

NORTH CAROLINA SUPREME COURT

NORTH CAROLINA LEAGUE OF)
CONSERVATION VOTERS, INC., *et al.*,)

Plaintiffs-Appellants,)

v.)

REPRESENTATIVE DESTIN HALL, in his)
official capacity as Chair of the House)
Standing Committee on Redistricting, *et al.*,)

Defendants-Appellees.)

From Wake County

REBECCA HARPER, *et al.*,)
Plaintiffs-Appellants,)

v.)

REPRESENTATIVE DESTIN HALL, in his)
official capacity as Chair of the House)
Standing Committee on Redistricting, *et al.*)

Defendants-Appellees.)

BRIEF OF AMICUS CURIAE BUNCOMBE COUNTY
BOARD OF COMMISSIONERS IN SUPPORT OF
PLAINTIFFS-APPELLANTS

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BOARD OF COMMISSIONERS IN SUPPORT OF
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INTRODUCTION

Pursuant to North Carolina Rule of Appellate Procedure 28(i), the Buncombe County Board of Commissioners submits this brief as amicus curiae in support of Plaintiffs-Appellants in these consolidated cases.¹

The Buncombe County Board of Commissioners and the citizens of Buncombe County have been the targets and victims of partisan gerrymandering by the General Assembly over the last decade, and they are in the General Assembly's crosshairs again this decade. Their firsthand experiences will assist the Court in understanding the broad sweep of the partisan gerrymandering plague in North Carolina and the continuing threat partisan gerrymandering poses to our republic at both the state and local levels.

I. The General Assembly's Intent to Secure Unfair Influence for Republican Voters is not Confined to Maintaining Control of the General Assembly.

Under general laws in place for decades, the General Assembly has granted counties and cities substantial powers to adopt referenda allowing voters to determine for themselves the form of their local government. *See* N.C.G.S. § 153A-58 (first enacted in 1927 and conferring independent power

¹ No counsel or party in any of these consolidated cases authored this brief in whole or in part or made a monetary contribution to fund the preparation or submission of this brief.

on boards of county commissioners to change their form of government by referendum); § 160A-101 (first enacted in 1969 and conferring similar power on cities). Similarly, under general laws in place for decades, the General Assembly has granted counties, cities, and school boards the power to revise the boundaries of their electoral districts following each new census to meet one-person, one-vote obligations. *See* N.C.G.S. § 153A-22 (power to redraw electoral districts for counties first enacted in 1981); § 160A-23.1 (power to redraw electoral districts for cities first enacted in 1990); § 115C-37 (power to redraw electoral districts for school boards first enacted in 1955). Notwithstanding these general laws, several times this past decade the General Assembly usurped the powers of local governments in Democratic-leaning counties to impose unlawful, gerrymandered districts on those local governments and their citizens—including Buncombe County.

In 1984 the citizens of Buncombe, exercising the power conferred on all counties by N.C.G.S. § 153A-58, approved a referendum providing for the election of the members of the Buncombe County Board of Commissioners at large. In May 2011 the General Assembly—on a party line vote—enacted local legislation reversing the results of that referendum. *See* An Act to Expand the Board of Commissioners of Buncombe County from Five to Seven Members and to Provide for the Election of all But the Chair by Districts, S.L. 2011-81, 2011 N.C. Sess. Laws 110, 110. Under this local act, at-large elections were replaced

by district elections and the boundaries of the new county commission electoral districts were made coterminous with the boundaries of the three House of Representative districts for Buncombe. *Id.* No other county has ever had the boundaries of its legislative districts imposed as the boundaries of its county commission districts.

Moreover, as subsequently determined by the courts, the boundaries of these districts violated the state constitutional rights of Buncombe citizens because they had been deliberately drawn to discriminate against citizens on the basis of their partisan preferences. *See Common Cause v. Lewis*, 2019 WL 4569584, at *73, 78–80 (N.C. Super. Ct. Sept. 3, 2019) (finding that the boundaries established by the General Assembly in 2011 for the three Buncombe House districts constituted “an extreme partisan gerrymander” that harmed Buncombe voters in violation of the state constitution by distorting and diminishing the value and weight of their votes). Buncombe County’s residents suffered this harm over the 2012, 2014, 2016, and 2018 elections for two sets of offices: for the Board of County Commissioners and for their representatives in the State House. Thus, the consequence of the General Assembly’s 2011 Buncombe local act, in combination with its 2011 House redistricting map, was to submerge in a partisan bog the votes cast by Buncombe citizens over a span of eight years in four different elections for two separate sets of public office.

The Buncombe local act was not an outlier. It was in fact one of a series of local acts passed over the last decade targeting the value and weight of votes cast in local elections in urban, Democratic counties. In this series of acts, the General Assembly arrogated to itself the powers ordinarily conferred on local governments to redraw the boundaries of their electoral districts. *See, e.g.*, An Act to Provide that Members of the Wake County Board of Education Shall be Elected from Districts, S.L. 2013-110, 2013 N.C. Sess. Laws 215, 215–29 (creating districts for the Wake County Board of Education); An Act to Increase the Size of the Wake County Board of Commissioners and to Alter the Districts to Coincide with the Districts of the Wake County Board of Education, S.L. 2015-4, 2015 N.C. Sess. Laws 34, 34 (creating districts for the election of the Wake County Board of Commissioners); An Act to Modify the Form of Government in the City of Trinity and to Clarify the Form of Government, Method of Election, and Determination of Election Results in the City of Greensboro, S.L. 2015-138, 2015 N.C. Sess. Laws 337, 337–46 (creating districts for the election of the Greensboro City Council). Each of these local acts, like the legislative districts imposed by local act on Buncombe County, was declared an unconstitutional partisan gerrymander. *See Raleigh Wake Citizens Assoc. v. Wake Cnty. Bd. of Elections*, 827 F.3d 333 (4th Cir. 2016) (invalidating the local acts creating new districts for the election of the members of the Wake County Board of Education and the Wake County Board

of Commissioners on the grounds that departures from one-person, one-vote in order to gain partisan advantage were unconstitutional); *City of Greensboro v. Guilford Cnty. Bd. of Elections*, 251 F. Supp 3d 935 (M.D.N.C. 2017) (invalidating the local act creating new districts for the election of the Greensboro City Council on the same grounds).²

These local acts—and their ultimate invalidation by state and federal courts—demonstrate the General Assembly’s intentional effort to discount the weight of votes at the state and local level in Democratic-leaning counties. Buncombe County and its residents have been doubly harmed by the General Assembly’s redistricting practices.

II. The 2021 Buncombe House Districts Perpetuate the General Assembly’s Gerrymandering Practices.

There is no doubt that the General Assembly’s gerrymandering practices will continue unabated absent intervention by this Court to protect the rights

² Although Buncombe County has been part of the General Assembly’s pattern of partisan discrimination, it has also been uniquely singled out from other local bodies in two ways. First, the General Assembly imposed *legislative* districts as the Board of Commissioners districts. The imposition of legislative districts has resulted in additional (perhaps unintended) consequences for the Buncombe County Board of Commissioners: namely, the pairing of multiple incumbents. Second, the General Assembly mandated that the Board of Commissioner district boundaries follow the legislative district boundaries in perpetuity. *See* S.L. 2011-81, 2011 N.C. Sess. Laws 110, 110. While other counties were able to redistrict their electoral district boundaries in 2021, Buncombe County and its residents remain subject to the districts imposed by the General Assembly.

guaranteed all citizens by Article I of the Constitution. The General Assembly's willingness to sacrifice the constitutional rights of North Carolinians is plainly demonstrated by the facts recently found by the trial court regarding the new House districts drawn by the General Assembly in Buncombe County.

The Buncombe House districts are challenged by all three sets of plaintiffs as illegal partisan gerrymanders. *N.C. League of Conservation Voters, Inc. v. Hall*, 21-CVS-15426 (N.C. Super. Ct. Jan. 11, 2022), Judgment³ ¶ 323. The three-judge panel found the three new districts to be “the result of intentional, pro-Republican partisan redistricting” that over the entire decade will harm citizens because the districts are “nonresponsive to the votes cast ... in multiple electoral environments.” Judgment ¶¶ 308, 328.

These findings were based on common sense supported by the unanimous, unrefuted analyses of a team of expert mathematicians, statisticians, and political scientists. For example:

³ Available at <https://www.nccourts.gov/assets/inline-files/22.01.22%20-%20Final%20Judgment.pdf?QLMOdYaLQJuVikstejKHdnL27Ka71qqo> (last accessed Jan. 21, 2022).

- Professor Wesley Pegden’s analysis establishes that 99.979% of the trillions of simulated maps he constructed were less partisan than the enacted Buncombe districts. Pegden report⁴ at 16; Judgment ¶ 330;
- Professor Jonathan Mattingly’s analyses establish that 98.8% of the thousands of simulated maps he constructed using the General Assembly’s announced criteria resulted in maps more favorable to Democratic voters and candidates, and less favorable to Republican voters and candidates. Mattingly Report⁵ at 38; Judgment ¶ 329 and
- Dr. Moon Duchin’s analysis establishes that the General Assembly designed House district 116 to never to elect a Democrat—and the trial court agreed. Judgment ¶ 331.⁶

Further, the General Assembly’s announced criteria were mere pretexts designed to hide their partisan goals in Buncombe County. Compactness was an announced criterion, but House District 116 in Buncombe is the least compact district in the entire House map. Judgment ¶ 331. Keeping cities whole was an announced criterion, but Asheville is unnecessarily divided among all three Buncombe House districts. *See* Municipality – District Report,

⁴ Available at <https://www.nccourts.gov/assets/inline-files/PX523%20Expert%20Report%20of%20Dr.%20Wesley%20Pegden.pdf?Po61aAt8ddk8siAGq6J.5o1kB9NdlkRY> (last accessed Jan. 21, 2022).

⁵ Available at <https://www.nccourts.gov/assets/inline-files/PX629%20Expert%20Report%20of%20Dr.%20Jonathan%20C.%20Mattingly.pdf?68n8gxG7t8ZPLTx17WYUgl.BPD1BoTVd> (last accessed Jan. 21, 2022).

⁶ Even the Legislative Defendants’ expert, Dr Barber, confirmed that the enacted Buncombe districts are outliers. In ten of the eleven individual elections that Dr. Barber analyzed, his simulations resulted in three Democratic districts for the majority of his simulated plans. Judgment ¶ 332.

available at https://www.ncleg.gov/Files/GIS/Plans_Main/House_2021/SL%202021-175%20House%20-%20StatPack%20Report.pdf (last accessed Jan. 21, 2022).

Most tellingly, preservation of the existing districts was unnecessarily ignored in Buncombe County. With the movement of a single precinct from House District 116 to 115, the General Assembly could have readopted the 2019 court-approved House districts in Buncombe County.⁷ But that simple, rational step would have threatened the General Assembly's overarching partisan goal since the 2019 districts resulted in the election of three Democrats from Buncombe County. There is no explanation for the Buncombe County districts other than extreme partisanship.

And without court intervention, Buncombe County residents will again be subjected to unresponsive districts for their county commission and State House delegation. Buncombe County voters deserve representative and responsive government—both at the local and state levels. Because these districts undermine the legitimacy of the Buncombe County Board of

⁷ Compare An Act to Comply with Order of the Court in 18 CVS 014001, Wake County, S.L. 2019-220, <https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2019-220.pdf> to 2020 Census, North Carolina – Total Population by Voting District, available at https://www.ncleg.gov/Files/GIS/Base_Data/2021/Reports/PL94_171_2020_VtdPop.pdf (last accessed Jan. 21, 2022).

Commissioners and the trust voters place in their local government, this Court should invalidate the extreme gerrymander in Buncombe County.

CONCLUSION

This Court should reverse the judgment of the Court and order relief before any elections are held under the gerrymandered districts.

Respectfully submitted, this the 21st day of January, 2022.

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