IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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 IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, by and through their counsel of record, submit this Memorandum in Support of their Motion for Preliminary Injunction.

I. STATEMENT OF THE CASE

In this action, Plaintiffs seek declaratory and injunctive relief precluding the State of North Carolina from conducting an election for the U.S. House of Representatives pursuant to a redistricting plan that is an illegal racial gerrymander. Specifically, Plaintiffs assert that the State has "packed" African-American voters in Congressional Districts 1 and 12 ("CD 1" and "CD 12," respectively), that race was the predominant factor in drawing these districts, and that the State had no compelling interest to do so.

The evidence of racial gerrymandering is compelling: the shapes of the districts are bizarre and not compact; the public statements made during the redistricting process reference race as the primary consideration; and the demographic data establish that registered voters were dramatically more likely to be included within the new CD 1 and CD 12 if they were African-American—even when controlling for party registration. Further, there is no compelling interest to justify the State's blatant use of race. Not only has the Supreme Court's recent holding in *Shelby Countty., Ala. v. Holder*, 570 U.S. ___, 133 S. Ct. 2612 (2013), removed North Carolina's ability to rely on Section 5 as a compelling interest, but also Section 5 would never have compelled the affirmative creation of two majority-minority districts that did not exist in the benchmark plan. Moreover, there is no reasonable basis for believing that packing African-American voters into these two districts was necessary to avoid liability under Section 2 of the VRA.

Plaintiffs bring this action in federal court now because it is has become apparent that there is no other means for them to obtain relief before the 2014 elections. Under the current schedule, candidates may begin registering on February 10, 2014. North Carolina's congressional plan is currently the subject of a state law challenge in state court, which is on appeal before the North Carolina Supreme Court. The North Carolina Supreme Court has not stayed the 2014 election schedule and will not have time to decide the merits and adopt a new map prior to the registration period. In the absence of relief from this Court, the 2014 elections will proceed under an unconstitutional redistricting plan, causing Plaintiffs and all who are similarly-situated irreparable injury.

Plaintiffs therefore seek preliminary injunctive relief from the Court pending the outcome of this litigation.

II. STATEMENT OF FACTS

A. Former CD 1 and 12

1. CD 1

The history of the development of CD 1 provides important context for the unlawful packing of African-Americans into the district. CD 1 was first drawn in an iteration of its present form in 1992. *See* Declaration of John M. Devaney ("Devaney Decl.") (copy attached to Motion as Exhibit 2), at Ex. 1. For the past 20 years, CD 1 has been represented by an African-American representative. *See id.*, Ex. 2. Between 1997 and 2011, CD 1 did not have a majority Black Voting Age Population ("BVAP").

In 1997, the General Assembly redrew the boundaries of the district. *See id.*, Ex. 3. Between 1997 and 2001, the BVAP of CD 1 was 46.54%. *See id.*, Ex. 4. The 1997

congressional plan, including CD 1, was precleared by the United States Department of Justice ("DOJ") under Section 5 of the VRA. In addition to preclearance by the DOJ, no legal challenges to the 1997 version of CD 1 under Section 2 of the VRA were filed by the DOJ or any other party. In 1998 and 2000, Representative Clayton prevailed in CD 1, winning 62% and 66% of the vote, respectively. *See id.*, Ex. 2 These results show that although CD 1 was not a majority-minority district, the White majority did not vote as a bloc to defeat the candidate favored by African-American voters.

After the 2000 Census, the General Assembly redrew CD 1, modestly increasing the BVAP of the district to 47.76%. *See id.*, Ex. 5. The 2001 congressional plan was precleared by the DOJ, and there were no Section 2 challenges to the redrawn version of CD 1 included in that plan. In each of the five general elections held under the 2000 Congressional map, an African-American candidate prevailed in CD 1. Indeed, between 2002 and 2010, the African-American candidate received no less than 59% of the vote. *See id.*, Ex. 2. Again, although CD 1 was not a majority-minority district, the White majority did not vote as a bloc to defeat African-Americans' candidates of choice. To the contrary, the election results in CD 1 continued to manifest significant cross-over voting by the White majority in support of African-American candidates.

2. CD 12

The map-drawing history for CD 12 also provides important context for Plaintiffs' claims of unlawful packing. CD 12 has existed in roughly its current form since 1992, when it was drawn as a majority African-American district in response to the DOJ's objection, under its then-existent "maximization" policy. *See id.*, Ex. 6, at 2. In 1997,

after years of litigation and the U.S. Supreme Court's repudiation of the DOJ's maximization policy, *see Miller v. Johnson*, 515 U.S. 900, 921-24 (1995), the General Assembly redrew CD 12.

The redrawn CD 12 had a BVAP of 32.56%, *see id.*, Ex. 4, which reflected the North Carolina General Assembly's determination in 1997 that the VRA did not require drawing CD 12 as a majority African-American district. *See Cromartie v. Hunt*, 133 F. Supp. 2d 407, 413 (E.D.N.C. 2000) (noting that "District 12 [was] not a majority-minority district"). The 1997 congressional plan, including CD 12, was precleared by the DOJ, and there were no legal challenges to CD 12 under Section 2 of the VRA.

After the 2000 Census, CD 12 was again redrawn. The BVAP of the new CD 12 was 42.31%. *See id.*, Ex. 5. The 2000 congressional plan, including CD 12, was also precleared by the DOJ and, again, no lawsuit challenging the 2000 version of CD 12 under Section 2 of the VRA was filed.

Since the 1992 general election, CD 12 has been served by Representative Mel Watt, who is African American. *See id.*, Ex. 2. Although CD 12 has not been majority-minority for 15 years, Representative Watt has never received less than 56% of the vote, and did not receive less than approximately 64% of the vote under the version of CD 12 in effect during the 2000s. *See id.* The White majority thus did not vote as a bloc to defeat the candidate favored by African-American voters in these elections. Instead, the election results in CD 12 continued to manifest significant cross-over voting by the White majority in support of African-American candidates.

B. The 2011 Redistricting Process

As the General Assembly confronted the task of redrawing the Congressional map after the 2010 Census, it had several important data points before it:

- CD 1 and CD 12 had been represented by African-American members of Congress since 1992, even though neither district had a majority BVAP under the last two redistricting maps passed by the General Assembly.
- The DOJ had precleared those previous maps without objection.
- No Section 2 lawsuits had been filed to challenge the previous iterations of CD 1 and CD 12. Indeed, no statewide Section 2 challenge of any kind had been filed in North Carolina in the past 30 years.

Notwithstanding this long history of stability in the districts, the General Assembly decided in 2011 to fundamentally restructure CD 1 and CD 12 by transforming them into majority BVAP districts. CD 1 increased from 47.76% to 52.65% BVAP; CD 12 increased from 43.77% to 50.66% BVAP. *See id.*, Exs. 19-20. The end result is bizarrely shaped districts that pack African-Americans and flout basic redistricting legal principles.

1. Development of the 2011 Congressional plan

Principal responsibility for the 2011 Congressional map-drawing process rested with Senator Robert Rucho, Chair of the Senate Redistricting Committee, and Representative David Lewis, Chair of the House Redistricting Committee. *See id.*, Ex. 7, at 5-6. Rucho and Lewis were jointly responsible for developing the Congressional map. *See id.*, Ex. 8 (Lewis Dep. 30:21-24, 33:3-6, 19-22).

Work on the Congressional map had, however, already begun. In 2010, Rucho and Lewis engaged Thomas Brooks Hofeller to design and draw the Congressional map

(as well as the House and Senate maps). *See id.*, Ex. 9 (Hofeller Dep. Vol. I, 35:20-36:20). Hofeller started work on redistricting in late 2010 and had a primary map-drawing role thereafter, *see id.*, Ex. 9 (Hofeller Dep. 36:8-20), notwithstanding that he did not attend any public hearings on redistricting in North Carolina or review transcripts of those hearings. *See id.*, Ex. 9 (Hofeller Dep. 37:21-38:10). Rucho and Lewis were the only people to give instructions to Hofeller regarding the creation of the Congressional map. *See id.*, Ex. 9 (Hofeller Dep. 56:5-57:4).

Hofeller created CD 1 and CD 12 as majority-BVAP districts before drawing other districts. *See id.*, Ex. 10 (Trial Tr. June 5, 2013 (Hofeller), 264:12-22). According to Watt, in an in-person meeting that took place in May or June of 2011, Rucho told Watt that the Republican leadership had told him they were going to ramp up CD 12 to over 50% BVAP because they believed it was required by the VRA. *See id.*, Ex. 11 (Trial Tr. June 4, 2013 (Watt), 182:3-184:23).

2. Rucho and Lewis acknowledge the racial purpose underlying the creation of CD 1 and CD 12

On July 1, 2011, Rucho and Lewis issued a joint public statement to accompany the release of their Congressional plan in which they expressly acknowledge that CD 1 was created with a racial purpose:

> The State's First Congressional District was originally drawn in 1992 as a majority black district. It was established by the State to comply with Section 2 of the Voting Rights Act. Under the decision by the United States Supreme Court in Strickland v. Bartlett, 129 U.S. 1231 (2009), the State is now obligated to draw majority black districts with true majority black voting age population. Under the 2010 Census, the

> current version of the First District does not contain a majority black voting age population.
>
> . . .
>
> Because African-Americans represent a high percentage of the population added to the First District . . . , we have . . . been able to re-establish Congressman Butterfield's district as a true majority black district under the Strickland case.

See id., Ex. 12, at 3-4. Consistent with this admission of racial purpose, Rucho and Lewis also acknowledged that the map's "precinct divisions were prompted by the creation of Congressman Butterfield's majority black [CD 1]." *Id.*, Ex. 12, at 7.

Rucho and Lewis similarly emphasized that race was the driving factor in creating CD 12. In a section of their public statement captioned "Compliance with the Voting Rights Act," they stated that they drew the "proposed [CD 12] at a black voting age level that is above the percentage of black voting age population found in the current [CD 12]" to "ensure preclearance" under Section 5 of the VRA. *Id.*, Ex. 12, at 2-5. CD 12 contains Guilford County which was—at the time—a covered jurisdiction under Section 5 of the VRA. *Id.*, Ex. 12, at 5.

Rucho and Lewis made similar admissions of racial purpose in another joint public statement, issued July 19, 2011, that accompanied the release of a revised version of the Congressional plan. They again stated that CD 1 was redrawn to include a majority BVAP "as required by Section 2 of the Voting Rights Act" and that they added to CD 1 "a sufficient number of African-Americans so that the [CD 1] can re-establish as a

majority black district." *Id.*, Ex. 13, at 3. The statement emphasized the importance of BVAP in creating the district:

> While our initial version of [CD 1] was fully compliant with Section 2 and Section 5 of the [VRA], our second version includes population from all of the Section 5 counties found in the 2001 version of [CD 1]. Moreover, the total BVAP located in Section 5 counties in Rucho-Lewis 2 exceeds the total BVAP currently found in the 2001 version.

Id., Ex. 13, at 4.

During the legislative debate surrounding passage of the 2011 Congressional Plan, Rucho and Lewis reiterated that they had redrawn CD 1 to be a majority black district. Rucho stated that CD 1 was "required by Section 2" of the VRA to contain a majority BVAP, and that CD 1 therefore "must include a sufficient number of African-Americans so that [CD 1] can re-establish as a majority black district." *Id.*, Ex. 14 (July 25, 2011 Senate Testimony (Sen. Rucho), 8:19-9:6); *see also id.*, Ex. 14 (17:23-25) (stating that CD 1 "has Section 2 requirements, and we fulfill those requirements"); *see also id.*, Ex. 15 (July 27, 2011 House Testimony (Rep. Lewis), 30:2-4 (stating that CD 1 "was drawn with race as a consideration, as is required by the [VRA]").

The focus on race in the legislative debate was equally prominent with respect to CD 12. Although their plan recreated CD 12 as a majority BVAP district where it had not been under the prior map, Rucho and Lewis maintained that CD 12 was *not* a "VRA" district drawn as a majority BVAP district. Instead, they claimed that CD 12 was drawn to pack Democratic voters into the district. *See, e.g.*, Ex. 16 (Rucho Dep. 182:5-184:9). Statements by the Republican leadership, however, told a different story. For example,

when asked whether CD 12 was a "voting rights district," Senator Andrew Brock, Vice Chair of the Redistricting Committee, replied "I think you do have voting rights in District 12, through Guildford County," and Rucho reiterated that "[t]here is a significant Section 5 population in Guildford County." *Id.*, Ex. 17 (July 22, 2011 Senate Testimony (Sen. Brock), 26:5-6); *see also id.*, Ex. 18 (July 21, 2011 Joint Redistricting Committee Testimony (Rep. Lewis), 12:19-13:8) (describing, in addition to CD 12, how "[m]inority population was also considered in other districts as well").

On July 28, 2011, the General Assembly passed the 2011 Congressional Plan, set forth at Session Law 2011-403. *See Dickson v. Rucho et al.*, Civil Action No. 11 CVS 16896 (Wake County Superior Court) (Plaintiffs' Second Set of Stipulations By All Parties, filed 25 February 2013, at ¶ 2(c)).

C. In Its Section 5 Preclearance Submission, the State Emphasized That It Purposefully Drew CD 1 to Increase African-American Population

In its September 2011, preclearance submission to the DOJ, the State acknowledged that under the congressional plans in effect between 1992 and 2010, "African-American candidates and incumbents have been elected in [CD 1 and 12] under all of these different plans." *See id.*, Ex. 7, at 10-11. Despite the sustained success of African-American candidates in these districts, the State trumpeted the fact that it had added more African-American population to the districts so that they would be majority BVAP districts:

> [T]he 2011 Congressional Plan recreates District 1 at a majority African-American level and continues District 12 as an African-American and very strong Democratic district that has continually elected a Democratic African American since

> 1992. . . . Minority voters have clearly retained their ability to elect two preferred candidates of choice in the 2011 versions of District 1 and 12.

See id., Ex. 7, at 15. According to the State, CD 1 had a "structural problem" following the 2010 Census that required re-drawing the district to add a large number of African-Americans. Specifically, the State decided that because the post-Census CD 1 had a "BVAP of only 48.63%," it had to be "re-create[d] . . . at a majority African-American level." *Id.*, Ex. 7, at 12; *see also id.*, Ex. 7, at 13 (discussing how the "majority African-American status of the District is corrected by drawing the District into Durham County.")

Attempting to justify its dramatic increase in the BVAP of CD 12, the State cited purported "concerns" that 20 years earlier the DOJ had objected to the 1991 Congressional Plan because there was not a second majority-minority district. *Id.*, Ex. 7, at 14. The State therefore added tens of thousands of African-Americans to CD 12. Its new version of the district was "similar to the 2001 version," but it increased the district's BVAP from 43.77% to 50.66%. *Id.*, Ex. 7, at 15.

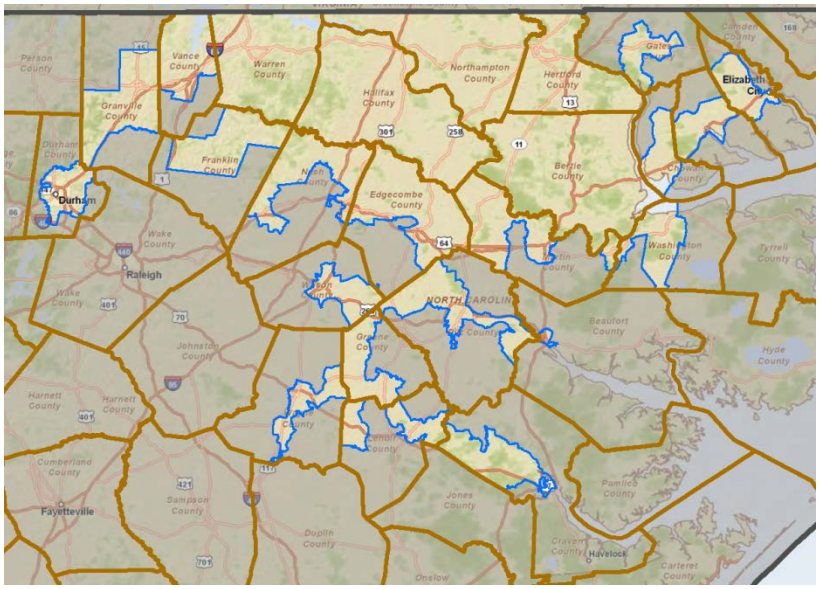
In December 2011, the DOJ pre-cleared the Congressional Plan containing these racially focused versions of CD 1 and CD 12. *See id.*, Ex. 19.

D. The Revised Configurations of CD 1 and CD 12

The end result of the redistricting process was the 2011 Congressional Plan, which includes CD 1 and CD 12.

1. Reconfigured CD 1

While the former CD 1 was drawn with a BVAP of 47.76%,[1] the reconfigured version has a 52.65% BVAP. *See* Devaney Decl., Ex. 20. To create a majority BVAP district, the General Assembly created a sprawling, unwieldy area that meanders from the rural Coastal Plain to the City of Durham:



See id., Ex. 21. What used to be a "distinctively rural" district, *Shaw v. Hunt*, 861 F. Supp. 408, 469 (E.D.N.C. 1994), now includes a significant urban population. Durham, which had never before been part of CD 1, now constitutes 20% of CD 1's population. *See* Devaney Decl., Ex. 22.

The new CD 1 is substantially less compact than its predecessor district. A common method for measuring a district's compactness is to calculate its Reock score, which is the ratio of the area of the district compared to the area of the smallest circle that

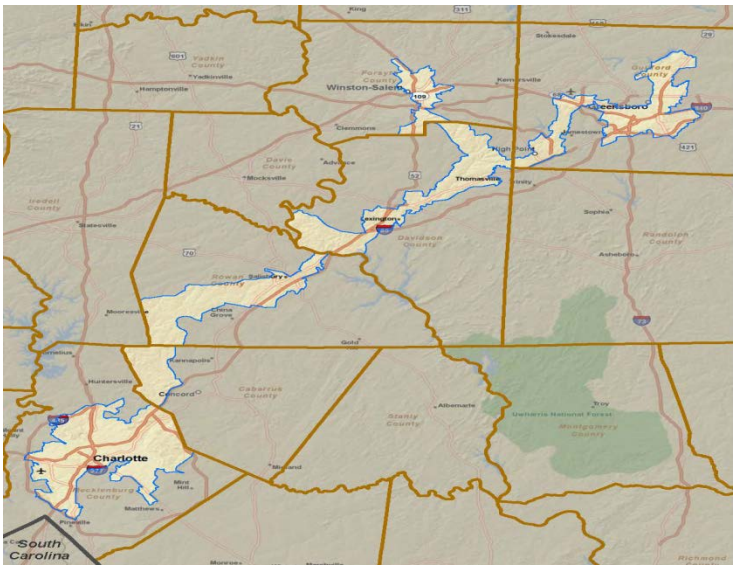
[1] Based on 2010 Census data, existing CD 1 had a BVAP of 48.63%. *See* http://www.ncleg.net/GIS/Download/District_Plans/DB_2011/Congress/Congress_ZeroDeviation/Reports/VTD_SingleDistrict/Vap_PDF/rptVTDVap-1.pdf.

could inscribe it. *See* Report of Stephen Ansolabehere ("Ansolabehere Report") (copy attached to Motion as Exhibit 1), at ¶ 9. The Reock score for the reconfigured district declined significantly from the score for the old district—from 0.390 to 0.294. *See id.*, Table 1. Other measures of compactness show the same result. For instance, the ratio of CD 1's area to its perimeter dropped from 11,098 to 6,896. *See id.*

The reconfigured CD 1 also disregards geographic and political boundaries to a greater extent than its predecessor. In the former version of CD 1, 13 of the 24 counties comprising the district were included in their entirety. *See id.* ¶ 12. By contrast, the reconfigured CD 1 contains only five whole counties, with the other 18 split between CD 1 and one or more other districts. *See id.* ¶ 13. CD 1 also splits 22 cities or towns. *See id.* ¶ 14.

2. Reconfigured CD 12

New CD 12 is a 120 mile long serpentine that is a mere 20 miles across at its widest part. *See id.*, Ex. 24. It includes fragments of Charlotte and Greensboro connected by a thin strip that traces Interstate 85. *See id.* A person traveling on Interstate 85 between the two cities would exit the district multiple times. *See id.*



After the Rucho-Lewis redistricting, CD 12's Reock score fell from 0.116 to 0.071, an extremely low Reock score that puts it among the most non-compact districts in the country. Ansolabehere Report, at ¶ 15; *see also* Devaney Decl., Ex. 26. The ratio of its area to perimeter fell from 2,404 to 1,839. Ansolabehere Report, Table 1. No Congressional District in North Carolina is less compact. *See id.* New CD 12 also disregards geographic and political boundaries, splitting the boundaries of 13 different cities and towns. *See id.* ¶ 17.

E. The State Law Challenge to the 2011 Congressional Plan

After the 2011 Congressional Plan was passed, two sets of plaintiffs challenged it (and the state legislative redistricting plans) in state court, alleging, among other things, that the plans were illegal racial gerrymanders under state law. *See North Carolina Conference of Branches of the NAACP et al. v. State of North Carolina et al.*, 1st Amended Complaint (12/9/12); *Dickson et al. v. Rucho et al.*, 1st Amended Complaint

(12/12/12). The two cases were consolidated in front of a three-judge court pursuant to N.C. Gen. Stat. § 1-267.1.

The state court conducted a two-day bench trial on June 5-6, 2013. *See Dickson et al. v. Rucho et al.*, Judgment and Memorandum of Opinion ("State Court Opinion"), at 7. On July 8, the court issued a Judgment and Memorandum of Decision denying Plaintiffs' pending motion for summary judgment and entering judgment in Defendants' favor. *See generally id.*

Of particular importance here, the state court found that the General Assembly used race as the predominant factor in drawing CD 1. The court stated it is "undisputed" that the General Assembly "intended to create" CD 1 to be a "Voting Rights Act district" that included at least 50% BVAP. *See id.* at 14. Although the court held that this racial purpose triggered review of CD 1 under the strict scrutiny standard, the court ultimately did not conduct a strict scrutiny evaluation that was specific to the district. Instead, addressing all VRA districts generically, the state court concluded that the State had a compelling interest in avoiding Section 2 and Section 5 liability, and that the State's VRA districts were narrowly tailored to those ends. *See generally id.* at 20-44.

The state court also considered CD 12 and other "non-VRA" districts, engaging in a "factual inquiry" and concluding that politics—not race—drove the creation of CD 12. *Id. at* 46-48, Appx. B 161-65. It applied rational basis review and upheld CD 12. *Id.* at 46-48.

The state court plaintiffs have appealed the state court's decision to the North Carolina Supreme Court. *See Dickson v. Rucho*, 11-CVS-16940 (Plaintiffs' Notice of

Appeal (July 22, 2013)). No order has been issued staying the 2014 elections or adopting an interim map while the legality of the Rucho-Lewis map is determined.

F. The 2014 Election Cycle

The statutory filing period for candidates seeking to represent North Carolina in the U.S. House of Representatives is February 10, 2014, through February 28, 2014. *See* N.C. Gen. Stat. § 163-106; Devaney Decl., Ex. 25. The primary election is scheduled for May 6, 2014. Devaney Decl., Ex. 25. The general election is scheduled for November 4, 2014. *Id*.

III. ARGUMENT

A. Preliminary Injunction Standards

A preliminary injunction should issue if a plaintiff shows (1) he is likely to succeed on the merits; (2) he will suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Real Truth About Obama, Inc. v. Fed. Election Comm'n*, 575 F.3d 342, 346 (4th Cir. 2009) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)), *vacated on other grounds*, 559 U.S. 1089 (2010).

Although these four factors are considered separately, they are interdependent. The more severe the potential harm to Plaintiffs, "the less compelling need be the showing that there is a likelihood of success on the merits." *Cannon v. North Carolina State Bd. of Elections*, 917 F. Supp. 387, 391 (E.D.N.C. 1996) (citing *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802 (4th Cir. 1991)). Indeed, if "the balance of harm to the plaintiff if preliminary relief is denied greatly outweighs the likely harm to

defendants upon issuing an injunction . . . the court need only determine that plaintiffs have 'raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation.'" *Republican Party of N.C. v. Hunt*, 841 F. Supp. 722, 730 (E.D.N.C.) (quoting *Blackwelder Furniture Co. of Statesville, Inc. v. Seilig Mfg. Co.*, 550 F.2d 189, 195 (4th Cir. 1977)), *aff'd*, 27 F.3d 563 (4th Cir. 1994).

B. Plaintiffs Will Suffer Irreparable Injury If Preliminary Relief Is Not Granted

CD 1 and CD 12 are unconstitutional because they were drawn based on race and are not supported by the type of compelling justification that is required to uphold racially motivated map drawing. The State's racial gerrymanders violate Plaintiffs' right to equal protection under the law and, by extension, their right to vote. *See* U.S. Const. amends. XIV, XV. If preliminary relief is denied, Plaintiffs and those similarly situated will suffer irreparable injury.

"It is beyond cavil that 'voting is of the most fundamental significance under our constitutional structure.'" *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (quoting *Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)). "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17-18 (1964). *See also Dixon v. Md. State Admin. Bd. of Election Laws*, 878 F.2d 776, 781 (4th Cir. 1989) ("The asserted injury to the right to cast an effective vote . . . of extraordinary importance.").

When the interest at stake is a core constitutional right, courts have found the harm to be irreparable without consideration of the availability of a monetary remedy.[2] *See Stuart v. Huff*, 834 F. Supp. 2d 424, 427-28 (M.D.N.C. 2011) (observing that if plaintiffs establish they are likely to succeed on the merits, "the threatened constitutional violations unquestionably represent irreparable harm") (citing *Elrod v. Burns*, 427 U.S. 347 (1976)); *Cannon v. N. Carolina State Bd. of Educ.*, 917 F. Supp. 387, 391 (E.D.N.C. 1996) ("Should the election proceed under the current plan [challenged as a racial gerrymander], plaintiffs' constitutional rights would be placed in great jeopardy, and the likelihood of irreparable harm would thus be quite high."); *see also Johnson v. Miller*, 929 F. Supp. 1529, 1560 (S.D. Ga. 1996) ("[I]rreparable harm in its purest sense will be occasioned by denying this preliminary injunction and by permitting use of a [districting] plan violating Plaintiffs' equal protection rights.").

The potential harm to Plaintiffs here is irreparable. It is near-impossible to provide adequate relief for claims such as the ones raised here during or after an election. *See, e.g.*, *Republican Party of N.C.*, 841 F. Supp. at 728. If preliminary relief is not granted and Plaintiffs prevail at trial, Plaintiffs' core constitutional rights will have been violated by an election being decided using districts that were impermissibly drawn based on race. The harm also would extend to the damaging consequences of classifying individuals by race in the first instance. *See Shaw v. Reno*, 509 U.S. 630, 643, 647 (1993)

[2] Even if the availability of monetary relief were relevant, Plaintiffs do not request any such relief because there is no remedy that can compensate them for the harm inflicted by racially-gerrymandered congressional districts.

(observing that racial classifications "threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility").

Because the potential harm to Plaintiffs is the deprivation of their constitutional rights, the prospect of irreparable harm is established and "the likelihood of success on the merits is so 'inseparably linked' to the proving of an actual harm that the court may proceed directly to consider the merits of [Plaintiffs'] action." *Dean*, 550 F. Supp. 2d at 602 (citing *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 511 (4th Cir. 2002)). *See also Stuart*, 834 F. Supp. 2d at 427-28 ("[T]hreatened constitutional violations unquestionably represent irreparable harm.").

C. Plaintiffs Are Likely to Succeed in Proving That The New Boundaries for Congressional Districts 1 and 12 Are An Unconstitutional Racial Gerrymander

1. An unconstitutional gerrymander exists when race was the predominant factor and there is no compelling interest to justify the use of race

"[A] State may not, absent extraordinary justification, . . . separate its citizens into different voting districts on the basis of race." *Miller*, 515 U.S. at 911-12 (internal quotations and citations omitted). The reason is simple: "When the State assigns voters on the basis of race, it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, think alike, share the same political interests, and will prefer the same candidates at the polls." *Id.* (internal quotations and citations omitted). A voting district is an unconstitutional racial gerrymander when a redistricting plan "cannot be understood as anything other than an effort to separate voters into

different districts on the basis of race, and that the separation lacks sufficient justification." *Shaw*, 509 U.S. at 649.

In a racial gerrymander case, "[t]he plaintiff's burden 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." *Miller*, 515 U.S. at 916. "To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, such as compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations." *Id*. Public statements, submissions, and sworn testimony by the individuals involved in the redistricting process are relevant. *See, e.g.*, *Bush v. Vera*, 517 U.S. 952, 960-61 (1996) (examining the state's preclearance submission to the DOJ and the testimony of state officials).

If Plaintiffs establish that race was the predominant factor, the Court applies strict scrutiny, and "the State must demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest." *Miller*, 515 U.S. at 920.

2. It is undisputed that race was the predominant factor in drawing CD 1

Here, there is no doubt that race was the predominant factor driving the creation of CD 1. As detailed at length above, the State has admitted as much.

First, the legislators responsible for the new CD 1, Rucho and Lewis, have conceded in public statements and sworn testimony that CD 1 was drawn based on race. Among other things, Rucho and Lewis have expressly stated that CD 1 was redrawn to

include a majority BVAP "as required by Section 2 of the Voting Rights Act" and they added to CD 1 "a sufficient number of African-Americans so that [CD 1] can re-establish as a majority black district." Devaney Decl., Ex. 13. They have also stated that they sacrificed traditional redistricting principles to allow CD 1 to be recast with a majority-BVAP population. *See, e.g.*, *id.*, Ex. 12 ("[Most of our precinct divisions were prompted by the creation of . . . majority black [CD 1]").

In addition, North Carolina's submission for preclearance to the DOJ conceded that CD 1 had been drawn primarily with race in mind. The State could not have been more explicit: CD 1 was "re-create[d] . . . at a majority African-American level." *See id.*, Ex. 7, at 15.

There is no other justification for CD 1. The district is bizarre on its face. *See supra* at 9. It tramples over political subdivisions. It connects profoundly disparate parts of the State, including the small, rural communities of the Coastal Plain and the City of Durham. *See supra* at 9. And African-Americans in the counties from which CD 1 was created were packed into the district, just as the drawers intended. *See supra* at 6-9. Thus, it is not surprising that the North Carolina state court found it "undisputed" that race was the predominant factor in drawing CD 1. *See* State Court Opinion, at 14-15 (concluding it was "undisputed" that the General Assembly drew CD 1 as a "VRA" district with a majority-BVAP and determining that CD 1's "shape, location and racial composition" was "predominantly determined by a racial objective.").

For CD 1 to withstand constitutional scrutiny, the State must prove that its use of race is justified by a compelling state interest, which it cannot do.

3. Race was also the predominant factor in drawing CD 12

Unlike with CD 1, State officials have not conceded that CD 12 was also drawn based primarily on race, but that is the only rational conclusion from the evidence. Indeed, the only distinction between CD 1 and CD 12 is that State officials outright admitted their use of race to draw CD 1. Other than that, CD 1 and 12 reflect the same race-driven process.

Like CD 1, CD 12 is bizarrely shaped, consisting of meandering tentacles that extend in erratic directions, slicing through county lines and encircling areas otherwise carved out from the district. *See* Devaney Decl., Ex. 24. Indeed, CD 12's shape is arguably the more bizarre of the two, as it lacks any central nucleus. The district is 120 miles long but only 20 miles wide at its widest point. *See id.* It traces I-85 and includes parts of two cities that are over 90 miles apart—Charlotte and Greensboro. *See id.*

Unsurprisingly, CD 12 cannot be explained by the traditional districting principle of compactness. Prior to the 2010 Census, CD 12 had a Reock score of 0.116. Ansolabehere Report, ¶ 15. The 2011 Congressional Plan reduced CD 12's score even further—to an abysmal 0.071, a fraction of the median score for the state, 0.377. *See id.* The ratio of CD 12's area to its perimeter also declined substantially, from 2,404 to 1,839. The new CD 12 is often cited as the *least compact district in the entire country*. Devaney Decl., Ex. 26.[3]

Also like CD 1, CD 12 cannot be explained by existing political subdivisions. CD 12 weaves through six counties and does not contain a single county in its entirety, an

[3] CD 1, which the State admits was a racial gerrymander, manifests the same pattern: its Reock score was reduced from 0.39 to just 0.29. *See* Ansolabehere Report, Table 1.

accomplishment not even CD 1 can match. New CD 12 also splits 13 cities or towns, with several of those cities and towns split among three or even four different congressional districts. *See* Ansolabehere Report, ¶ 17.

The shape and composition of CD 12 are thus not explained by traditional redistricting principles. The real explanation, as shown by the evidence described above, is the State's primary focus on race in drawing the district. First, legislative leaders admitted that Section 5 preclearance requirements, which focus on racial dynamics, were part of the calculus in drawing CD 12. *See supra* at 6-9. Likewise, the State, in its Section 5 preclearance submission, called the new CD 12 "an African-American" district, and explained that the new CD 12 "maintains, and in fact increases, the African-American community's ability to elect their candidate of choice." Devaney Decl., Ex. 7.

Second, the data show that African-Americans were purposefully packed into CD 12. The BVAP of CD 12 was increased hugely%, from 43.8% to 50.7%. Ansolabehere Report, at ¶¶ 18-19; *see also* Devaney Decl., Ex. 23. This increase exceeds even the increase exhibited in the new CD 1, where the BVAP was increased by approximately 5%. *Id.*

The role of race comes into even greater focus when analyzing the demographics of CD 12 relative to the demographics of the counties that are partly or wholly within it. This larger area, referred to here as the "envelope," is the area from which the General Assembly had to draw to fill CD 12 without crossing additional county boundaries or dramatically reconfiguring CD 12. *Id.* ¶ 20. The population of CD 12 comprises 30.3%

of the population of the envelope. *Id.* ¶ 34. Now compare the likelihood that a person of a given race, who lives within the envelope, was included within CD 12:

Likelihood that a Person of a Given Race was Put in CD 12				
Population Group	Population in Envelope		Population in CD 12	
White	993,642	**67.4%**	158,959	**16.0%**
Black	396,078	**26.9%**	254,119	**64.2%**

Id. ¶¶ 34-36. In other words, under the new district lines, an individual who lives in a county included in CD 12 is *more than four times as likely* to have been included within CD 12 if that person is African-American than if he is White. Like the increase in African-Americans in the voting age population, this ratio exceeds the one present in CD 1, which state officials acknowledge was drawn based on race, where a person was approximately twice as likely to be included within CD 1 if that person is African-American than if he is White. *Id.* ¶ 22.

The same results hold at an even more granular level of analysis: comparing the racial composition of the Voting Tabulation Districts (VTDs) that were included in CD 12 in the prior map with the ones included in the Rucho-Lewis Map:

Racial Composition of VTDs in former vs. new CD 12 (Registered Voters)		
	Black	White
Remained in CD 12	**54.0%**	31.9%
Moved into CD 12	**44.0%**	37.1%
Moved out of CD 12	23.2%	**64.0%**

Id. ¶ 38. The VTDs Rucho and Lewis chose to keep in or add to CD 12 have higher Black populations. The VTDs removed from CD 12 have dramatically higher White

populations. And the net difference in percent Black registration between VTDs moved into CD 12 and VTDs removed from CD 12 is 20.9%. The same pattern holds if the metric is population generally or voting age population, rather than registered voters.

Importantly, the data also show that the State's claim that it drew the new map based on party affiliation is not true. If party registration were the predominant factor, one would expect that the percentage of African-American and White voters included within CD 12 would be equal (or nearly so) for any given party registration. That is not the case. The percentage of African-American and White voters included within CD 12 is vastly different *even holding party affiliation constant*.

First consider the "envelope analysis" discussed above, adding party registration as a control variable:

Likelihood that a Person of a Given Race and Party was put in CD 12				
Party of Registration	Population Group	Population In Envelope	Population in CD 12	Percent of Group in CD 12
Democrat	White	280,915	51,367	**18.3%**
	Black	334,427	217,266	**65.0%**
Republican	White	448,914	61,740	**13.8%**
	Black	10,341	6,199	**59.9%**
Undeclared	White	262,024	45,496	**17.4%**
	Black	51,061	30,505	**59.7%**

Id. ¶ 44. If an individual within the envelope is African-American, the odds of him having been included within CD 12 were still approximately four times higher than the if he were White—*irrespective of party*.

These disparities are significantly greater under new CD 12 than they were under the prior map. For instance, under the old map, 40.4% of White Democrats were included within CD 12. *Id.* ¶ 45. If the State drew CD 12 as a political gerrymander, not a racial gerrymander, there is no reason why that number should have been cut by more than half, down to just 18.3%.

Now consider again the VTD analysis with party registration added:

Racial Composition of VTDs in former vs. new CD 12, Controlling for Party Registration (Registered Voters)						
	Among Democrats		Among Republicans		Among Undeclared	
	Black	White	Black	White	Black	White
Remained in CD 12	79.5%	15.3%	9.6%	85.7%	37.0%	49.3%
Moved into CD 12	68.1%	24.8%	6.7%	87.0%	29.8%	55.2%
Moved out of CD 12	45.8%	48.8%	1.7%	95.6%	13.0%	78.4%

Id., Table 10. Within all three categories of party registration, the VTDs kept in CD 12 or moved into CD 12 had much higher proportions of African-American voters than the VTDs that were moved out.

Reorganizing the data to sort first by race then by party registration further undermines the State's purported explanation:

Racial Composition of VTDs in former vs. new CD 12, Controlling for Party Registration (Registered Voters)						
	Among Whites			Among Blacks		
	Dem.	Rep.	Unreg.	Dem.	Rep.	Unreg.
Remained in CD 12	31.1%	40.4%	28.4%	85.7%	2.4%	11.3%
Moved into CD 12	34.3%	36.2%	29.2%	87.0%	2.5%	14.0%
Moved out of CD 12	29.3%	45.1%	24.5%	95.6%	2.5%	12.9%

Id., Table 11. The differences in party registration between the VTDs kept or moved within CD 12 compared to those moved out are trivially small. For instance, among White voters, the VTDs kept within CD 12 had only a slightly higher percentage of Democrats than those moved out (31.1% vs. 29.3%). And remarkably, among African-American voters, the VTDs moved into CD 12 had a *lower* percentage of Democrats than the VTDs moved out (87.0% vs. 95.6%).

The quantitative and qualitative evidence all point in the same direction: race, not traditional districting principles or even political affiliation, was the dominant factor in drawing CD 12, just as it was for CD 1. *Id.* ¶ 53. Indeed, the demographic data is even more compelling for CD 12 than CD 1. So are the implications from the face of the map. The way that the U.S. Supreme Court described a predecessor version of CD 12 applies with equal force to the 2011 iteration: CD 12 "includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color

of their skin, [and therefore] bears an uncomfortable resemblance to political apartheid." *Shaw*, 509 U.S. at 647.

D. There Is No Compelling Interest for Drawing The Lines Based on Race

Because race was the predominant factor motivating the creation of CD 1 and CD 12, strict scrutiny applies and "the State must demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest." *Miller*, 515 U.S. at 920. The U.S. Supreme Court has assumed, without deciding, that compliance with Section 2 and Section 5 of the VRA can be compelling state interests. *Bush*, 517 U.S. at 977. But the creation of majority-minority districts is narrowly tailored to achieve a compelling state interest only where such districting is "reasonably necessary" to comply with the VRA. *Id.*; *see also Shaw I*, 509 U.S. at 655.

There is no compelling interest to justify North Carolina's use of race in redrawing CD 1 and CD 12. First, these districts find no basis in Section 5 of the VRA. While Plaintiffs lament the U.S. Supreme Court's recent decision in *Shelby County* and support legislative efforts to restore application of Section 5's preclearance requirements, the current state of the law is that no North Carolina counties remain covered jurisdictions for purposes of that VRA provision. And even if Section 5 were applicable, it by no means compelled the affirmative creation of two new majority-minority districts. Second, the State had no basis for concluding that Section 2 required the creation of these two majority-minority districts.

1. The State can assert no compelling interest in Section 5 of the VRA

Section 5 of the VRA mandates that certain "covered" jurisdictions obtain preclearance from the DOJ or from the District Court for the District of Columbia before changing any "standard, practice, or procedure with respect to voting." 42 U.S.C. § 1973c. In North Carolina, 40 counties were considered "covered" jurisdictions for purposes of Section 5. Because the U.S. Supreme Court held that the coverage formula provided in Section 4(b) of the VRA is unconstitutional, *Shelby Cnty., Ala. v. Holder*, 570 U.S. ___, 133 S. Ct. 2612 (2013), the State cannot rely on compliance with Section 5 as a compelling state interest.

But even under the law as it stood prior to *Shelby County*, the changes the State made to CDs 1 and 12 would not have been required by Section 5, and the State would have been precluded from relying on that provision to defend its unconstitutional actions. For purposes of preclearance under Section 5, the standard normally applied in the redistricting context is one of "retrogression." *Beer v. United States*, 425 U.S. 130, 141 (1976). "'Retrogression' may be defined as a decrease in the new districting plan or other voting scheme from the previous plan or scheme in the absolute number of representatives which a minority group has a fair chance to elect." *Ketchum v. Byrne*, 740 F.2d 1398, 1402 n.2 (7th Cir. 1984). As shown by the evidence described above, African-Americans were consistently able to elect candidates of their choice in CDs 1 and 12 under the previous two redistricting maps, notwithstanding that neither district was drawn as a majority-BVAP district. The retrogression prohibition in Section 5 did not require the State to convert those districts into majority-minority districts.

2. Section 2 of the VRA did not require the creation of majority-minority districts here

Section 2 of the VRA requires the creation of majority-minority districts only where three preconditions are met: (1) the minority group is "sufficiently large and geographically compact to constitute a majority" in a single-member district; (2) the minority group is "politically cohesive"; and (3) the white majority votes "sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986); *see also Growe v. Emison*, 507 U.S. 25, 40 (1993). In order for a state to satisfy strict scrutiny for race-based redistricting based on Section 2 compliance, it must have a "'strong basis in evidence' for concluding that the creation of a majority-minority district is reasonably necessary to comply with § 2." *Bush*, 517 U.S. at 977 (quoting *Shaw I*, 509 U.S. at 656). "[G]eneralized assumptions about the prevalence of racial bloc voting" do not qualify as a "strong basis in evidence." *Id.* at 994 (O'Connor, J., concurring). Moreover, the district must "substantially address[]" the potential Section 2 liability without "subordinat[ing] traditional districting principles to race substantially more than is 'reasonably necessary' to avoid" that liability." *Id.* at 977, 979.

Here, the State had no basis for concluding that Section 2 required it to redraw CD 1 and CD 12 as majority-minority districts. Neither of these districts was a majority-minority district under the prior two congressional plans, and no lawsuits were filed challenging the 1997 or 2001 versions of these districts under Section 2. *See supra* Section II.A. Indeed, no statewide Section 2 challenge of any kind had been filed in

North Carolina in the past 30 years. *Id.* Moreover, minority-preferred candidates have consistently won in the prior iterations of CD 1 and CD 12, even without majority-minority districts. *Id.* Thus, the white majority has not voted as a bloc to defeat the candidates favored by African-American voters in these districts—just the opposite, the election results show significant cross-over voting by the white majority in support of African-American candidates. Finally, as evidenced by the tortured district lines that stretch every which way to encompass African-American voters, *see supra*, the minority populations in these districts are not geographically compact enough to comprise a majority in a single-member district.

Section 2 cannot be invoked as a talisman by a State seeking to pack minority voters into a district, as the General Assembly sought to do here. Compliance with Section 2 is not a compelling interest that justifies the General Assembly's racial gerrymanders of CD 1 and CD 12.

E. The Equities Strongly Favor Granting Preliminary Relief

The balance of equities also points strongly in favor of preliminary relief for at least three reasons: (1) the potential harm to Defendants is minimal, especially when compared to the potential harm to Plaintiffs; (2) there is sufficient time to adopt new district boundaries for CD 1 and CD 12; and (3) Plaintiffs did not delay in raising their claims.

The equities weigh in favor of granting Plaintiffs' motion because any burden Defendants may claim pales in comparison to the deprivation of Plaintiffs' core constitutional rights:

> The balance of hardships in this case decidedly favors the plaintiffs. Should the election proceed under the current plan, plaintiffs' constitutional rights would be placed in great jeopardy, and the likelihood of irreparable harm would thus be quite high. Delaying the . . . election, or conducting it under the standard five at-large member plan, would cost little when compared to the damage otherwise risked by plaintiffs and all those similarly situated in being deprived of their Constitutional rights.

Cannon, 917 F. Supp. at 391.[4]

Defendants are likely to claim harm from the administrative costs of redistricting and potential voter confusion. But "a state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction." *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (internal quotations and citation omitted). *See also Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003) (finding that defendant "is in no way harmed by issuance of a preliminary injunction which prevents it from enforcing a regulation, which, on this record, is likely to be found unconstitutional").

Further, this motion is filed seven weeks before candidates may even register (February 10), more than four months before the primary election (May 6), and more than 10 months before the general election (November 4). There is ample time for the Court to implement and the voters to digest adjustments to the boundaries—the General Assembly only needs a mere two weeks to "remedy any defects" in voting districts, after

[4] The likely harm to Defendants, and a comparison of that harm with the likely harm to Plaintiffs (referred to as the "hardship balancing test"), was at one point its own factor in the test for granting preliminary relief. *See, e.g.*, *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4th Cir. 1991). More recently, that comparison appears to have been subsumed within a broader balancing of the equities.

which the Court may adopt its own interim plan if the General Assembly fails to do so. *See* N.C. Gen. Stat. § 120-2.4. Indeed, there is more time than existed approximately 15 years ago, when in the course of redistricting litigation a new map was enacted on May 22, 1998, less than six months before the general election. *See Cromartie v. Hunt*, 133 F. Supp. 2d 407, 410 (E.D.N.C. 2000) (reciting the procedural history of the litigation). And unlike in that case, here Plaintiffs' claims center on only two of North Carolina's congressional districts. This more narrow focus weighs in favor of granting preliminary relief, too. *See NAACP-Greensboro Branch v. Guilford Cnty. Bd. of Elections*, 858 F. Supp. 2d 516, 528 (M.D.N.C. 2012) (finding the equities weigh in favor of preliminary relief where the case "does not involve a 'time-consuming' or complex reapportionment"); *Reynolds v. Sims*, 377 U.S. 533, 585 (1964) ("[O]nce a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan."); *Desena v. Maine*, 793 F. Supp. 2d 456, 462 (D. Me. 2011) ("Constitutional violations, once apparent, should not be permitted to fester; they should be cured at the earliest practicable date.").

Further, Plaintiffs have not delayed in raising their claims. To the contrary, Plaintiffs filed suit less than four months after the Supreme Court issued its decision in *Shelby County*, and shortly after it became apparent that the ongoing state court litigation would not be resolved prior to the February 2014 candidate filing deadline. Plaintiffs then filed this motion promptly after filing suit. Plaintiffs' diligence in raising their claims and pursuing relief should further tip the scale in favor of granting relief. *See*

NCAAP-Greensboro Branch, 858 F. Supp. 2d at 528 (finding the equities weighed in favor of preliminary relief where "Plaintiffs did not unduly delay bringing suit and filed for a preliminary injunction" even though the motion was filed six days before the candidate filing period opened).

Defendants may argue that even if an irreparable constitutional violation is likely, the Court should defer a decision on this motion until the State Court case has been resolved. But the state court is *not* in the process of adopting a new districting plan, and there is no reason to believe that it could adopt a new plan in time for the upcoming election, even if the state court plaintiffs ultimately prevailed on appeal. Because "it [is] apparent that the state court, through no fault of the District Court itself, [will] not develop a redistricting plan in time for the primaries," this Court is "[o]f course . . . justified in adopting its own plan." *Growe v. Emison*, 507 U.S. 25, 36 (1993).

F. Granting Preliminary Relief Is In The Public Interest

Finally, granting preliminary relief is in the public interest. It goes without saying that "upholding constitutional rights is in the public interest." *Legend Night Club v. Miller*, 637 F.3d 291, 303 (4th Cir. 2011) (citing *Giovani Carandola*, 303 F.3d at 521). This is particularly true where the constitutional right involves the right to vote: "public interest requires the furtherance of the constitutional protections that attach to the franchise." *Republican Party of N.C.*, 841 F. Supp. at 732. *See also Hutchinson v. Miller*, 797 F.2d 1279, 1283 (4th Cir. 1986) (acknowledging and affirming "the significant duty of federal courts to preserve constitutional rights in the electoral process").

The public also has a strong policy interest in avoiding the damaging collateral effects of campaigns and elections based on racially gerrymandered district lines:

> Classifications of citizens solely on the basis of race are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. They threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility. . . .
>
> [Apportionment based on race] reinforces the perception that members of the same racial group—regardless of their age, education, economic status, or the community in which they live—think alike, share the same political interests, and will prefer the same candidates at the polls. . . .
>
> By perpetuating such notions, a racial gerrymander may exacerbate the very patterns of racial bloc voting that majority-minority districting is sometimes said to counteract.

Shaw I, 509 U.S. at 643, 647, 648 (internal quotations and citations omitted).

Moreover, as discussed above, there is sufficient time to grant relief without undermining the public's interest in an orderly election. Any such concerns "simply serve to emphasize why a preliminary injunction during these early stages of the filing period would better serve the public than waiting until the eve of the election." *NAACP-Greensboro Branch*, 858 F. Supp. 2d at 529. At that point, or any time thereafter, "[a] victory on the merits by plaintiffs would require the court either to nullify the elections that had already taken place and thereafter order new elections at considerable cost and time to the public and to all involved, or to bring the campaigns then in process to a staggering halt . . . . Either alternative would be equally undesirable and would result in further delay and hardship to plaintiffs in vindicating their rights established by a victory on the merits." *Republican Party of N.C.*, 841 F. Supp. at 728.

For these reasons, the public has a strong interest in this Court granting preliminary relief now, before the election cycle begins.

IV. CONCLUSION

For the reasons stated above, the Court should enter a preliminary injunction enjoining the State from holding elections under the 2011 Congressional Plan.

Respectfully submitted, this the 24th day of December, 2013.

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Local Rule 83.1
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CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing **PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION** to be made by electronic filing with the Clerk of the Court using the CM/ECF System, which will send a Notice of Electronic Filing to all parties with an e-mail address of record, who have appeared and consent to electronic service in this action.

This the 27th day of January, 2014.

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