

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

SANDRA LITTLE COVINGTON, *et al.*,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, *et al.*,

Defendants.

No. 1:15-cv-00399

**[PROPOSED] AMICI CURIAE BRIEF OF
DEMOCRACY NORTH CAROLINA AND
LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA
IN OPPOSITION TO DEFENDANTS' REDISTRICTING PLAN
AND IN SUPPORT OF PLAINTIFFS**

Democracy North Carolina (“Democracy NC”) and the League of Women Voters of North Carolina (“LWV NC”) submit this brief as *amici curiae* in support of Plaintiff’s Response in Opposition to Defendants’ Notice of Filing and Enactment of House and Senate Districting Plans.

STATEMENT OF INTEREST

Democracy NC is a nonpartisan, nonprofit organization that seeks to protect democracy in North Carolina and promote citizens’ ownership of their government through original research, policy advocacy, grassroots organizing, civic engagement, and leadership training. Democracy NC works for increased voter participation and pro-democracy reforms to improve government accountability and ethics and address the issue of money in politics on behalf of its supporters who are registered voters throughout the

state of North Carolina. In furtherance of its mission to protect North Carolina's democracy and improve government accountability, Democracy NC conducts a redistricting reform campaign through which it seeks to educate North Carolina voters about the importance of fair maps, to engage voters in the redistricting process, and to promote policy change to put an end to partisan and racial gerrymandering.

League of Women Voters of NC is a nonpartisan, community-based organization formed in 1920 after the enactment of the Nineteenth Amendment granting women the right to vote. The LWV NC is dedicated to encouraging its members and the people of North Carolina to exercise their right to vote as protected by the Constitution and the Voting Rights Act of 1965. The mission of LWV NC is to promote political responsibility through informed and active participation in government. The LWV NC strives to promote citizen education and make democracy work by, among other things, removing unnecessary barriers to full participation in the electoral process – including partisan and racial gerrymandering. Currently, LWV NC has 17 local leagues across the state with members who are registered and regular voters.

Due to the active, statewide participation of their membership in the redistricting process, *Amici* are in a unique position to provide this Court with an important perspective on the public hearings recently held by Defendants, which Defendants argued were crucial for the creation of remedial maps. Further, *Amici* have a special interest in this case as plaintiffs in the consolidated state court case, *Dickson v. Rucho*, challenging many of the 2011 districts at issue here as unconstitutionally based on race, which is currently pending

before the North Carolina Supreme Court. 766 S.E.2d 138 (N.C. 2014), *vacated*, (135 S. Ct. 1843 (2015), remanded to 781 S.E.2d 404 (N.C. 2015); *vacated and remanded*, 137 S. Ct. 2186 (2017).

SUMMARY OF THE ARGUMENT

Despite Plaintiffs' arguments and this Court's own conclusion that "the General Assembly already has had ample time to enact a remedial districting plan," the Court graciously granted Defendants extra time to implement their "commendable goal of obtaining and considering public input and engaging in robust debate and discussion." Order, July 31, 2017, ECF No. 180 at 5-6. The Court gave Defendants two options, one with a September 1 deadline and the other with a September 15 deadline; the latter provided more time for meaningful public involvement. *Id.* at 7-9

Tellingly, Defendants chose the earlier, September 1 deadline and then proceeded to implement a public hearing process that citizens repeatedly labeled "a farce," "inexcusable," and "shameful."

"[A] hearing three days after the maps have been released and a day after the data is released is just ridiculous," John Haywood told legislators at the Beaufort County Community College. Beaufort Public Hr'g Tr. 37, Aug. 22, 2017, ECF No. 184-11. The college was one of seven sites opened for a simulcast public hearing on August 22 – except most sites were in cramped rooms with inferior audio-visual systems.

"I think it was totally disrespectful for us to be here at 4:00 p.m. in a room this small," Pam Woods said at the Beaufort location. "It can't be a public meeting if the public can't

get here.” *Id.* at 22. Other locations were even worse. The rooms chosen at the community colleges in Fayetteville, Charlotte and near Greensboro had an announced combined capacity of 151 seats – but more than 350 people showed up at those locations on August 22.

Ironically, Defendants blamed the Court’s scheduling for their inability to select better venues and disclose their maps well ahead of the hearings. Instead of pursuing what the Court called a “commendable goal of obtaining and considering public input,” Defendants’ actions demonstrated a fundamental disrespect, if not contempt, for the public’s involvement and, indeed, for this Court’s decision to grant them extra time. *Amici* Democracy NC and LWV NC believe it’s important for this Court to receive a detailed description of these actions and the deep disappointment the public feels about the public hearing process.

Enhancing public participation is central to the missions of *Amici*; respecting the will of the people is central to the state and federal constitutions. The North Carolina Constitution, for example, is replete with such declarations as, “All power is vested in and derived from the people” and “[t]he people have a right to . . . instruct their representatives.” N.C. Const. art. I, §§ 2, 12. The process used by Defendants to draw the maps completely contradicted these mandates. Combined with the fact that Defendants have had more than ample time to remedy their maps’ deficiencies, we urge the Court to take full control of any further map drawing, protect the public’s interests, and bestow no more generosity upon Defendants.

ARGUMENT

I. **DESPITE DEFENDANTS' ASSERTIONS THAT PUBLIC INPUT WAS CRUCIAL, THE PROCESS THROUGH WHICH THE REMEDIAL MAPS WERE ADOPTED DEMONSTRATE A BLATANT DISREGARD FOR THE PUBLIC AND THE INSTRUCTIONS OF THIS COURT**

A. **Public Input was Ignored in Establishing Criteria for the Remedial Maps**

On August 4, 2017, the House and Senate redistricting committees met in joint session to hear public comment about the criteria that should be used in drawing remedial maps for General Assembly districts. This public hearing was the first step in a two-step process Defendants adopted for obtaining public input. The second step involved receiving public comment about the remedial maps after drafts were released. But even before the first step began, Defendants announced they would use Dr. Thomas Hofeller to draw their maps, the same computer expert who drew the plans declared unconstitutional by this Court. As a result, many of the 29 speakers at the August 4 public hearing on criteria expressed a lack of confidence in the Defendants' openness to their input.

“Bringing back Dr. Thomas Hofeller, who failed so miserably in protecting democracy when drawing the 2011 maps, only shows that you desire to continue to undermine our democracy,” said William Smith. Joint Redistricting Comm. Meeting Tr. 44, Aug. 4, 2017, ECF No. 184-8. “The fact that you have again hired the same consultants to draw the – that drew the current illegal maps is troubling,” said Heather Simon. *Id.* at 33-34.

Some speakers also expressed a concern that the maps had already been drawn, since Dr. Hofeller had already provided the county groupings of districts to the Court many

months before its July 31, 2017 ruling. For example, speaker Jen Jones stated:

But just as leadership is confident in Thomas Hofeller to redraw our maps, the same man who did so in 2011, I am confident that those maps have already been drawn, that the criteria for those maps is already set. And I would really appreciate as a member of the public, to see those maps.

Id. at 39. During the hearing, Rep. Henry “Mickey” Michaux pointedly asked House Redistricting Committee Senior Chair David Lewis if new maps were indeed already drawn but not being disclosed to legislators or the public. Rep. Lewis responded, “I can assure this body that none has been drawn at my direction, and that I have direct knowledge of.” *Id.* at 72.

Amici’s analysis of the testimony at the hearing indicates that 28 of the 29 speakers called for criteria or an independent map-drawing process that minimized partisan and racial bias. For example, Phyllis Demko criticized the way the General Assembly relied on partisan election results to draw Congressional districts and asked that the joint committee “adopt criteria that do not include addresses of candidates or incumbents and that residents’ voting histories not be considered.” *Id.* at 30.

“I would recommend that we basically use criteria that does not set partisan targets, does not protect incumbents, does not exclude threats to incumbents, and use criteria that excludes data on party registration, on race and ethnicity except where required by the Federal Voting Rights Act,” said Pam Schwingl. *Id.* at 38.

“In creating the districts, addresses of lawmakers, current and past, party affiliation, voting history of the voters, or any other data other than that which is required by law, should not be used to help a party or a politician in any way,” said Beth Gerall. “Before

districts are approved, they must be evaluated and demonstrate party competitiveness and no racial bias.” *Id.* at 55-56.

In addition to receiving testimony in Raleigh on August 4, the House and Senate Redistricting Committee invited the public to submit comments online about the redistricting process, from July 26 to August 26. State Sen. Jeff Jackson coordinated an analysis of the more than 4,300 comments submitted and wrote an article for the Charlotte Agenda about them. The comments showed “an expression of contempt for gerrymandering and a demand for fair, impartial districts,” wrote Sen. Jackson. “[O]nly 38 could even be remotely constructed as supporting partisan redistricting.” One of the 99.2% opposing partisan criteria said, “It is past time to create districts without gerrymandering. We need straightforward districts, free from partisan machinations. This issue is important for people to have confidence in our state government.”¹

Nevertheless, at the August 10 joint meeting of the House and Senate Redistricting Committees, the Republican majority adopted nine criteria for drawing new maps, including three that were in direct opposition to the messages consistently delivered by the public in their in-person and online testimony. The committee chairs cited public testimony in support of such adopted criterion as not dividing municipalities, but these three received strong public opposition:

¹ See Jeff Jackson, *Behold the smackdown of gerrymandering that are your 4,300 public comments to the redistricting committee*, Charlotte Agenda, Sept. 5, 2017, <https://www.charlotteagenda.com/102661/gerrymandering-jeff-jackson-north-carolina-public-comments>.

- #7. “Incumbency Protection: Reasonable efforts and political considerations may be used to avoid pairing incumbent members of the House or Senate with another incumbent in legislative districts drawn in the 2017 House and Senate plans. The Committee may make reasonable efforts to ensure voters have a reasonable opportunity to elect non-paired incumbents of either party to a district in the 2017 House and Senate plans.”²
- #8. “Election Data: Political consideration and election results data may be used in the drawing of legislative districts in the 2017 House and Senate plans.”³
- #9. “No Consideration of Racial Data: Data identifying the race of individuals or voters shall not be used in the drawing of legislative districts in the 2017 House and Senate plans.”⁴

By contrast, several criteria that directly addressed the concerns of nearly every member of the public who spoke or submitted comments electronically were rejected by the majority-party members on the redistricting committees. For example, Sen. Ben Clark submitted a criterion that spoke to the public’s opposition to partisan gerrymandering. Joint Redistricting Comm. Meeting Tr. 165ff, Aug. 10, 2017ECF No. 184-9. His proposal read: “Maintaining or establishing a partisan advantage for any party shall NOT be a criterion for the construction or approval of House and Senate district plans.” *Id.*

Just before legislators voted on Sen. Clark’s proposal, Sen. Terry Van Duyn told members of the committees, “I’d just like to be on record in saying I think this is the most

² See *Proposed 7. Incumbency Protection*, House Select Committee on Redistricting, Aug. 10, 2017, <http://www.ncleg.net/documentsites/committees/house2017-183/8-10-2017/Proposed%207.%20Incumbancy%20Protection.pdf>.

³ See *Proposed 8. Election Data*, House Select Committee on Redistricting, Aug. 10, 2017, <http://www.ncleg.net/documentsites/committees/house2017-183/8-10-2017/Proposed%208.%20Election%20Data.pdf>.

⁴ See *Proposed 9. No Consideration of Racial Data*, House Select Committee on Redistricting, Aug. 10, 2017, <http://www.ncleg.net/documentsites/committees/house2017-183/8-10-2017/Proposed%209.%20No%20Consideration%20of%20Racial%20Data.pdf>.

important criteria, given what we heard in public comment.” *Id.* at 167. But the criterion was rejected on a party-line vote, 17 for and 32 against. *Id.* at 167-174.

The public’s call for an appropriate recognition of racial data to comply with the Voting Rights Act and Constitution was also dismissed. For example, Rep. Darren Jackson, House Democratic leader, proposed a package of six criteria that was voted down. *Id.* at 187ff. The first criterion read: “Race will not be the predominant factor used to redraw the boundary of any House or Senate district unless that decision is supported by legislative findings based on substantial evidence that the district’s boundaries are necessary to avoid a violation of the Voting Rights Act, properly interpreted.” *Id.*

Similarly, Sen. Erica Smith-Ingram offered a criterion that directly addressed the racial gerrymandering of the 28 districts that were the subject of the Court’s order. *Id.* at 174ff.

Her criterion read:

None of the nine Senate districts and 19 House districts deemed as unconstitutional by the US Supreme Court in the *Covington* case shall have a total black voting age population higher than that which existed in those enacted NC legislative districts that were in effect in 2010, except for when a district is naturally occurring because it is drawn compactly or drawn in respect of the Whole County Provision.

Id. Sen. Smith-Ingram’s proposed criterion to prevent packing black voters into a small number of districts was also rejected on a party-line vote after House Redistricting Committee Chair Nelson Dollar argued that the Plaintiffs in the *Covington* case “brought no such claim [of impermissible packing of black voters] in the case to start with.” He backed up his claim by reading a footnote from this Court’s decision, which he misread to the members as, “In reaching this conclusion, we make no finding that the General

Assembly acted in bad faith . . . nor do we consider the challenged districts involved any impermissible packing of minority voters, as plaintiffs acknowledge, they bring no such claim.” *Id.* at 177-178.

Rep. Mickey Michaux pointed out that Rep. Dollar’s quotation left out an important word. Michaux noted that the Court’s footnote “says, ‘nor do we consider whether the challenged districts’ – ‘whether the challenged districts involved any impermissible packing.’ They didn’t rule out any impermissible packing,” Michaux emphasized. “It just says they didn’t consider it in this decision.” *Id.* at 179. But Dollar shot back, “That’s not what the footnote reads here. And I would point out to the gentleman that what is – is noted here, in the record, is as plaintiffs acknowledge, they bring no such claim.” *Id.* at 179.

The 17-32 vote against Sen. Smith-Ingram’s proposal followed, and that ended the debate on whether, or how, racial data should be included as a criterion.

B. The Notice of Public Hearing as Well as The Facilities and Resources Provided for the Hearing Were Grossly Inadequate and Offensive to the Public Interest

On August 16, Defendants announced that simultaneous public hearings on the draft maps would be held in six cities on August 22, beginning at 4:00 pm. A seventh site was soon added. The available locations, with the number of seats available at each site, according to the Senate Redistricting Committee’s announcement, were as follows⁵:

⁵ See *Aug. 22, 2017 Redistricting Public Hearing Sites*, Senate Redistricting Committee, Aug. 22, 2017, <http://www.ncleg.net/documentsites/committees/senate2017-154/08-22-2017/Public%20Hearing%20Sites%20-%20Updated.pdf>. Column with “# Signed-In on 8/22” is from sign-in sheets provided by House Select Committee on Redistricting staff.

Location	City	Address	# Seats Available	# Signed-In on 8/22
NC General Assembly	Raleigh	Legislative Office Building Room 643		351
Central Piedmont Community College	Charlotte	1112 Charlottetowne Ave Hall Bldg, Rooms 215/216	45-55	139
Fayetteville Tech. Community College	Fayetteville	2817 Fort Bragg Road, GCB, Room 108	66	102
Caldwell County Community College	Hudson	2855 Hickory Blvd, Bldg B, Room 104	75	94
Guilford Technical Community College	Jamestown	601 E Main St, Medline Campus Center, Rm 360	25-30	115
Halifax County Community College	Weldon	100 College Road, Bldg 100, Room 108	125	76
Beaufort County Community College	Washington	5337 US Hwy 264 East, Building 9, Room #935	59	76

The small number of seats available and the lack of locations in southeastern and western North Carolina brought an immediate response from the public. Once again, Defendants attempted to use the Court’s ruling as a justification for their action. In response to a Buncombe County resident asking why no hearing would be held in the Asheville area, Rep. David Lewis sent an email blaming “the compressed time schedule we are operating under,” as well as “the fact that no districts in Buncombe or west of Buncombe are changing in any way.” But Rep. Lewis’ House Select Committee on Redistricting has Republican legislators from every region, including the mountains and southeast, so why should the public hearings bypass those regions?

When pressed by *Amici* about the limited seating, particularly for the Triad and Charlotte regions, Rep. Lewis’ staff explained that the rooms were the “best we could do with the limited time” between the Court’s ruling and September 1 deadline for submitting

remedial district plans. In fact, *Amici* later learned that much larger rooms were available on August 22 on the campuses, sometimes even in the same buildings, but Defendants decided to select meeting rooms with the technological capacity to be linked together across the state through simulcasting, even if they were very small and were not linked via audio-video to a nearby overflow room. Despite the obvious barriers that small rooms would create for public participation, Defendants stuck to their plan – with predictable results.

Compounding the unworkable locations for the August 22 hearings, Defendants did not release the map for the 120 House districts until Saturday, August 19. The map for the 50 Senate districts was released on Sunday evening, August 20. However, neither map came with the crucial underlying data to describe the registration profile and other features of the proposed districts. Finally, on Monday, August 21, barely 24 hours before the public hearings, Defendants released a statistical package (“stat pack”) – but it included no registration information and no data about the racial composition of the districts. It only included the population totals and partisan election results by district for 10 statewide races selected from 2010 through 2016. The stat pack reinforced Defendants’ choice of criteria that discounted race and prioritized partisan election outcomes.

Despite the poor choice of locations, hundreds of citizens turned out for the August 22 hearings. Long lines developed before 3:00 pm, the designated time for people to begin signing up to speak. People began leaving even before the event started at 4:00 pm because it was apparent the crowds could not fit in the rooms. Eventually, more than 950 citizens

signed the attendance logs at the seven sites, according to staff of the Senate Redistricting Committee. Over 250 signed in at the Jamestown (Guilford County) and Charlotte locations, or three times the number of seats available. About twice as many showed up in Fayetteville as seats available for the public. Overflow rooms were opened in some places, including two overflow rooms at the General Assembly that filled to near capacity. Many of the rooms had inferior audio-visual systems that sporadically failed completely. Even the main rooms at some locations had sound problems or became disconnected from the simulcast broadcast, creating frustration for everyone.

At the Jamestown hearing, Bill Doom told the legislators:

[T]his hearing is set up as an insult with the timing, the lack of data, the lack of space, the lack of electronic facilities, et cetera. All [that] tell[s] me that nobody really wanted any feedback, that they're going to do the minimum requirement by law and let it go. That is a disrespect for self-rule.

Jamestown Public Hr'g Tr. 28, Aug. 22, 2017, ECF No. 184-15. "That we only received these maps on Saturday and did not receive documentation to back up the justification for those new lines is unreasonable," said Roxanne Griffin. *Id.* at 31.

The anger and frustration was palpable. People felt abused and humiliated. "I am horrified at this process," said Gloria Faley, who arrived at the hearing in Raleigh at 1:00 and didn't speak until after 7:00 p.m. "Your decision is already made. It's a sham." Raleigh Public Hr'g Tr. 112-113, Aug. 22, 2017, ECF No. 184-10.

"[R]eleasing the maps and information on the redrawn district maps so late and so last-minute on the day before public hearings is an act of disrespect to all the people of this state," Kim Eng Koo said at the Weldon location. "This last-minute release maneuver

smacks of dishonesty and secrecy, a lack of openness, which is a disgraceful act for public officials.” Weldon Public Hr’g Tr. 46, Aug. 22, 2017, ECF No. 184-16.

At one overflow room at the General Assembly’s Legislative Building in Raleigh, 64 people signed a petition circulated to inform this Court about the terrible sound quality. Their action was the inspiration for filing this brief. Many added their own comments: “extremely poor sound/visual quality”; “multiple times connection was broken”; “disgraceful”; “could not hear at the public hearing”; “this is how democracy does not work”; “unacceptable audio”; “inexcusable.” The petition signers came from Pinehurst, Goldsboro, Wilson, Spring Lake, Pittsboro and all parts of the Triangle.

A few minutes after the hearing began at the Legislative Building, Bob Hall, executive director of Democracy NC, approached Erika Churchill, a senior legislative staffer for redistricting committees, about the obvious problem of having hundreds of people speak in rotation through seven sites – a prospect that at best could take over 10 hours. It would be far better, he suggested, to stop the simulcasting and continue with seven independent hearings in seven locations, with just the speakers at that site giving testimony to the redistricting committee members present, with the proceedings audio recorded. Churchill said the intent was to have the proceedings all recorded by the court reporter at the Raleigh site in real time, but she said she would pass along the recommendation to stop the simulcasting to the committee chairs.

Frustrations only grew worse as the simulcasting between the seven locations periodically broke down or could not be heard. Almost 300 people were signed up to speak,

but as the hours went by, more people walked out. *See also* Appendix (providing additional comments from people about their frustrations). Despite vocal complaints, the co-chairs in Raleigh continued to ask a few speakers from one location to give their three minutes of testimony, then asked another location for a few speakers, each one called forward by a redistricting committee member at the site.

After about three hours – with about 50 people testifying – Rep. David Lewis announced that a new plan would begin because “we have a total of 221 speakers left to speak. That would require, at the pace we are moving, approximately 11 hours,” he said. “That is in excess of what a court reporter would be able to deal with in making the transcripts.” He explained that two recordings were being made at each location, “which can be delivered to court reporters to create a transcript. And that is what we are going to do. The seven sites now will operate independently of each other.” The new plan would make it possible “to get through the public comment in a much more time-efficient manner,” he continued. “We will then be able to have multiple court reporters compile one record that would be available for the members of the committee as we move forward in this process.” Raleigh Public Hr’g Tr. 110-111, Aug. 22, 2017, ECF No. 184-10.

It is not clear why it took three hours for Rep. Lewis and legislative leaders to decide to change the public hearing process.

C. Defendants Disregarded All of the Voluminous and Meaningful Public Comment that They Received

It is clear the public’s testimony on August 22 had no impact on the General Assembly’s adoption of remedial maps. The transcripts of the public testimony indicate they were not

completed until Monday, August 28, which is the day the full House and Senate adopted their respective plans by floor votes. At the August 25 meeting of the House Redistricting Committee, Rep. David Lewis said, “I . . . obtained the audio recordings and have reviewed them myself.” House Select Comm. on Redistricting Meeting Tr. 29, Aug. 25, 2017, ECF No. 184-18. But none of the changes that Rep. Lewis made to the pre-hearing House map to create the refined map or “proposed committee substitute” distributed to members on August 25 were the result of public comment, according to Lewis. *Id.* at 16-17.

Similarly, Senate Redistricting Committee Chair Ralph Hise told his committee that “we’ve made no changes” to the map based on comments at the public hearings. Senate Redistricting Comm. Meeting Tr. 31, Aug. 24, 2017, ECF No. 184-17. Sen. Hise again blamed the Court for the “compressed time line” and “compressed . . . consideration of public comment.” Further, he said the public hearing speakers mostly repeated talking points about the redistricting process and offered few specifics about “particular districts and what they are and what they should be. I will tell you that I am saddened by the fact that we did not receive much of that information within the public comment section,” Hise told the Senate committee. *Id.* at 34-36. Sen. Hise went so far as to tell the committee members, “I think it’s also fair to point out that almost none of the comments in public comment were in any manner directly related to the shape of a district, to the pairings of districts, or to the communities covered within a particular district.” *Id.* at 32.

Contrary to Hise’s negative conclusion, an objective review reveals that the public comments included numerous recommendations for changes to specific districts, with

reference to the district number and/or county name, including: House Districts 1, 6, 10, 21, 36, 37, 57, 58, 40, 41, 82, 83, and 105, and Senate Districts 3, 11, 19, 21, 22, 27, 28, 30, 31, and 41.

In addition, speaker after speaker criticized the continued use of racial and partisan gerrymandering in drawing the new maps. Sarah Fellman at the Charlotte location noted:

The problem is that in North Carolina partisanship is racism. Partisan bias in districting prevents minority voters and those that agree with them from having their voices heard in Raleigh in proportion to their vote share. Concentrating Democrats, often synonymous with minorities, into a small number of districts is wrong whether it's for Republicans' advantage, whites' advantage or both. And with that, I urge you, members of the redistricting committee, to do the right thing by creating new maps that ensure that minority voices are heard in Raleigh.

Raleigh Public Hr'g Tr. 34, Aug. 22, 2017, ECF No. 184-10. Similarly, Martha Shafer in Jamestown expressed her concerns with the proposal:

In the very short time I have had to look at the data since it's been made public, it appears that these new maps show that the redistricting committee is collectively thumbing its nose at the federal judges. What you have proposed is not a real remedy. By not considering race as a criterion, you use partisanship as a tool to increasingly waste the votes of people of color.

Jamestown Public Hr'g Tr. 22-23, Aug. 22, 2017, ECF No. 184-15.

According to Dimple Shah, of the 16 "most flippable" or swing districts in the NC House, "11 have been slanted more heavily for the GOP while only two were drawn more favorably for Democrats. The other three were unchanged. Make no mistake; the NCGOP is actually trying to benefit from having drawn illegal racially-biased maps in the first place and the court order to redraw them." "Most flagrantly," Shah testified, the NCGOP "reached well beyond the areas affected by racial gerrymandering and [redrew] many

districts that were completely unaffected by the court ruling.” In that way, she said, “the NCGOP has used the court order as a chance to redraw much of the legislative map in its favor.” Charlotte Public Hr’g Tr. 35-37, Aug. 22, 2017, ECF No. 184-12.

II. OBVIOUS AVAILABLE ALTERNATIVES FOR RECEIVING PUBLIC COMMENT DEMONSTRATE THAT DEFENDANTS’ STATED DESIRE FOR PUBLIC INPUT WAS DISINGENUOUS AT BEST

Given the financial resources and staff personnel devoted to the redistricting process, Defendants could have chosen a different path, with at least six alternative steps to the ones they took, in order to faithfully fulfill the Court-approved “commendable goal of obtaining and considering public input and engaging in robust debate and discussion.”

First, Defendants should have chosen the September 15 optional deadline and schedule offered by the Court. The House and Senate criteria and draft remedial map were actually ready by the August 21 deadline set under that schedule; the stat pack and plan for public hearings could also have been ready to give the Court. That schedule would have allowed more time for a productive public hearing process.

Second, Defendants should have released the maps to the public at least seven days before the public hearing. Adequate time would have prevented dozens of comments like this one at the hearing in Weldon from Gwen Wilkins:

I question how you, in good conscience, could schedule public hearings when you have just released the maps a day or two before the hearing. . . . I am of the opinion your mind is already made up, though, and the public hearings going on across this state are just a farce to appease us, so you can satisfy the requirement of the federal court.

Weldon Public Hr’g Tr. 10-11, Aug. 22, 2017, ECF No. 184-16.

Third, Defendants should have released a comprehensive statistical package, including voter registration and demographic data, when the maps were released, in Excel or a similar computer-friendly format, with data about split precincts – similar to the format of the stat pack released with the 2011 maps. If election outcomes were included, they should have included several of the same elections as used in the 2011 stat pack to facilitate comparisons.

Fourth, Defendants should have held a series of independent public hearings about the draft maps in all parts of the state, in large rooms with high quality audio-visual equipment. The hearings could be on the same day, with multiple legislators and a court reporter at each location.

Fifth, the public comments on criteria and the maps should have influenced the outcome of the legislative debate and the final maps submitted to the Court. The complete dismissal of public comment is appalling; it undermines public faith in a representative government and, as Debbie Snowdon testified, it illuminates the unaccountability caused by gerrymandering “because you don’t have to listen to us.” Charlotte Public Hr’g Tr. 13, Aug. 22, 2017, ECF No. 184-12.

Sixth, the dominant public outcry for more competitive, less partisan/racially biased districts should have led to a reliance on independent map drawers or at least intense negotiation between the litigants to reach agreement in many areas.

CONCLUSION

In light of the foregoing, we urge the Court to repair the damage, fix the maps, and

affirm the message of so many citizens participating in the public hearings, including Casey Thornburg, who declared in Charlotte, “Cheating by gerrymandering and disenfranchising voters is unpatriotic, disgusting and not sustainable.” *Id.* at 7. Democracy NC and LWV NC respectfully ask this Court to reject the redistricting plan offered by Defendants and either adopt the redistricting plan offered by Plaintiffs or appoint a special master to draw new maps.

Dated: September 15, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this day, I filed the foregoing **Amicus Curiae Brief in Opposition to Defendants’ Redistricting Plan and In Support of Plaintiffs** with the clerk’s office via the CM/ECF system, which will send notification of filing to the following counsel of record:

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APPENDIX: Shutting Out the Public

Defendants claimed they needed time to receive and incorporate public comment, but their actions systematically shut out the public. Nearly 300 individuals signed up to speak on August 22, 2017, at the 7 public hearings on the remedial maps, but only 177 were able to do so because of Defendants' structure for the hearings. Democracy NC asked people it encouraged to attend to send statements about the meetings. Here is a selection of those statements.

Jenny Kotora-Lynch, Apex (attended Raleigh site): "The process of taking public comments from 7 meetings at once was absurd from the outset, as anyone could have expected. In our overflow room, the meetings were streamed onto 2 screens. Several times we lost the feed altogether. The sound quality varied from okay to terrible. The picture was terrible."

Pallas Langford, Kernersville (at Jamestown site): "The primary room definitely could not hold the number of people that appeared. I ended up in the overflow room. The hearing stream was setup to run off a computer with inadequate audio for the audience size. Some attendees left because of the poor audio. I felt as if they didn't want us there."

Marni Goldshlag, Durham (at Raleigh site): "I signed in to speak at about 3:15 p.m. and didn't get to speak until after 9 p.m. The initial process with 7 sights alternating speakers was painfully slow and unwieldy. The technology was ridiculous!"

Lewis Busch, Chapel Hill (at Raleigh site): "We arrived by 4 and were told we could sit in the third extra room opened to overflow crowds. He is 84 and walks with a cane. I am 73 and am still healing from a broken heel. We went home instead of staying. There was too little room provided and not enough notice to allow familiarity with the maps before needing to testify."

Sarah Peveler, Tarboro (at Weldon site): "I found the process intimidating to speakers, both in its structure and in its on-the-ground management. I left after we learned that 200+ speakers still waited. This was a sham."

Karen Mallam, Siler City (at Raleigh site): "The process seemed set up to discourage citizen participation. Dragging the whole thing out with testimony from multiple sites in rotation was ridiculous and their technology didn't work well."

Jennifer Alexander, Kill Devil Hills: "I live several hours from the closest location for the public comments on the maps. There should have been many more locations with the opportunity to speak at public hearings. With an issue as important as this, there should be a genuine and earnest effort to hear from North Carolinians on fair maps."

Rachel Campbell, Charlotte (at Charlotte site): "Finally I went up to see where I was on the list and was advised #14 and it would most likely be 10-11 p.m. before I would be able to speak. I was unable to do this since I had been there since 3:15 p.m."

Linda Duda, Durham (at Raleigh site): "I was ninth on the list but did not get called, while others who entered after me were called. I had to leave at 7 p.m. for another event. The video/audio feed was so bad in many of the locations that the speaker's words were unintelligible."

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Autumn Cobeland, Raleigh (at Raleigh site): “I have never felt quite so unwelcome at an event. We were tucked into other rooms where we were told we could see and hear all of the events, but the sound on the computer was completely inadequate for the room and the video paused frequently.”

Jeanne Doom, Thomasville (at Jamestown site): “We arrived early, but there was no room for us in the 3rd floor hearing room. We were sent to an overflow room. There were 2 big screens to see the proceedings but the sound quality was so bad you couldn't understand a word. Many people left.”

Hazel Poolos, Richfield (at Charlotte site): “The microphone set up in Charlotte was horrible – very difficult to hear speakers at other locations; room too small.

Becca Zerkin, Chapel Hill (at Raleigh site): “The video and sound system froze up many times, and the volume was never loud enough. To me the message was clear: our voices and efforts were not valued by the committee; we were only called there so that they could check that box.”

Craig Schaub, Winston-Salem (at Jamestown site): “The process clearly appeared stacked against public participation. We showed up to a room that had few more than 50 chairs, and others were sent to an overflow space 3 floors away with poor audio-visual connection. It felt mostly like a charade. Our site was given space to share only two three-minute statements in the first 95 minutes of the hearing.”

Juanita Brown, Burnsville: “I wasn't able to attend the hearing as the closest one was almost two hours away and there was nothing in Asheville area at all. I was shocked at how few public hearings were schedule on something as important to our democracy as this.”

Bill Roach, Newport (at Washington site): “Very short notice of the meeting. No time to review maps or data. Not advertised well. Tuesday afternoon at 4:00 was an inconvenient time for many people. Technology was substandard. The room was filled. People overflowed into the hall.”

Christina Moore, Boone (at Hudson site): “The video link from Raleigh and other locations was so bad it was nearly impossible to understand speakers. The Hudson location was to serve about 28 counties. I drove 1 1/2 hours in the middle of the day to get to the meeting. Let's be serious. Irresponsible leadership led to this sham meeting set-up.”

Rachel Campbell, Charlotte (at Charlotte site): “The room was very small and very few seats, the sound system was terrible, we were unable to hear the person addressing the meeting or speakers nor the video being streamed in from the other locations. There were people standing everywhere and a long line of people out in the hallways who could not get into the meeting. . . . This is how you turn voters off. I ask people why they don't vote and am told it is a waste of time since the system is rigged and after today, I definitely agree with them.”

Linda Zales, Statesville: “Because of the short notice given to us, and not having the option of a venue close to me, I could not attend a hearing. My hope and prayer is that this task of drawing fair maps will be entrusted to the courts, given that our General Assembly has proven once more that they have no interest in doing what is right and just, and cannot be trusted by we North Carolinians to do what is morally right and comply with the Supreme Court's order to draw fair maps.”