Exhibit 8

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-399

PLAINTIFFS' RESPONSE AND PROPOSED MODIFICATIONS TO THE SPECIAL MASTER'S DRAFT PLAN

Plaintiffs have carefully analyzed the Special Master's Draft Plan (hereinafter, "Draft Plan") and have concluded that the plan does remedy the constitutional flaws in the legislature's 2017 enacted plan. Because the Special Master has invited "suggestions as to unpairing incumbents or otherwise," ECF 212 at 1, Plaintiffs here offer some suggestions to unpair incumbents, and a few other slight proposed revisions to the Draft Plan. Such suggestions are offered only where, in accordance with the Court's and Special Master's instructions, those modifications take into account the state's legislative policy preferences as expressed in the state's adopted redistricting criteria, see ECF 212 at 3, and "do not degrade the underlying features of the plan as expressed in the Court's November 1st order." ECF 212 at 4.

I. House Districts 57 and Surrounding Districts in Guilford County

Plaintiffs' analysis of the proposed changes to House Districts in Guilford County indicates that the racial gerrymandering has been cured. However, the reconfigured

districts do pair two sets of incumbents: African-American Democrat Amos Quick, currently representing House District 58, and White Republican Jon Hardister, currently representing House District 59, are paired in Draft Plan House District 59; White Democrat Pricey Harrison, currently representing House District 57, and White Republican John Blust, currently representing House District 62, are paired in Draft Plan House District 61. Districts 57 and 58 in the Draft Plan are left with no incumbent.

Plaintiffs believe that Representative Quick and Representative Hardister can be unpaired easily without degrading the underlying features of the plan. Representative Quick lives in Precinct SUM2, which is immediately adjacent to Draft Plan House District 58, which has no incumbent. There are two options for moving Representative Quick to open District 58:

(1) Rep. Quick's entire precinct could be added to HD 58. This change would not make HD 59 or HD 58 over- or under-populated.

(2) Rep. Quick lives at the northern end of Precinct SUM2, closer to the border with HD 58, so the precinct could be split to add only the top portion of SUM2 to HD 58.

Moving the entire precinct SUM2 to HD 58 does make HD 58 less compact than it is in the Draft Plan, but it is still within acceptable compactness ranges and much more compact than districts in the 2011 Plan.[1] Splitting the SUM2 precinct would make HD

[1]In the Draft Plan, HD 58 scores 0.27 on Reock and 0.15 on Polsby-Popper. Plaintiffs' proposed version of HD 58 that moves the entire SUM2 precinct scores 0.23 on Reock and 0.13 on Polsby-Popper. Thus, the Plaintiffs' Proposed whole-precinct modification

58 more compact—comparable to the version in the Draft Plan[2]—but it would split a precinct where the Draft Plan in Guilford County currently split no precincts. In Plaintiffs' view, both options are acceptable—neither significantly degrades the underlying plan in terms of compactness or respect for precincts and municipal boundaries. Plaintiffs offer both options to the Special Master—the maps presented in Exhibit A (the whole precinct map is at page 1 and the split precinct map is at page 2) and the shapefiles being served via email—but express no preference in terms of which option best complies with the Court's directives to the Special Master.

II. Wake County Districts

Plaintiffs propose two small modifications to the Wake County Districts in the Special Master's Draft Plan. First, and most importantly, Plaintiffs have observed an apparently inadvertent violation of the North Carolina Constitution's prohibition on mid-decade redistricting. The Special Master was instructed by the Court to "recreate the 2011 House Districts 36, 37, 40 and 41" because the modification of those districts in the 2017 plan exceeded the court's order to remedy the two districts found to be racial gerrymanders. ECF 212 at 14 (Special Master's Order on Draft Plan); *see also* ECF 206 at 2-3 (Court's Order Appointing Special Master). It appears that the Draft Plan

---

is slightly less compact than the Draft Plan, but not in a way that degrades the plan in any significant way.

[2] In the Draft Plan, HD 58 scores 0.27 on Reock and 0.15 on Polsby-Popper. Plaintiffs' proposed version of HD 58 that adds only the northern part of precinct SUM2 scores 0.24 on Reock and 0.14 on Polsby-Popper. Plaintiffs' proposed split-precinct modification is thus more compact than the whole-precinct modification, and essentially comparable to the Special Master's Draft Plan version of the district.

inadvertently makes one precinct whole that was split in the 2011 version of HD 40. *See* Ex. A at 3. That is precinct 08-10, which is split in the 2011 version of HD 40 but is whole in the Draft Plan version of HD 40. Plaintiffs recommend slightly modifying the Draft Plan's version of HD 40 to restore it entirely to its 2011 version, including that split precinct. Significantly, restoring HD 40 to its 2011 form has ripple effects on at least two additional districts—certainly HD 49 and potentially HD 34. Splitting the precinct in HD 40 means that population is moved to HD 49, which then becomes overpopulated, and some population must be moved to an adjacent district. HD 34 is an obvious choice to receive that additional population from HD 49. The other districts that were to be restored to their 2011 versions (36, 37 and 41) have been perfectly restored.

Second, in the Draft Plan, two incumbents are paired. Democrat Cynthia Ball, currently representing House District 49, and Democrat Grier Martin, currently representing House District 34, are now paired in Draft Plan House District 49, while House District 34 is left with no incumbent. Representative Martin lives in Precinct 01-10, which is near the edge of Draft Plan District 49, making it easy to move him out of that district. Plaintiffs' proposed modification moves only six precincts between the two affected districts—Precincts 07-03 and 07-09 are moved from District 34 to District 49, and Precincts 01-10, 01-11, 01-12 and 01-36 are moved from District 49 to District 34. These modifications unpair the incumbents, keep the two districts within acceptable population deviations, have no impact on municipal boundary splits, do not split any precincts, and create two districts that are comparably compact to the same two districts

in the Draft Plan.[3] The two districts are maintained in the same region and retain the same general shape as they have in the Draft Plan. The map displaying Plaintiffs' proposed modifications to Wake County House Districts is can be seen in Exhibit A at page 4.

III. Plaintiffs Make No Suggested Changes to the Following Districts

A. Mecklenburg County – HD 92, 103, 104, and 105

Plaintiffs' analysis of the proposed changes in this county in the Draft Plan indicates that the racial gerrymandering has been cured and that no incumbents intending to run in 2018 are paired by the configuration of the districts. Thus, Plaintiffs lodge no objections or proposed modifications to House Districts 92, 103, 104, and 105 in the Draft Plan.

B. Guilford County – HD 61

While Plaintiffs are able to recommend changes to the pairing of Representatives Hardister and Quick in Guilford county, *see supra* at Section I, at 1-3, unpairing Representative Blust and Representative Harrison is much more challenging.

[3] The change in compactness scores in HD 49 and 34 cannot be attributed entirely or even predominantly to the unpairing of Representatives Ball and Martin. Both of those districts were modified to accommodate the restoration of HD 40 and even out the population between districts in that area. Notwithstanding that fact, the compactness scores of the districts in the Special Master's plan and the Plaintiffs' suggested revisions are comparable. HD 49 in the Draft Plan scores 0.41 on Reock and 0.33 on Polsby-Popper. HD 49 in the Plaintiffs' Proposed Wake Modification scores 0.46 on Reock and 0.30 on Polsby-Popper. HD 34 in the Draft Plan scores 0.46 on Reock and 0.53 on Polsby-Popper. HD 34 in the Plaintiffs' Proposed Wake Modification scores 0.44 on Reock and 0.43 on Polsby-Popper. Thus, the Special Master's version of HD 34 is only very slightly more compact than Plaintiffs' suggested version, but that may be due to the restoration of HD 40. With HD 49, the Special Master's version scores better on Polsby-Popper and the Plaintiffs' version scores better on Reock. Ultimately, Plaintiffs' suggested modifications do not degrade the compactness of the Special Master's plan.

Representative Blust lives in Precinct FR3, which is at the edge of Draft Plan House District 61 and directly adjacent to House District 62. But moving Representative Blust into that District pairs Rep. Blust with Republican Representative John Faircloth, and has no other added advantages in terms of compactness or municipal boundaries. In addition, based on where Rep. Blust and Rep. Harrison live, it is not possible to move either of them into the open HD 57 without significantly degrading the underlying features of the plan. Thus, it seems like this pairing may be unavoidable, particularly given the fact that the Court has instructed that preventing the unpairing of incumbents is a "distinctly subordinate consideration." ECF 212 at 3.

C. Sampson, Wayne, and Bladen Counties – HD 21 and 22

Plaintiffs' analysis of the proposed changes in this area of the state in the Draft Plan indicates that the racial gerrymandering has been cured and that no incumbents intending to run in 2018 are paired by the configuration of the districts. Thus, Plaintiffs lodge no objections to House Districts 21 and 22 in the Draft Plan nor have any proposed modifications.

D. Cumberland and Hoke Counties – SD 19 and 21

Plaintiffs have no objection or proposed modification to Senate Districts 19 and 21 in the Draft Plan, although there is a potential pairing of Senators Clark (African-American Democrat) and Meredith (White Republican), using Senator Clark's new house in Fayetteville. *See* ECF 208, Ex. 2. Plaintiffs have not been able to create a map that cures

the racial gerrymander, unpairs Senator Clark's new home from Senator Meredith's residence, and maintains the underlying features of the plan.

E. Guilford County – SD 28

Plaintiffs' analysis of the proposed changes to Senate District 28 indicates that the racial gerrymandering has been adequately cured. As with the Senate Districts in Cumberland County, there are two incumbents paired—African-American Democrat Gladys Robinson, currently representing Senate District 28, and White Republican Senator Trudy Wade, currently representing Senate District 27, are paired in Draft Plan Senate District 27.

Plaintiffs have not been able to design a configuration of Senate Districts in this cluster that would both cure the racial gerrymandering in Senate District 28, leave Senate District 26 untouched, *see* ECF 212 at 7, not degrade the underlying features of the plan, and not pair these two incumbents.

CONCLUSION

Therefore Plaintiffs respectfully make the foregoing proposed slight adjustments to the Special Master's draft plan. Shapefiles with these proposed changes are being served upon the parties and the Special Master with the filing of this brief.

Respectfully submitted this 17th day of November, 2017.

POYNER SPRUILL LLP

By: /s/ Edwin M. Speas, Jr.
Edwin M. Speas, Jr.
N.C. State Bar No. 4112
espeas@poynerspruill.com
Caroline P. Mackie
N.C. State Bar No. 41512
cmackie@poynerspruill.com
P.O. Box 1801 (27602-1801)
301 Fayetteville St., Suite 1900
Raleigh, NC 27601
Telephone: 919-783-6400
Facsimile: 919-783-1075

Counsel for Plaintiffs

SOUTHERN COALITION FOR SOCIAL JUSTICE

By: /s/ Allison J. Riggs
Allison J. Riggs
N.C. State Bar No. 40028
allisonriggs@southerncoalition.org
1415 Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-794-4198
Facsimile: 919-323-3942

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this date I have electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will provide electronic notification of the same to the following:

Alexander M. Peters
James Bernier
Special Deputy Attorney General
Office of the Attorney General
P.O. Box 629
Raleigh, NC 27602
apeters@ncdoj.gov

Counsel for Defendants

Thomas A. Farr
Phillip J. Strach
Michael D. McKnight
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100
Raleigh, NC 27602
thomas.farr@ogletreedeakins.com
phillip.strach@ogletreedeakins.com
michael.mcknight@ogletreedeakins.com

Counsel for Defendants

This 17th day of November, 2017.

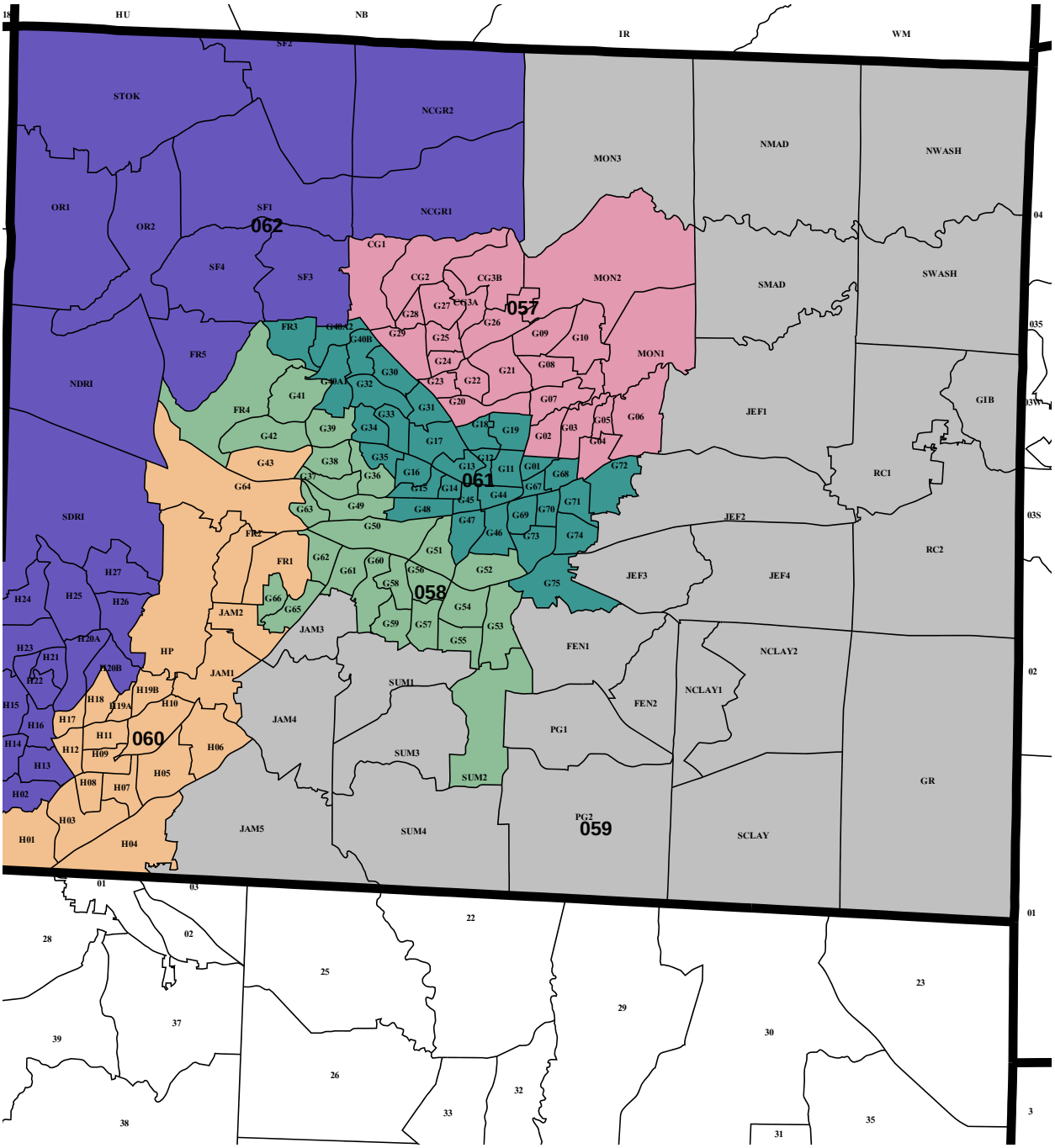
/s/ Allison J. Riggs
Allison J. Riggs

Counsel for Plaintiffs

Exhibit A

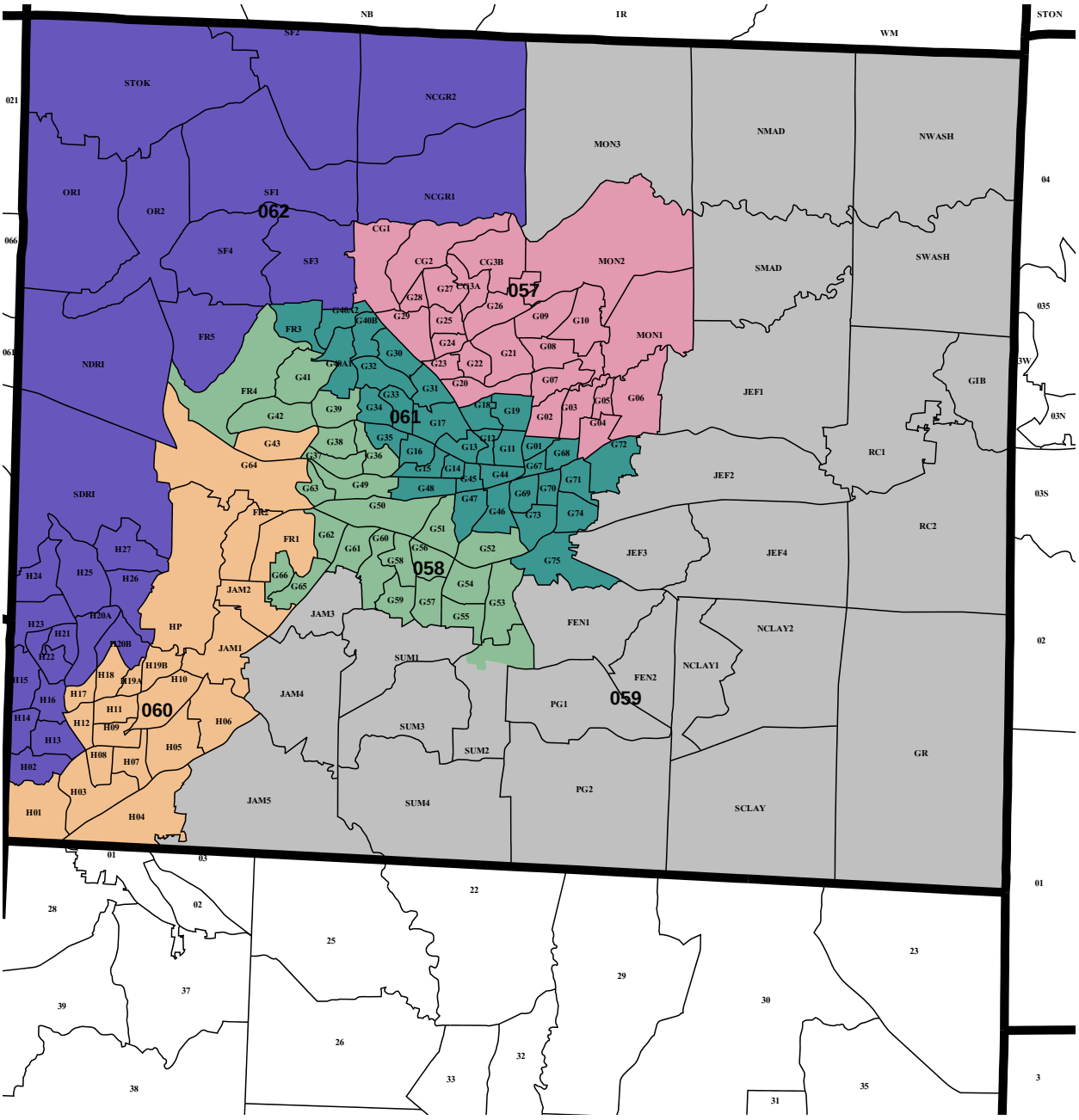
Plaintiffs' Suggested Modification to House Districts 58 and 59 in Guilford County

(Whole precinct SUM2 moved)



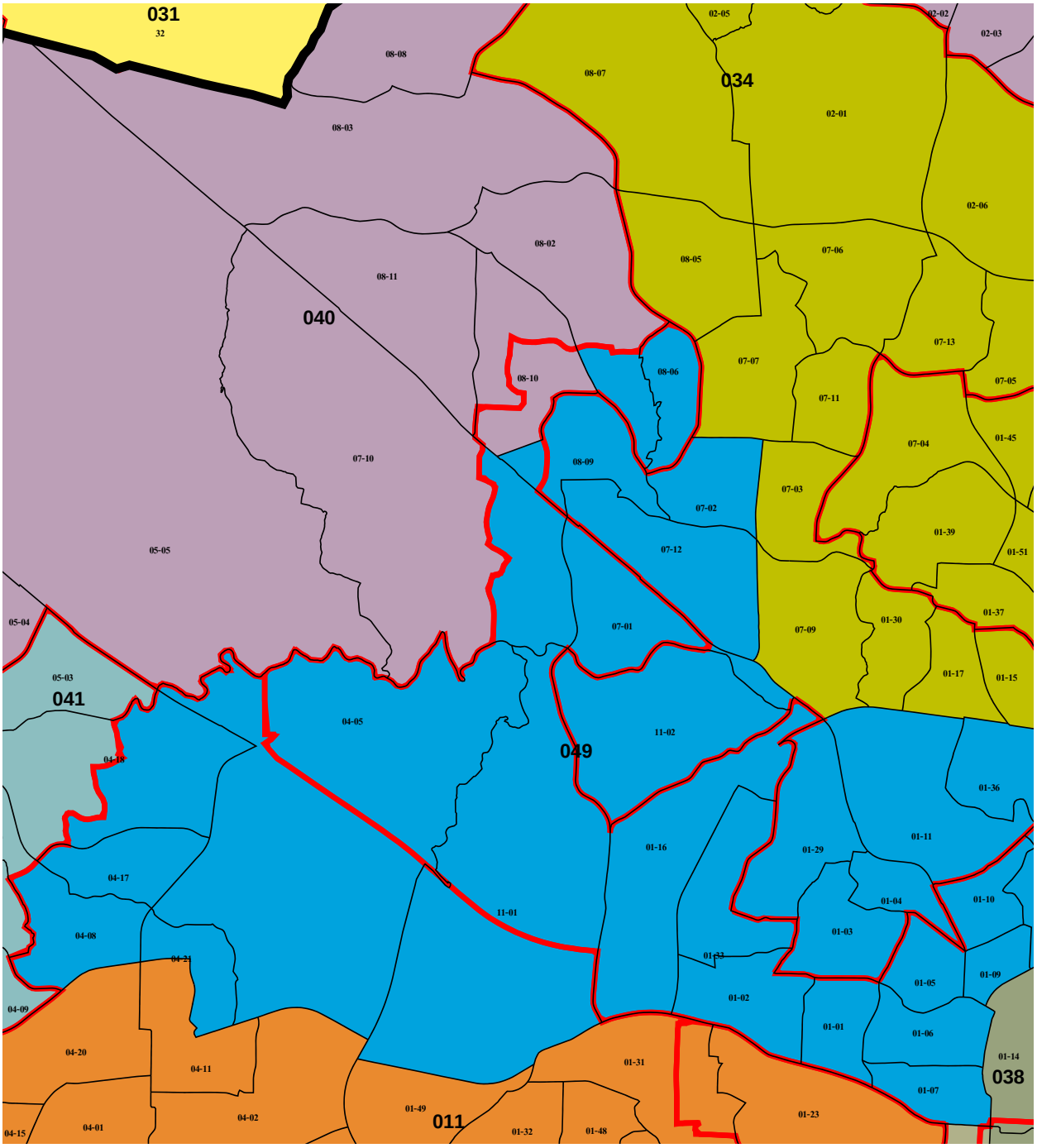
Plaintiffs' Suggested Modification to House Districts 58 and 59 in Guilford County

(Precinct SUM2 split)



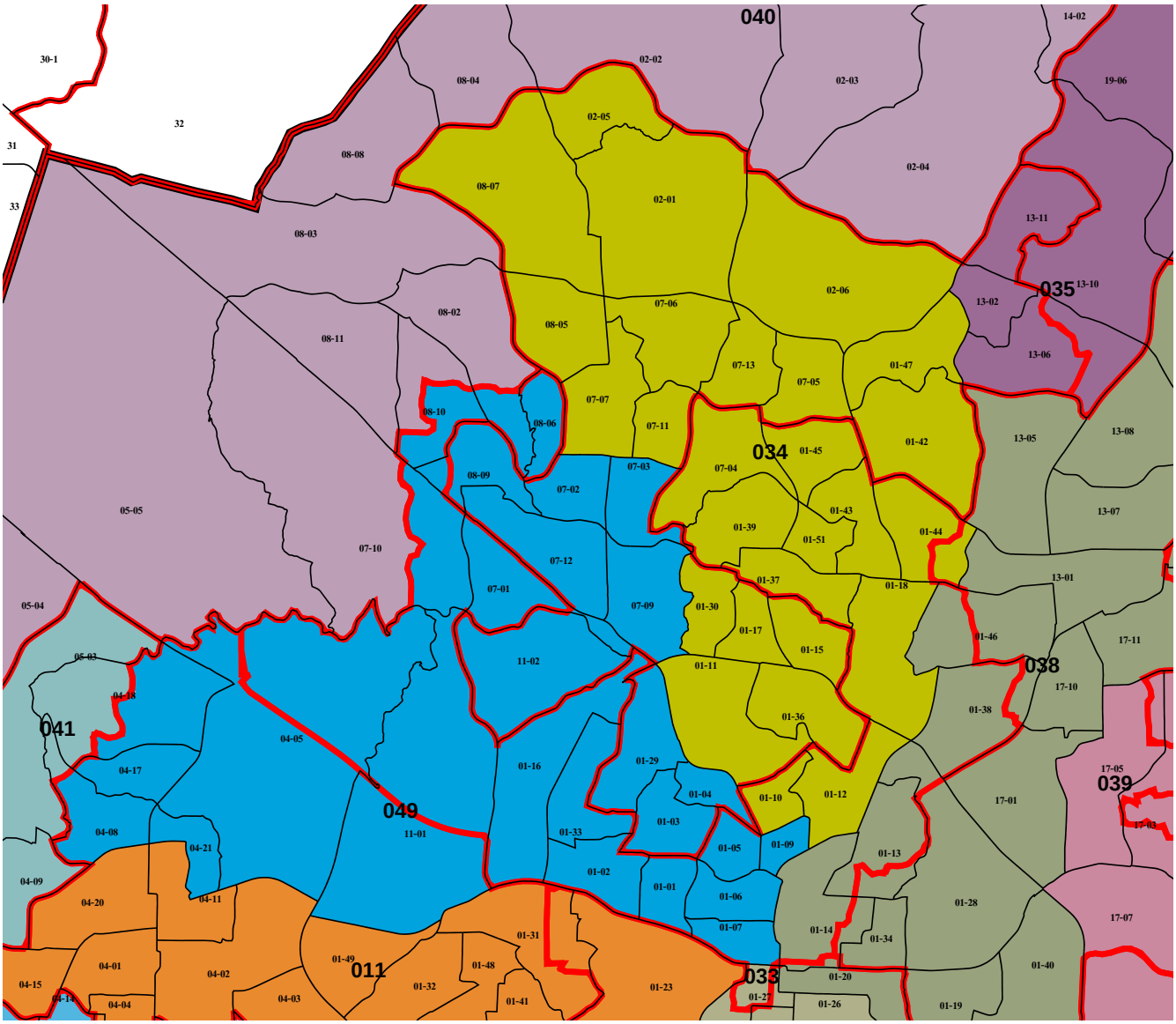
Special Master's House Draft Plan in Wake County

(Red lines are 2011 House district borders)



Plaintiffs' Suggested Modifications to House Districts 34, 40, and 49 in Wake County

(Red lines are 2011 district borders)



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-399

PLAINTIFFS' RESPONSE TO LEGISLATIVE DEFENDANTS' NOVEMBER 17, 2017 FILING

The Special Master instructed the parties to provide proposed objections and revisions to the Draft Plan and specifically encouraged the parties to include suggestions as to how incumbents should be unpaired. ECF 212 at 19. Legislative Defendants provide only abstract objections, not meaningfully engaging with any element of the Draft Plan, and offer no alternative plan or suggestions for unpairing incumbents for the Special Master's consideration (or upon which Plaintiffs could comment). Indeed, this lack of meaningful response from Legislative Defendants is surprising since a large portion of their brief complains about the absence of another chance to remedy the continued unconstitutionality in the 2017 enacted plan. When presented with an opportunity by the Special Master to do just that, Legislative Defendants declined.

Nonetheless, Plaintiffs submit the following observations to assist the Special Master in completing the task assigned to him.

I. UNDER THE NORTH CAROLINA CONSTITUTION, THE COURT DID NOT AUTHORIZE THE LEGISLATURE TO ENGAGE IN MID-DECADE REDISTRICTING BEYOND THAT WHICH WAS NECESSARY TO REMEDY RACIAL GERRYMANDERING, AND THUS THE SPECIAL MASTER'S MODIFICATIONS ARE APPROPRIATE

Legislative Defendants' continued protestations that the legislature was free to make any changes it saw fit to all Wake and Mecklenburg County House Districts during the 2017 remedial process defies all logic and legal reasoning. A federal court can only authorize a legislature to depart from state constitutional demands insofar as is necessary to correct violations of federal law. *See Cleveland Cnty. Ass'n for Gov't by the People v. Cleveland Cnty. Bd. of Comm'rs,* 142 F.3d 468, 477 (D.C. Cir. 1998) (per curiam) ("[I]f a violation of federal law *necessitates* a remedy barred by state law, the state law must give way; if no such violation exists, principles of federalism dictate that state law governs."). The Court's reading of Article II, Sections 3(4) and 5(4) of the North Carolina constitution is neither "novel," Defs' Br. at 13, nor inconsistent with North Carolina state law precedent. It is difficult to imagine any directive more "clear, complete, and unmistakable," *Kornegay v. Goldsboro*, 180 N.C. 441, 445, 105 S.E. 187, 189 (1920), than the plainly-worded rule that legislative districts "shall remain unaltered until the return of another decennial census." N.C. CONST. art. II §§3(4) and 5(4).

In Wake and Mecklenburg Counties, it is factually incorrect that "the shapes and locations of the non-adjoining districts were directly caused by the location of the illegal districts," Defs' Br. at 13-14, and thus must somehow be altered in correcting the racial gerrymanders. Plaintiffs' proposed maps for these two counties, introduced during the

legislative session and presented to this Court, demonstrate that the racial gerrymanders can be remedied without touching the five implicated districts, and there is no "domino effect" on every district in the county. Defs' Br. at 14. Were the Special Master to suggest to the court that the legislature should have free rein to redistrict county-wide, even where such alterations are not necessary to remedy a federal law violation, then the Court would commit the very errors that were central in *Perry v. Perez*, 565 U.S. 388, 392 (2012), where a federal court erroneously disregarded state law and policy. The Special Master should decline to offer such poor advice.

II. THE AVAILABILITY OR USE OF RACIAL DATA DOES NOT EQUATE TO RACIAL PREDOMINANCE IN REDISTRICTING

Legislative Defendants' only remotely-specific condemnation of the Draft Plan is that the Special Master employed "racial sorting" in the plan. Defs' Br. at 15. As Legislative Defendants should know—after years of litigation over its 2011 maps and three recent United States Supreme Court decisions reiterating the standards for the appropriate use of race—the consideration of race in redistricting does not condemn a plan as an unconstitutional racial gerrymander. *See Bush v. Vera*, 517 U.S. 952, 993 (1996) (O'Connor, J., concurring); *see also Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 555 (3d Cir. 2011); *Prejean v. Foster*, 227 F.3d 504, 509 (5th Cir. 2000); *Shirt v. Hazeltine*, 461 F.3d 1011, 1019 (8th Cir. 2006). The use of race in drawing district lines only triggers heightened scrutiny where race is "the predominant factor motivating the [mapdrawer's] decision to place a significant number of voters within or without a particular district." *Ala. Legis. Black Caucus v. Alabama*, 135 S. Ct. 1257, 1267 (2015) (quoting *Miller v. Johnson*,

515 U.S. 900, 916 (1995)) ("*ALBC*"); *see also Cooper v. Harris*, 137 S. Ct. 1455, 1463 (2017); *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 794 (2016).

These three recent cases paint a detailed picture of what actually constitutes a mechanical racial target. *See ALBC*, 135 S. Ct. at 1257, 1271 (finding that the "primary redistricting goal [] to maintain existing racial percentages in each majority-minority district" was a mechanical racial target); *Cooper*, 137 S. Ct. at 1468-69 (holding that a prerequisite that certain districts "must include a sufficient number of African-Americans" to make the "majority black district[s]," regardless of the level of racially polarized voting in the region, is a "textbook example of race-based districting") (internal quotations omitted); *Bethune-Hill,* 137 S. Ct. at 802 (ruling that the legislature's predetermination that each district that elected an African-American representative must have, as redrawn, at least 55% black voting age population was, in all but one instance, an unjustified racial target). Contrary to Legislative Defendants' allegations, mechanical racial targets do not exist and predominate in the redistricting process where, in areas of the state with substantial African-American populations, compact districts drawn from whole precincts and respecting political subdivisions might have black voting age populations ranging from 39% to 43.6%. Defs' Br. at 15. This geographically-predictable outcome is neither surprising nor constitutionally suspect. There is no racial gerrymandering or racial sorting in the Draft Plan because there is neither "circumstantial evidence of a district's shape and demographics" that race predominated "or more direct evidence going to [] purpose." *Bethune-Hill,* 137 S. Ct. at 797. In making these specious claims, Legislative Defendants

can point to no evidence that the Special Master "subordinated traditional race-neutral districting principles . . . to racial considerations," because none exists. *Id*.

CONCLUSION

The three-judge panel provided the Special Master with detailed instructions on how to construct a proposed remedial map, *see, e.g.*, Court Order, ECF 206 at 5-13 (detailing, among other things, the data the Special Master was to obtain or refrain from using, the traditional redistricting criteria he was to respect, and many others). The Special Master's Draft Plan evidences that he understood the detailed instructions from the Court and has a firm grasp on compliance with the United States Supreme Court's precedent on racial gerrymandering.

Therefore, Plaintiffs respectfully urge the Special Master to reject Legislative Defendants' broad and abstract objections, make only the proposed slight adjustments proposed by Plaintiffs to the Draft Plan, and otherwise present the Draft Plan to the Court for its consideration in its current form.

Respectfully submitted this 21st day of November, 2017.

POYNER SPRUILL LLP

By: /s/ Edwin M. Speas, Jr.
Edwin M. Speas, Jr.
N.C. State Bar No. 4112
espeas@poynerspruill.com
Caroline P. Mackie
N.C. State Bar No. 41512
cmackie@poynerspruill.com
P.O. Box 1801 (27602-1801)
301 Fayetteville St., Suite 1900
Raleigh, NC 27601
Telephone: 919-783-6400
Facsimile: 919-783-1075

Counsel for Plaintiffs

SOUTHERN COALITION FOR SOCIAL JUSTICE

By: /s/ Allison J. Riggs
Allison J. Riggs
N.C. State Bar No. 40028
allisonriggs@southerncoalition.org
1415 Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-794-4198
Facsimile: 919-323-3942

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this date I have electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will provide electronic notification of the same to the following:

Alexander M. Peters
James Bernier
Special Deputy Attorney General
Office of the Attorney General
P.O. Box 629
Raleigh, NC 27602
apeters@ncdoj.gov

Counsel for Defendants

Thomas A. Farr
Phillip J. Strach
Michael D. McKnight
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100
Raleigh, NC 27602
thomas.farr@ogletreedeakins.com
phillip.strach@ogletreedeakins.com
michael.mcknight@ogletreedeakins.com

Counsel for Defendants

This 21st day of November, 2017.

/s/ Allison J. Riggs
Allison J. Riggs

Counsel for Plaintiffs