

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 002322

FILED
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WAKE COUNTY C.S.C.

NORTH CAROLINA STATE
CONFERENCE OF NAACP BRANCHES;
LEAGUE OF WOMEN VOTERS OF
NORTH CAROLINA, DEMOCRACY
NORTH CAROLINA; A. PHILIP
RANDOLPH INSTITUTE OF NORTH
CAROLINA; ELAINE OKAL; RETTA
RIORDAN; CHERYL TUNG; and
CANDACE BLACKLEY,
Plaintiffs,

vs.

DAVID R. LEWIS *in his official capacity as
Senior Chairman of the North Carolina
House of Representatives Select Committee
on Redistricting for the 2017-2018 Session;*
RALPH E. HISE *in his official capacity as
Chairman of the North Carolina Senate
Committee on Redistricting for the 2017-2018
Legislative Session;* TIMOTHY K. MOORE
*in his official capacity as Speaker of the
North Carolina House of Representatives;*
and PHILLIP E. BERGER, *in his official
capacity as President Pro Tempore of the
North Carolina Senate;* THE STATE OF
NORTH CAROLINA; and THE NORTH
CAROLINA STATE BOARD OF
ELECTIONS,

Defendants.

VERIFIED COMPLAINT

(Three-Judge Panel requested pursuant to
N.C. Gen. Stat. § 1-267.1)

Plaintiffs, the North Carolina State Conference of NAACP Branches, the League of Women Voters of North Carolina, Democracy North Carolina, North Carolina A. Philip Randolph Institute, and four individual Plaintiffs named above allege and state:

PRELIMINARY STATEMENT

1. Due to the North Carolina General Assembly's flagrant violations of federal law and unrelenting political gamesmanship, the voters in North Carolina have been deprived of the opportunity to fairly elect their state representatives, and have been subjected to voting in unconstitutional districts, in every election since the return of the 2010 Decennial Census.

2. The latest round of redistricting – initiated in 2017 at the order of a federal court to correct the pervasive and unjustified use of race in the 2011 state legislative redistricting plans to divide North Carolina's voters into legislative districts on the basis of their skin color– constitutes yet another round of political gamesmanship by the North Carolina General Assembly and, more problematically, blatantly violates the will of the people as laid out in the North Carolina Constitution yet again to ensure that state legislative “representatives” are able to choose their voters, rather than voters choosing their representatives.

3. This action challenges the constitutionality of four Wake County districts as drawn in the 2017 “remedial” redistricting plan for the State House of Representatives, enacted by the General Assembly following the invalidation of certain 2011 State Legislative districts as racial gerrymanders. The districts being challenged are House Districts 36, 37, 40, and 41. Plaintiffs challenge these districts on the basis that their alteration from their 2011 form was not necessary to comply with a federal court's order to remedy racial gerrymandering in Wake House Districts 33 and 38, and therefore violates the North Carolina Constitution's bar on mid-decade redistricting.

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear Plaintiffs' claims and grant declaratory relief pursuant to Articles 26 and 26 A of Chapter 1 of the North Carolina General Statutes.

2. Venue is proper pursuant to N.C. Gen. Stat. § 1-81.1, as Wake County Superior Court is the exclusive venue for any action challenging the General Assembly's apportionment of State legislative districts.

3. A three-judge panel must be convened in this matter pursuant to N.C. Gen. Stat. § 1-267.1.

PARTIES

4. Plaintiff the North Carolina State Conference of NAACP branches (hereinafter "NC NAACP") is a nonpartisan, nonprofit organization composed of over 100 adult branches, over 25 youth and college chapters, and 20,000 individual members throughout the state of North Carolina. The NC NAACP has members who are citizens and registered voters in each of the State's 100 counties. The fundamental mission of the NC NAACP is to "ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and discrimination."¹ In furtherance of this mission, the NC NAACP advocates for the integrity of democracy at the local, state, and national level to ensure that elected representatives share the interests, values, and beliefs of – and are accountable to – the communities they represent, regardless of race. The NC NAACP encourages and facilitates nonpartisan voter registration drives by its chapters to promote civic participation.

5. Plaintiff League of Women Voters of North Carolina (hereinafter "LWVNC") is a nonpartisan community-based organization formed in 1920, immediately after the enactment of the Nineteenth Amendment granting women's suffrage. LWVNC is affiliated with the League of

¹ <https://naacpnc.org/about-us/>

Women Voters of the United States, which was also founded in 1920. The LWNVC is dedicated to encouraging its members and the people of North Carolina to exercise their right to vote as protected by the federal and state constitutions and the Voting Rights Act of 1965. The mission of LWNVC is to promote political responsibility through informed and active participation in government and to act on selected governmental issues. The LWNVC impacts public policies, promotes citizen education, and makes democracy work by, among other things, removing unnecessary barriers to full participation in the electoral process. Currently LWNVC has 17 local leagues and over 1700 members, each of whom, on information and belief, is a registered voter in North Carolina. With members in almost every county in the state, the LWNVC's local leagues host public forums and open discussions on issues of importance to the communities. Individual league members invest substantial time and effort in voter training and civic engagement activities. LWNVC began as an organization focused on the needs of women and the training of women voters; it has evolved into an organization concerned with educating, advocating for, and empowering all North Carolinians.

6. Plaintiff Democracy North Carolina (hereinafter "Democracy NC") is a nonpartisan, nonprofit organization dedicated to research, organizing, and advocacy to increase voter access and participation and reduce the corrupting role of money in politics. Democracy NC has volunteers in every region of the state who are registered voters in North Carolina. Its volunteers form grassroots coalitions in and it has advocates on the ground in Wake County, Fayetteville, Twin Counties (Edgecombe/Nash), Mecklenburg County, Wilmington, Winston-Salem, Alamance County, Asheville, New Bern, Salisbury and Greenville. Democracy NC works for pro-democracy reforms that strengthen enforcement of election laws, protect voting rights, and improve government accountability and ethics. Democracy NC engages in substantial election

protection efforts to ensure that voters are able to access the ballot, and likewise spends substantial time and effort producing voter guides to educate voters about the candidates that will be on their ballots. Through original research, policy advocacy, grassroots organizing, civic engagement, and leadership training, Democracy NC seeks to achieve a government that is truly of the people, for the people, and by the people.

7. Plaintiff North Carolina A. Philip Randolph Institute (hereinafter “NC APRI”) is the North Carolina division of the national A. Philip Randolph Institute, the senior constituency group of the AFL-CIO dedicated to advancing racial equality and economic justice. APRI grew out of the legacy of African-American trade unionists’ advocacy for civil rights and the passage of the federal Voting Rights Act and continues to advocate for social, political, and economic justice for all working American. NC APRI has members who are registered voters across North Carolina. Its chapters are located in Raleigh, Durham, Greensboro, the Piedmont, Roanoke Rapids, and Fayetteville. NC APRI works to increase accessibility to the polls, voter registration, and voter education. It distributes nonpartisan voter guides and hosts phone banks to encourage voter participation.

8. Plaintiff Elaine Okal is a registered voter in Wake County. She resides at 6233 Hampton Ridge Road in Raleigh, which is located in Precinct 15-03. Under the 2017 enacted plan, she would vote in House District 36. She is a member of the League of Women Voters and is active in local politics. She has been a regular voter her entire life.

9. Plaintiff Retta Riordan is a registered voter in Wake County. She resides at 313 Chantclair Drive in Apex, which is located in Precinct 20-11. Under the 2017 enacted plan, she would vote in House District 37. She is majored in political science and attended law school, and

follows North Carolina politics closely. She is a regular voter and is a member of the League of Women Voters.

10. Plaintiff Cheryl Tung is a registered voter in Wake County. She resides at 6020 Over Hadden Court in Raleigh, which is located in Precinct 02-02. Under the 2017 enacted plan, she would vote in House District 40. She is a registered unaffiliated voter and a regular voter. She is a member of the League of Women Voters.

11. Plaintiff Candace Blackley is a registered voter in Wake County. She resides at 1006 Modest Way in Apex, which is located in Precinct 20-06. Under the 2017 enacted plan, she would vote in House District 41. She was born in North Carolina and has lived in Wake County since 1964. She has lived in Apex for at least the last 14 years. She is a member of the League of Women Voters and a lifelong regular voter.

12. Defendant David R. Lewis is being sued in his official capacity as Senior Chairman of the North Carolina House of Representatives Select Committee on Redistricting for the 2017-2018 Session.

13. Defendant Ralph E. Hise is being sued in his official capacity as Chairman of the North Carolina Senate Committee on Redistricting for the 2017-2018 Session.

14. Defendant Timothy K. Moore is being sued in his official capacity as Speaker of the North Carolina House of Representatives.

15. Defendant Philip E. Berger is being sued in his official capacity as President Pro Tempore of the North Carolina Senate.

16. Defendant State of North Carolina is a sovereign state in the United States.

17. Defendant North Carolina State Board of Elections is the agency responsible for the administration of the election laws of the State of North Carolina.

FACTUAL ALLEGATIONS

Challenges to the 2011 Legislative Redistricting

18. During the 2011 Regular Session of the North Carolina General Assembly, new Congressional and State Legislative districts were enacted with the intended effect of a dramatically higher number of districts with greater than 50% Black Voting Age Population (BVAP). These districts were not required by the Voting Rights Act, so the predominant use of race in their construction contravened the equal protection guarantees of both the Fourteenth Amendment to the United States Constitution and Article I, Section 19, of the North Carolina Constitution.

19. Following the enactment of those new districts in 2011, a group of four North Carolina nonprofit organizations (who are party to the present suit) and individual North Carolina voters filed actions in this Court challenging the enacted Congressional and State Legislative districts as racial gerrymanders in violation of the United States and North Carolina Constitutions. *See Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014), *vacated*, 135 S. Ct. 1843 (2015) (mem.). The Supreme Court of North Carolina concluded in 2014 that the 2011 enacted plans did not violate the *Dickson* plaintiffs' rights. *Id.* at 574, 766 SE.2d at 260.

20. The *Dickson* plaintiffs appealed the North Carolina Supreme Court's ruling to the Supreme Court of the United States, which vacated the ruling and remanded the case for further consideration in light of its decision in *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1843 (2015). *Dickson*, 135 S. Ct. 1843.

21. On May 29, 2015, a separate group of North Carolina voters initiated an action in the Middle District of North Carolina challenging the same State Legislative districts as racial

gerrymanders in violation of the United States Constitution. *See Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016).

22. On remand from the Supreme Court of the United States, the Supreme Court of North Carolina again concluded that the 2011 enacted plans complied with state and federal law. *Dickson v. Rucho*, 368 N.C. 481, 484, 781 S.E.2d 404, 410 (2015), *vacated*, 137 S. Ct. 2186 (2017). The *Dickson* plaintiffs again appealed to the United States Supreme Court.

23. While the second appeal to the United States Supreme Court was still pending in the *Dickson* matter, the Middle District of North Carolina unanimously held that the challenged 2011 enacted State Legislative districts were unconstitutional racial gerrymanders. *Covington*, 316 F.R.D. at 176.

24. Specifically, with respect to the two House Districts in Wake County challenged as unconstitutional racial gerrymanders (House District 33 and 38), the *Covington* court found:

- a. Prior to the 2011 redistricting cycle, Wake County contained no majority black House districts and only one district with a BVAP above 40%. Defendants identified that it was possible to draw two majority-black House Districts in Wake County and drew those districts, identifying them as “VRA” districts. House Districts 33 and 38, located in central Wake County and encompassing much of eastern and southern Raleigh and the adjacent suburbs, were those majority-black districts. *Id.* at 159-60.
- b. House Districts 33 and 38 split a large number of precincts *on the basis of race*, with the portions of the split precincts with a higher concentration of black residents being assigned to one of those two districts, and the portions of the precincts with more white residents being assigned to adjacent districts. *Id.* at 160.

- c. These two districts also similarly divided municipalities and communities of interest *on the basis of race*. *Id.*
- d. On the basis of this evidence, the Covington court concluded that race predominated in the construction of Wake County House Districts 33 and 38. *Id.*
- e. The Covington court then concluded that the state had no strong basis in evidence to believe that the Voting Rights Act compelled the drawing of these districts. There was no evidence in the record that racially polarized voting in Wake County was legally significant, that is prevented black voters in Wake County from electing their candidates of choice to the North Carolina House of Representatives. Thus, that court concluded that there was no compelling state interest in using race in a predominant manner to construct House Districts 33 and 38. *Id.* at 169-71.

25. On May 30, 2017, the United States Supreme Court again vacated the North Carolina Supreme Court's ruling in *Dickson* and remanded the case for further consideration in light of *Cooper v. Harris*, 137 S. Ct. 1455 (2017), a federal court case invalidating the 2011 enacted Congressional districts challenged by the *Dickson* plaintiffs. *Dickson*, 137 S. Ct. 2186 (2017).

26. The United States Supreme Court summarily affirmed the *Covington* court's invalidation of the 2011 enacted State Legislative districts without dissent on June 5, 2017. *North Carolina v. Covington*, 137 S. Ct. 2211.

27. After a hearing in August of 2017, the North Carolina Supreme Court ultimately remanded the *Dickson* case to the three-judge panel to determine, among other things, whether the case was moot in light of *Covington* and *Harris*. *Dickson v. Rucho*, 804 S.E.2d 184 (N.C. 2017).

28. On July 31, 2017, the General Assembly was ordered by the *Covington* court to submit proposed State Legislative redistricting plans that remedied the constitutional defects affirmed by the Supreme Court of the United States. *Covington v. North Carolina*, 267 F. Supp. 3d 664, 668-69 (2017).

The 2017 State Legislative Redistricting

29. Senator Ralph Hise serves as Chairman of the General Assembly’s Senate Committee on Redistricting for the 2017-2018 Legislative Session.

30. Representative David Lewis serves as Senior Chairman of the General Assembly’s House Select Committee on Redistricting for the 2017-2018 Legislative Session.

31. Senator Hise and Representative Lewis retained Dr. Thomas Hofeller to assist in drafting new State Legislative districts to remedy the racially gerrymandered districts invalidated by the *Covington* court.

32. Dr. Hofeller drafted the 2011 Congressional and State Legislative districts that were invalidated as unconstitutional by the *Harris* and *Covington* courts.

33. On August 10, 2017, the Senate and House Select Committees on Redistricting met and adopted the following criteria to be used in drafting the remedial plans:

Equal Population. The Committees shall use the 2010 federal decennial census data as the sole basis of population for drawing legislative districts in the 2017 House and Senate plans. The number of persons in each legislative district shall comply with the +/- 5 percent population deviation standard established by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E. 2d 377 (2002).

Contiguity. Legislative districts shall be comprised of contiguous territory. Contiguity by water is sufficient.

County Groupings and Traversals. The Committees shall draw legislative districts within county groupings as required by *Stephenson v. Bartlett*, 355 N.C. 354, 562

S.E. 2d 377 (2002) (Stephenson I), Stephenson v. Bartlett, 357 N.C. 301, 582 S.E.2d 247 (2003) (Stephenson II), Dickson v. Rucho, 367 N.C. 542, 766 S.E.2d 238 (2014) (Dickson I) and Dickson v. Rucho, 368 N.C. 481, 781 S.E.2d 460 (2015) (Dickson II). Within county groupings, county lines shall not be traversed except as authorized by Stephenson I, Stephenson II, Dickson I, and Dickson II.

Compactness. The Committees shall make reasonable efforts to draw legislative districts in the 2017 House and Senate plans that improve the compactness of the current districts. In doing so, the Committees may use as a guide the minimum Reock (“dispersion”) and Polsby-Popper (“perimeter”) scores identified by Richard H. Pildes and Richard G. Neimi in Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election- District Appearances After Shaw v. Reno, 92 Mich. L. Rev. 483 (1993).

Fewer Split Precincts. The Committees shall make reasonable efforts to draw legislative districts in the 2017 House and Senate plans that split fewer precincts than the current legislative redistricting plans.

Municipal Boundaries. The Committees may consider municipal boundaries when drawing legislative districts in the 2017 House and Senate plans.

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 Committees 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.

Election Data. Political considerations and election results data may be used in the drawing of legislative districts in the 2017 House and Senate plans.

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.

34. Dr. Hofeller was instructed to comply with the adopted criteria when drafting the maps, but upon information and belief, was provided no further instruction as to the weight of the

various criteria or as to harmonizing the criteria with other requirements under state and federal law.

35. Importantly, Dr. Hofeller was not instructed to, and did not change, districts in areas of the state where the *Covington* plaintiffs did not lodge racial gerrymandering challenges against districts, and where, accordingly, those districts were not subject to the federal court order to redraw unconstitutional districts.

36. The General Assembly released the revised House Plan on August 20, 2017, and provided statistical information regarding that plan on August 21, 2017.

37. On August 23, 2017, the *Covington* plaintiffs sent a letter to the Senate and House Select Committees on Redistricting objecting to, *inter alia*, the unnecessary reconfiguration of House Districts 36, 37, 40, and 41 in Wake County because those reconfigurations were unnecessary to remedy the racial gerrymandering found in House Districts 33 and 38 and thus were in violation of the plain language of Article II, Section 5 of the North Carolina Constitution.

38. In addition to the letter, the *Covington* plaintiffs provided the Committees with an alternative map addressing this constitutional violation. That map demonstrated that it was possible to correct the racial gerrymandering in the only two districts subject to the federal court's order to redraw without altering the four districts at issue here.

39. The House Select Committee on Redistricting approved the revised House Plan along party lines on August 25, 2017 without addressing the *Covington* plaintiffs' objections.

40. The General Assembly adopted the revised House Plan with only *de minimis* changes on August 31, 2017, none of which addressed the violations of the mid-decade redistricting prohibition in Wake County, and filed its proposed remedial plans with the *Covington* court on September 7, 2017.

41. The *Covington* plaintiffs reiterated their objections to the now-enacted remedial plans before the court, noting that, *inter alia*, the unnecessary reconfiguration of House Districts 36, 37, 40, and 41 violated the North Carolina Constitution.

42. The *Covington* court agreed that the General Assembly had violated the North Carolina constitution and appointed a special master to, among other things, assess whether it was necessary to modify House Districts 36, 37, 40 and 41 in order to remedy the racial gerrymandering in House Districts 33 and 38, and if it was not necessary, to create a configuration of Wake County House districts that both remedied the federal constitutional violation and complied with the state constitution by restoring the 2011 configuration of the unnecessarily altered districts. The Special Master found that it was not necessary to alter those four districts in order to remedy the federal constitutional violations and provided the *Covington* court with a map that complied with both the federal and state constitutions. The *Covington* court ordered these alterations into effect on January 19, 2018. *Covington v. North Carolina*, No. 1:15-cv-399, 2018 U.S. Dist. LEXIS 8741 (M.D.N.C. Jan. 19, 2018).

43. Without written explanation, the Supreme Court of the United States stayed implementation of the special master's remedy to the General Assembly's violation of the North Carolina Constitution on February 6, 2018.

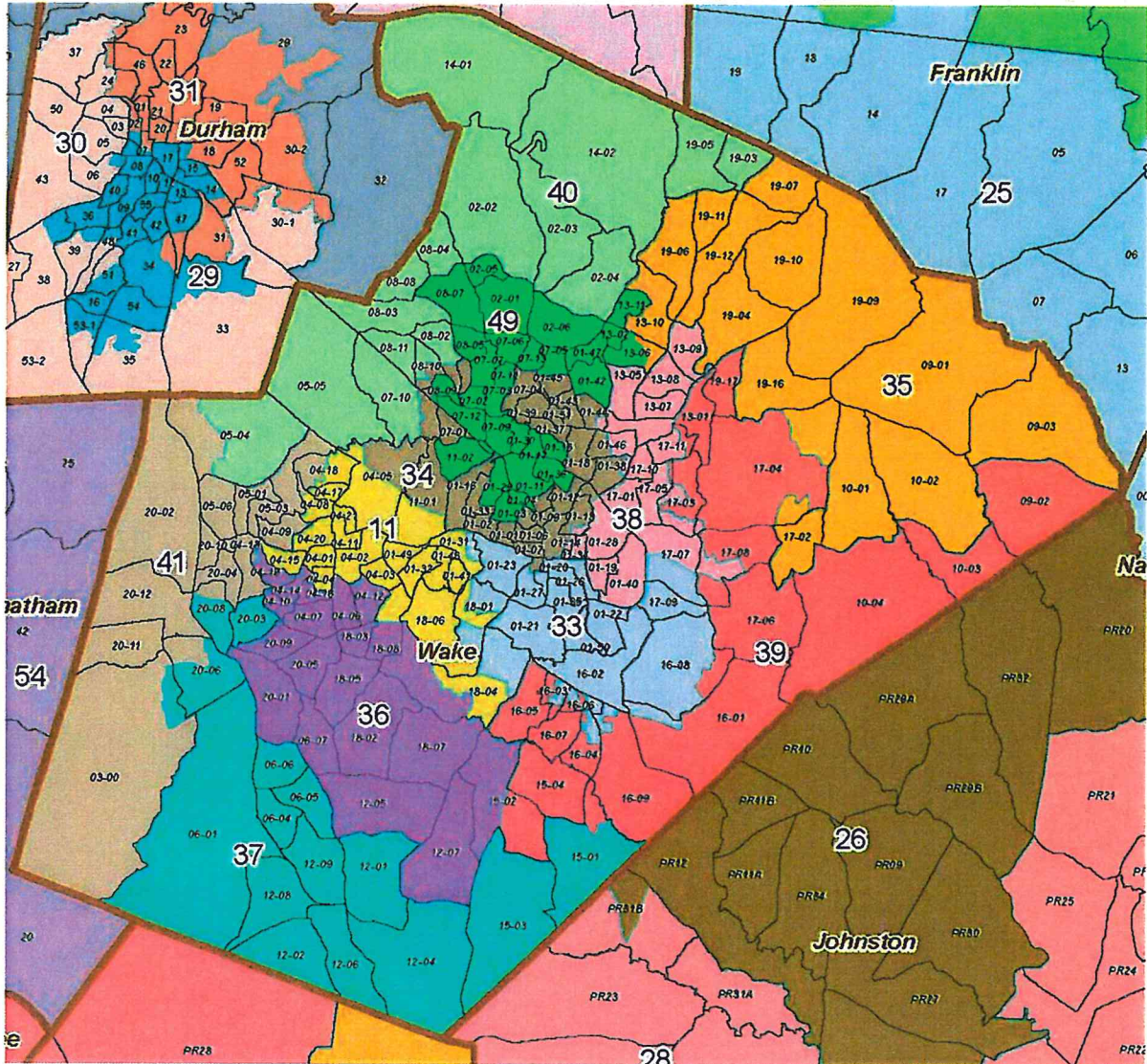
44. On February 7, 2018, the *Dickson* plaintiffs moved the court for emergency relief, requesting that the Court take up the state constitutional question apparently at issue in the Supreme Court's emergency stay and order the *Covington* special master's districts into effect given the apparent violation of the North Carolina Constitution.

45. The *Dickson* court denied this motion for emergency relief on February 12, 2018. On the same day, the *Dickson* court entered its Order and Judgment on Remand, concluding that while

the *Dickson* plaintiffs were entitled to a declaratory judgment in their favor, the case was now moot and plaintiffs' objections to the constitutionality of the 2017 remedy were better suited for new litigation.

The 2011 Configuration of Wake County

46. The configuration of the 2011 enacted House Districts in Wake County were as follows:



47. In Wake County and throughout the state, in the construction of VRA districts and non-VRA districts, the 2011 legislature decided as a matter of policy not to avoid splitting precincts or municipalities.

48. The 2011 version of House District 36, when drawn, was highly likely to elect a Republican house member. According to statistics used in the 2011 redistricting process, 58.89% of the district voted for Richard Burr, the Republican candidate for the United States Senate, in 2010, and 38.61% of the district voted for Elaine Marshall, the Democratic candidate in the same race.

49. Under the 2011 version of House District 36, the election results for the North Carolina State House race were as follows:

2012	Nelson Dollar, Republican: 54.96%	Lisa Baker, Democrat: 45.04%
2014	Nelson Dollar, Republican: 54.34%	Lisa Baker, Democrat: 45.66%
2016	Nelson Dollar, Republican: 49.26%	Jennifer Ferrell, Democrat: 46.49%

50. Over the course of the decade, this district has become more competitive, and the Republican incumbent is no longer as secure in his chances of re-election.

51. The 2011 version of House District 37, when drawn, was highly likely to elect a Republican house member. According to statistics used in the 2011 redistricting process, 60.81% of the district voted for Richard Burr, the Republican candidate for the United States Senate, in 2010, and 36.55% of the district voted for Elaine Marshall, the Democratic candidate in the same race.

52. Under the 2011 version of House District 37, the election results for the North Carolina State House race were as follows:

2012	Paul Stam, Republican: 57.01%	Jason Wunsch, Democrat: 42.99%
2014	Paul Stam, Republican: 100%	No Opponent
2016	Linda Hunt-Williams, Republican: 52.29%	Randy Barrow, Democrat: 43.00%

53. The 2011 version of House District 40, when drawn, was highly likely to elect a Republican house member. According to statistics used in the 2011 redistricting process, 59.23%

of the district voted for Richard Burr, the Republican candidate for the United States Senate, in 2010, and 37.86% of the district voted for Elaine Marshall, the Democratic candidate in the same race.

54. Under the 2011 version of House District 40, the election results for the North Carolina State House race were as follows:

2012	Marilyn Avila, Republican: 53.86%	Watt Jones, Democrat: 41.78%
2014	Marilyn Avila, Republican: 54.30%	Margaret Broadwell, Democrat: 45.70%
2016	Marilyn Avila, Republican: 49.59%	Joe John, Democrat: 50.41%

55. Over the course of the decade, the district became more competitive, and a Democrat unseated the Republican incumbent in 2016.

56. The 2011 version of House District 41, when drawn, was highly likely to elect a Republican house member. According to statistics used in the 2011 redistricting process, 55.59% of the district voted for Richard Burr, the Republican candidate for the United States Senate, in 2010, and 41.60% of the district voted for Elaine Marshall, the Democratic candidate in the same race.

57. Under the 2011 version of House District 41, the election results for the North Carolina State House race were as follows:

2012	Tom Murry, Republican: 51.78%	Jim Messina, Democrat: 48.22%
2014	Tom Murry, Republican: 48.68%	Gale Adcock, Democrat: 51.32%
2016	Chris Shoffner, Republican: 43.01%	Gale Adcock, Democrat: 56.99%

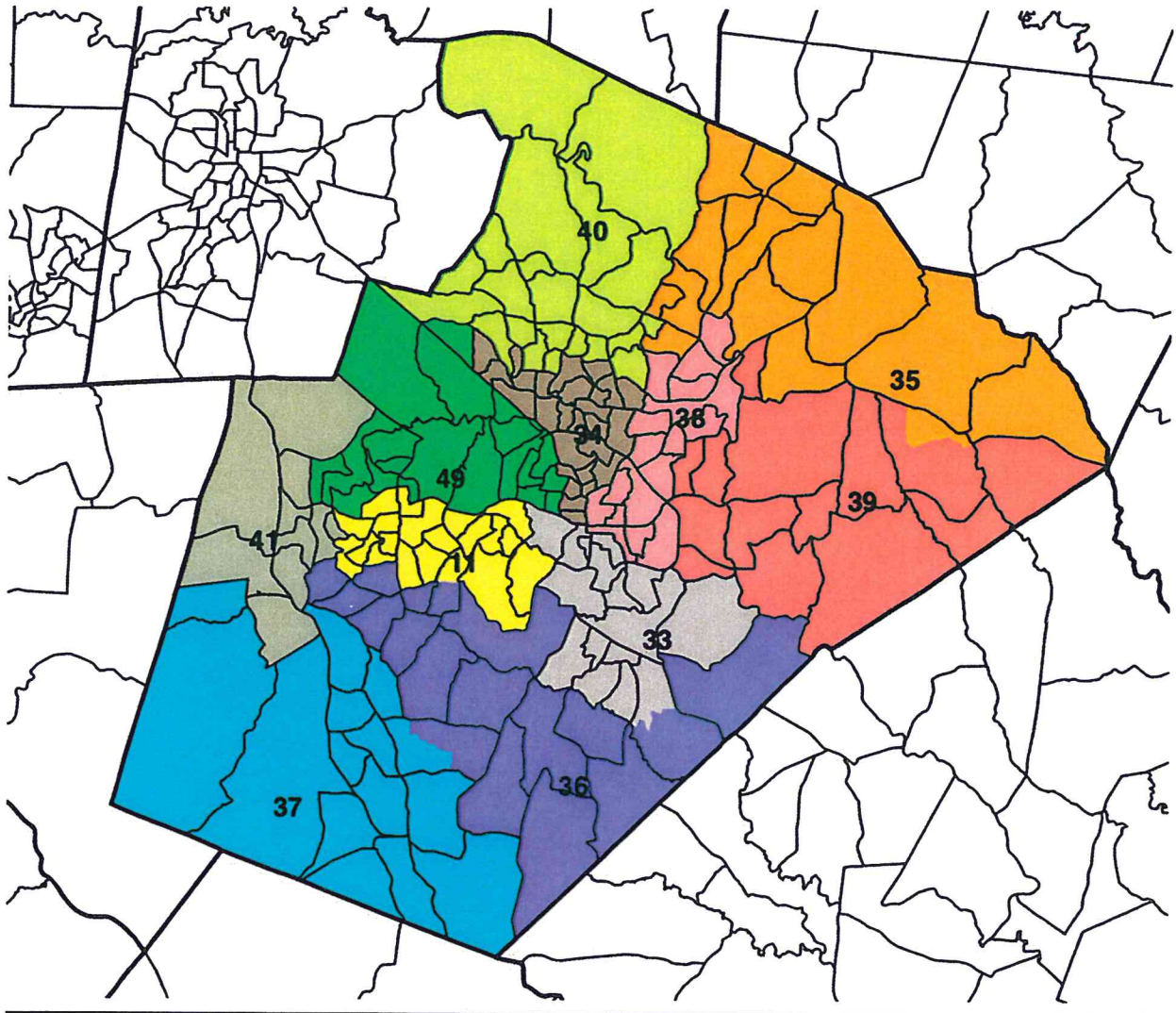
58. Over the course of the decade, the district became more competitive, and a Democrat unseated the Republican incumbent in 2014.

59. The *Covington* court invalidated House Districts 33 and 38 in Wake County as unconstitutional racial gerrymanders.

60. In the 2011 configuration of Wake County, no portion of House Districts 36, 37, 40, or 41 abut any portion of House Districts 33 and 38.

The 2017 Configuration of Wake County

61. The configuration of the 2017 enacted House Districts in Wake County are as follows:



62. It has never been alleged by any litigant or court that the 2017 versions of House District 33 and 38 do not correct the racial gerrymandering present in the 2011 versions, but the 2017 House plan in Wake County also unnecessarily alters every House District in Wake County.

63. Because the alteration of these districts went further than necessary to comply with the federal court's order to redraw House Districts 33 and 38, the legislature redistricted the four districts at issue here in violation of state constitutional law. While no policy consideration, appropriate ones or not, can excuse non-compliance with the state constitution, the electoral trends in Wake County strongly suggest that the driving reason for these additional changes beyond those the court ordered was political gain and to subvert the will of the voters as expressed in recent elections.

64. The 2017 configuration of House District 36 is altered to again craft a district that is highly likely to elect a Republican House member. According to statistics available and employed during the 2017 redistricting process, 61.83% of the district voted for Richard Burr, the Republican candidate for the United States Senate, in 2010, and 35.93% of the district voted for Elaine Marshall, the Democratic candidate in the same race.

65. The 2017 configuration of House District 37 is highly likely to elect a Republican House member. According to statistics available and used in the 2017 redistricting process, 59.79% of the district voted for Richard Burr, the Republican candidate for the United States Senate, in 2010, and 37.49% of the district voted for Elaine Marshall, the Democratic candidate in the same race.

66. The 2017 configuration of House District 40 is altered to once again create a district that is highly likely to elect a Republican House member. According to statistics available and used in the 2017 redistricting process, 60.41% of the district voted for Richard Burr, the Republican candidate for the United States Senate, in 2010, and 37.17% of the district voted for Elaine Marshall, the Democratic candidate in the same race.

67. The 2017 configuration of House District 41 is altered to move Democratic voters into a district that, while drawn as a Republican district in 2011, was already electing a Democratic House member and is now even more highly likely to elect a Democratic House member. According to statistics available and used in the 2017 redistricting process, now only 43.46% of the district voted for Richard Burr, the Republican candidate for the United States Senate, in 2010, while 53.57% of the district voted for Elaine Marshall, the Democratic candidate in the same race.

68. That is, because all four districts at issue here and originally engineered as Republican-controlled districts in the 2011 redistricting cycle became substantially more competitive over the course of the decade, with two of them flipping to Democratic control, the legislature in 2017 improperly used the federal court order to redraw two unconstitutional districts in a different area of the county as a pretext to substantially alter political performance of three of the four districts challenged here. House District 37, the most safely Republican of the four districts, roughly maintained its 2011 performance in its 2017 reconfiguration. One district, House District 41, was ceded to the Democrats, and it was reconfigured in 2017 to pack substantially more Democratic voters into it than were placed into the district in 2011. The other two districts—House Districts 36 and 40—were altered to boost their Republican performance, reversing trends of voting in those districts that indicated growing dissatisfaction with the Republican incumbents.

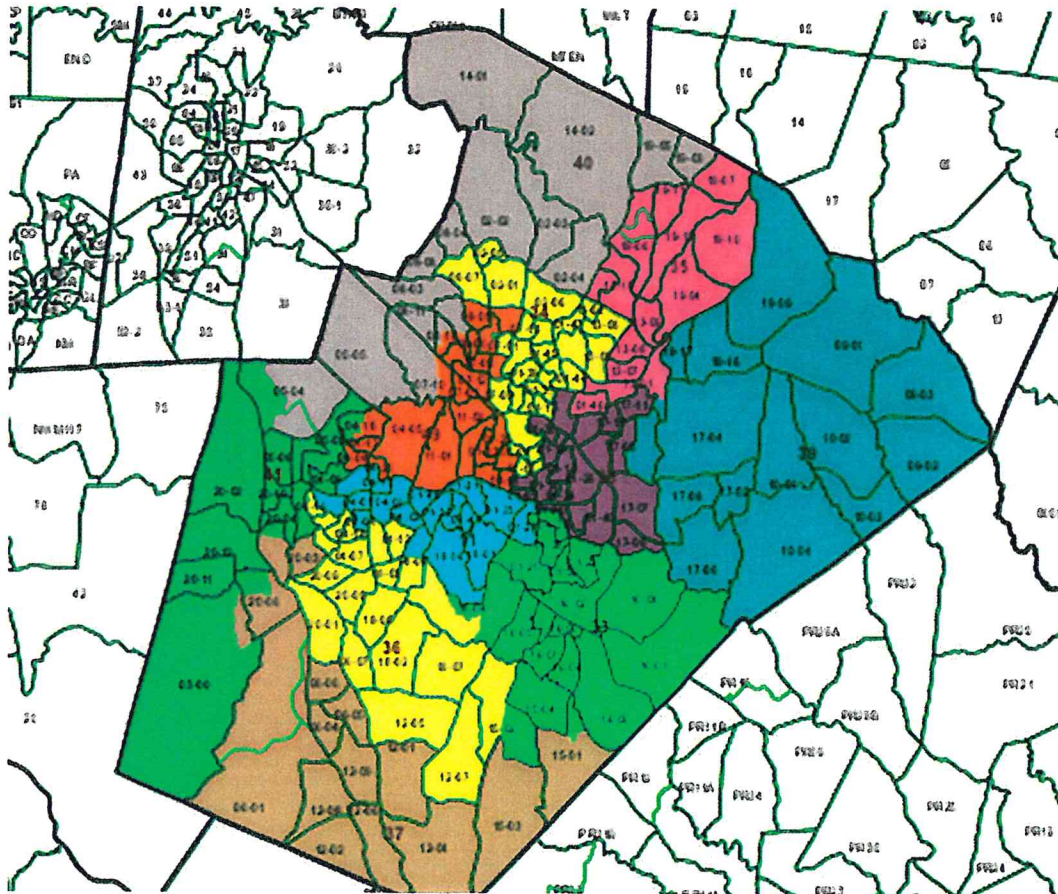
69. To be clear, no policy reasons, even legitimate ones like wanting to avoid splitting precincts or to draw compact districts, can supersede the legislature's primary obligation to ensure compliance with the state constitution before taking into account any additional policy interests. The legislature in 2011 expressed the exact opposite policy preferences than it did in 2017 with respect to splitting precincts and compactness - that change is within its right and it

could apply those changed policy preferences in the redrawing of any districts that it was authorized by court order to redraw. However, a shift in preferences alone does not allow any North Carolina legislature to redraw state legislative districts anew mid-decade. Regardless, the dramatic political alterations to three of the four districts at issue here make clear that no legitimate policy concerns actually motivated the illegal violation of the state constitutional prohibition on mid-decade redistricting.

Proposed Alternatives to the 2017 Configuration of Wake County

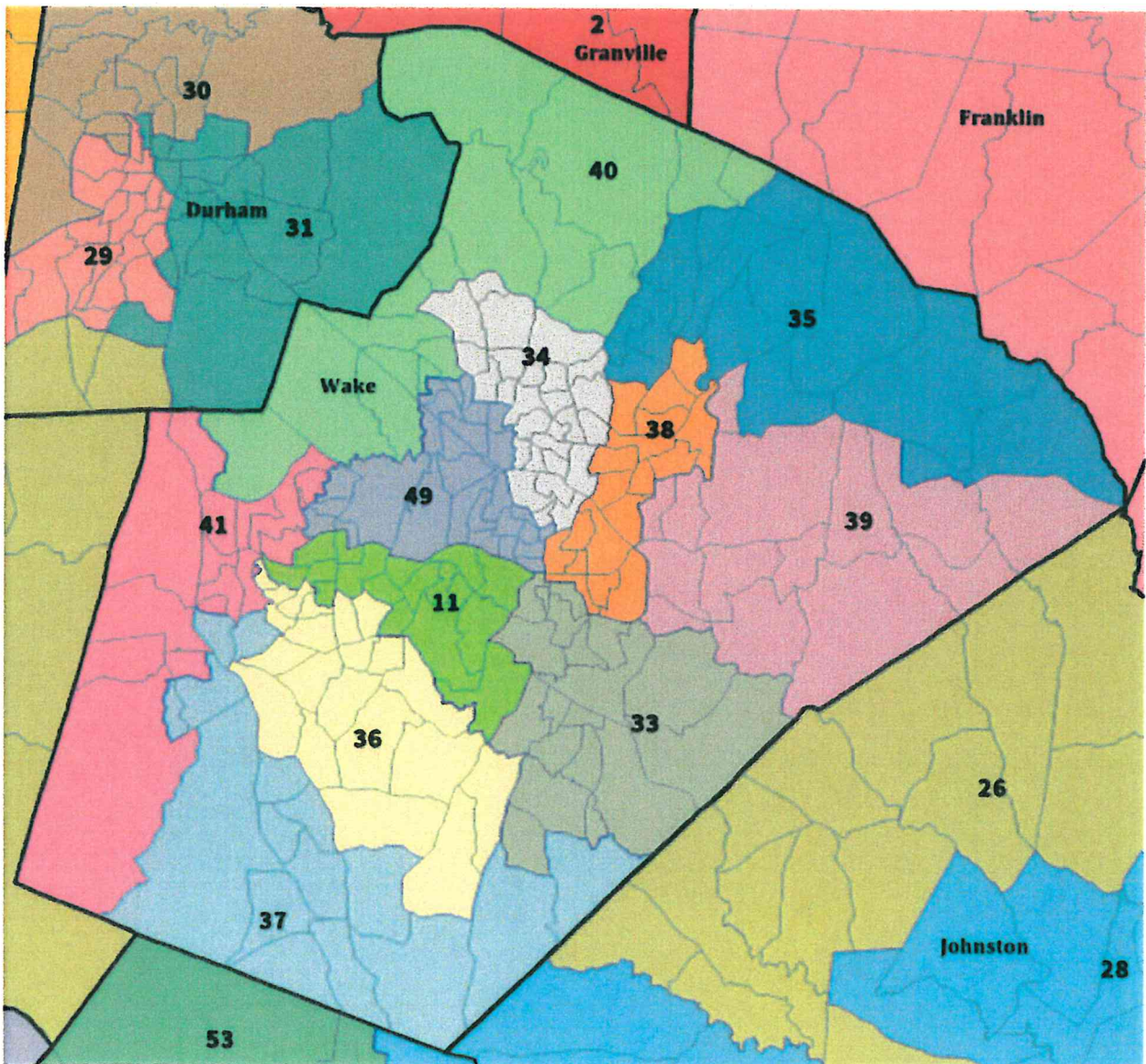
70. Two different alternate remedial configurations of Wake County House Districts demonstrate conclusively that it was possible to remedy the racial gerrymandering found in House Districts 33 and 38 without altering the four districts at issue here.

71. During the legislative process, before the 2017 remedial plans were enacted, the *Covington* plaintiffs proposed to the General Assembly an alternative configuration of Wake County to remedy the racially gerrymandered House Districts 33 and 38. That configuration is as follows:



72. The *Covington* plaintiffs' proposed alternative does in fact correct the racial gerrymandering in House Districts 22 and 38 and did so without making any changes to House Districts 36, 37, 40, or 41, as enacted in 2011.

73. The *Covington* Special Master later also proposed an alternative configuration of Wake County (different from the *Covington* plaintiffs' proposed map) to remedy the racially gerrymandered House Districts 33 and 38. That configuration is as follows:



74. The Special Master’s proposed alternative also corrects the unconstitutional racially gerrymandered districts in the county without making any changes to House Districts 36, 37, 40, or 41, as enacted in 2011

75. The existence of these two distinct alternatives, one of which plainly put the legislature on notice of its state constitutional violation before it enacted the 2017 plans, proves definitively that it is possible to correct the two House districts that the federal court ordered redrawn without redrawing every House district in the county.

PLAINTIFFS’ FIRST CLAIM FOR RELIEF

(Violation of the Mid-Decade Redistricting Prohibition, Article II, § 5 of the North Carolina Constitution, State House Redistricting Legislation, 2017 Sess. Law 208 s.1)

76. Plaintiffs rely herein upon all of the paragraphs of this complaint.

77. Under Article II, § 5 of the North Carolina Constitution, “[w]hen established, the representative districts and the apportionment of representatives shall remain unaltered until the return of another decennial census of population taken by order of congress.”

78. When redistricting, the General Assembly is only permitted to violate the provisions of the State constitution “to the extent necessary to comply with federal law.” *Stephenson v. Bartlett*, 355 N.C. 354, 375, 562 S.E.2d 377, 397 (2002).

79. “The General Assembly may consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions, but it must do so in conformity with the State Constitution.” *Id.* at 371, 562 S.E.2d at 390.

80. The alternative maps proposed by the *Covington* plaintiffs and Special Master fully comply with the federal court order to redraw two House districts that were unconstitutional racial gerrymanders without redrawing every House district in Wake County and thereby

demonstrate that the alteration of House Districts 36, 37, 40, and 41 was not necessary to remedy the unconstitutional racial gerrymandering in House Districts 33 and 38.

81. Because alteration of House Districts 36, 37, 40, and 41 was not “necessary to comply with federal law,” *Id.* at 375, 562 S.E.2d. at 397, the General Assembly did not have discretion to reconfigure these districts based on considerations of partisan advantage, incumbency protection, or any other policy consideration.

82. In altering these districts, Defendants have “abrogate[d] the constitutional limitations or ‘objective constraints’ that the people of North Carolina have imposed on legislative redistricting and reapportionment in the State Constitution.” *Id.* at 371, 562 S.E.2d at 390.

83. The configuration of Wake County in the 2017 enacted State House plan violates the Mid-Decade Redistricting Prohibition of Article II, § 5 of the North Carolina Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully move the court:

1. Declare that the 2017 Enacted State House Plan (2017 N.C. Sess. Laws. 208 § 1) altered Wake County districts unnecessary to comply with federal law in violation of the Mid-Decade Redistricting Prohibition of Article II, § 5 of the North Carolina Constitution.

2. Preliminarily and permanently enjoin Defendants, their agents, officers, and employees, from enforcing or giving any effect to the Wake County portion of the 2017 Enacted State House Plan, including enjoining the Defendants, their agents, officers, and employees from conducting any primary or general election based on the Wake County portion of the 2017 Enacted State House Plan.

3. Enter a preliminary and permanent injunction setting a place and time for the court to receive proposed redistricting plans for the Wake County House Districts that restore the 2011

configuration of House Districts 36, 37, 40, and 41 and otherwise comply with the requirements of state and federal law while balancing the federal and state constitutional demands that elections be conducted in accordance with equal protection guarantees.

4. Make all further orders as are just, necessary, and proper including orders providing for an expedited and shortened period of discovery and an expedited trial.

5. Require Defendants to pay Plaintiffs' costs and expenses.

6. Grant Plaintiffs such other and further relief the Court deems just and proper.

This the 21st day of February, 2018.



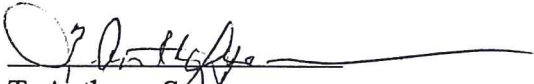
Allison J. Riggs
State Bar No. 40028
allison@southerncoalition.org
Jaclyn A. Maffetore
State Bar No. 50849
jaclyn@southerncoalition.org
Ivy Johnson
State Bar No. 52228
ivy@southerncoalition.org
Southern Coalition for Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3380
Facsimile: 919-323-3942

Counsel for Plaintiffs

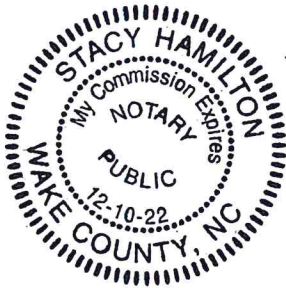
VERIFICATION

I, T. Anthony Spearman, President of the North Carolina State Conference of the NAACP, having been duly sworn, hereby state that I have read the foregoing Complaint, and that the same is true to the best of my knowledge.

This the 20th day of February, 2018.


T. Anthony Spearman

Sworn to and subscribed before me by
T. Anthony Spearman, personally appearing, this
The 20th day of February, 2018.




Notary Public

My Commission Expires:

12/10/2022

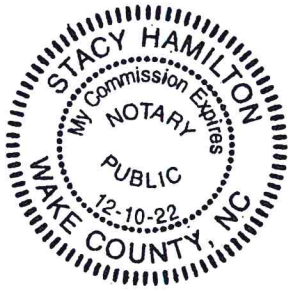
VERIFICATION

I, Candace Blackley, having been duly sworn, hereby state that I have read the foregoing Complaint, and that the same is true to the best of my knowledge.

This the 19th day of February, 2018.

Candace Blackley
Candace Blackley

Sworn to and subscribed before me by
Candace Blackley, personally appearing, this
The 19th day of February, 2018.



[Signature]
Notary Public

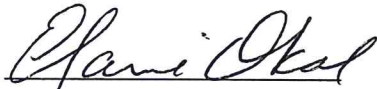
My Commission Expires:

12 / 10 / 2022

VERIFICATION

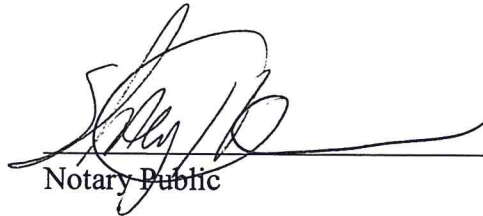
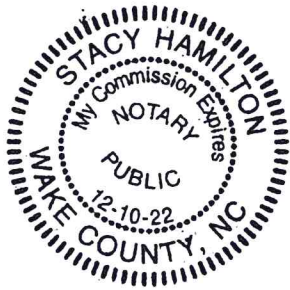
I, Elaine Okal, having been duly sworn, hereby state that I have read the foregoing Complaint, and that the same is true to the best of my knowledge.

This the 19th day of February, 2018.



Elaine Okal

Sworn to and subscribed before me by
Elaine Okal, personally appearing, this
The 19 day of February, 2018.



Notary Public

My Commission Expires:

12 / 10 / 2022

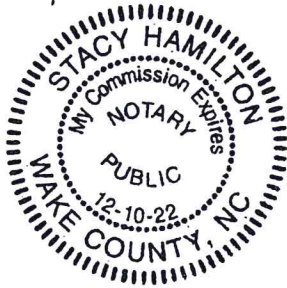
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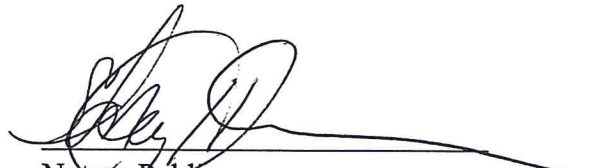
I, Retta Riordan, having been duly sworn, hereby state that I have read the foregoing Complaint, and that the same is true to the best of my knowledge.

This the 19th day of February, 2018.


Retta Riordan

Sworn to and subscribed before me by
Retta Riordan, personally appearing, this
The 19th day of February, 2018.




Notary Public

My Commission Expires:

12/10/2022

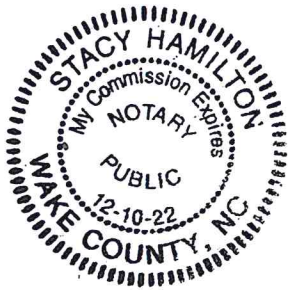
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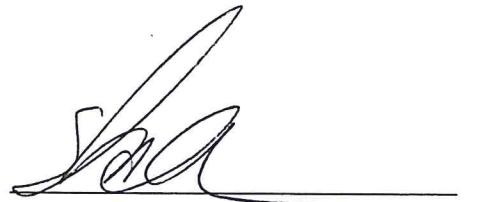
I, Cheryl Tung, having been duly sworn, hereby state that I have read the foregoing Complaint, and that the same is true to the best of my knowledge.

This the 17th day of February, 2018.


Cheryl Tung

Sworn to and subscribed before me by
Cheryl Tung, personally appearing, this
The 17 day of February, 2018.




Notary Public

My Commission Expires:

12/10/2022

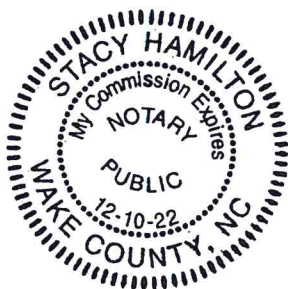
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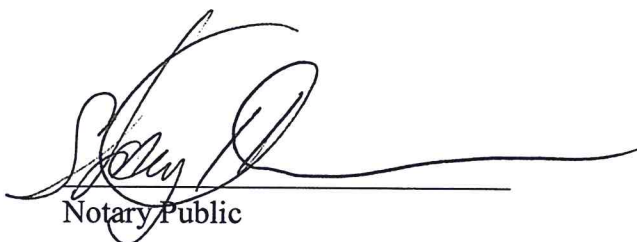
I, Melvin Montford, Executive Director of the North Carolina A. Philip Randolph Institute, having been duly sworn, hereby state that I have read the foregoing Complaint, and that the same is true to the best of my knowledge.

This the 19th day of February, 2018.


Melvin Montford

Sworn to and subscribed before me by
Melvin Montford, personally appearing, this
The 19 day of February, 2018.




Notary Public

My Commission Expires:

12 / 10 / 2022

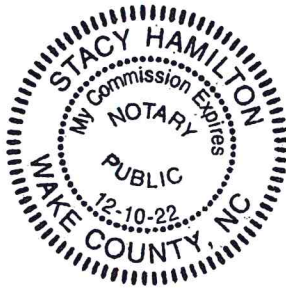
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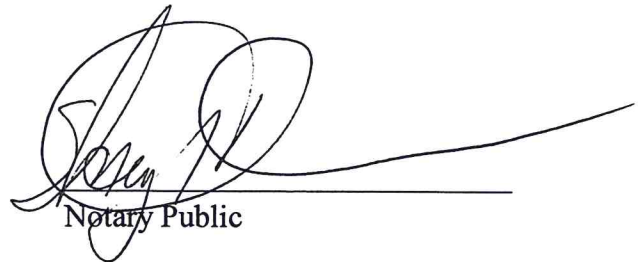
I, Janet Hoy, Co-President of the League of Women Voters of North Carolina, having been duly sworn, hereby state that I have read the foregoing Complaint, and that the same is true to the best of my knowledge.

This the 19th day of February, 2018.


Janet Hoy

Sworn to and subscribed before me by
Janet Hoy, personally appearing, this
The 19 day of February, 2018.




Notary Public


My Commission Expires:

12/10/2022

VERIFICATION

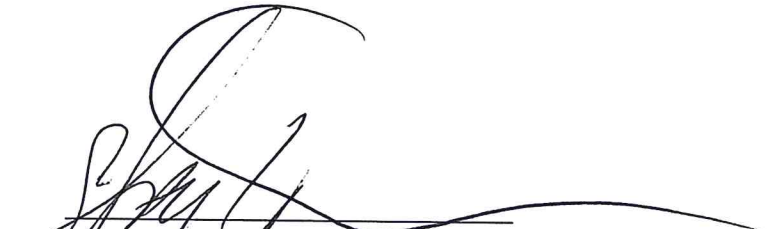
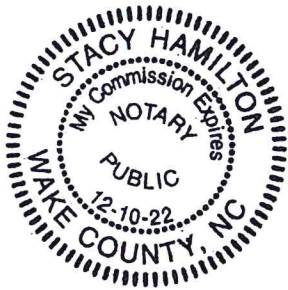
I, Tomas Lopez, Executive Director of Democracy North Carolina, having been duly sworn, hereby state that I have read the foregoing Complaint, and that the same is true to the best of my knowledge.

This the 19th day of February, 2018.



Tomas Lopez

Sworn to and subscribed before me by
Tomas Lopez, personally appearing, this
The 19th day of February, 2018.



Notary Public

My Commission Expires:

12/10/2022