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

COMMON CAUSE, *et al.*, Plaintiffs, v. ROBERT A. RUCHO, in his official capacity as Chairman of the North Carolina Senate Redistricting Committee for the 2016 Extra Session and Co-Chairman of the Joint Select Committee on Congressional Redistricting, *et al.*, Defendants.	CIVIL ACTION NO. 1:16-CV-1026-WO-JEP THREE-JUDGE COURT
League of Women Voters of North Carolina, *et al.*, Plaintiffs, v. Robert A. Rucho, in his official capacity as Chairman of the North Carolina Senate Redistricting Committee for the 2016 Extra Session and Co-Chairman of the 2016 Joint Select Committee on Congressional Redistricting, *et al.*, Defendants.	CIVIL ACTION NO. 1:16-CV-1164-WO-JEP THREE JUDGE COURT

LEGISLATIVE DEFENDANTS' OPENING STATEMENT

Redistricting is a core sovereign function reserved to a state legislature. Plaintiffs through this action seek to transfer the inherently political process of redistricting from state legislatures to federal courts. If plaintiffs have their way, the federal courts will wander out of the political thicket and into a political lion's den. Plaintiffs' theories do not—and cannot—answer the elusive question asked by the Supreme Court – how much politics is too much politics in redistricting? Instead, plaintiffs thrust federal courts into the middle of a vibrant and ongoing political conversation among competing views and ask judges to pick political winners and losers in what will become judicial gerrymandering. Plaintiffs foist this job on the courts with no workable compass with which to navigate; instead, plaintiffs would arm the courts with so-called "science" that conveniently achieves plaintiffs' partisan political goals through what amounts to proportional representation. No greater threat to the reputation of the federal judiciary exists than the lure of plaintiffs' "social science" sirens.

This is particularly true here, where the congressional districts drawn by the legislature are not gerrymanders in any sense of the word. The districts were drawn in response to a racial gerrymandering judgment where the legislature reasonably decided to cure the racial gerrymanders without disrupting the political status quo. The legislature did so while following traditional redistricting principles more closely than any other congressional plan in North Carolina's history. Only thirteen of 100 counties are divided by the plan. Only twelve of over 2600 precincts are divided. This is a far cry from the highly gerrymandered congressional districts of the past, including the 1997-2001 version of CD 12, the 2001 version of CD 13, or the entire 1992 congressional plan (which was

heavily gerrymandered to elect at least eight Democrats). The 2016 congressional plan is simply not a gerrymander, much less a political gerrymander.

If congressional districts are to be based upon geographically compact areas drawn by using traditional districting principles that limit the ability of a legislature to draw true gerrymanders, the 2016 congressional plan is the least "gerrymandered" plan adopted in North Carolina since the 1980s. For the first time in decades, congressional districts are more reflective of actual communities of interest and geographic-based districting.

Because plaintiffs cannot prove the 2016 plan is gerrymandered in light of the legislature's strict adherence to traditional redistricting principles, plaintiffs will instead rely on flawed social "science" that relies on statewide voting data and a uniquely undemocratic notion that individual votes can be "wasted." Plaintiffs will present no evidence explaining how a particular district or its lines have been gerrymandered or are otherwise distorted. Plaintiffs' theories are unreliable, imprecise, and self-contradictory—hardly the judicially manageable standards sought after by the Supreme Court. Use of statewide data also elevates political gerrymandering claims over racial gerrymandering claims—something no Justice of the Supreme Court has ever agreed should be the case.

Plaintiffs' claims fare no better under the First Amendment. The Supreme Court has already rejected several attempts to challenge districting plans under the First Amendment. These prior decisions, including the Supreme Court's summary affirmance of the district court's decision in *Badham v. Eu*, are binding on this court. Plaintiffs' First

Amendment theories would forbid all consideration of politics in redistricting, something that would contradict decades of established Supreme Court precedent.

The First Amendment guarantees that citizens have an equal opportunity to engage in political debate and support their candidates of choice. It does not and cannot be interpreted to mean that they are entitled to electoral success in the congressional district where they reside or that they are entitled to "competitive" districts. Plaintiffs have failed to provide any judicially manageable standard for deciding how to create political "balance" in a particular district. Those decisions have been left to legislatures—not federal judges—for over 200 years.

Redistricting is the most inherently political process under our form of government. The remedy for concerns over political mapdrawing rests with the people, not with the courts. And the evidence will show that the people are fully capable of rising to the occasion. In 2010, Republicans captured legislative near-supermajorities under plans drawn by Democrats in 2001 and 2003. The 1992 congressional plan was one of the most heavily gerrymandered congressional plans ever enacted. But even this map was vulnerable. In the 1994 election, many of the Democratic incumbents who believed they were protected in "Democratic" districts were voted out of office. The results of the 1994 election and other examples of failed attempts at so-called political gerrymanders provide a cautionary tale for this court. This court should avoid entangling itself in the highly partisan, hotly disputed and inherently political process of redistricting. Instead, as has been the norm for centuries, it should be left to the people of the state of North Carolina to decide at the ballot box whether to elect Republicans or

Democrats in districts that are based upon county and precinct lines and better represent the interests of actual communities than any North Carolina plan in recent times.

This, the 13th day of October, 2017.

OGLETREE, DEAKINS, NASH
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CERTIFICATE OF SERVICE

I, Phillip J. Strach, hereby certify that I have this day electronically filed the foregoing **LEGISLATIVE DEFENDANTS' OPENING STATEMENT** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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