and that the legislative leaders even "indicated that race was the predominant motivating factor." (D.E. 1, Compl. ¶¶ 5, 38, 54, 63-66.) Plaintiffs further allege that the General Assembly "subordinated other redistricting principles" in drawing the First District and allege that both First and Twelfth Districts are "bizarre" or "not compact." (D.E. 1, Compl. ¶¶ 37, 51, 52, 61, 62.) Finally, the Plaintiffs allege here that neither district was reasonably necessary to obtain preclearance of the plans under Section 5 of the VRA or to protect the state from liability under Section 2 of the VRA. (D.E. 1, Compl. ¶¶ 3, 5, 58, 59, 66, 67, 71, 72.) In short, the claims of the Plaintiffs in this action are identical to the claims made by the plaintiffs in the *State Redistricting Cases*.

QUESTIONS PRESENTED

I. Should this Court should stay or defer further proceedings in this action pending resolution of the identical state court claims brought by the plaintiffs in the *State Redistricting Cases*?

II. May the Court properly abstain from further action in this case under the United States Supreme Court's decision in *Younger v. Harris*?

III. Should this Court stay, defer, or abstain from further proceedings in this action under the United States Supreme Court's decision in *Colorado River Conservation District v. United States* until the *State Redistricting Cases* are resolved?

ARGUMENT

A. Federal courts must defer to state courts and state legislatures in disputes over redistricting

The primacy of state judiciaries in redistricting disputes has been repeatedly recognized by the United States Supreme Court. *See Scott v. Germano*, 381 U.S. 407 (1965); *Chapman v. Meier*, 420 U.S. 1, 27 (1975); *Growe v. Emison*, 507 U.S. 25, 34 (1993). In *Germano*, the Court observed that "the power of the judiciary of a state to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the states in such cases has been specifically encouraged." 381 U.S. at 409; *see also Chapman*, 420 U.S. at 27 ("We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court.") Moreover, the Court has held that "[a]bsent evidence that these state branches will fail timely to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it."

Growe, 507 U.S. at 34. Although "i[n] other contexts, a federal court's decision to decline to exercise jurisdiction is disfavored and thus exceptional . . . in the reapportionment context, when parallel State proceedings exist, the decision to refrain from hearing the litigant's claims should be the routine course." *Rice v. Smith*, 988 F. Supp. 1437, 1439 (M.D. Ala. 1997) (citations omitted).

B. This Court should stay or defer proceedings in this matter pending resolution of the identical state court claims brought by the plaintiffs in the *State Redistricting Cases*

1. Applicable Legal Standard: The Supreme Court's decisions in *Germano* and *Growe*

In *Germano*, the United States Supreme Court considered a challenge brought in an Illinois federal district court to an Illinois State Senate redistricting plan. 381 U.S. at 408. While the plan was the subject of litigation in the state courts, a federal district court entered an order declaring the plan invalid and requiring that "any implementation, amendment or substitution of all or part of the said defective portions" of the legislation be submitted to the federal court for approval before the next election. *Id.* Thereafter, the Illinois Supreme Court issued a decision finding the plan invalid. *Id.*

Following the Illinois Supreme Court's decision, the *Germano* appellants moved the federal district court to reconsider its decision, vacate its order, and stay further proceedings but the federal court refused. *Id.* at 408-09. On appeal, the United States Supreme Court held that the federal district court erred by failing to stay its proceedings after the Illinois Supreme Court issued its ruling invalidating the reapportionment plan. *Id.* at 409-10. The *Germano* court held that the district court instead "should have stayed

its hand" and remanded the case with directions to the district court to "enter an order fixing a reasonable time within which the appropriate agencies of the State of Illinois, including its Supreme Court, may validly redistrict the Illinois State Senate." *Id.*

The United States Supreme Court reaffirmed the principles outlined in *Germano* nearly 30 years later in *Growe v. Emison*. *Growe* involved three separate groups of plaintiffs: The first group filed an action in Minnesota state court challenging the state's congressional and legislative districts. 507 U.S. at 27. A second group of plaintiffs then filed an action in federal court raising similar challenges to the congressional and legislative districts, but also objecting to the districts under Section 2 of the VRA. *Id.* at 28. The third group of plaintiffs then filed their own lawsuit in federal court raising federal and state constitutional challenges to the new legislative districts. *Id.* at 28-29. No claims under the VRA were included in the lawsuit filed by the third group of plaintiffs. *Id.*

The two federal cases were consolidated but the state court case continued separately from the consolidated federal case. *Id.* at 29. The Minnesota state court ultimately sought to enter an order approving a redistricting plan for the state. *Id.* at 30. But before the state court could do so, the federal court had adopted its own redistricting plans and entered a permanent injunction prohibiting the state court from interfering with implementation of the redistricting plans drawn by the federal court. *Id.* at 30-31. On appeal, the United States Supreme Court ruled that the district court erred in not deferring to the Minnesota state court as required by *Germano*. *Id.* at 34. The *Growe* Court noted that, in "the reapportionment context," federal judges are "required . . . to defer

consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself." *Id.* at 33 (emphasis in original).

The *Growe* Court also rejected the argument that differences between the state and federal cases supported a departure from *Germano* principles. *Id.* at 34-35. The Court found that *Germano* did not require the federal and state court complaints to be identical before the federal court was required to defer to the state court because "the primacy of the State" in the redistricting context "compels a federal court to defer." *Id.* at 35-36 (stating that "the elementary principles of federalism and comity embodied in the full faith and credit statute, 28 U.S.C § 1738" required the federal court to defer to the state court).

2. *Germano* and *Growe* require this Court to stay all proceedings in this action pending final disposition of the identical claims raised the *State Redistricting Cases*

The requirements of *Germano* and *Growe* are clear: where a state court has "begun to address" a redistricting dispute, a federal court should "stay its hand" and defer consideration of any parallel redistricting challenge filed in federal court. Here, because the same claims raised by Plaintiffs in this action have already been addressed in the *State Redistricting Cases* by a three-judge state court panel and are currently pending before the North Carolina Supreme Court, at a minimum, this Court should stay or defer further proceedings in this matter until the *State Redistricting Cases* have been resolved.

The grounds for deferral in this matter until the *State Redistricting Cases* are resolved are even stronger than those in *Growe* because the Plaintiffs here have raised the

same claims with respect to the First and Twelfth Districts as those currently before the North Carolina Supreme Court in the *State Redistricting Cases*. After the North Carolina Supreme Court's decision is issued, any aggrieved party may then appeal to the United States Supreme Court. *See* 28 U.S.C. § 1257(a) ("Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where . . . the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States . . ."). Any ruling by the United States Supreme Court on any issue or claim raised in the *State Redistricting Cases* would be binding on this Court.

Even if neither party appealed the North Carolina Supreme Court's ruling or if the United States Supreme Court declines to hear any appeal by one of the parties in the *State Redistricting Cases*, one or more of the Plaintiffs in this action may be bound by the judgment in the *State Redistricting Cases* under the doctrines of *res judicata* (claim preclusion) or collateral estoppel (issue preclusion). In addition to the fact that Plaintiffs' claims in this action involve the same claims and issues with respect to the First and Twelfth Districts that were decided in the *State Redistricting Cases* by the three-judge state court and that are now before the North Carolina Supreme Court, it is likely that Defendants will be able to show, following discovery, that the interests of the plaintiffs in this litigation were aligned with and represented by the plaintiffs in the *State Redistricting Cases*, particularly if any of the Plaintiffs here are members of any of the

Organizational Plaintiffs that are plaintiffs in the *State Redistricting Cases*.[1] *See Warth*, 422 U.S. at 511 (noting that an "association may be an appropriate representative of its members").

Because the redistricting issues Plaintiffs seek to address in this action have already been reviewed once by a three-judge North Carolina state court and are again being considered by the North Carolina Supreme Court, Plaintiffs cannot show that the North Carolina state courts have refused to address the issues raised in their Complaint. Plaintiffs should not be permitted to take a "second bite" at the same claims made by the plaintiffs in the *State Redistricting Cases* in this Court simply because they were unhappy with the decision of the three-judge trial court with respect to the districts at issue here or because they are uncertain about the prospects of the claims of the plaintiffs in the *State Redistricting Cases* before the North Carolina Supreme Court. Deferral is further warranted in light of the possibility that the United States Supreme Court may render a decision that is binding on this Court on one or more of the claims or issues in this litigation. And, even if it does not, knowing the outcome of the *State Redistricting Cases* is essential to a fair and efficient resolution of the Plaintiffs' claims here because one or more of the claims in this action may be barred by the doctrines of *res judicata* or

[1] One of the Plaintiffs here may be one of the plaintiffs in the *State Redistricting Cases*: The Complaint in this action identifies one Plaintiff as "Samuel L. Love" and alleges that he is a resident of the 12th Congressional District. (D.E. 1, Compl. ¶ 9.) Similarly, an individual named "Samuel Love" who resides in the 12th Congressional District is also a named plaintiff in the *State Redistricting Cases*. (Ex. 1, NAACP Plaintiffs' Am. Compl. ¶ 53.)

collateral estoppel if the plaintiffs in the *State Redistricting Cases* adequately represented the interests of the Plaintiffs here.

C. This Court may also properly abstain from further action in this case under the United States Supreme Court's decision in *Younger v. Harris*

In addition to the reasons outlined in *Germano* and *Growe*, this Court may abstain from further proceedings in this matter under the United States Supreme Court's decision in *Younger v. Harris*, 401 U.S. 37 (1971). Abstention is proper in a civil action under *Younger* where three conditions are met: (1) there is an "ongoing judicial proceeding" in a state court; (2) the ongoing proceedings implicate "important state interests"; and (3) there is an "adequate opportunity in the state proceedings to raise constitutional challenges." *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982).

This three-part test is met here. As established above, the *State Redistricting Cases* which involve the same claims and issues with respect to the First and Twelfth Districts at issue in this action, are currently pending before the North Carolina Supreme Court. Second, the United States Supreme Court, along with other federal courts, has repeatedly recognized that redistricting involves "important state interests." *See Germano*, 381 U.S. at 409; *Chapman*, 420 U.S. at 27; *Growe*, 507 U.S. at 34. Finally, the same constitutional challenges to the First and Twelfth Districts that Plaintiffs seek to raise here have already been raised in the *State Redistricting Cases* by some of the same

counsel[2] representing the Plaintiffs in this action. Accordingly, Plaintiffs cannot contend that there has been no opportunity to raise constitutional challenges with respect to the First and Twelfth Districts in the *State Redistricting Cases.*

Even though the Plaintiffs in this case might be nominally different from those in the *State Redistricting Cases*, this Court may still abstain from this action under *Younger*. *See, e.g., Hicks v. Miranda,* 422 U.S. 332, 348 (1975) (finding federal district court should have abstained under *Younger* from a federal lawsuit brought by owners of a movie theater where employees of theater were charged with violating state obscenity laws on grounds that the owners' "interests and those of their employees were intertwined"); *Cedar Rapids Cellular Tel., L.P. v. Miller*, 280 F.3d 874, 881-82 (8th Cir. 2002) (finding that, under *Younger*, "the parties in federal and state court need not be identical where the interests of the parties seeking relief in federal court are closely related to those of [the] parties in pending state proceedings and where the federal action seeks to interfere with pending state proceedings"); *Spargo v. N.Y. State Comm'n on Judicial Conduct*, 351 F.3d 65, 84 (2d Cir. 2003) (finding that legal interests of a judge and his political supporters who were plaintiffs in federal lawsuit were "sufficiently intertwined" and that circumstances presented in case where such that *Younger* could "bar claims of third-parties who are not directly involved in the pending state action"); *Citizens for a Strong Ohio v. Marsh*, 123 Fed. App'x 630, 636-37 (6th Cir. 2005) (rejecting argument that *Younger* abstention does not apply to parties who are not subject

[2] The Poyner & Spruill law firm and attorneys Edwin Speas, John O'Hale, and Caroline Mackey are counsel to the Dickson Plaintiffs in the *State Redistricting Cases*.

to pending state court proceedings and affirming dismissal of three parties to federal lawsuit who were not parties to pending state administrative action involving the same issues).

Plaintiffs' interests in this action are clearly "intertwined" with those of the plaintiffs in the *State Redistricting Cases*. Both sets of plaintiffs share the same ultimate goals of having a court: (1) declare that the current First and Twelfth Districts violate the Equal Protection Clause of the Fourteen Amendment to the United States Constitution; (2) enjoin the defendants named in each such from "enforcing or giving any effect to" the First and Twelfth Districts; and (3) adopt a new Congressional redistricting plan or order the State adopt new Congressional districts. (*Compare* D.E. 1, p. 19 [Prayer for Relief] *with* Prayers for Relief in attached Exs. 1 and 2.) Unlike in other contexts, if the relief sought by the plaintiffs in the *State Redistricting Cases* is ultimately granted, then the Plaintiffs here will receive the same "relief" as the plaintiffs in the *State Redistricting Cases*. In other words, the decision in the *State Redistricting Cases* will have the same impact on the Plaintiffs here as it does the plaintiffs in the *State Redistricting Cases* and all other residents of the First and Twelfth Districts.

Additionally, the Plaintiffs here and the plaintiffs in the *State Redistricting Cases* are all seeking declaratory and injunctive relief to enjoin use of the current districts and to have new districts implemented either by the courts or with court supervision. As such, the relief Plaintiffs seek here, if granted, would directly interfere with the pending *State Redistricting Cases* because North Carolina can only have one set of Congressional Districts. *See Growe*, 507 U.S. at 35 (noting that a state "can have only one set of

legislative districts"). Accordingly, this Court may properly abstain from this action under *Younger*.

D. The *Colorado River* doctrine allows this Court to abstain from this action or stay further proceedings in this matter until the *State Redistricting Cases* are resolved

The United States Supreme Court's decision in *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800 (1976) provides a third, independent basis for the Court to exercise its discretion to stay further proceedings in this matter pending disposition of the state court proceedings in the *State Redistricting Cases*. Under *Colorado River*, a court may exercise discretion to stay or decline to exercise jurisdiction at all over a case if two pre-conditions are met: First, there must be "parallel proceedings" in state and federal court. *See Colorado River*, 424 U.S. at 813; *Sto Corp. v. Lancaster Homes, Inc.*, 11 Fed. App'x 182, 186 (4th Cir. 2001). Second, "exceptional circumstances" warranting a stay or abstention must exist. *Id.*

The requirement of "parallel proceedings" is met "if substantially the same parties litigate substantially the same issues in different forums." *Sto Corp.*, 11 Fed. App'x at 186 (citing *New Beckley Mining Corp. v. Int'l Union, UMWA*, 946 F.2d 1072, 1073 (4th Cir. 1991)). As detailed above, there is no question here that the Plaintiffs seek to litigate "substantially the same issues" that the plaintiffs in the *State Redistricting Cases* are currently litigating. Further, even though the Plaintiffs here might be nominally different from the plaintiffs in the *State Redistricting Cases*, in the context of the claims raised and relief sought in each of these lawsuits, they are "substantially the same parties."

Unlike other cases in which the *Colorado River* doctrine has been invoked, this action and the *State Redistricting Cases* do not involve disputes over property or tort claims where one or more plaintiffs may have different rights with respect to a piece of property or may be entitled to different recoveries from different defendants. In such cases where these types of relief are at issue, a federal court's refusal to stay, defer, or abstain when parallel litigation exists in a state court unless the named parties are exactly the same as, or at least in privity with one another, makes logical sense. In contrast, as explained above, the decision of the North Carolina Supreme Court and, possibly, the United States Supreme Court in the *State Redistricting Cases* will have the same impact on the Plaintiffs in this action as it will the named plaintiffs in the *State Redistricting Cases*. The Plaintiffs here will receive the same "benefit" or suffer the same "determent"— depending on the outcome of the case and one's perspective of the issues being litigated—as any other resident of the First and Twelfth Districts. Accordingly, the Plaintiffs here must be regarded as "substantially the same" as the plaintiffs in the *State Redistricting Cases*.

Because "parallel proceedings" exist, the Court must next determine whether this case presents "exceptional circumstances" warranting a stay of proceedings pending resolution of the *State Redistricting Cases*. Courts must balance several factors in assessing whether "exceptional circumstances" are present, including the following: (1) "the inconvenience of the federal forum"; (2) "the desirability of avoiding piecemeal litigation"; (3) "the order in which jurisdiction was obtained by the concurrent forums"; (4) whether state or federal law is implicated; and (5) whether the state court proceedings

are adequate to protect the parties' rights. *See Colorado River*, 424 U.S. at 818; *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 23 (1983); *Sto Corp.*, 11 Fed. App'x at 186. Because these factors weigh in favor of a stay or abstention in this case, this Court should abstain from further proceedings in this matter or, at a minimum, stay further proceedings pending resolution of the *State Redistricting Cases*.

Due to the advanced stage of the proceedings in the *State Redistricting Cases*, re-litigating the same issues already litigated before the three-judge panel and currently pending before the North Carolina Supreme Court in this Court is not only inconvenient and a waste of judicial resources but could result in piecemeal litigation, including the possibility of potentially divergent outcomes. Further, the complaints in the *State Redistricting Cases* were filed nearly two years before the Plaintiffs filed their Complaint in this action and nearly three months after the three-judge panel in the *State Redistricting Cases* issued its decision dismissing the same claims the Plaintiffs seek to raise before this Court regarding the First and Twelfth Districts.

Although Plaintiffs here seek to raise claims under the United States Constitution and the VRA, Plaintiffs cannot credibly contend that the state court in the *State Redistricting Cases* was not qualified to weigh these claims or to protect their rights and the rights of other residents of the First and Twelfth Districts. Indeed, the same counsel representing Plaintiffs in this action chose to litigate the same claims at issue here before the state court in the *State Redistricting Cases*. Moreover, North Carolina's state courts have concurrent jurisdiction with federal courts over any claims brought under the VRA or claims alleging violations of the United States Constitution. *See Stone v. Powell*, 428

U.S. 465, 494 n. 35 (1976) ("State courts, like federal courts, have a constitutional obligation . . . to uphold federal law."); *Hathorn v. Lovorn*, 457 U.S. 255, 268-69 (1981) (holding that Mississippi states court had the "power" and "duty" to decide whether change in election procedures complied with the VRA). These factors as applied here, along with the fact that this action involves a redistricting dispute in which a stay, deferral, or abstention should be "the routine course" rather than the exception, *Rice*, 988 F. Supp. at 1439, demonstrate the "exceptional circumstances" required under *Colorado River* have been met. Accordingly, this Court should abstain from this action or stay further proceedings in this matter pending disposition of the proceedings in the *State Redistricting Cases*

This the 11th day of February, 2014.

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CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **Memorandum of Law in Support of Defendants' Motion to Stay, Defer, or Abstain** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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This the 11th day of February, 2014.

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