No. 201PA12-5 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

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MARGARET DICKSON, *et al.* *Plaintiffs*, v. ROBERT RUCHO, *et al.* *Defendants*.	)	**From Wake County** 11 CVS 16896 11 CVS 16940 (*Consolidated*)
NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP, *et al.* *Plaintiffs*, v. THE STATE OF NORTH CAROLINA, *et al.* *Defendants*.	)	

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RECORD ON APPEAL

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STATEMENT OF ORGANIZATION OF TRIAL COURT

Defendants Tim Moore, Speaker of the North Carolina House of Representatives, Philip E. Berger, President Pro Tempore of the North Carolina Senate, Ralph Hise, Chair of the Senate Committee on Redistricting, and David Lewis, Chair of the House Committee on Redistricting (hereinafter "legislative defendants"),[1] appeal to this Court the Order and Judgment of the of the three-judge panel of the Honorable Paul C. Ridgeway, the Honorable Joseph N. Crosswhite, and the Honorable Alma L. Hinton on Remand from the North Carolina Supreme Court entered 12 February 2018. The legislative defendants filed and served written notice of appeal on 14 March 2018.

The record on appeal was filed in the Supreme Court on 8 May 2018 and was docketed by the Court after filing.

STATEMENT OF JURISDICTION

These actions were commenced by the filing of complaints and the issuance of summonses on or about 3 November 2011. By order dated 19 December 2011, the actions were consolidated into one action. The parties acknowledge that the trial court had personal and subject matter jurisdiction at that time.

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[1] Pursuant to N.C. R. Civ. P. 25(f)(1), Speaker Moore, the successor to Speaker Thom Tillis, and Senator Hise, the successor to Senator Redistricting Committee Chair Robert Rucho, are automatically substituted as parties in these consolidated matters.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
11 CVS 016940

FILED
2011 DEC -9 PM 2:37
WAKE COUNTY, C.S.C.
BY _____

NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP; LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DEMOCRACY NORTH CAROLINA, NORTH CAROLINA A. PHILIP RANDOLPH INSTITUTE, REVA MCNAIR, MATTHEW DAVIS, TRESSIE STANTON, ANNE WILSON, SHARON HIGHTOWER, KAY BRANDON, GOLDIE WELLS, GRAY NEWMAN, YVONNE STAFFORD, ROBERT DAWKINS, SARA STOHLER, HUGH STOHLER, OCTAVIA RAINEY, CHARLES HODGE, MARSHALL HARDY, MARTHA GARDENHIGHT, BEN, TAYLOR, KEITH RIVERS, ROMALLUS O. MURPHY, CARL WHITE, ROSA BRODIE, HERMAN LEWIS, CLARENCE ALBERT, EVESTER BAILEY, ALBERT BROWN, BENJAMIN LANIER, GILBERT VAUGHN, AVIE LESTER, THEODORE MUCHITENI, WILLIAM HOBBS, JIMMIE RAY HAWKINS, HORACE P. BULLOCK, ROBERTA WADDLE, CHRISTINA DAVIS-MCCOY, JAMES OLIVER WILLIAMS, MARGARET SPEED, LARRY LAVERNE BROOKS, CAROLYN S. ALLEN, WALTER ROGERS SR., SHAWN MEACHEM MARY GREEN BONAPARTE, SAMUEL LOVE, COURTNEY PATTERSON, WILLIE O. SINCLAIR, CARDES HENRY BROWN JR., and JANE STEPHENS,

Plaintiffs,

vs.

THE STATE OF NORTH CAROLINA, THE NORTH CAROLINA STATE BOARD OF ELECTIONS; THOM TILLIS, in his official capacity as Speaker of the North Carolina House of Representatives; and PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate.

Defendants.

FIRST AMENDED COMPLAINT
(Three-Judge Court pursuant to G.S. 1-267.1)
(AMND)

Pursuant to Rule 15(a) of the North Carolina Rules of Civil Procedure, Plaintiffs file this First Amended Complaint. For their first amended complaint, Plaintiffs allege and state:

PRELIMINARY STATEMENT

1. Ignoring decades of progress and the current realities of racially polarized voting in North Carolina elections, the General Assembly's Congressional, House and Senate redistricting plans enacted following the release of the 2010 Census data are an intentional and cynical use of race that exceeds what is required to ensure fairness to previously disenfranchised racial minority voters. The plans violate North Carolina voters' rights to equal protection under the law by assigning voters to districts based on their race beyond what is required by the Voting Rights Act. These race-based assignments unfairly prejudice the African-American voters who were split off from the rest of their voting precincts, divided from otherwise compact communities of interest, and packed into districts that previously elected candidates of choice of African-American voters.[1] They also harm the African Americans left in districts with fewer minority voters and the non-African-American voters who are also thereby packed in race-based districts and whose communities of interests are dismantled.

2. In addition to being excessively race-based, all three plans brazenly flout North Carolina's state constitutional requirements to draw geographically compact districts that respect county boundaries and encompass communities of interest. The plans unnecessarily and unjustifiably split hundreds of voting precincts throughout the state, the traditional markers of

[1] The data in this Complaint is based on Voting Tabulation Districts (VTDs), which are comparable to precincts. VTDs are the voting tabulation districts reported to the Census. They are based on the voting precincts in effect on January 1, 2008 and cannot be altered by the Board of Elections. In most cases, precincts correspond exactly with VTDs. However, in limited cases, local Boards of Election may have altered the precinct boundary within a VTD after January 1, 2008. Because of the similiarity between precincts and VTDs, the term "precinct" in this Complaint refers to VTDs.

communities of interest. Dividing precincts and the communities of interest they represent results in non-compact districts that hinder the effective participation of voters in the democratic process.

3. The plans divide 563 precincts with two million voting-age adults (27% of the state's total) into more than 1,400 sections, with voters in the same neighborhood or same street partitioned into different political districts. The number of split precincts is unprecedented and far exceeds alternative plans that comply with federal and state law. They have the design and effect to segregate voters by race. In a majority of cases, the sections are drawn so that the black voting-age population in one section is 20 percentage points greater than in the other section sent to another district. The confusion for voters, community educators, election administrators and the elevated risks to a fair election process caused by splitting precincts on a census block basis are undeniable. More than one-third of the state's black voting-age population resides in these 563 precincts. A black adult has a 50 percent greater risk of living in a precinct split up by the plans than does a white adult. White adults are six times more likely to live in a split precinct if they reside in a precinct that is more than 25 percent black than if they live in one that is less than 10 percent black.

4. This action challenges the redistricting plans adopted by the General Assembly on the grounds that they violate the equal protection guarantees of the state and federal constitutions and that they violate state constitutional provisions designed to ensure that legislative districts are drawn in a way that promotes representative democracy. In addition, the excessive partisanship driving these plans violates the North Carolina Constitution's guarantee that the legislature should act for the "good of the whole." The Plaintiffs, nonprofit, nonpartisan organizations and individual impacted voters, seek injunctive relief to prevent the use of those plans in any future elections.

I. JURSIDICTION AND VENUE

5. This Court has jurisdiction of this action pursuant to Articles 26 and 26A of Chapter 1 of the North Carolina General Statutes.

6. The Court has jurisdiction of the federal claims pursuant to 42 USC § 1983.

7. Pursuant to G.S. 1-81.1, the exclusive venue for this action is the Wake County Superior Court.

8. A three-judge court must convene in this matter pursuant to G.S. 1-267.1 because this action challenges the validity of redistricting plans enacted by the General Assembly.

II. PARTIES

9. Plaintiff the North Carolina State Conference of Branches of the NAACP is a nonpartisan, nonprofit organization composed of over 100 branches and 20,000 individual members throughout the state of North Carolina. The NC Conference has members who are citizens and registered voters in each of the State's 100 counties and in the 40 counties covered by the Voting Rights Act. The fundamental mission of the NAACP is the advancement and improvement of the political, educational, social, and economic status of minority groups; the elimination of racial prejudice; the publicizing of adverse effects of racial discrimination; and the initiation of lawful action to secure the elimination of racial bias. In furtherance of this mission, the NC Conference advocates to ensure that the interests of the African-American community are represented on the local, state and national legislative bodies by representatives who share the community's interests, values and beliefs and who will be accountable to the community. The NC Conference encourages and facilitates nonpartisan voter registration drives by its chapters to promote civic participation.

10. Plaintiff League of Women Voters of North Carolina (LWVNC) is a nonpartisan community-based organization, formed in 1920, immediately after the enactment of the

Nineteenth Amendment to the U.S. Constitution granting women's suffrage. The LWVNC is dedicated to encouraging its members and the people of North Carolina to exercise their right to vote as protected by the North Carolina Constitution. The mission of LWVNC is to promote political responsibility through informed and active participation in government and to act on selected governmental issues. The LWVNC 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 LWVNC has 16 local leagues and over 972 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 LWVNC's local leagues are engaged in numerous activities, including hosting public forums and open discussions on issues of importance to the community. Individual league members invest substantial time and effort in voter training and civic engagement activities. LWVNC is affiliated with the League of Women Voters of the United States, which was also founded in 1920. LWVNC 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.

11. Plaintiff Democracy North Carolina (Democracy NC) is a nonpartisan, not for profit organization dedicated to research, organizing, and advocacy to increase voter participation and remove barriers to serve in public office. Democracy NC has members in every region of the state who are registered voters in North Carolina. Its members form grassroots coalitions centered in Charlotte, Greensboro, Fayetteville, Greenville, Winston-Salem, Asheville and Wilmington. Democracy NC works for pro-democracy reforms that strengthen enforcement of election laws, protect voter rights and improve government accountability and ethics. 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.

12. Plaintiff North Carolina A. Philip Randolph Institute (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 Americans. NC APRI has members who are registered voters across North Carolina. Its chapters are located in Durham, Greensboro, the Piedmont, Raleigh, 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.

13. Plaintiff Reva McNair is an African-American registered voter in Cumberland County. She resides at 1514 Deanscroft Place, Fayetteville, NC 28314, which is located in Precinct G5B. Under the enacted plans, she would vote in House District 41, Senate District 21 and Congressional District 4. She is an active participant in local politics.

14. Plaintiff Matthew Davis is an African-American registered voter in Cumberland County. He resides at 6131 Sabine Drive, Fayetteville, NC 28303 which is located in Precinct CC32 . Under the enacted plans, he would vote in House District 42, Senate District 21 and Congressional District 4. He is a member of the NAACP and a leader in the organization Democracy Fayetteville.

15. Plaintiff Tressie Stanton is an African-American registered voter in Cumberland County. She resides at 218 Vass Road, Spring Lake, NC, 28390, which is located in Precinct

G11. Under the enacted plans, she would vote in House District 42, Senate District 21 and Congressional District 2. She is involved in political activities in her community.

16. Plaintiff Anne Wilson is a white registered voter in Forsyth County. She resides at 445 Marshall View Court, Winston Salem, NC 27101, which is located in Precinct 601. Under the enacted plans, she would vote in House District 71, Senate District 32 and Congressional District 5. She is an active participant in local politics.

17. Plaintiff Sharon Hightower is an African-American registered voter in Guilford County. She resides at 6 Belles Court, Greensboro, NC 27401, which is located in Precinct G71. Under the enacted plans, she would vote in House District 58, Senate District 28 and Congressional District 12. She is a leader of the Guilford County Unity Effort, and is also affiliated with the NAACP, Democracy NC, and the Greensboro Voters Alliance.

18. Plaintiff Kay Brandon is an African-American registered voter in Guilford County. She resides at 1437 Old Hickory Drive, Greensboro, NC 27405, which is located in Precinct G05. Under the enacted plans, she would vote in House District 57, Senate District 28 and Congressional District 12. She is involved in political activities in her community.

19. Plaintiff Goldie Wells is an African-American registered voter in Guilford County. She resides at 4203 Belfield Drive, Greensboro, NC 27405, which is located in Precinct G06. Under the enacted plans, she would vote in House District 57, Senate District 28 and Congressional District 12. She is an active leader in civic organizations and involved in community advocacy in Greensboro.

20. Plaintiff Gray Newman is a white registered voter in Mecklenburg County. He resides at 5038 Carden Drive, Charlotte, NC 28227, which is located in Precinct 235. Under the enacted plans, he would vote in House District 103, Senate District 40 and Congressional District

9. He is active in voter education as a leader of Democracy NC and the League of Women Voters.

21. Plaintiff Yvonne Stafford is an African-American registered voter in Mecklenburg County. She resides at 1018 Everett Place, Charlotte, NC 28205, which is located in Precinct 014. Under the enacted plans, she would vote in House District 107, Senate District 40 and Congressional District 12. She is an active participant in local politics.

22. Plaintiff Robert Dawkins is an African-American registered voter in Mecklenburg County. He resides at 11919 Misty Pine Court, Charlotte, NC 28215, which is located in Precinct 201. Under the enacted plans, he would vote in House District 103, Senate District 41 and Congressional District 8. He is an active leader in the organization Democracy NC.

23. Plaintiffs Sara Stohler and Hugh Stohler are white registered voters and residents of Wake County. They reside at 528 N. Bloodworth Street, Raleigh, NC 27604, which is located in Precinct 01-14. Under the current plan, they would vote in House District 34, Senate District 16, and Congressional District 4. They are very involved in political activities in their community.

24. Plaintiff Octavia Rainey is an African-American registered voter in Wake County. She resides in 1516 E. Lane Street, Raleigh, NC 27610, which is located in Precinct 1-34. Under the enacted plans, she would vote in House District 38, Senate District 14 and Congressional District 4. She is an officer of Southeast Raleigh Community Association and active in voter registration.

25. Plaintiff Charles Hodge is an African-American registered voter in Wake County. He resides at 2301 Old Crews Road, Raleigh, NC 27616, which is located in Precinct 17-04. Under the enacted plans, he would vote in House District 39, Senate District 18 and Congressional District 13. He is engaged in political activities in his community.

26. Plaintiff Marshall Hardy is a white registered voter in Wake County. He resides at 1020 West South Street, Raleigh, NC 27603, which is located in Precinct 01-27. Under the enacted plans, he would vote in House District 33, Senate District 16, and Congressional District 4. He is the Chair of the Boylan Heights Association, and a member of the ACLU Wake County Board and the NC Consumer Council Board.

27. Plaintiff Martha Gardenhight is an African-American registered voter in Buncombe County. She resides at 131 Wyatt Street, Asheville, NC 28803, which is located in Precinct 100.1. Under the enacted plans, she would vote in House District 114, Senate District 49 and Congressional District 10. She is an Assistant Secretary/Executive Committee member of the NAACP and an active participant in local civic affairs in her community.

28. Plaintiff Ben Taylor is an African-American registered voter in Durham County. He resides at 3816 Booker Avenue, Durham, NC, 27713, which is located in Precinct 34. Under the enacted plans, he would vote in House District 29, Senate District 20, and Congressional District 1.

29. Plaintiff Keith Rivers is an African-American registered voter in Pasquotank County. He resides at 104 Grandview Drive, Elizabeth City, NC 27909, which is located in Precinct 1-B. Under the enacted plans, he would vote in House District 5, Senate District 1, and Congressional District 1. He is the President of the Pasquotank NAACP.

30. Plaintiff Romallus O. Murphy is an African-American registered voter in Guilford County. He resides at 339 E. Montcastle Drive Unit E, Greensboro, NC 27406, which is located in Precinct FEN1. Under the enacted plans, he would vote in House District 58, Senate District 28, and Congressional District 12. He is an attorney with voting rights expertise and the former General Counsel for the North Carolina State Conference of Branches of the NAACP.

31. Plaintiff Carl White is an African-American registered voter in Hertford County. He resides at 634 NC Highway 305, Aulander, NC 27805, which is located in Precinct ML. Under the enacted plans, he would vote in House District 5, Senate District 3, and Congressional District 1. He is the President of the Hertford County NAACP and current Director of District 11 for the NAACP.

32. Plaintiff Rosa Brodie is an African-American registered voter in Nash County. She resides at 112 Patterson Drive, Rocky Mount, NC 27804, which is located in Precinct 37. Under the enacted plans, she would vote in House District 7, Senate District 11, and Congressional District 13. She is a retired educator, current Board Member and Secretary of Nash Healthcare Services, an active AARP member and volunteers at the polls.

33. Plaintiff Herman Lewis is an African-American registered voter in Wayne County. He resides at 287 Lagrange Road, Lagrange, NC 28551, which is located in Precinct 07. Under the enacted plans, he would vote in House District 4, Senate District 5 and Congressional District 1. He is a retired police officer and member of the NAACP.

34. Plaintiff Clarence Albert Jr. is an African-American registered voter in Wilson County. He resides at 2903 Concord Drive, Wilson, NC 27896, which is located in Precinct PRWM. Under the enacted plans, he would vote in House District 8, Senate District 11, and Congressional District 13. He is the chair of Veterans Affairs for the local branch of the NAACP.

35. Plaintiff Evester Bailey is an African-American registered voter in Durham County residing at 3626 Suffolk Street, Durham, NC 27707, which is located in Precinct 30. Under the enacted plans, he would vote in House District 29, Senate District 20 and Congressional District 4. He is actively involved as a volunteer in political activities in his local precinct.

36. Plaintiff Albert Brown is an African-American registered voter in Duplin County. He resides at 1370 W. Charity Road, Rose Hill, NC 28458, which is located in Precinct CHAR. Under the enacted plans, he would vote in House District 21, Senate District 10 and Congressional District 7. He was the Chairman of the Duplin County Board of Elections for ten years and is the Current Chairman of James Sprunt Community College. He is also a member of the Duplin County NAACP.

37. Plaintiff Benjamin Lanier is an African-American registered voter in Greene County. He resides at 2056 Fred Harrison Rd., Snow Hill, NC, 28580. Under the enacted plans he would vote in House District 12, Senate District 5 and Congressional District 1. He is involved in civic and political activities in his community and is President of the Greene County NAACP.

38. Plaintiff Gilbert Vaughn is an African-American registered voter in Chowan County. He resides at 114 Osprey Drive, Edenton, NC 27932, which is located in Precinct KI. Under the enacted plans, he would vote in House District 1, Senate District 1 and Congressional District 3. He is President of the Perquimans County NAACP and an active participant in local civic affairs in his community.

39. Plaintiff Avie Lester is an African-American registered voter in Person County. He resides at 7455 Virgilina Road, Roxboro, NC 27574, which is located in Precinct HLWY. Under the enacted plans, he would vote in House District 2, Senate District 22 and Congressional District 6. He is President of the Person County NAACP and an active participant in local civic affairs in his community

40. Plaintiff Dr. Theodore Muchiteni is an African-American registered voter in Pitt County. He resides at 1342 Windham Road, Greenville, NC 27834, which is located in Precinct

701. Under the enacted plans, he would vote in House District 24, Senate District 5 and Congressional District 1. He is an active life member of the NAACP.

41. Plaintiff William Hobbs is an African-American registered voter in Nash County. He resides at 2801 Coleberry Trail, Rocky Mount, NC 27804, which is located in Precinct 37. Under the enacted plans, he would vote in House District 25, Senate District 11 and Congressional District 13. He is an active participant in local civic affairs in his community.

42. Plaintiff Jimmie Ray Hawkins is an African-American registered voter in Durham County. He resides at 4415 Sun Valley Drive, Durham, NC 27707, which is located in Precinct 39. Under the enacted plans, he would vote in House District 30, Senate District 22 and Congressional District 4. He is a member of the NAACP and President of Durham Congregations in Action.

43. Plaintiff Horace Bullock is an African-American registered voter in Vance County. He resides at 129 South Bullock Street, Henderson, NC 27536, which is located in Precinct SH1. Under the enacted plans, he would vote in House District 32, Senate District 4 and Congressional District 1. He is president of the Vance County NAACP.

44. Plaintiff Roberta Waddle is a white registered voter in Cumberland County. She resides at 3941 Gainey Road, Fayetteville, NC 28306, which is located in Precinct SH77. Under the enacted plans, she would vote in House District 45, Senate District 19 and Congressional District 2. She is a member of the NAACP and active in civic affairs in her community.

45. Plaintiff Christina Davis-McCoy is an African-American registered voter in Hoke County. She resides at 243 Aggies Lane, Raeford, North Carolina, 28376, which is located in Precinct 03. Under the enacted plans, she would vote in House District 48, Senate District 21 and Congressional District 7. She is Executive Director of the Blue Springs Hoke County

Community Development Corporation and active in community voter education and voter mobilization.

46. Plaintiff James Oliver Williams is a white registered voter in Wake County. He resides at 1905 Lewis Circle, Raleigh, NC 27608, which is located in Precinct 01-03. Under the enacted plans, he would vote in House District 49, Senate District 15 and Congressional District 13. He is a former Raleigh City Council member and former Raleigh Planning Commission member.

47. Plaintiff Margaret Speed is an African-American registered voter in Harnett County. She resides at 135 Mye Lane, Cameron, NC 28326, which is located in in Precinct PR16. Under the enacted plans, she would vote in House District 51, Senate District 12 and Congressional District 2. She is an active life member of the NAACP and a volunteer at her local precinct.

48. Plaintiff Larry Laverne Brooks is an African-American registered voter in Chatham County. He resides at 2554 Meronies Church Road, Bear Creek, NC 27207, which is located in Precinct 18. Under the enacted plans, he would vote in House District 54, Senate District 23 and Congressional District 2. He is president of the West Chatham County NAACP.

49. Plaintiff Carolyn S. Allen is a white registered voter from Guilford County. She resides at 2611 David Caldwell Drive, Greensboro, NC 27408, which is located in Precinct G31. Under the enacted plans, she would vote in House District 59, Senate District 26 and Congressional District 6. She is a former mayor of Greensboro, a member of League of Women Voters and on the board of East Market Street Development.

50. Plaintiff Walter Rogers is an African-American registered voter in Scotland County. He resides at 9061 Carver School Road, Laurel Hill, NC 28351, which is located in Precinct 9. Under the enacted plans, he would vote in House District 66, Senate District 25, and

Congressional District 8. He is the Voter Education and Registration Chair of the Prince Hall Grand Lodge.

51. Plaintiff Shawn Meachem is a white voter in Mecklenburg County. She resides at 6400 Kelsey Drive, Charlotte, NC 28215, which is located in Precinct 104. Under the enacted plans, she would vote in House District 99, Senate District 40 and Congressional District 12. She is the Vice President of Hampshire Hills Neighborhood Association and a Vice President of the Plaza Eastway Neighborhood Association.

52. Plaintiff Mary Green Bonaparte is an African-American registered voter in Mecklenburg County. She resides at 201 Echodale Dr., Charlotte, NC 28217, which is located in Precinct 147. Under the enacted plans, she would vote in House District 102, Senate District 38 and Congressional District 12. She is an active participant in local politics.

53. Plaintiff Samuel Love is an African-American registered voter in Mecklenburg County. He resides at 6417 Heatherbrooke Avenue, Charlotte, NC 28213, which is located in Precinct 82. Under the enacted plans, he would vote in House District 106, Senate District 40 and Congressional District 12 He is a leader in the Hidden Valley Neighborhood Association. And is very active in community issues and political organizing.

54. Plaintiff Courtney Patterson is an African-American registered voter in Lenoir County. He resides at 1105 Patterson Rd, Kinston, NC 28501, which is located in Precinct N. Under the enacted plans, he would vote in House District 12, Senate District 7 and Congressional District 7. He is the 4th Vice President of the NC NAACP and engaged in political and civil activities in his community.

55. Plaintiff Willie O. Sinclair is an African-American registered voter in Wake County. He resides at 4810 Greenbrier Road, Raleigh, NC 27603, which located in Precinct 16-

05. Under the enacted plans, he would vote in House District 39, Senate District 18 and Congressional District 13. He is treasurer of the Raleigh/Apex NAACP.

56. Plaintiff Cardes Henry Brown, Jr. is an African-American registered voter in Guilford County. He resides at 6106 Longbranch Court, Pleasant Garden, NC 27313, which is located in Precinct PG2. Under the enacted plans, he would vote in House District 61, Senate District 27, and Congressional District 6. He is President of the Greensboro NAACP and engaged in political and civic activities in his community.

57. Plaintiff Jane Stephens is a white registered voter in Forsyth County. She resides at 525 Hedgewood Place, Winston-Salem, NC, 27104, which is located in Precinct 805. Under the enacted plans, she would vote in House District 74, Senate 31 and Congressional District 5. She is a member of the NAACP and engaged in civic activities in her community.

58. Defendant State of North Carolina is one of the 50 sovereign states in the United States.

59. Defendant State Board of Elections is a state agency of North Carolina, headquartered in Wake County, which administers the election laws of the State of North Carolina.

60. Defendant Thom Tillis is being sued in his official capacity as Speaker of the North Carolina House of Representatives.

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

III. FACTUAL ALLEGATIONS

The 2011 Legislative Redistricting

62. The 2011 Regular Session of the North Carolina General Assembly convened on January 26, 2011. Under Article II, §§ 3 and 5 of the North Carolina State Constitution, the

General Assembly must enact new redistricting plans for the Senate and House districts at its first session convened after the return of the United States Census.

63. Under 2 U.S.C. §§ 2a and 2c, the General Assembly has the authority to revise Congressional districts.

64. On March 2, 2011, the General Assembly received the population data from the 2010 Census, pursuant to P.L. 94-171, from the United States Department of Commerce.

65. On July 27, 2011, the General Assembly passed the State Senate Redistricting Plan, 2011 S.L. 404, known as the "Rucho Senate 2" Plan, and the 2011 Congressional Redistricting Plan, 2011 S.L. 403, "Rucho-Lewis Congress 3." On July 28, 2011, the General Assembly passed the State House Redistricting Plan, 2011 S.L. 402, the "Lewis-Dollar-Dockham 4" Plan.

66. No African-American Representatives or Senators voted for any of the three enacted plans.

67. The North Carolina Attorney General submitted the 2011 House, Senate and Congressional Plans to the United States Department of Justice for preclearance under Section 5 of the Voting Rights Act on September 2, 2011.

68. On September 2, 2011, the North Carolina Attorney General also filed a complaint in the United States Court for the District of Columbia. (North Carolina v. Holder, No. 1:11-CV-01592 (D.D.C.)).

69. On November 1, 2011, the three plans as intended to be adopted by the General Assembly were precleared by the United States Department of Justice.

70. On November 1, 2011, the General Assembly alerted the Department of Justice that there was a technical issue with the House and Senate Plans as enacted into law. The

software code used to translate the maps in Maptitude into language for insertion into a bill draft contained an error.

71. The error in the software code resulted in the omission of some Census blocks in the bill text. The error affected only Census blocks where the Census block was in a block group or tract that was wholly contained within one segment of a voting tabulation district split between two or more districts. In these blocks, some units of geography were not assigned to any district.

72. On November 7, 2011, the General Assembly passed curative legislation to assign all the areas left unassigned by the House Redistricting Plan, 2011 S.L. 402. The revised Plan was enacted into law as 2011 S.L. 416.

73. On November 7, 2011, the General Assembly passed curative legislation to assign all the areas left unassigned by the Senate Redistricting Plan, 2011 S.L. 404. The revised Plan was enacted into law as 2011 S.L. 413

74. The curative legislation was submitted to the Department of Justice for preclearance.. The Department of Justice precleared the legislation on X.

75. These plans now represent the current electoral districts for the House, Senate, and Congressional elections.

76. The 2011 State House, State Senate, and Congressional Plans unnecessarily and unjustifiably place black voters into districts based solely on their race. In doing so, the General Assembly failed to comply with the traditional redistricting principles enumerated in *Stephenson v. Bartlett.* These principles include compactness, contiguity and respect for political subdivisions.

Dismantling Communities of Interest: Split Precincts

77. A precinct is one of the most traditional forms of political subdivisions, reflecting a compact geographic neighborhood.

78. The State House and Senate Plans split an unprecedented number of precincts. The State House Plan split 395 precincts, almost twice as many as any of the alternative Plans submitted to the House Redistricting Committee. The State Senate Plan split 257 precincts, again more than any alternative Plan submitted to the Senate Redistricting Committee.

79. Splitting precincts harms voters by diminishing efficiency and efficacy in both elections and political representation.

80. Splitting precincts divides communities of interest and diminishes the community's ability to effect change through the electoral process.

81. Splitting precincts increases confusion on Election Day and makes it more difficult for voters to know who will be on their ballot when they go to vote. This confusion reduces the ability of voters to participate effectively in the electoral process.

82. Splitting precincts increases the different kinds of ballots used at the polls, increasing the likelihood that a voter will receive the wrong ballot.

83. Splitting precincts creates more administrative paperwork at the polling location, leading to longer lines that discourage voter participation.

84. Splitting precincts also makes it harder for voters to identify their elected representatives. By creating confusion about who represents what part of the neighborhood, these split precincts are stumbling blocks for voters who want to petition their elected representatives and hold them accountable.

85. By admission of North Carolina election officials, splitting precincts increases the risk of voters receiving the wrong ballots, creates suspicion when neighbors are given different ballots, requires additional training and additional paid personnel at the polls, and creates

significant risks in staff properly assigning voters to the wrong districts. One official testified in the public record, "the possibility of error when geocoding on a block by block basis at such a large scale is unavoidable."

86. Splitting so many precincts is unnecessary, as the North Carolina Constitution allows a population deviation of plus or minus 5 percent in compliance with the Equal Protection Clause in the State House and Senate districts. *Stephenson v. Bartlett*, 355 N.C. 354, 385 (2002).

87. Moreover, these precincts were not split to minimize deviations among districts, as the overall deviation range is nearly 10 percent in the current plans.

88. The General Assembly repeatedly split precincts to place black voters in a different district than the rest of the precinct. 36.34 percent of the black voting age population in North Carolina lives in one of the 563 split precincts.

89. In contrast, 23.24 percent of the non-Hispanic white voting age population in North Carolina lives in one of the 563 split precincts.

90. Therefore, black voters are 56.37 percent more likely than white voters to live in a split precinct.

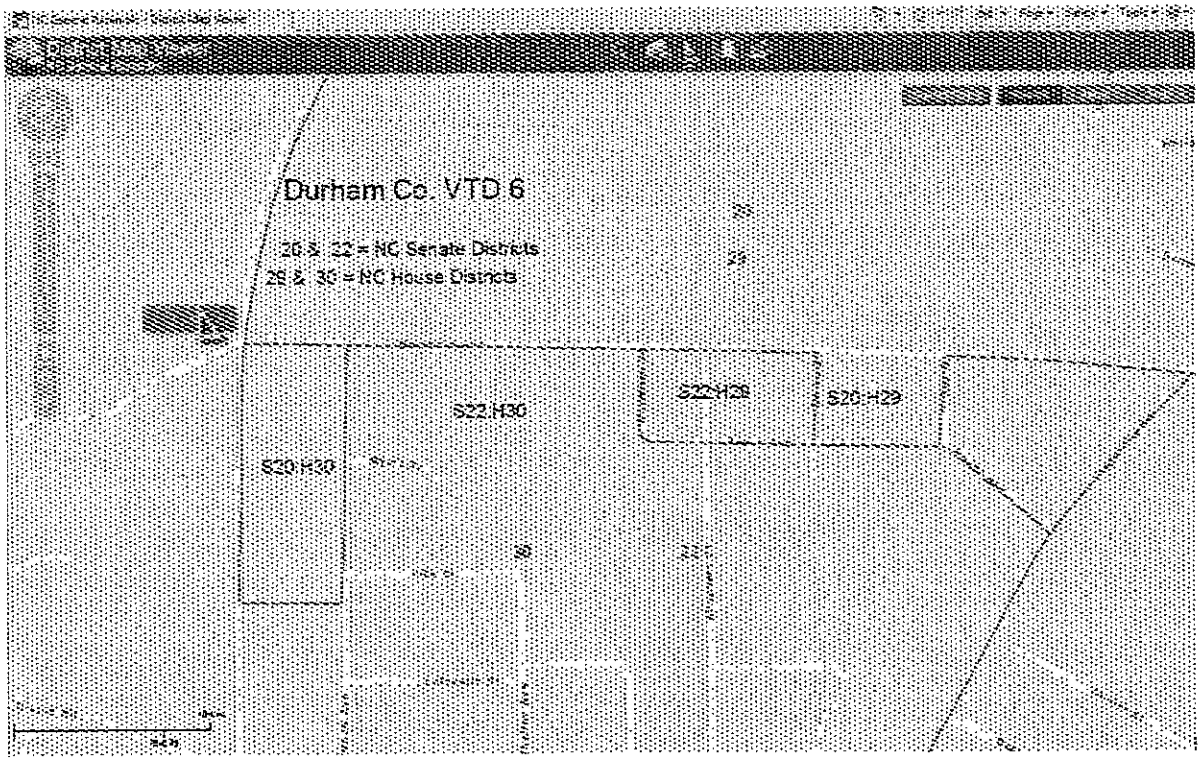
91. In 55 percent of the cases where precincts were split, the lines were drawn so that one section has a black voting age population that is at least 20 percentage points greater than in the other section.

92. The General Assembly did not have access to party affiliation data at a sub-precinct level. Race therefore predominated in the decision to split precincts containing African American voters.

93. An example of using black voters as a proxy for political affiliation can be found in Buncombe County. Precinct 100.1 is split between Districts 114 and 115 in Lewis-Dollar-Dockham 4. The majority of black voters in Precinct 100.1 belong to the piece inside District

114, which increases the Democratic majority in that district. The majority of white voters in Precinct 100.1 belong to the piece inside District 115, which is drawn as a Republican performing district.

94. Durham County provides an example of problems caused when excessive numbers of precincts are split within a county and across redistricting plans. Durham has 39 split precincts in the House and Senate enacted plans combined, 35 splits in the Senate and 21 split in the House plan. Previously Durham County had only 6 split precincts. Those splits were along major roads, readily identifiable and did not overlap. In contrast, the precinct splits in the enacted plan are complex, involve minor roads and overlap. For example, along just one street in a Durham neighborhood, there will be four different ballot styles in a six block area along one side of Morehead Street in a general election. Following is a map of the area in VTD 6 that is split between Senate Districts 20 and 22, and House Districts 29 and 30.



95. An example of the confusion and difficulties caused by splitting so many precincts is the fact that the General Assembly's computer system did not assign to any district 420 census blocks in Session law 2011-403 (Rucho-Lewis Congress 3), 5,380 census blocks in Session Law 2011-404 (Lewis-Dollar-Dockham 4) and 3,200 census blocks in Session Law 2011-402 (Rucho Senate 2).

State House Redistricting

96. On February 15, 2011, the Speaker of the House Thom Tillis appointed the officers and members of the House Redistricting Committee. Rep. David Lewis was appointed Chair of the Committee. Rep. Nelson Dollar and Rep. Jerry Dockham were appointed co-chairs.

97. The House Redistricting Committee considered a plan named "Lewis-Dollar-Dockham 4."

98. In addition to the plan created by the House Redistricting Committee, two legislators introduced alternative plans: (1) the plan proposed by Democratic Rep. Grier Martin known as "House Fair and Legal;" and (2) the plan presented by Rep. Kelly Alexander of the Legislative Black Caucus ("LBC Plan"). In addition, a plan was developed by a coalition of community-based organizations called AFRAM (Alliance for Fair Redistricting and Minority Voting Rights) and submitted at a June 23, 2011 public hearing, "AFRAM Plan."

99. All three alternative plans adhered to the traditional redistricting criteria of compactness, contiguity, and preserving communities of interest. The plans also provided appropriate and effective voting districts for minorities in compliance with Section 2 and Section 5 of the Voting Rights Act.

100. The State House Plan currently in effect is known as the "2009 Plan." The 2009 Plan is an amended version of the Plan ratified in 2003. The 2009 Amendments affected New Hanover and Pender counties, neither of which is covered by Section 5 of the Voting Rights Act.

The 2009 Plan was used in the 2009 and 2010 elections. It is the benchmark used for Section 5 analysis.

101. On July 28, 2011, the General Assembly passed the State House Redistricting Plan, 2011 S.L. 402, the "Lewis-Dollar-Dockham 4" Plan.

102. No African-American Senator or Representative voted for the Lewis-Dollar-Dockham 4 Plan.

103. On November 7, 2011, the General Assembly passed curative legislation to assign all the areas left unassigned by the House Redistricting Plan, 2011 S.L. 402. The revised Plan was enacted into law as 2011 S.L. 416.

104. No African-American Senator or Representative voted for the curative legislation.

Packed Districts

105. The Lewis-Dollar-Dockham 4 Plan carved black voters out of recognizable communities and neighborhoods, packing existing minority opportunity districts, and minimizing the influence of black voters in surrounding districts.

106. The Black Voting Age Population, "BVAP," discussed herein, reflects data collected by the Census Bureau and includes multiracial respondents to the Census that indicate they are any part black or African American.

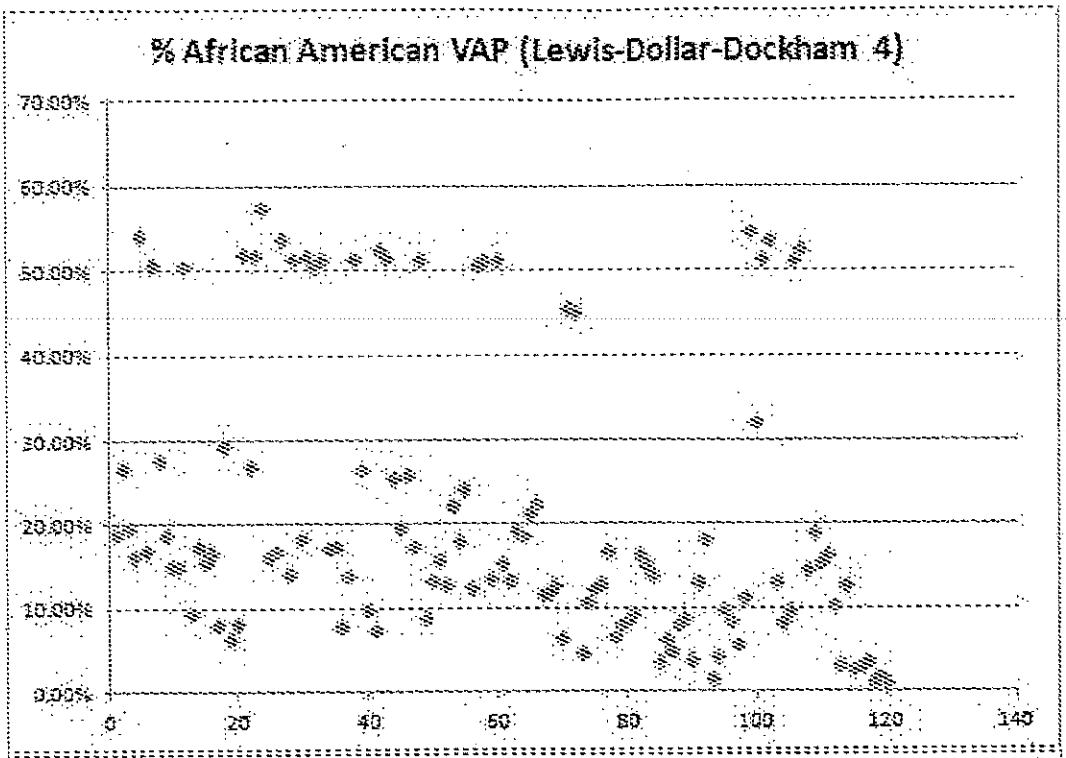
107. In the Lewis-Dollar-Dockham 4 Plan, 23 of the 120 districts in the State have a BVAP greater than 50 percent. Two districts have a BVAP between 40 percent and 50 percent. In drawing these districts, the plan's drafters intentionally removed black voters to lower the black vote in adjacent districts

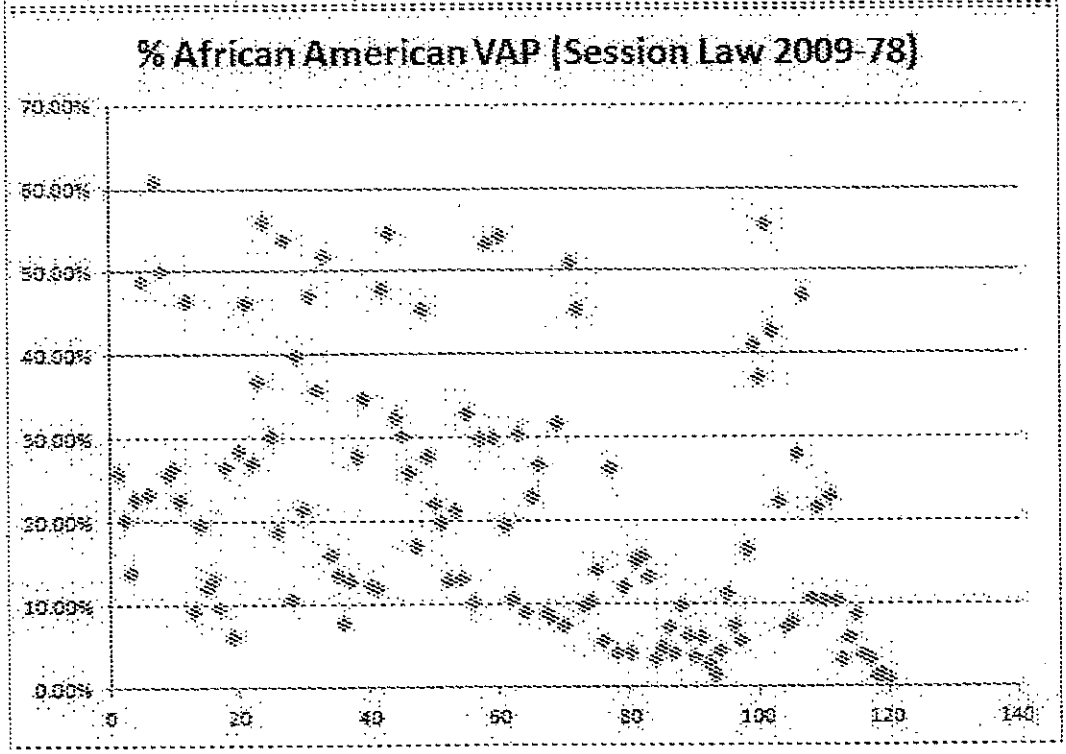
108. In comparison, the 2009 House Plan had 10 districts with a BVAP over 50 percent. Eleven districts had BVAP percentages between 39.99 percent and 50 percent.

109. The Lewis-Dollar-Dockham 4 Plan segregates black voters into districts with greater than 50 percent BVAP or less than 30 percent BVAP. In the Plan, only 3 districts have a BVAP between 30 and 50 percent.

110. In comparison, the 2009 House Plan had 22 of the 120 districts with a BVAP between 30 and 50 percent.

111. The BVAP of the Lewis-Dollar-Dockham 4 Plan and the 2009 Plan are shown in the chart below where each dot represents one of the 120 districts in the plan. The vertical axis is the percent BVAP of the district and the horizontal axis is the number of the district.





Precinct Divisions

112. The Lewis-Dollar-Dockham 4 Plan fails to comply with the traditional redistricting principles enumerated in *Stephenson v. Bartlett.* These principles include compactness, contiguity and respect for political subdivisions.

113. The Lewis-Dollar-Dockham 4 Plan disregards the importance of maintaining intact precincts, dividing 395 precincts. A voting age population of more than 1,400,000 adults, or nearly twenty percent (20%) of the State's voting age population, resides within these divided precincts. Fifty percent (50%) or more of all the precincts in the county were split in Craven County (23 of 27), Greene County (5 of 10), Lee County (3 of 5), Nash County (15 of 26) and Scotland County (5 of 10). In Mecklenburg County 49 precincts are divided; in Wake County 43 precincts are divided; and in Guilford County 37 precincts are divided. These counties and precincts contain a high percentage of African Americans.

114. The Lewis-Dollar-Dockham 4 Plan splits more precincts than any alternative plan submitted to the House Redistricting Committee. The enacted plan splits more than three times the number of precincts than the House Fair & Legal Plan, which split only 129 precincts. Additionally the enacted plan split almost twice as many precincts as the House LBC and House AFRAM plans, which split 210 precincts and 202 precincts, respectively.

115. The Lewis-Dollar-Dockham 4 Plan repeatedly split precincts based on race.

116. The plaintiffs are harmed by this excessive splitting of precincts.

Compactness and Communities of Interest

117. Many of the districts in Lewis-Dollar-Dockham 4 are drawn without regard for the traditional redistricting principles of compactness and respect for communities of interest.

118. Many of the districts have bizarre and wandering lines that can only be explained by the race-based addition of voters to or exclusion of voters from the district.

119. The Plan's lack of compactness shows its neglect of well-established communities of interest. This neglect weakens voters' ability to effect change as a community through the political process.

120. The alternative plans submitted to the House Redistricting Committee are more compact and preserve more communities of interest than Lewis-Dollar-Dockham 4.

121. In 7 out of 7 measures of overall compactness, the Lewis-Dollar-Dockham 4 Plan rated less compact than the House Fair & Legal, the AFRAM and LBC Plans.

122. The Lewis-Dollar-Dockham 4 Plan packs black voters into already effective minority districts without justification from the North Carolina Constitution or the federal Voting Rights Act.

123. This racial classification of voters is clearly demonstrated by examining various regions in the Lewis-Dollar-Dockham 4 Plan.

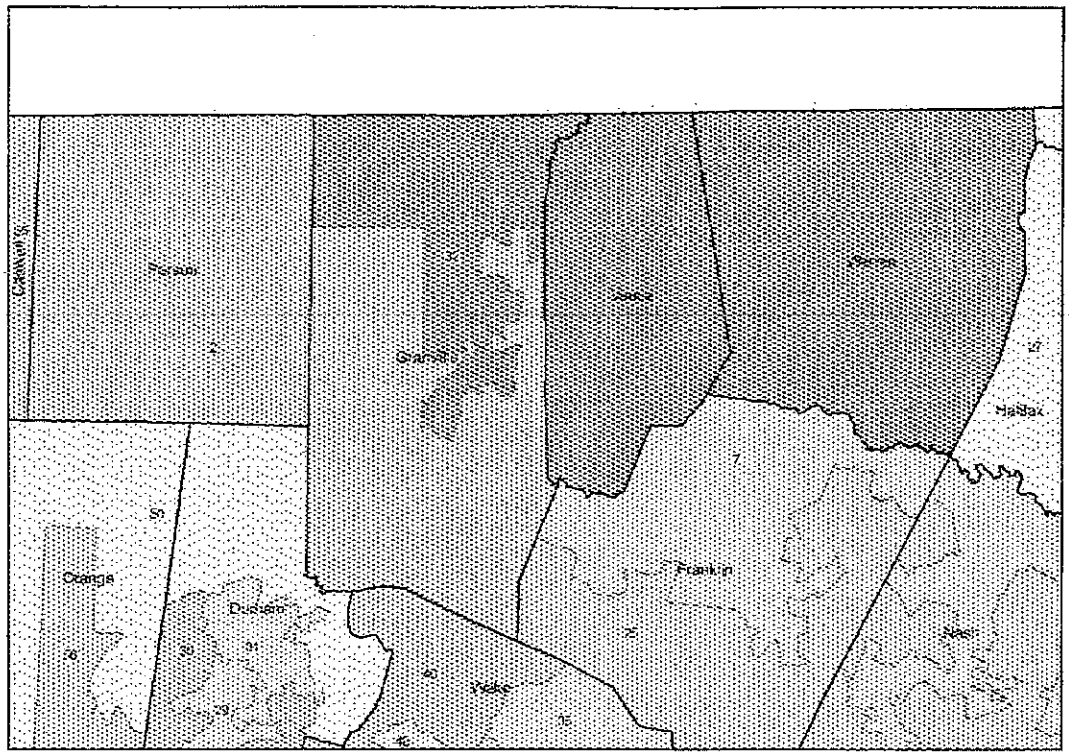
The Person-Warren-Vance-Granville Region

124. Lewis-Dollar-Dockham 4 Plan draws District 2 and District 32 as a pair of highly irregular, ragged districts to pack as many black voters as possible into District 32. In turn, the voting power of minorities remaining in District 2 is diluted. In creating this pair of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

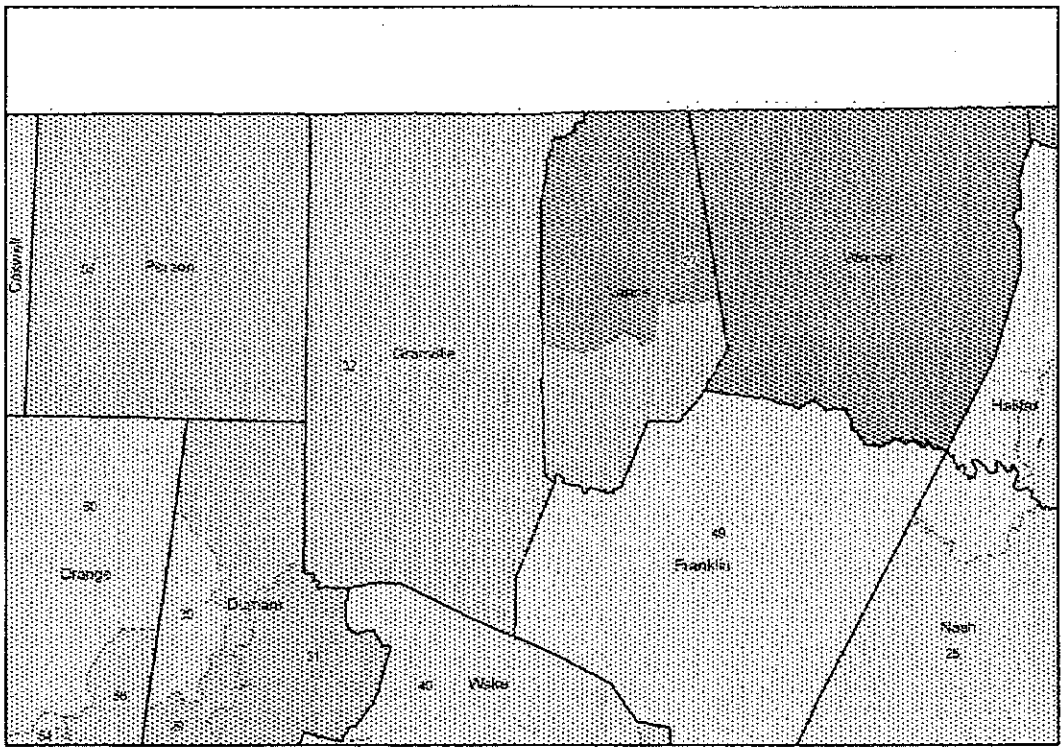
125. District 32 includes Warren and Vance counties in their entirety and then extends a southern tentacle into Granville County.

126. District 2 includes Person County in its entirety, and the remainder of Granville County unclaimed by District 32.

127. Below is a map of Lewis-Dollar-Dockham 4 Districts 2 and 32.



128. Below is a map of the equivalent area under the 2009 House Plan.



129. District 32 is a new district, drawn to have 50.45 percent BVAP.

130. The drawing of this pair of districts in this manner is a racial classification, designed to increase the number of black voters in District 32 and decrease the number of black voters in District 2. In turn, the number of white voters in District 2 is increased.

131. The use of race in drawing these districts is not narrowly tailored to meet a compelling governmental interest.

132. The design of these two districts does not respect traditional communities of interest such as precincts. In Districts 2 and 32, 5 precincts were split.

133. The design of these two districts also rejects the traditional redistricting principles of compactness. In measures of compactness, District 32 rated less compact than the equivalent district in the AFRAM plan on 6 out of 7 tests.

134. As a result of the inflated black population of District 32, minorities in the District 2 have less ability to elect the candidate of their choice and less influence in the electoral process.

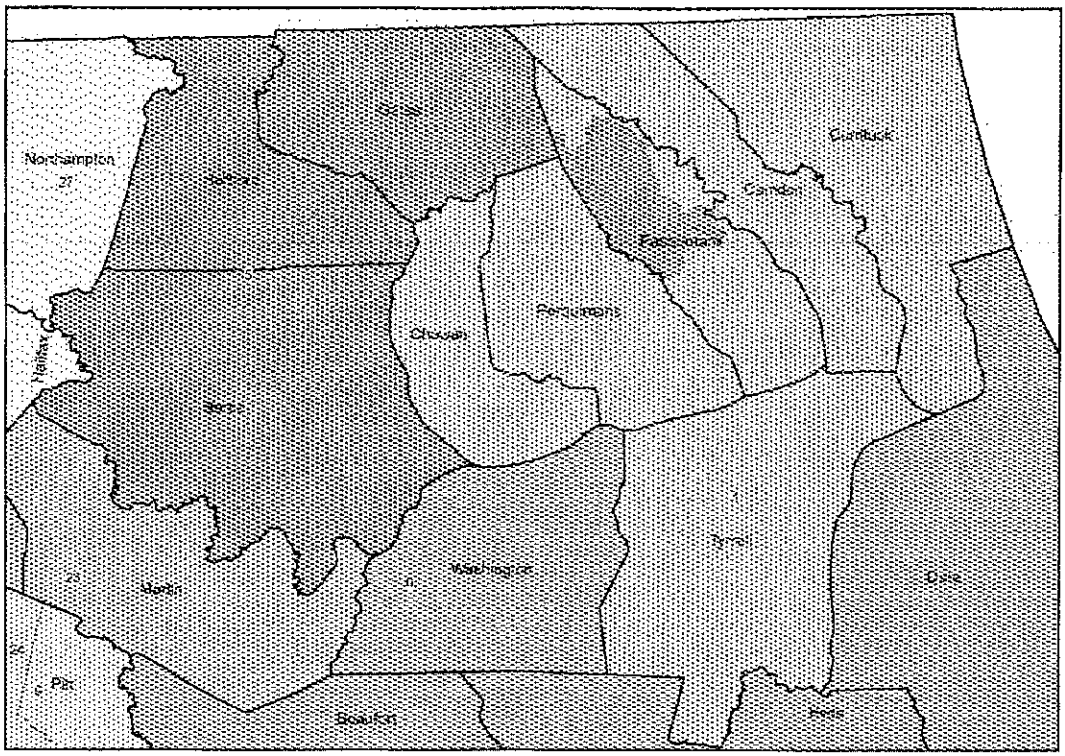
The Northeastern Corner

135. Lewis-Dollar-Dockham 4 Plan draws District 5 to pack in as many black voters as possible from District 1. In turn, the voting power of minorities remaining in District 1 is diluted. In creating this pair of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

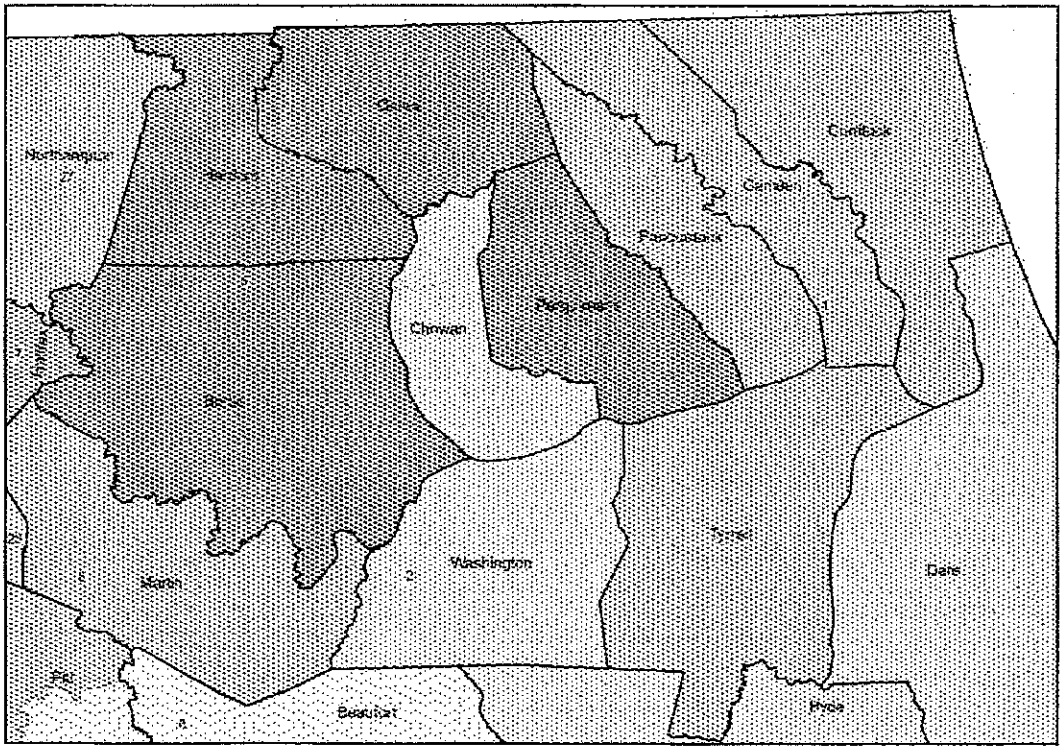
136. District 5 is subject to Section 5 preclearance. It includes Bertie, Hertford and Gates Counties in their entirety and then extends to grab the middle of Pasquotank County.

137. District 1, a majority white district, includes Currituck, Camden, Perquimans, Chowan and Tyrell Counties in their entirety, and the remainder of Pasquotank County unclaimed by District 5.

138. Below is a map of Lewis-Dollar-Dockham 4 Districts 1 and 5.



139. Below is a map of the equivalent area under the 2009 House Plan.



140. In House District 5, currently represented by an African American, Rep. Annie Mobley, the current BVAP of 48.87 percent increases to 54.17 percent under the new plan.

141. District 5 was already effectively electing the black candidate of choice and would have complied with the Voting Rights Act if the district had been drawn with a BVAP of approximately 48.87 percent.

142. The drawing of this pair of districts in this manner is a racial classification, designed to increase the number of black voters in District 5 and decrease the number of black voters in District 1. In turn, the number of white voters in District 1 is increased.

143. The use of race in drawing this district is not narrowly tailored to meet a compelling governmental interest.

144. The design of these two districts does not respect traditional communities of interest. In drawing black voters into District 5, 6 precincts in District 1 and 5 were split.

145. As a result of the inflated black population of District 5, minorities in District 1 have less ability to elect the candidate of their choice and less influence in the electoral process.

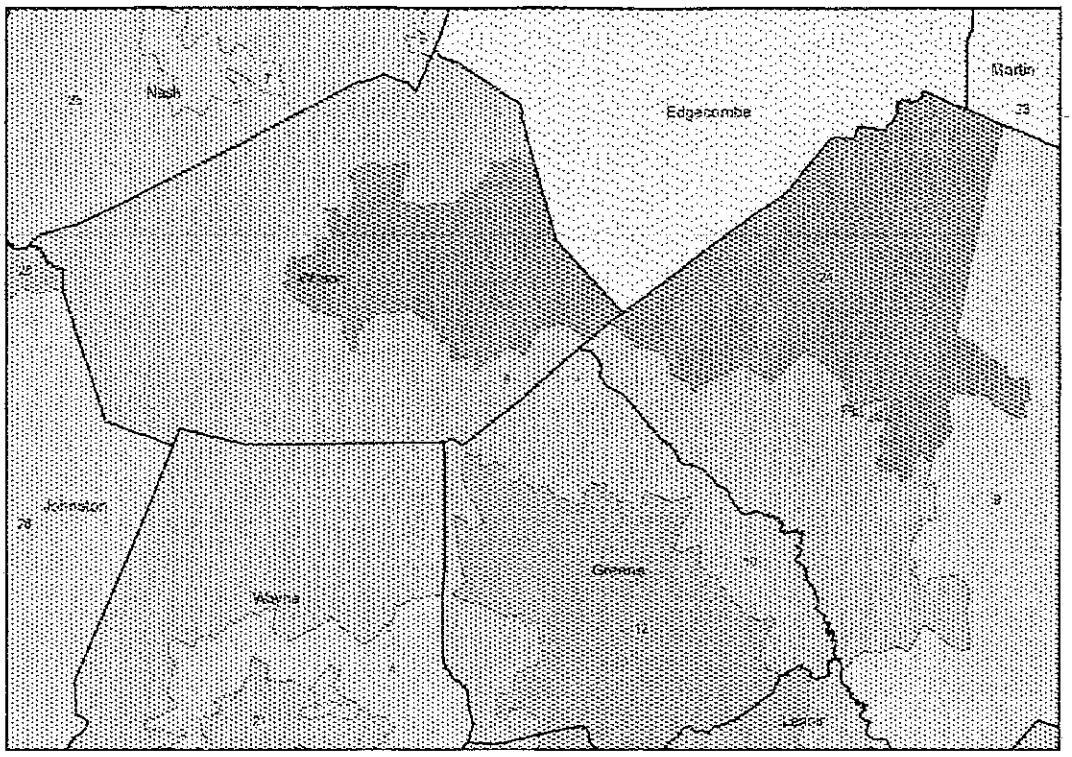
The Wilson-Pitt Region

146. Lewis-Dollar-Dockham 4 Plan draws District 8 and District 24 as a pair of highly irregular, ragged districts to pack as many black voters as possible into District 24. In turn, the voting power of minorities remaining in District 8 is diluted. In creating this pair of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

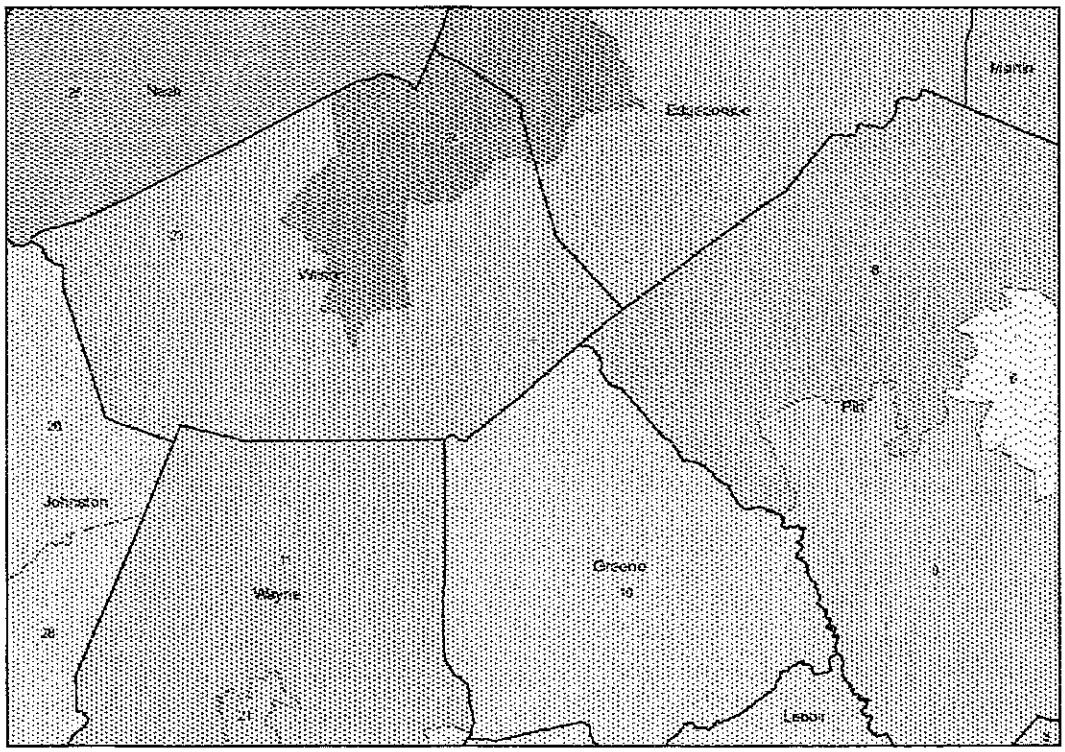
147. District 24 is subject to Section 5 preclearance. It takes a piece of the eastern half of Wilson County and extends west into Pitt County.

148. District 8 includes the remainder of Wilson County unclaimed by District 24 and the southwest corner of Pitt County.

149. Below is a map of Lewis-Dollar-Dockham 4 Districts 8 and 24.



150. Below is a map of the equivalent area under the 2009 House Plan.



151. In House District 24, represented by an African American, Rep. Jean Farmer-Butterfield, the current BVAP of 50.23 percent increases to 57.33 percent.

152. District 24 was already effectively electing the black candidate of choice and would have complied with the Voting Rights Act if the district had been drawn with a BVAP of approximately 50.23 percent.

153. The drawing of this pair of districts in this manner is a racial classification, designed to increase the number of black voters in District 24 and decrease the number of black voters in District 8. In turn, the number of white voters in District 8 is increased.

154. The use of race in drawing these districts is not narrowly tailored to meet a compelling governmental interest.

155. The design of these two districts does not respect traditional communities of interest such as precincts. In District 8, 9 precincts were split. In District 24, 12 precincts were split.

156. As a result of the inflated black population of District 24, minorities in District 8 have less ability to elect the candidate of their choice and less influence in the electoral process.

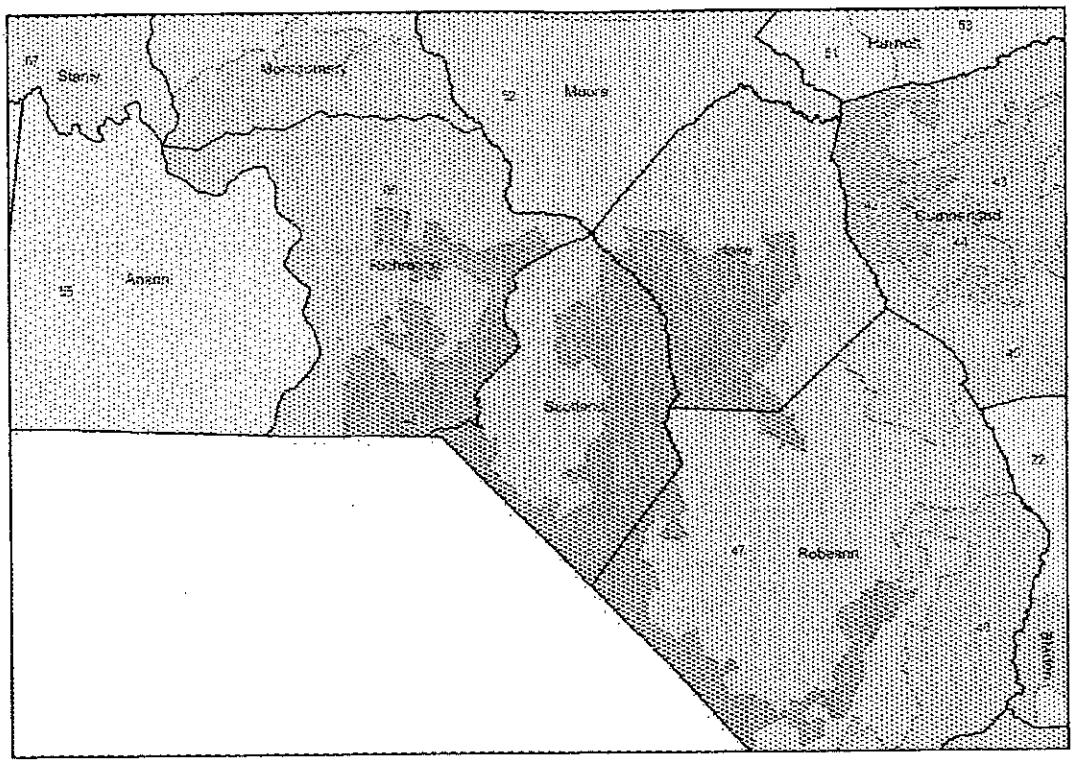
The Scotland-Richmond-Hoke Region

157. Lewis-Dollar-Dockham 4 Plan draws District 48 and District 66 as a pair of highly irregular, ragged districts to pack as many black voters as possible into District 48. In turn, the voting power of minorities remaining in District 66 is diluted. In creating this pair of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

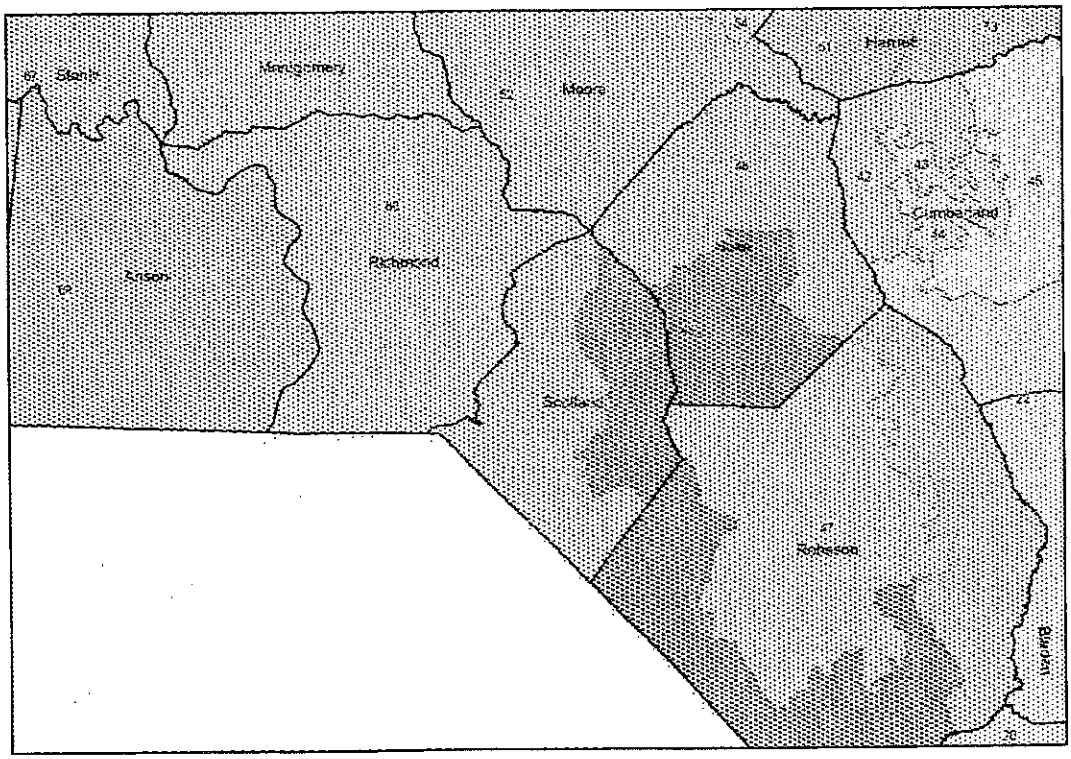
158. District 48 is subject to Section 5 preclearance. It begins in the southern half of Richmond County and spreads east through jagged portions of Scotland and Hoke, before extending an arm into Robeson County.

159. District 66 begins in Montgomery County and fills the remainder of Richmond, Scotland, and Hoke Counties unclaimed by District 48 before ending in north Robeson County.

160. Below is a map of Lewis-Dollar-Dockham 4 Districts 48 and 66.



161. Below is a map of the equivalent area under the 2009 House Plan.



162. In House District 48 represented by an African American, Rep. Garland Pierce, the current BVAP of 45.56 percent increases to 51.27 percent.

163. District 5 was already effectively electing the black candidate of choice and complied with the Voting Rights Act.

164. The drawing of this pair of districts in this manner is a racial classification, designed to increase the number of black voters in District 48 and decrease the number of black voters in District 66. In turn, the number of white voters in District 66 is increased.

165. The use of race in drawing these districts is not narrowly tailored to meet a compelling governmental interest.

166. The design of these districts also rejects the traditional redistricting principles of compactness. In measures of compactness, District 48 rated less compact than the equivalent district in the AFRAM plan on 5 out of 7 tests.

167. The design of these two districts does not respect traditional communities of interest, such as precincts.

168. In District 48, 31 precincts were split.

169. In District 66, 24 precincts were split.

170. As a result of the inflated black population of District 48, minorities in the District 66 have less ability to elect the candidate of their choice and less influence in the electoral process.

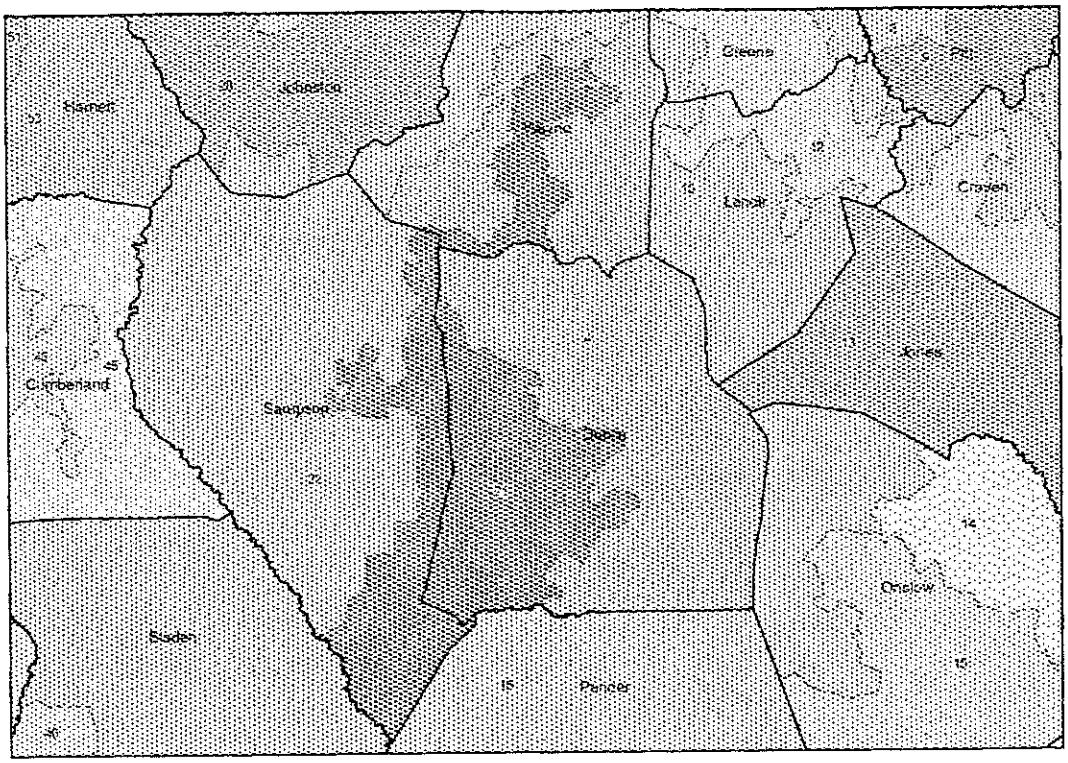
The Sampson-Duplin-Wayne Region

171. The Lewis-Dollar-Dockham 4 Plan draws District 4 and District 21 as a pair of ragged districts to pack as many black voters as possible into District 21. In turn, the voting power of minorities remaining in District 4 is diluted. In creating this pair of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

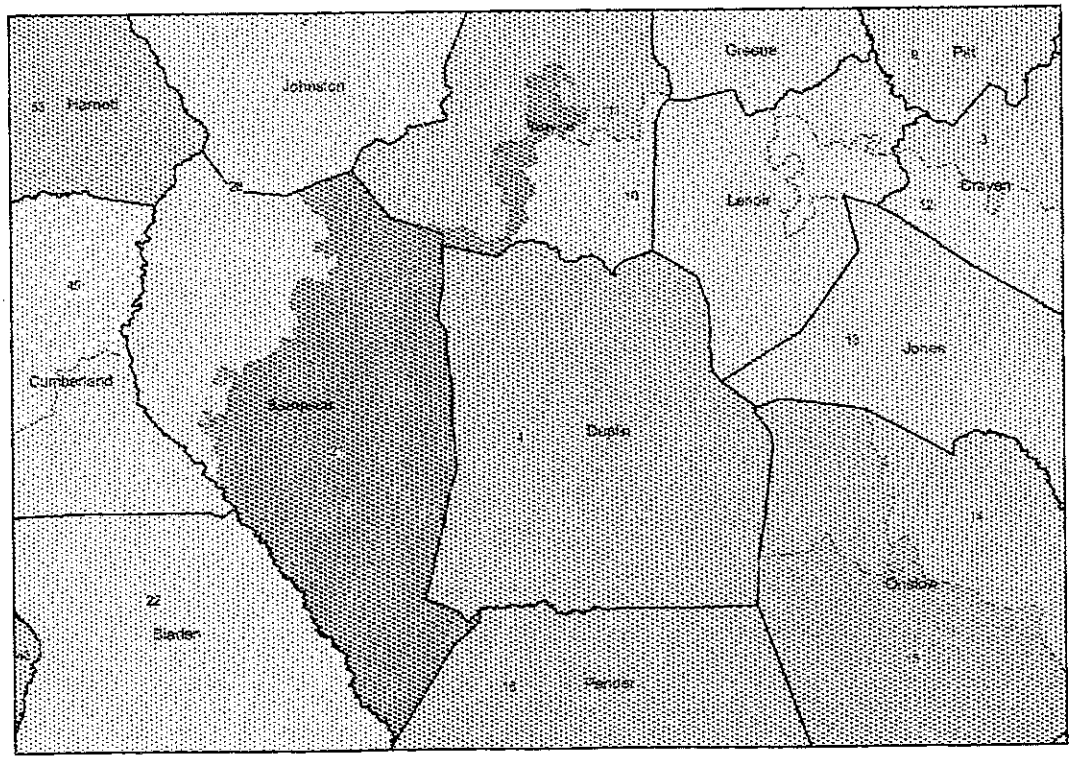
172. District 21 is subject to Section 5 preclearance. It begins in the southern half of Sampson County and spreads east through a jagged portion of Duplin County, before extending an arm north into Wayne County.

173. District 4 is comprised of the remainder of Duplin unclaimed by District 21 and reaches north into Wayne County.

174. Below is a map of Lewis-Dollar-Dockham 4 Districts 4 and 21.



175. Below is a map of the equivalent area under the 2009 House Plan.



176. In House District 21, represented by an African American, Rep. Larry Bell, the current BVAP of 46.25 percent increases to 51.9 percent

177. District 21 was already effectively electing the black candidate of choice and would have complied with the Voting Rights Act if the new BVAP remained around 46 percent.

178. The drawing of this pair of districts in this manner is a racial classification, designed to increase the number of black voters in District 21 and decrease the number of black voters in District 4. In turn, the number of white voters in District 4 is increased.

179. The use of race in drawing these districts is not narrowly tailored to meet a compelling governmental interest.

180. The design of these districts also rejects the traditional redistricting principles of compactness. In measures of compactness, District 21 rated less compact than the equivalent district in the AFRAM plan on 7 out of 7 tests.

181. The design of these two districts does not respect traditional communities of interest such as precinct. In District 4, 17 precincts were split.

182. In District 21, 25 precincts were split.

183. As a result of the inflated black population of District 21, minorities in the District 4 have less ability to elect the candidate of their choice and less influence in the electoral process.

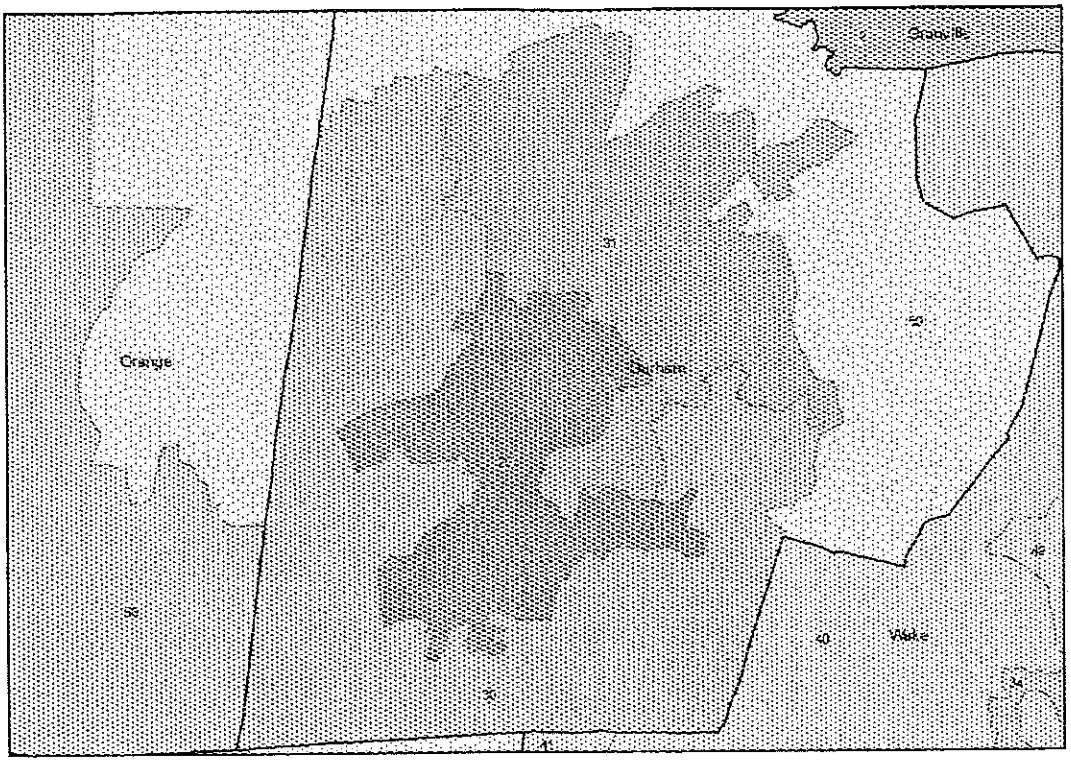
The Durham Region

184. The Lewis-Dollar-Dockham 4 Plan draws District 29 and District 30 as a pair of highly irregular, ragged districts to pack as many black voters as possible into District 29. In turn, the voting power of minorities remaining in District 30 is diluted. In creating this pair of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

185. District 29 spreads like an ink blot over the city of Durham, a city with a large black population.

186. District 30 fills the remainder of the southern half of Durham unclaimed by District 29.

187. Below is a map of Lewis-Dollar-Dockham 4 Districts 29 and 30.



188. Below is a map of the equivalent area under the 2009 House Plan.

189. In House District 29, represented by an African American, Rep. Larry Hall, the current BVAP of 39.99 percent increases to 51.34 percent.

190. District 21 was already effectively electing the black candidate of choice and would have complied with the Voting Rights Act if the new BVAP remained around 46 percent.

191. The drawing of this pair of districts in this manner is a racial classification, designed to increase the number of black voters in District 29 and decrease the number of black voters in District 30. In turn, the number of white voters in District 30 is increased.

192. The use of race in drawing these districts is not narrowly tailored to meet a compelling governmental interest.

193. The design of these two districts does not respect traditional communities of interest. In District 29, 14 precincts were split.

194. In District 30, 12 precincts were split.

195. A total of 21 of Durham County's 55 precincts are split in drawing Districts 29, 30, and 31.

196. As a result of the inflated black population of District 29, minorities in the District 30 have less ability to elect the candidate of their choice and less influence in the electoral process.

The Wake Region

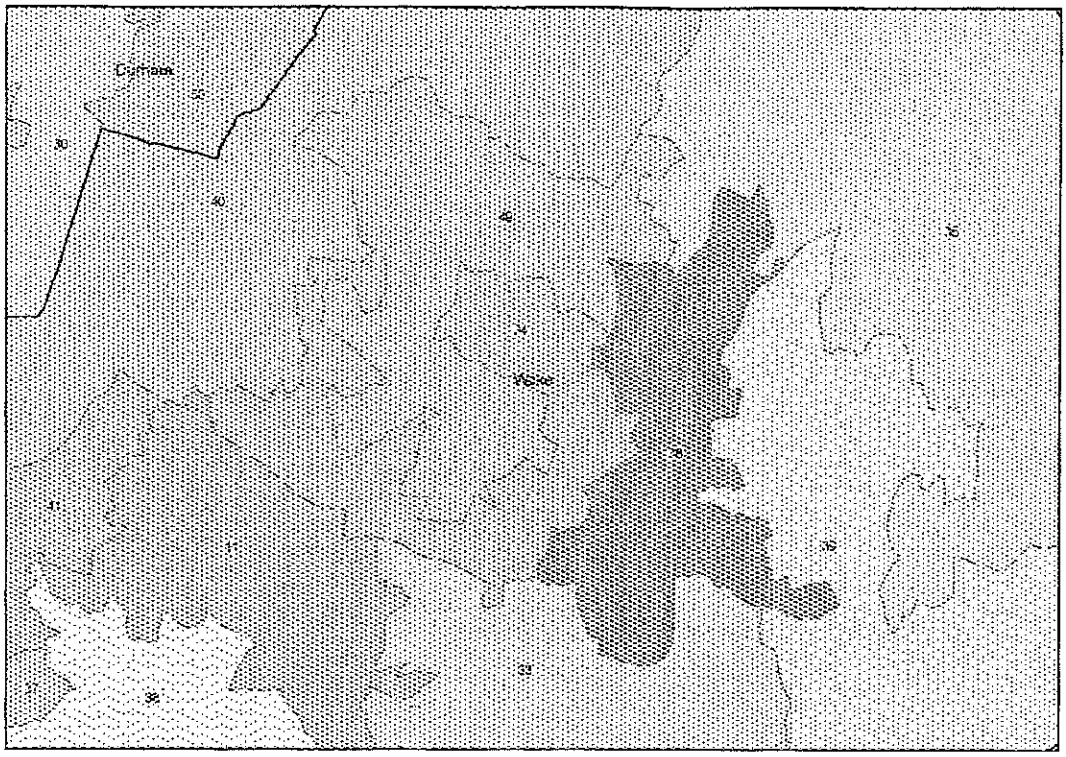
197. The Lewis-Dollar-Dockham 4 Plan draws Districts 34, 38 and 49 as a group of ragged, entwined, districts within Wake County to pack as many black voters as possible into District 38. In turn, the voting power of minorities remaining in Districts 34 and 49 is diluted. In creating this group of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

198. District 38 begins in central Wake County and extends over southeast Raleigh, into Garner and north into Knightdale and Wake Forest.

199. District 34 goes west of 38, over Cary and then and curves north around Raleigh to the edge of District 49.

200. District 49 contains central and North Raleigh.

201. Below is a map of Lewis-Dollar-Dockham 4 Districts 34, 38, and 49.



202. Below is a map of the equivalent area under the 2009 House Plan.

203. District 38 is a new majority-minority district, drawn to have 50.45 percent BVAP.

204. The drawing of this pair of districts in this manner is a racial classification, designed to increase the number of black voters in District 38 and decrease the number of black voters in Districts 34 and 49. In turn, the number of white voters in Districts 34 and 49 is increased.

205. The use of race in drawing these districts is not narrowly tailored to meet a compelling governmental interest.

206. The design of these districts also rejects the traditional redistricting principles of compactness. In measures of compactness, District 38 rated less compact than the equivalent district in the AFRAM plan on 5 out of 7 tests.

207. The design of these two districts does not respect traditional communities of interest, such as precincts. In District 34, 14 precincts were split.

208. In District 38, 13 precincts were split.

209. In District 49, 3 precincts were split.

210. As a result of the inflated black population of District 38, minorities in the District 34 and 49 have less ability to elect the candidate of their choice and less influence in the electoral process.

The Cumberland Region

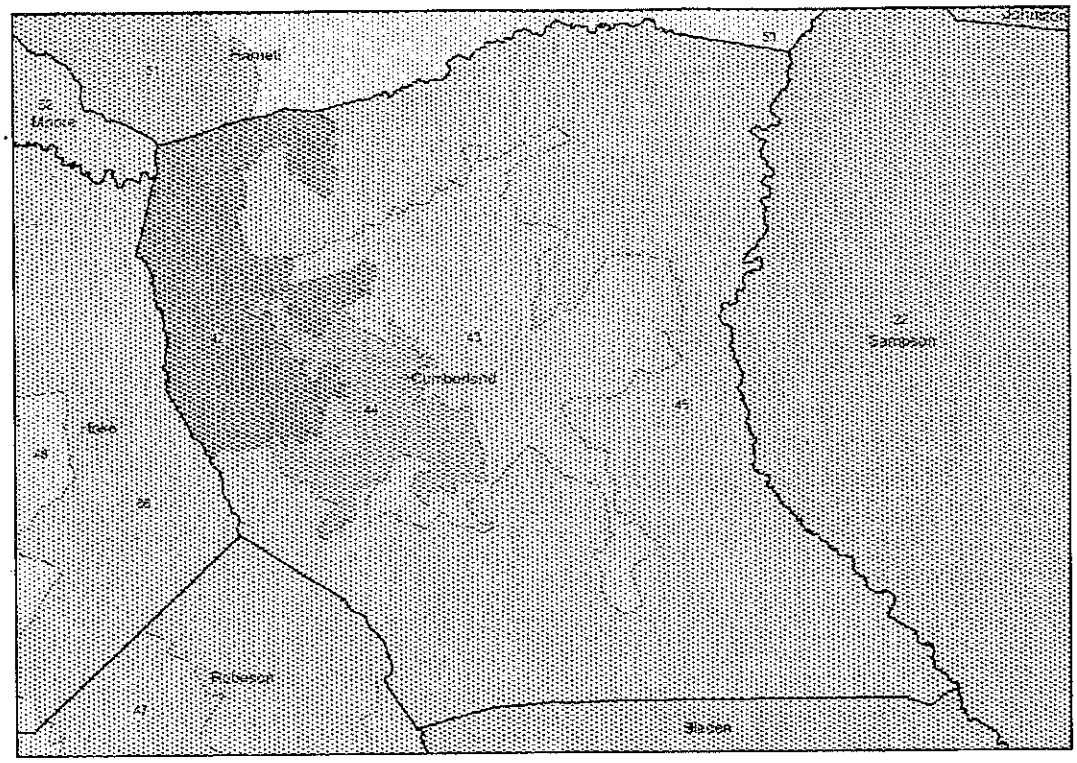
211. The Lewis-Dollar-Dockham 4 Plan draws District 42, 43, and 45 as a group of ragged districts within Cumberland County to pack as many black voters as possible into District 42. In turn, the voting power of minorities remaining in District 45 is diluted. In creating this group of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

212. District 42 is subject to Section 5 preclearance. It hugs the western edge of Cumberland County.

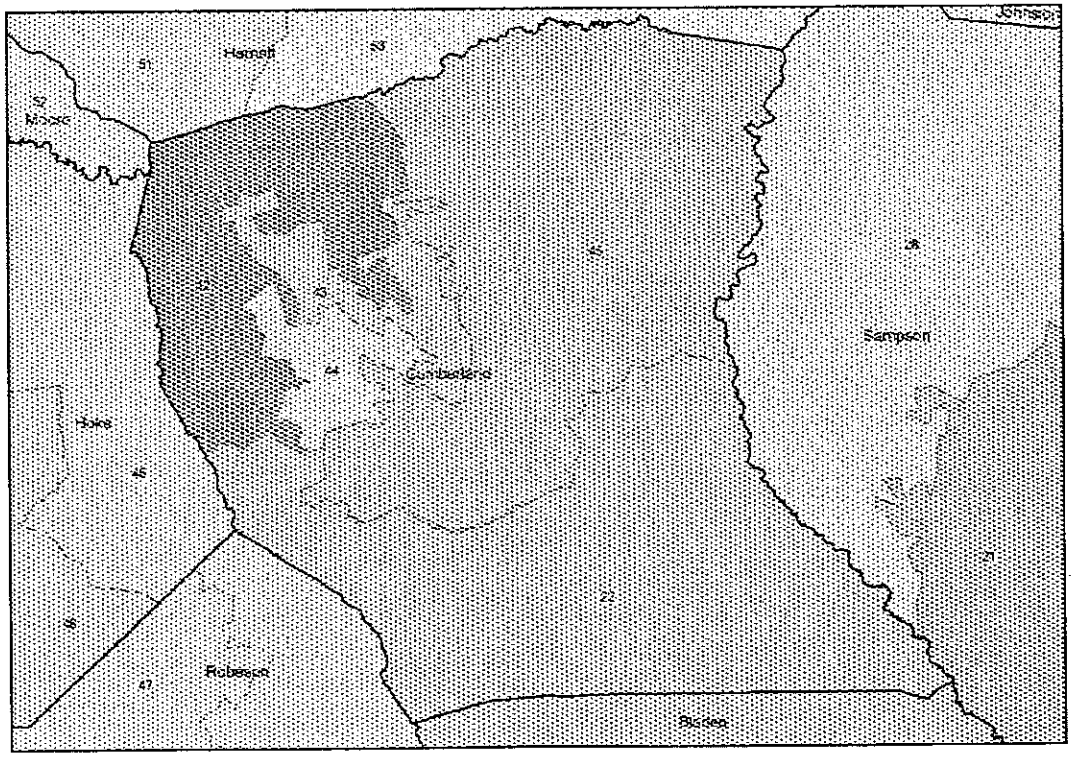
213. District 43 is subject to Section 5 preclearance. It spreads across the heart of Cumberland County, bounded by Districts 42, 44 and 45.

214. District 45 is subject to Section 5 preclearance. It fills the remainder of Cumberland County unclaimed by Districts 42, 43, and 44.

215. Below is a map of Lewis-Dollar-Dockham 4 Districts 42, 43, 44, and 45.



216. Below is a map of the equivalent area under the 2009 House Plan.



217. In House District 42, represented by an African American, Rep. Marvin Lucas, the current BVAP of 47.94 percent increases to 52.56 percent.

218. District 42 was already effectively electing the black candidate of choice and would comply with the Voting Rights Act if the new BVAP was drawn around 48 percent.

219. District 42 pulls black voters out of District 43. To apparently avoid retrogression under Section 5, District 43 extends a thin tentacle deep into District 45 to gather additional black voters. A more compact, non-retrogressive alternative was available if District 42 had not been unjustifiably packed.

220. The drawing of this pair of districts in this manner is a racial classification, designed to increase the number of black voters in District 42 and decrease the number of black voters in District 45. In turn, the number of white voters in District 45 is increased.

221. The use of race in drawing these districts is not narrowly tailored to meet a compelling governmental interest.

222. This district pairing does not respect traditional communities of interest, such as precincts. In District 42, 15 districts were split.

223. In District 45, 10 precincts were split.

224. A total of 27 of Cumberland County's 48 precincts are split in drawing Districts 42, 43, 44, and 45.

225. As a result of the inflated black population of District 42, minorities in District 45 have less ability to elect the candidate of their choice and less influence in the electoral process.

The Guilford Region

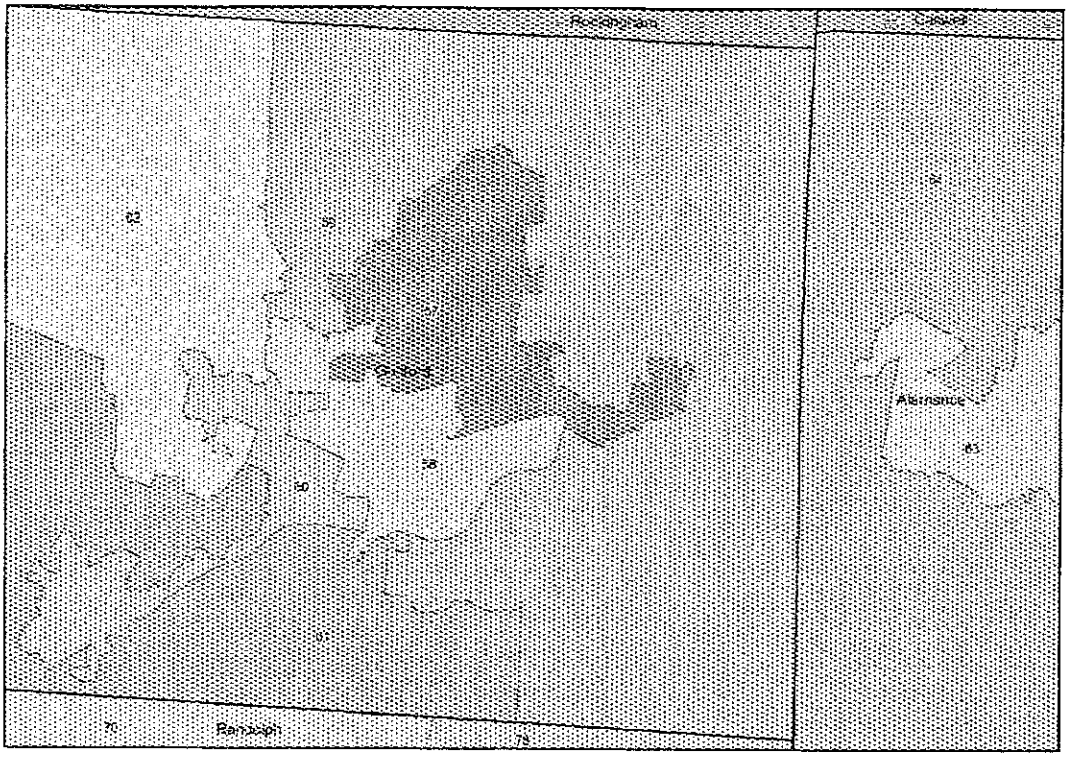
226. The Lewis-Dollar-Dockham 4 Plan draws Districts 57 and 59 as a pair of ragged districts to pack as many black voters as possible into District 57. Under the 2009 Plan, black voters in both districts exerted substantial influence. The new Plan packs as many black voters as

possible into District 57 to create a new majority-minority district not required by the Voting Rights Act.

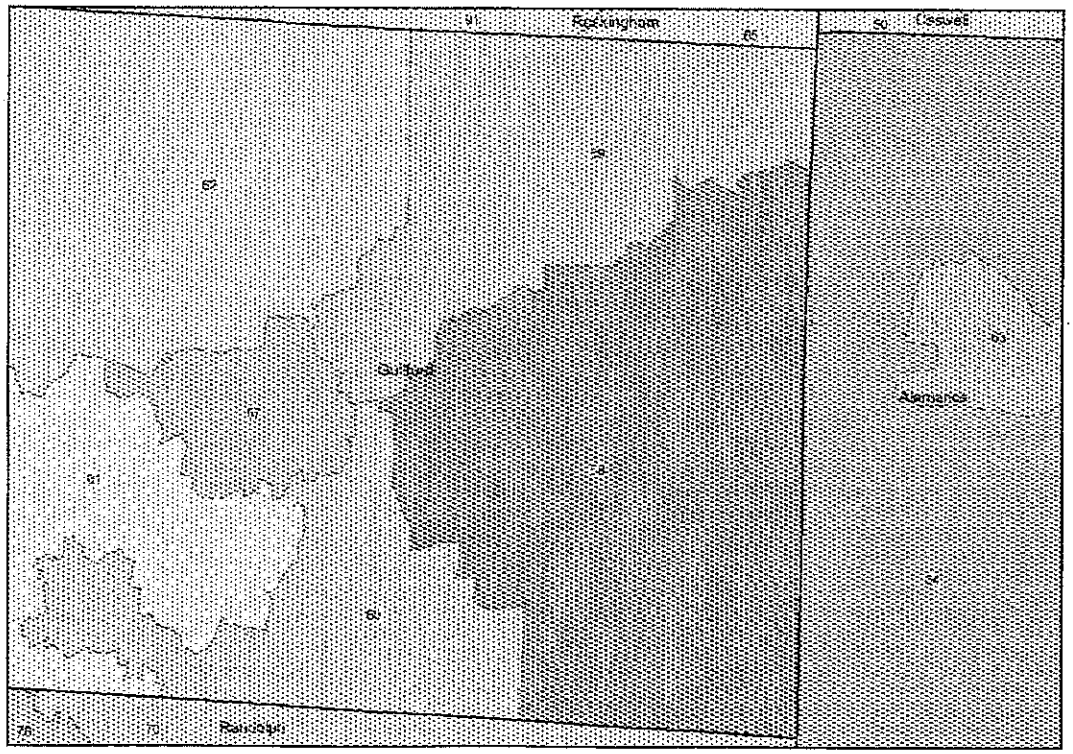
227. District 57 is subject to Section 5 preclearance. It begins in central Guilford, over Greensboro and extends a tendril into the eastern part of the county.

228. District 59 covers the majority of eastern Guilford County.

229. Below is a map of Lewis-Dollar-Dockham 4 Districts 57 and 59.



230. Below is a map of the equivalent area under the 2009 House Plan.



231. District 57 has a BVAP of 50.69 percent.

232. The drawing of this pair of districts in this manner is a racial classification, designed to increase the number of black voters in District 57 and decrease the number of black voters in District 59. In turn, the number of white voters in District 59 is increased.

233. The use of race in drawing these districts is not narrowly tailored to meet a compelling governmental interest.

234. The design of these districts also rejects the traditional redistricting principles of compactness. In measures of compactness, District 57 rated less compact than the equivalent district in the AFRAM plan on 7 out of 7 tests.

235. The design of these two districts does not respect traditional communities of interest and political subdivisions.

236. In District 59, 11 precincts were split.

237. In District 57, 15 precincts were split.

238. As a result of the inflated black population of District 57, minorities in the District 59 have less ability to elect the candidate of their choice and less influence in the electoral process.

The Mecklenburg Region

239. The Lewis-Dollar-Dockham 4 Plan creates 5 black majority districts out of the 10 districts in Mecklenburg County.

240. These districts are not required by the Voting Rights Act.

241. In comparison, the AFRAM Plan creates only 2 majority-minority districts, in compliance with the Voting Rights Act.

242. The Plan draws Districts 99 and 103 to pack as many black voters as possible into District 99. In turn, the voting power of minorities remaining in District 103 is diluted. In

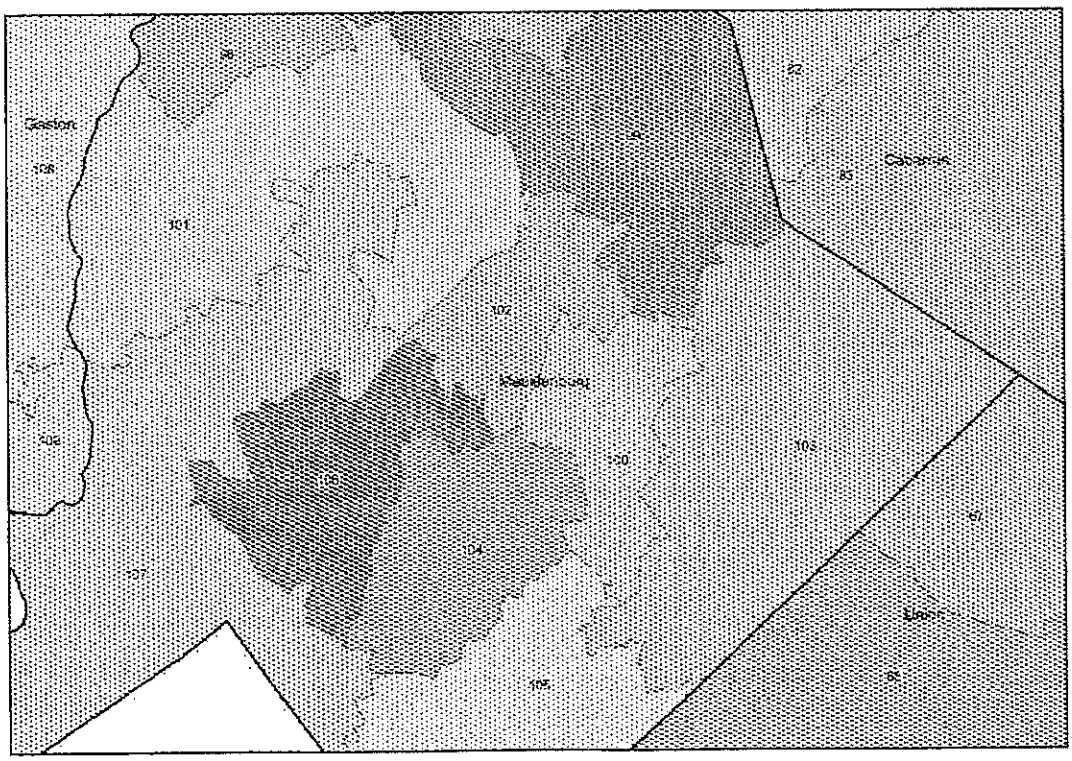
creating this group of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

243. District 99 begins in the eastern side of Mecklenburg County and is bounded by Districts 106 and 107 in the northwest and District 100 in the southwest. It extends an arm into District 103 in the East.

244. District 103 hugs the eastern border of Mecklenburg County and is bordered by Districts 99, 100, 104, and 105.

245. Below is a map of Lewis-Dollar-Dockham 4 Districts 99, 102, 103, and 106.

246. Below is a map of the equivalent area under the 2009 House Plan.



247. In House District 99, represented by an African American, Rep. Rodney Moore, the current BVAP of 41.26 percent increases to 54.65 percent BVAP.

248. The drawing of this pair of districts in this manner is a racial classification, designed to increase the number of black voters in District 99 and decrease the number of black voters in District 103. In turn, the number of white voters in District 103 is increased.

249. The use of race in drawing these districts is not narrowly tailored to meet a compelling governmental interest.

250. The design of these districts also rejects the traditional redistricting principles of compactness.

251. Additionally, Lewis-Dollar-Dockham 4 draws Districts 102 and 106 to be two additional and unnecessary majority-minority districts in Mecklenburg. District 102, rises from 42.74 percent to 53.53 percent. District 106 is a new district in the county, drawn with a BVAP of 51.12 percent.

252. District 102 and 106 are racial classifications, drawn intentionally to increase the number of black voters in the district and decrease the number of black voters in adjacent districts.

253. These new majority-minority districts are not required for compliance with Section 2 of the Voting Rights Act.

254. To create these additional and unnecessary majority-minority districts, the entirety of Mecklenburg County is drawn with less consideration for compactness and communities of interest.

255. Lewis-Dollar-Dockham 4's Mecklenburg area rated less compact than the Mecklenburg area in the AFRAM Plan in 7 out of 7 measures.

256. The creation of unnecessary majority-minority districts leads to less compact adjacent districts. District 92, adjacent to District 102, is less compact than the equivalent district in the AFRAM Plan.

257. District 107, adjacent to Districts 92, 98, 99, 101 and 106 is less compact than the equivalent district in the AFRAM Plan.

258. The design of these districts does not respect traditional communities of interest. In Mecklenburg County, 49 out of the county's 195 precincts were split.

259. In District 99, 7 precincts were split.

260. In District 103, 3 precincts were split.

261. In District 102, 7 precincts were split.

262. In District 106, 3 precincts were split.

263. An egregious example of race-based precinct splits occurred in the Mecklenburg area. Precinct 235 in Mecklenburg County was split into two sub-precincts, which divided between House District 100 and 103. District 100 wrapped around one small predominantly black area, removing it from District 103. Adjacent Precinct 94 was split to pull white voters into 103.

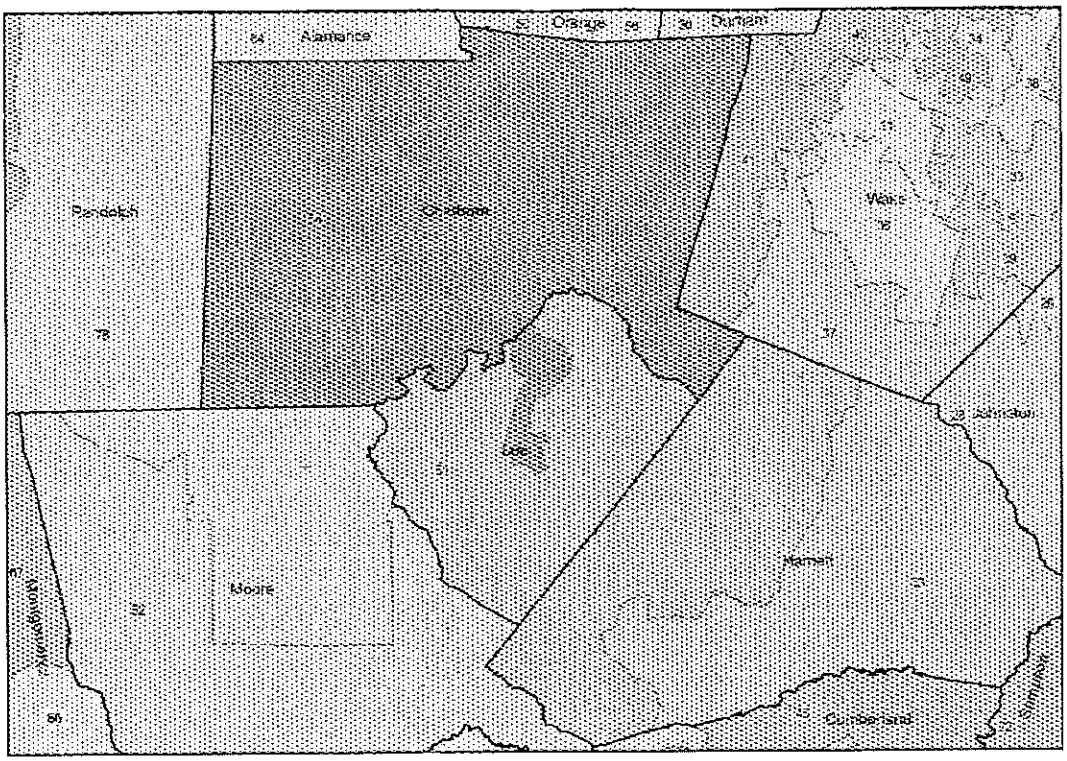
264. As a result of the inflated black population of District 99, 102, and 106, minorities in the District 103 and throughout the Mecklenburg area have less ability to elect the candidate of their choice and less influence in the electoral process.

Chatham-Lee Region

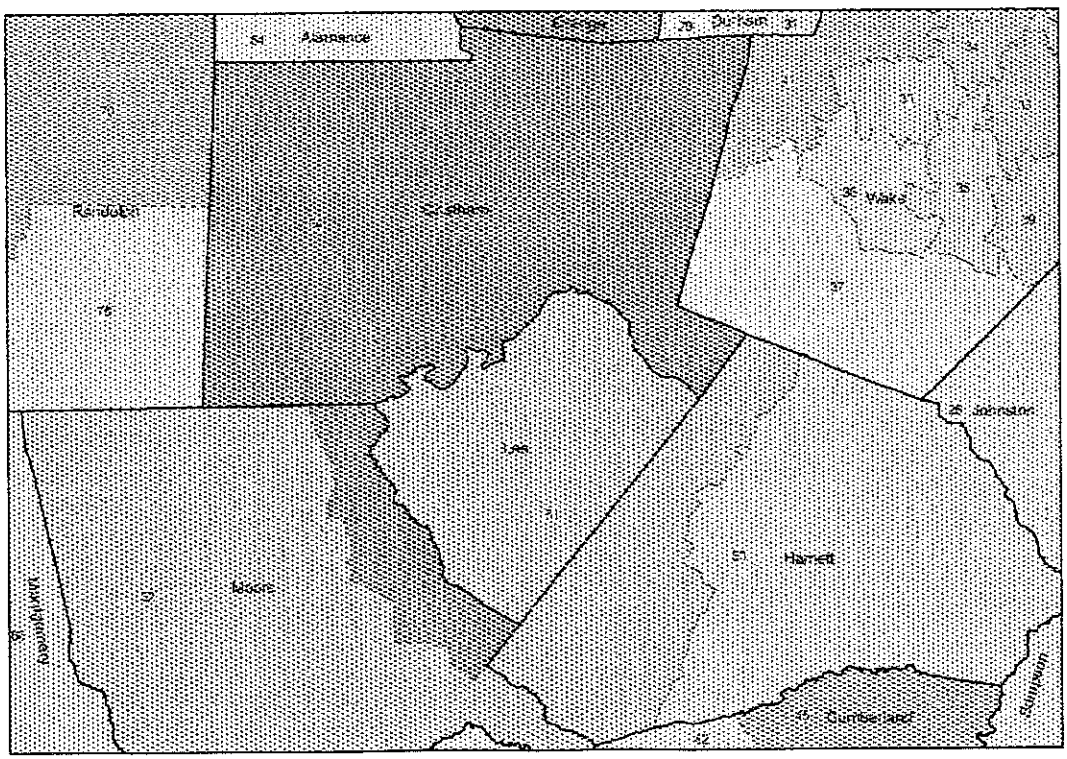
265. The Lewis-Dollar-Dockham 4 Plan draws District 54 to scoop black voters out of District 51 in Lee County In turn, the voting power of minorities remaining in District 51 is diluted. In creating this pair of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

266. The Plan draws Districts 54 as containing Chatham County in its entirety then reaches an arm into District 51 in Lee County.

267. Below is a map of Lewis-Dollar-Dockham 4 Districts 51 and 54.



268. Below is a map of the equivalent area under the 2009 House Plan.



269. The total BVAP of District 54 is 17.98.

270. The BVAP of the Lee County piece of District 54 is 36.5 percent of the population of the Lee County piece.

271. District 54's excursion into Lee County accounts for approximately 40 percent of the entire BVAP of the district.

272. The drawing of this pair of districts in this manner is a racial classification, designed to increase the number of black voters in District 54 and decrease the number of black voters in District 51. In turn, the number of white voters in District 51 is increased.

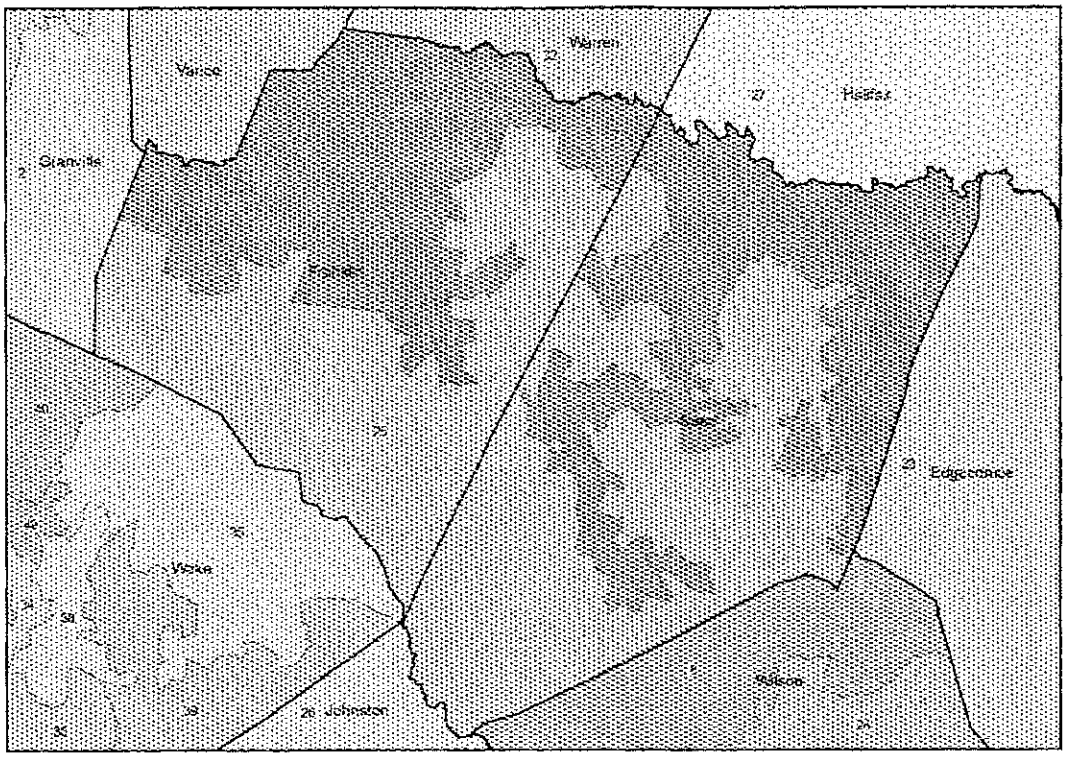
273. The use of race in drawing these districts is not narrowly tailored to meet a compelling governmental interest.

The Halifax-Nash-Franklin Region

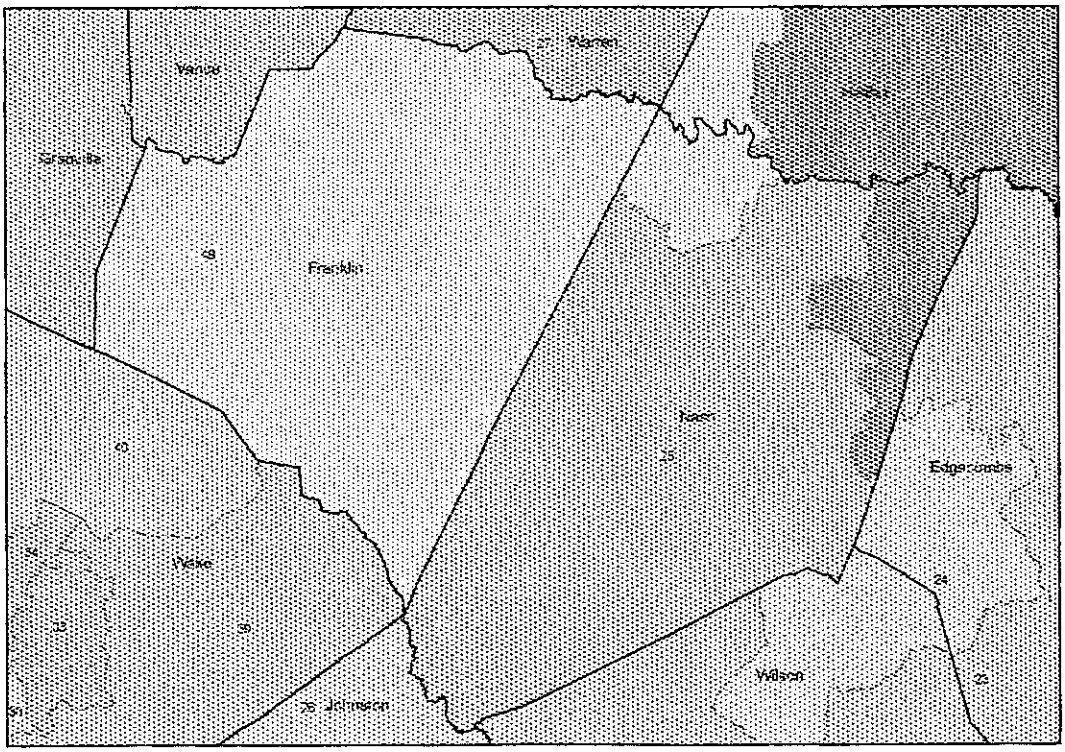
274. Lewis-Dollar-Dockham 4 Plan draws District 7 and District 25 as a pair of highly irregular, ragged districts that ignores the historic community of interest that unites Nash and Halifax Counties. In creating this pair of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

275. District 7 winds its way through the northern portions of Franklin and Nash Counties, with arms that reach into the southern half of Nash County. District 25 includes the remainder of Franklin and Nash Counties unclaimed by District 7.

276. Below is a map of Lewis-Dollar-Dockham 4 Districts 7 and 25.



277. Below is a map of the equivalent area under the 2009 House Plan.



278. The design of these two districts does not respect traditional communities of interest, such as precincts. In Districts 7 and 25, 22 precincts were split.

279. The design of these districts also rejects the traditional redistricting principles of compactness. In measures of compactness, District 7 rated less compact than the equivalent district in the AFRAM plan on 6 out of 7 tests.

State Senate Redistricting

280. On January 27, 2011, the Senate Redistricting Committee was appointed and Senator Bob Rucho was named as Chair of the Committee.

281. The Senate Redistricting Committee considered a plan named "Rucho Senate 2."

282. In addition to Rucho Senate 2, two legislators introduced alternative plans: (1) the plan presented by Minority Leader, Senator Martin Nesbitt, called "Senate Fair and Legal;" and (2) the plan presented by Senator Floyd McKissick for the Legislative Black Caucus, the "LBC Plan." In addition, an alternative plan was developed by a coalition of community-based organizations called AFRAM (Alliance for Fair Redistricting and Minority Voting Rights) and submitted at the June 23, 2011 public hearing, "AFRAM map."

283. All three alternative plans adhered to the traditional redistricting criteria of compactness, contiguity, and preserving communities of interest. The plans also provided appropriate and effective voting districts for minority voters in compliance with Section 2 and Section 5 of the Voting Rights Act.

284. The State Senate plan currently in effect is known as the "2003 Senate Plan." The 2003 Plan was ratified in 2003, and was used in the 2004 through 2010 elections. It is the benchmark used for Section 5 analysis.

285. On July 27, 2011, the General Assembly passed the State Senate Redistricting Plan, S.L. 404, known as the "Rucho Senate 2" plan.

286. No African-American Senators or Representatives voted for the Rucho Senate 2 Plan.

287. On November 7, 2011, the General Assembly passed curative legislation to assign all the areas left unassigned by the Senate Redistricting Plan, 2011 S.L. 404. The revised Plan was enacted into law as 2011 S.L. 413

288. No African-American Senators or Representatives voted for the curative legislation.

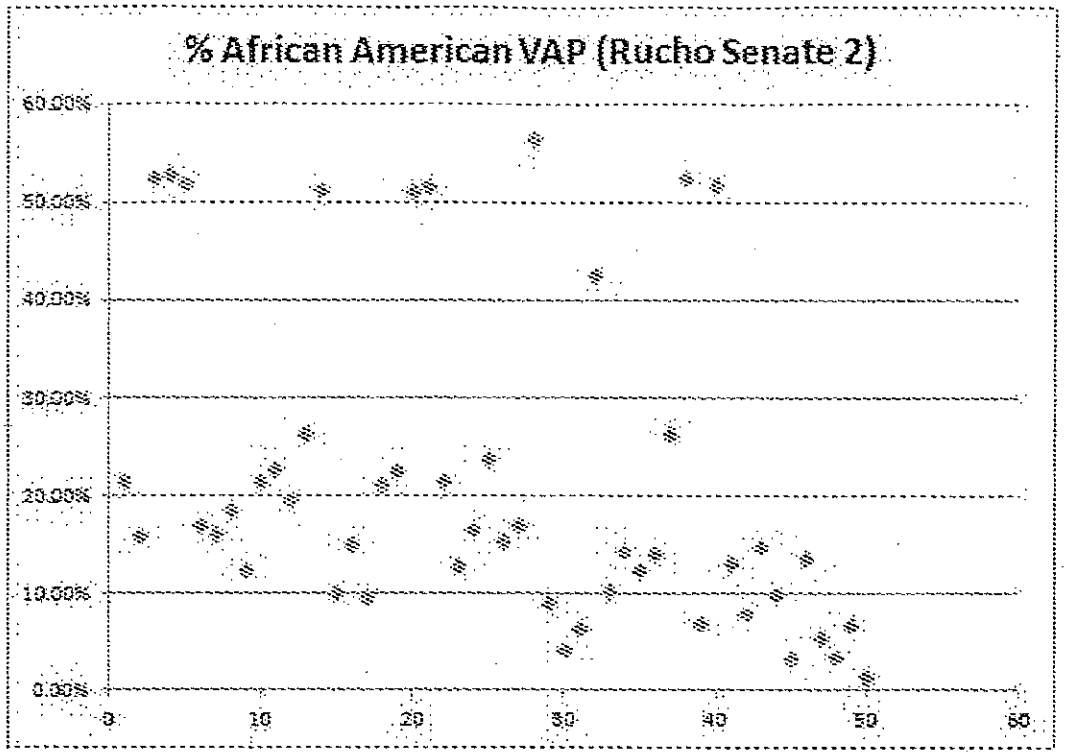
289. In the Rucho Senate 2 Plan, 10 districts have a BVAP greater than 40 percent and 9 of these districts have a BVAP over 50 percent.

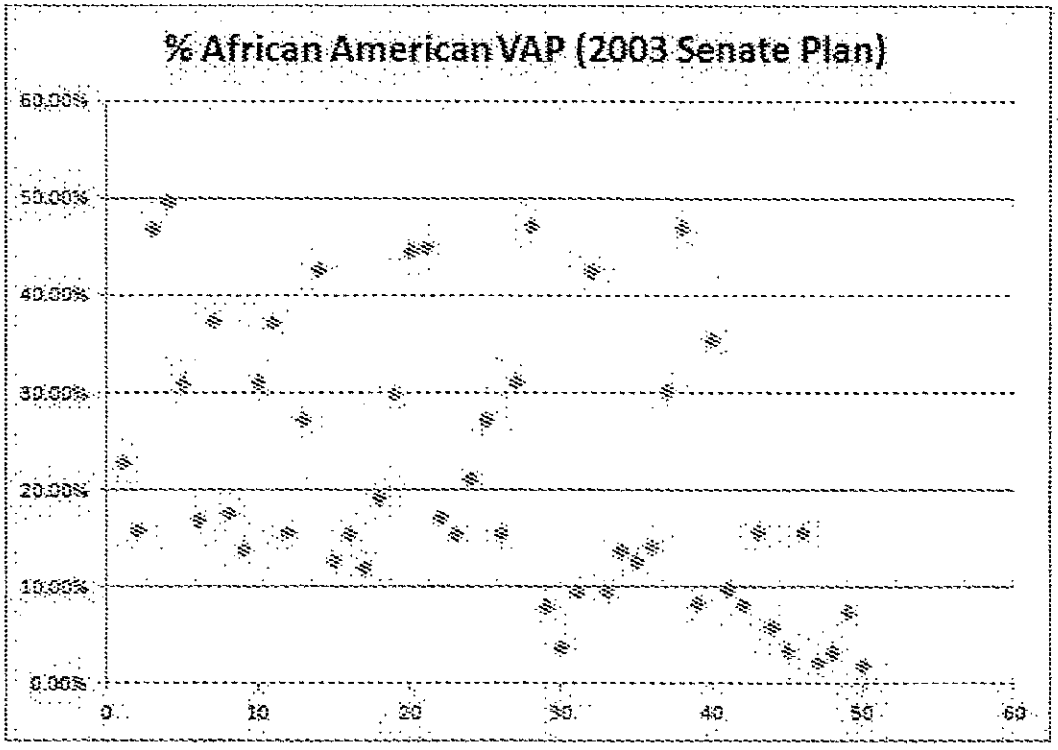
290. By comparison, in the 2003 Senate Plan, no district had a BVAP greater than 50 percent. Eight districts had a BVAP greater than 40 percent, ranging from 42.52 percent to 49.7 percent. From these eight districts, seven black Senators were elected.

291. The Rucho Senate 2 Plan segregates many black voters into districts with greater than 50 percent BVAP or less than 30 percent BVAP. In the Plan, only 1 district has a BVAP between 30 and 50 percent.

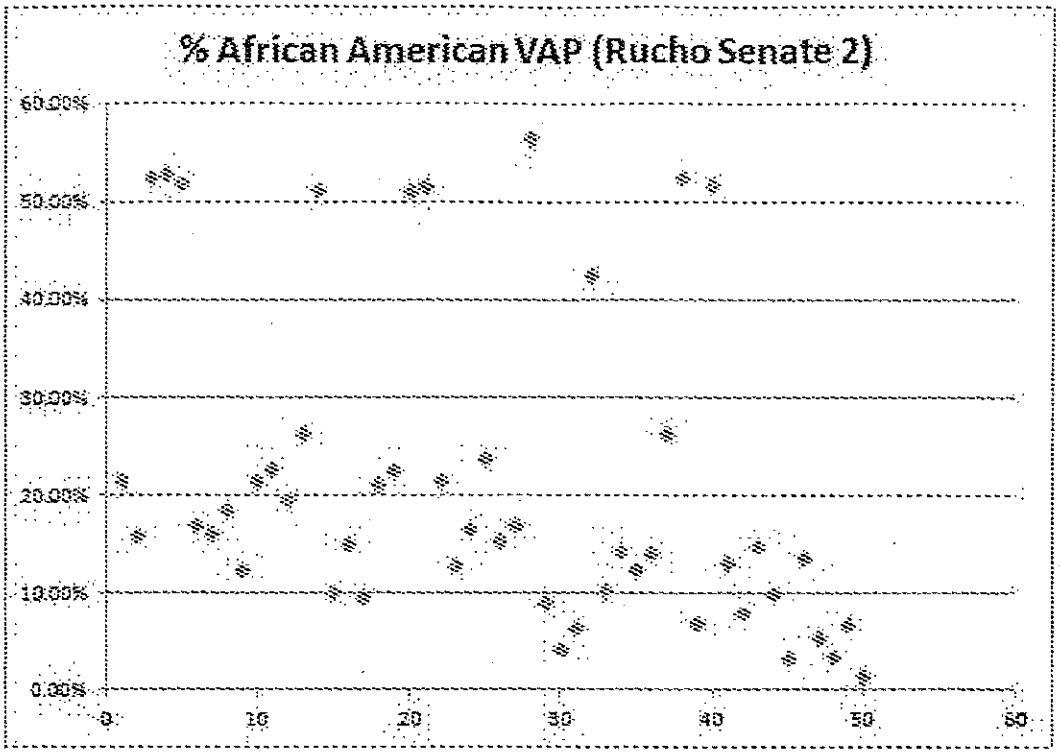
292. In comparison, the 2003 Plan had 15 districts with a BVAP between 30 and 50 percent.

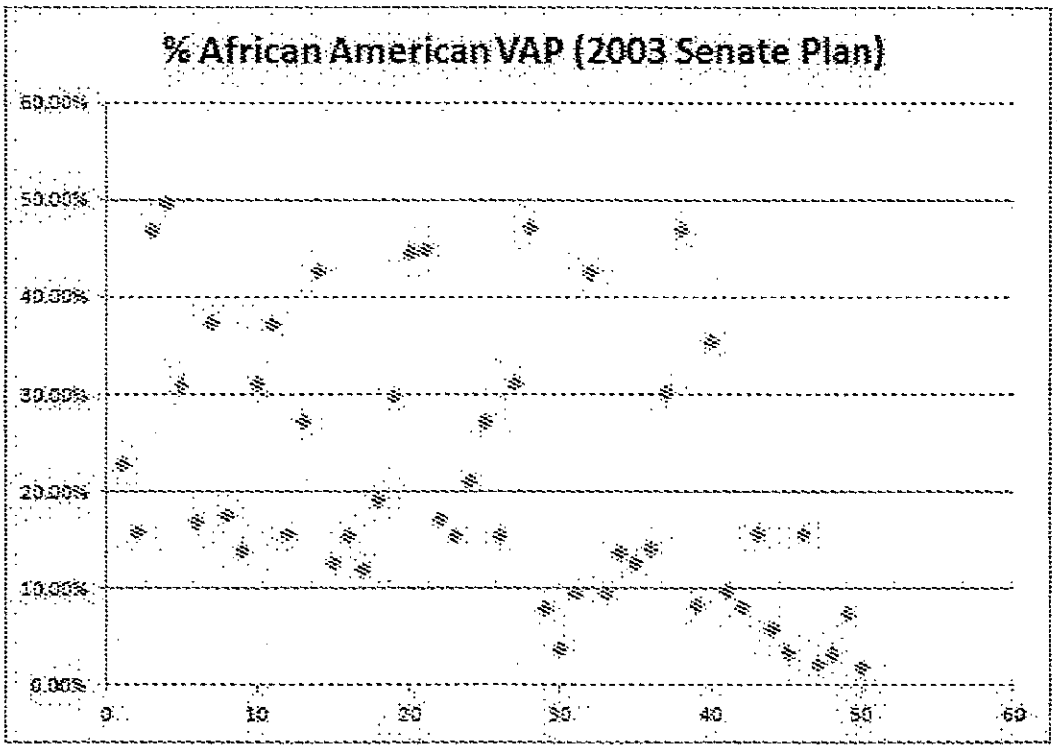
293. The BVAP of the Rucho Senate 2 Plan and the 2003 Plan are shown below where each dot represents one of the 50 districts in the plan. The vertical axis is the percent BVAP of the district and the horizontal axis is the number of the district.





294. In drawing these districts, the Rucho Senate 2 plan intentionally carved black voters out of existing majority-white districts to increase the BVAP of districts already providing





294. In drawing these districts, the Rucho Senate 2 plan intentionally carved black voters out of existing majority-white districts to increase the BVAP of districts already providing

African-American voters an opportunity to elect their candidates of choice and to decrease the number of black voters in the remaining majority white districts. The Rucho Senate 2 Plan divided black voters from their neighborhoods and communities by splitting the precincts in which they vote and packing them in existing, performing minority districts.

295. Rucho Senate 2 divides 257 precincts in 12 counties. A voting age population of approximately 1,000,000 citizens resides within these divided precincts.

296. The Rucho Senate 2 Plan splits more precincts than any alternative plan submitted to the Senate Redistricting Committee. The enacted plan splits **43 times** the number of precincts than the Senate Fair & Legal Plan, which split only 6 precincts. Additionally the enacted plan split many more precincts than the Senate LBC and Senate AFRAM plans, which split 5 precincts and 70 precincts, respectively.

297. The Rucho Senate 2 Plan repeatedly split precincts based on race.

298. The plaintiffs are harmed by this excessive splitting of precincts.

299. The Rucho Senate 2 Plan also fails to preserve the traditional redistricting principle of compactness. In measures of compactness, the Rucho Senate 2 Plan rated less compact than the Senate Fair & Legal Plan in 6 out of 7 tests and the AFRAM and LBC Plans in 5 out of 7 tests.

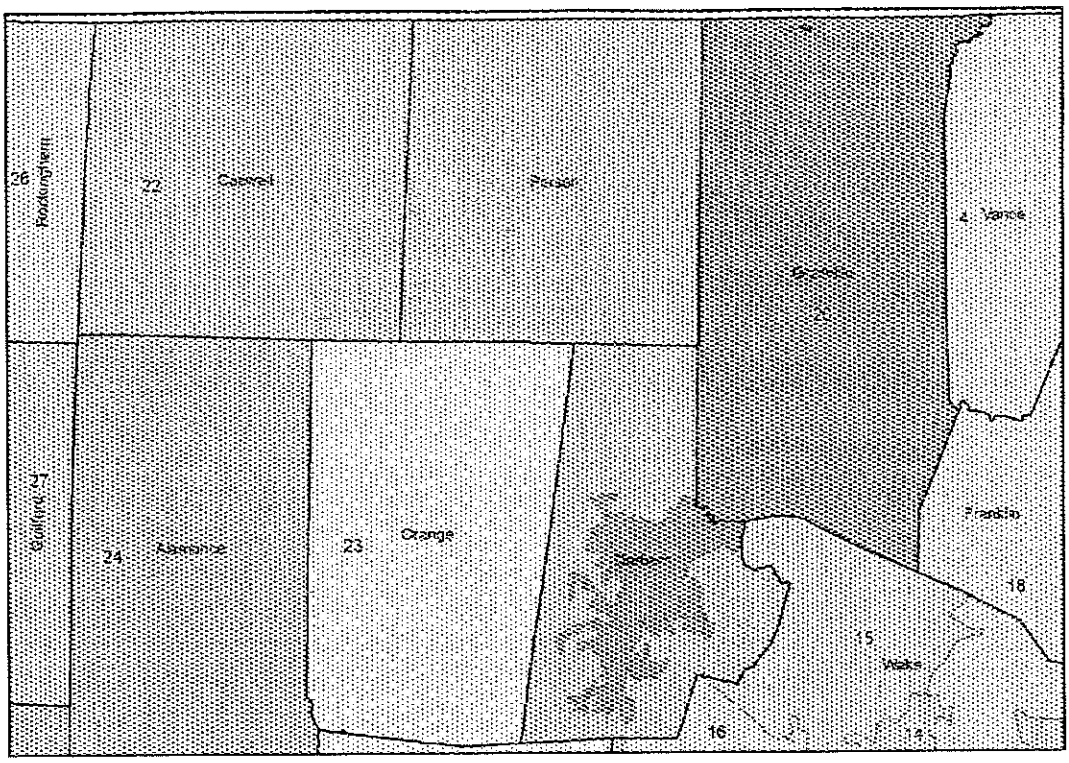
The Durham-Granville Area

300. Rucho Senate 2 draws District 20 and District 22 as a pair of highly irregular, ragged districts to pack as many black voters as possible into District 20. In turn, the voting power of minorities remaining in District 22 is diluted. In creating this pair of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

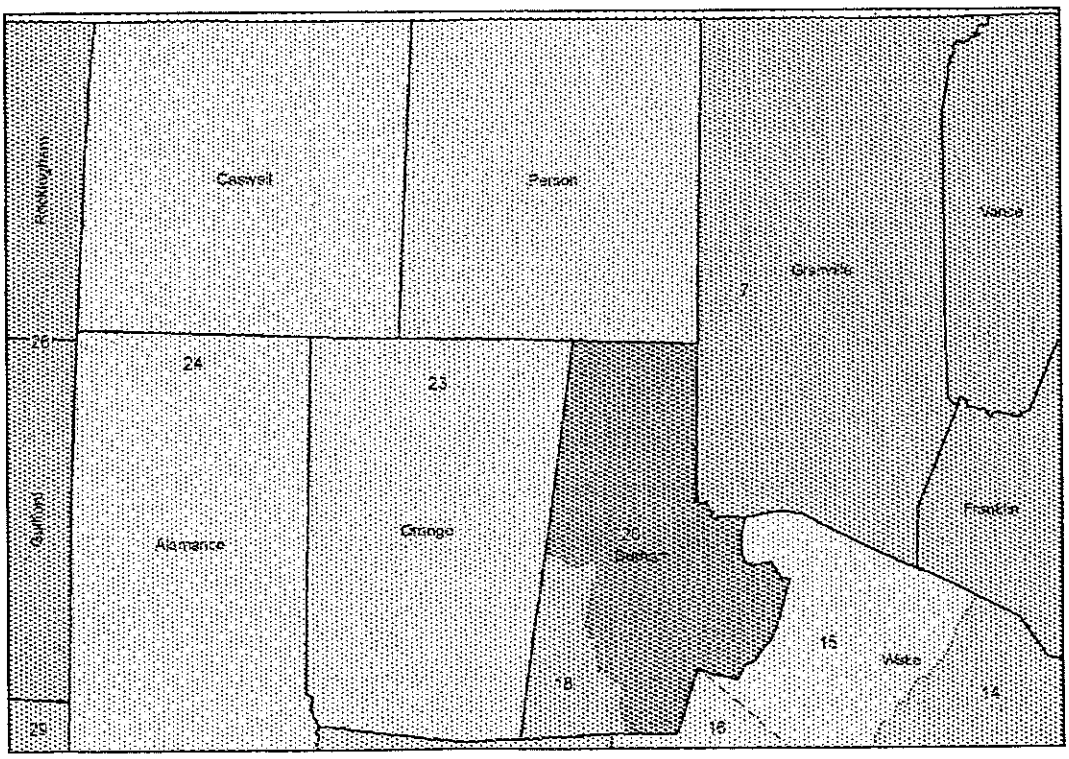
301. District 20 includes Granville County in its entirety and then extends a southern tentacle into Durham County to reach into Durham, a city with a large black population.

302. District 22 includes Caswell and Person Counties in their entirety, and the remainder of Durham County unclaimed by District 20.

303. Below is a map of Rucho Senate 2 Districts 20 and 22.



304. Below is a map of the equivalent area under the 2003 Senate Plan.



305. In Senate District 20, represented by an African-American, Sen. Floyd McKissick, the current BVAP of 44.64 percent increases to 51.04 percent under the new plan.

306. District 20 was already effectively electing the black candidate of choice and a majority BVAP district was not needed to comply with Section 2 of the Voting Rights Act.

307. District 20's reach into Durham targets black voters. In the area of District 20 in Durham County, the BVAP is 59.18 percent. In contrast, the BVAP of the rest of Durham County, located in District 22, is only 17.73 percent.

308. The drawing of this pair of districts in this manner is a racial classification, designed to increase the number of black voters in District 20 and decrease the number of black voters in District 22. In turn, the number of white voters in District 22 is increased.

309. The design of these two districts does not respect traditional communities of interest. In Durham County, the majority of precincts (35 out of 55) were split. Districts 20 and 22 also had 35 split precincts.

310. The design of these districts rejects the traditional redistricting principles of compactness. In measures of compactness, District 20 rated less compact than the equivalent district in the AFRAM plan on 7 out of 7 tests.

311. As a result of the inflated black population of District 20, minorities in the Durham/Granville area risk losing the ability to elect the candidate of their choice.

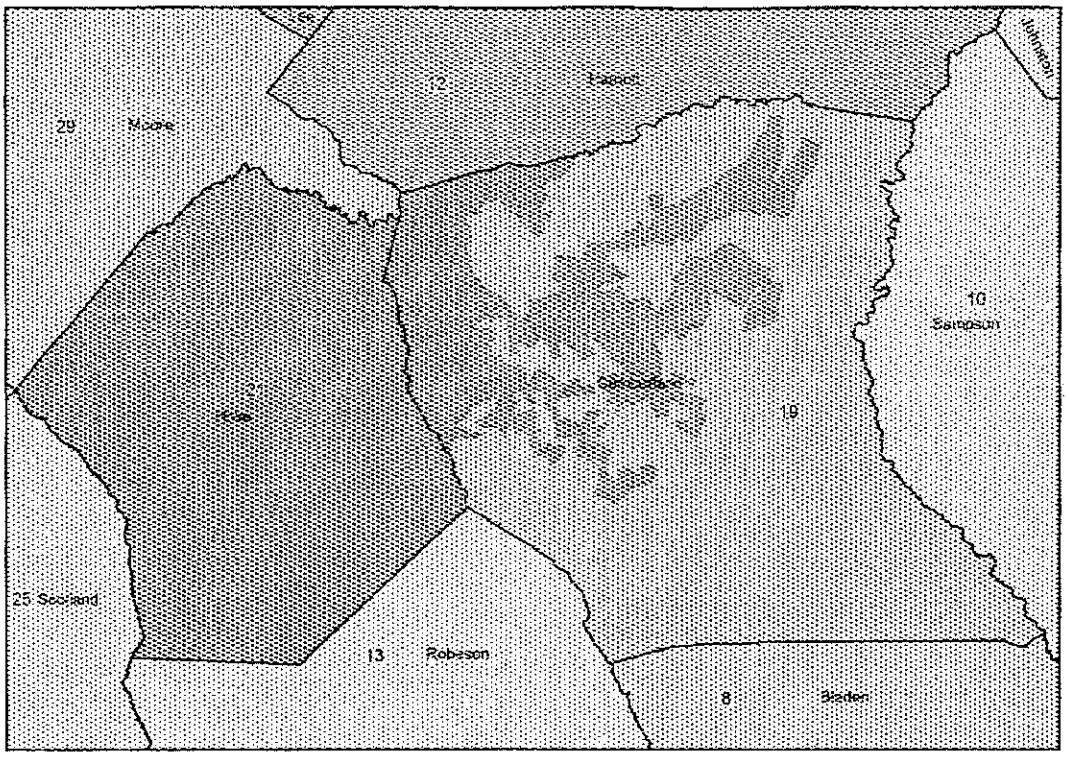
The Hoke-Cumberland Area

312. The Rucho Senate 2 Plan draws District 19 and District 21 as a pair of convoluted districts to pack as many black voters as possible into District 21. In turn, the voting power of minorities remaining in District 19 is diluted. In creating this pair of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

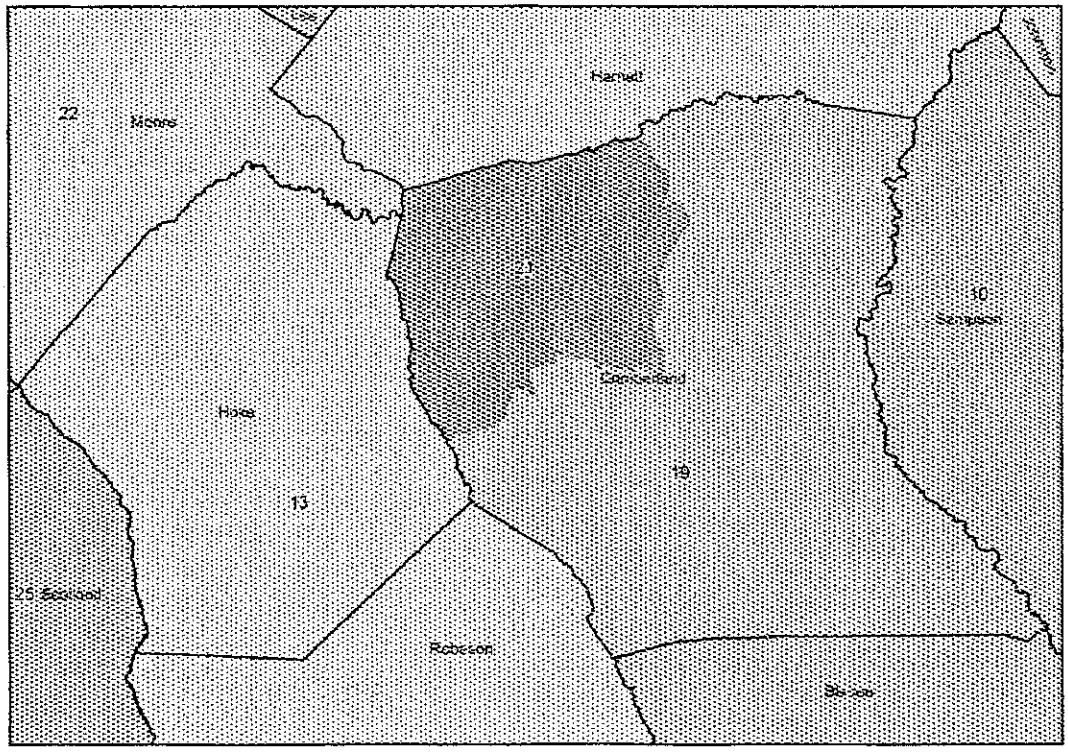
313. District 21 is subject to Section 5 preclearance. It includes Hoke County in its entirety and then extends east in five separate "fingers" into Cumberland County. These fingers stretch into Fayetteville, a city with a large black population.

314. District 19 contains the portion of Cumberland County unclaimed by District 21.

315. Below is a map of Rucho Senate 2 Districts 19 and 21.



316. Below is a map of the equivalent area under the 2003 Senate Plan.



317. In Senate District 21, represented by African-American Sen. Eric Mansfield, the current BVAP of 44.93 percent increases to 51.53 percent.

318. District 21 was already effectively electing the black candidate of choice and complied with the Voting Rights Act.

319. The drawing of this pair of districts in this manner is a racial classification, designed to increase the number of black voters in District 21 and decrease the number of black voters in District 19. In turn, the number of white voters in District 19 is increased.

320. The use of race in drawing these districts is not narrowly tailored to meet a compelling governmental interest.

321. The design of these two districts does not respect traditional communities of interest. Within Districts 19 and 21, 33 precincts were split in each district. More than one-half the precincts are divided by Senate districts in Cumberland County (33 of 48)

322. The design of these districts also rejects the traditional redistricting principles of compactness. In measures of compactness, District 21 rated less compact than the equivalent district in the AFRAM plan on 7 out of 7 tests.

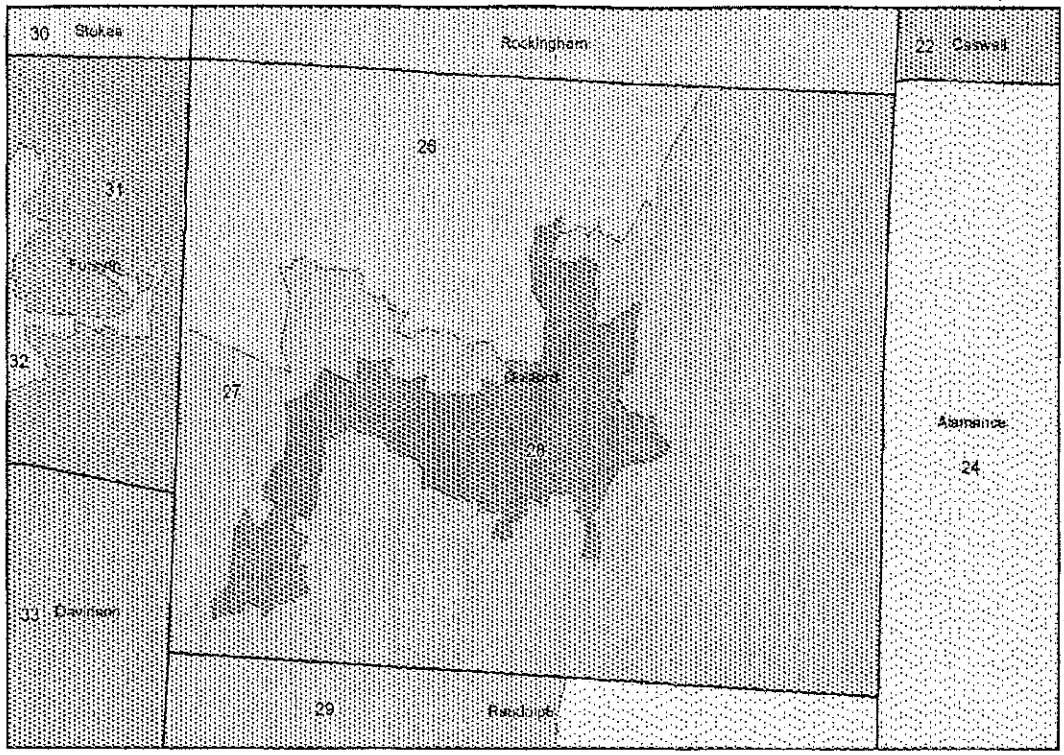
323. As a result of the inflated black population of District 21, minorities in District 19 have less ability to elect the candidate of their choice and less influence in the electoral process.

The Guilford Area

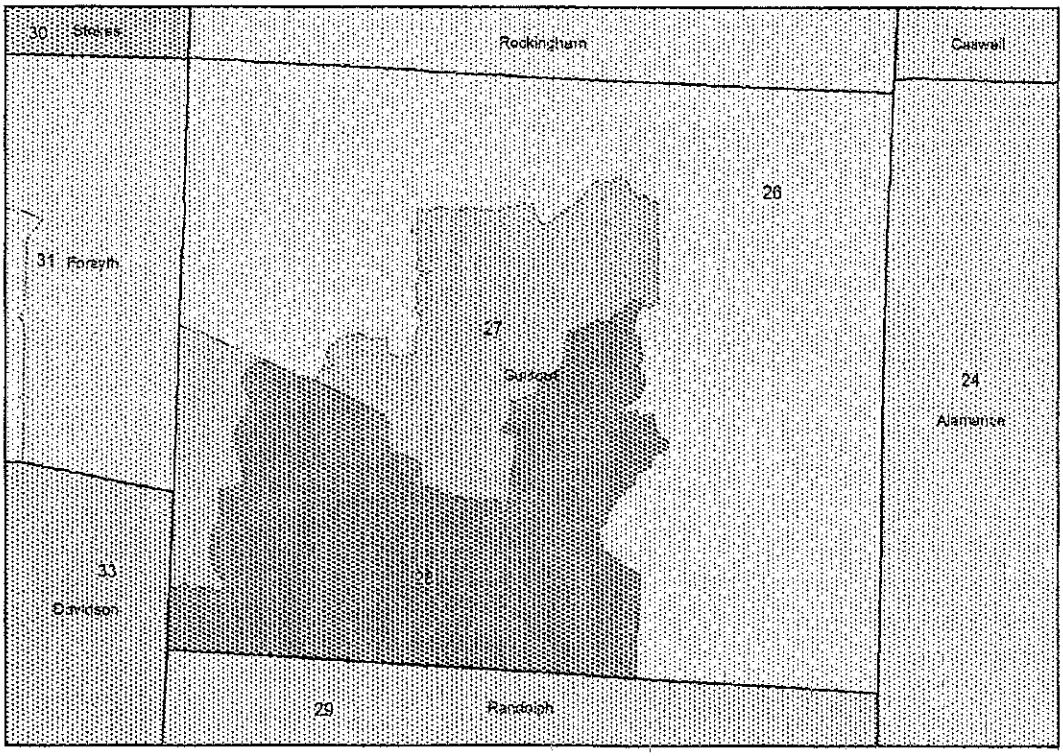
324. The Rucho Senate 2 Plan draws District 27 and District 28 as a pair of convoluted, interlocked districts to pack as many black voters as possible into District 28. In turn, the voting power of minorities remaining in District 27 is diluted. In creating this pair of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

325. District 28 is subject to Section 5. It is entirely included in Guilford County.

326. Below is a map of Rucho Senate 2 Districts 27 and 28.



327. Below is a map of the equivalent area under the 2003 Senate Plan.



328. In Senate District 28, represented by an African American, Sen. Gladys Robinson, the current BVAP of 47.20 percent increases to 56.49 percent.

329. District 28 was already effectively electing the black candidate of choice and complied with the Voting Rights Act.

330. This district is a racial classification, drawn intentionally to increase the number of black voters in the district.

331. The use of race in drawing this district is not narrowly tailored to meet a compelling governmental interest.

332. The design of these two districts does not respect traditional communities of interest. In Guilford, 16 precincts were split by Senate districts.

333. In District 28, 15 precincts were split.

334. In District 27, 14 precincts were split.

335. The design of these districts also rejects the traditional redistricting principles of compactness. In measures of compactness, District 28 rated less compact than the equivalent district in the AFRAM plan on 4 out of 7 tests.

336. As a result of the inflated black population of District 28, minorities in District 27 have less ability to elect the candidate of their choice and less influence in the electoral process.

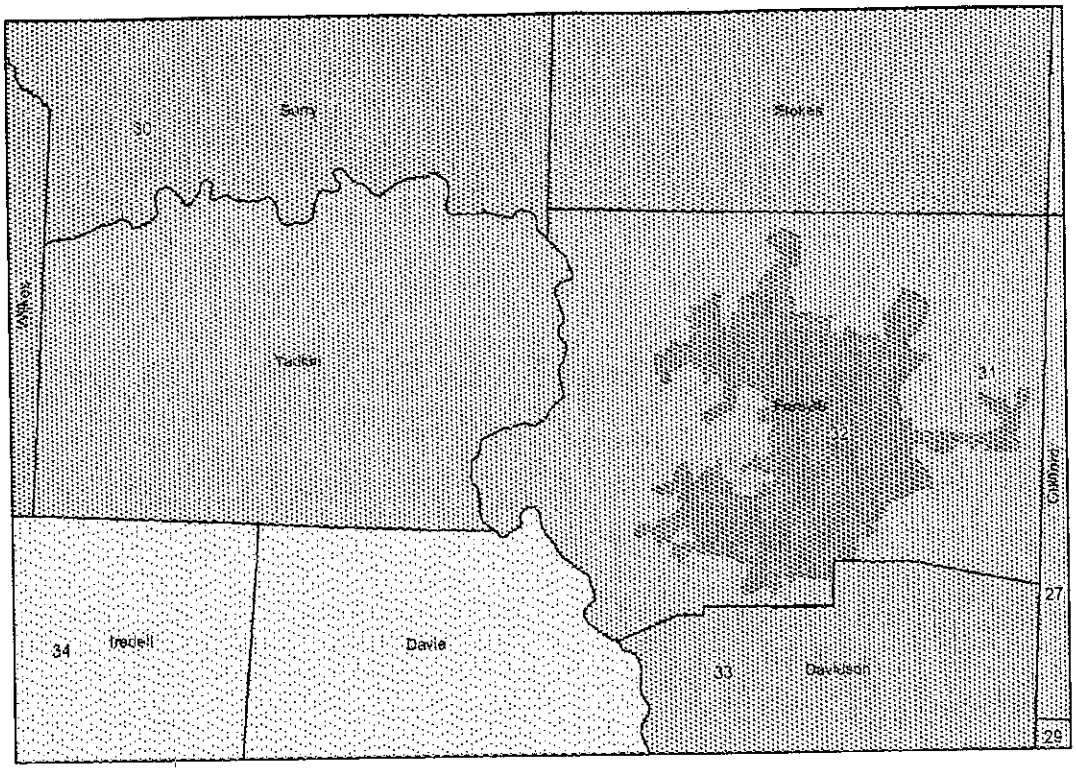
The Forsyth Area

337. The Rucho Senate 2 Plan draws District 31 and District 32 as a pair of highly irregular, unwieldy districts. In creating this pair of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

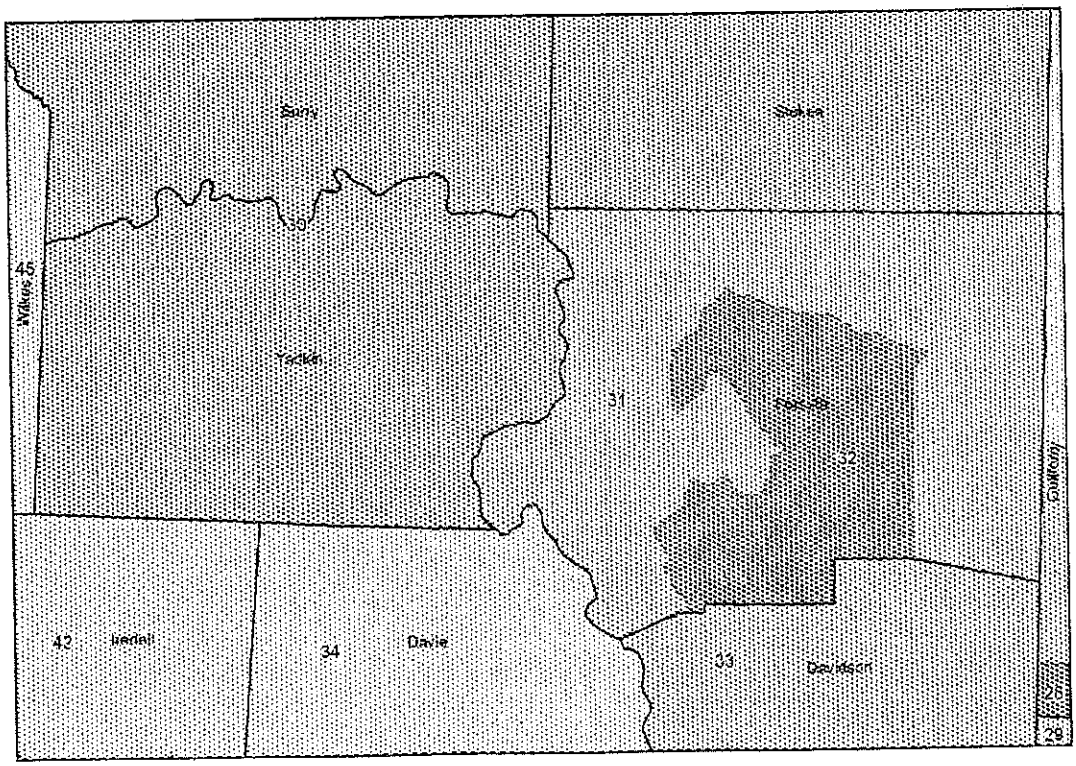
338. District 32 spreads from the center of Forsyth County, sprouting tentacles in each direction.

339. District 31 is the adjacent district, retaining the rest of Forsyth and containing Yadkin County in its entirety.

340. Below is a map of Rucho Senate 2 Districts 31 and 32.



341. Below is a map of the equivalent area under the 2003 Senate Plan.



342. District 32 is drawn to be 42.53 percent black.

343. District 31 pairs two incumbents, Republican Senator Peter Brunstetter and Democratic Senator Linda Garrou. It has a BVAP of 6.42 percent

344. Districts 31 and 32 do not respect traditional communities of interest. In Forsyth County, 43 of 101 precincts are divided.

345. The design of these districts also rejects the traditional redistricting principles of compactness. In measures of compactness, District 32 rated less compact than the equivalent district in the AFRAM plan on 6 out of 7 tests.

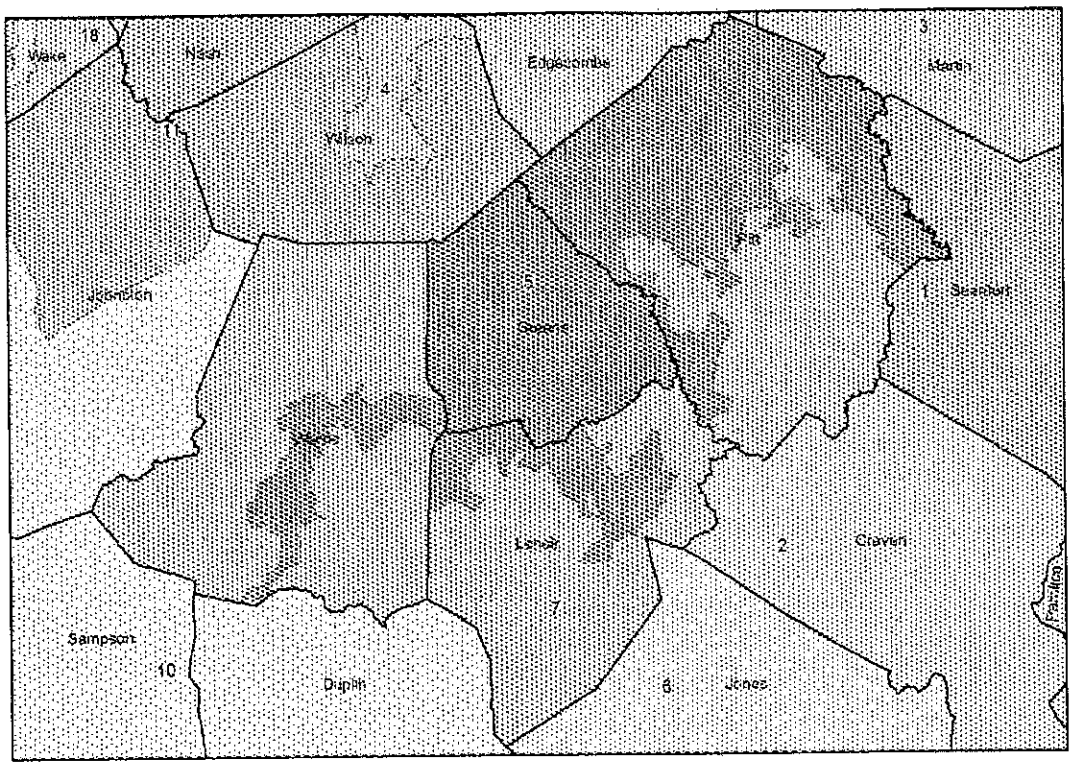
The Greene-Wayne-Lenoir-Pitt Area

346. The Rucho Senate 2 Plan draws District 5 and District 7 across four counties to create a majority-black District 5. In turn, the voting power of minorities remaining in District 7 is diluted. In creating this pair of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

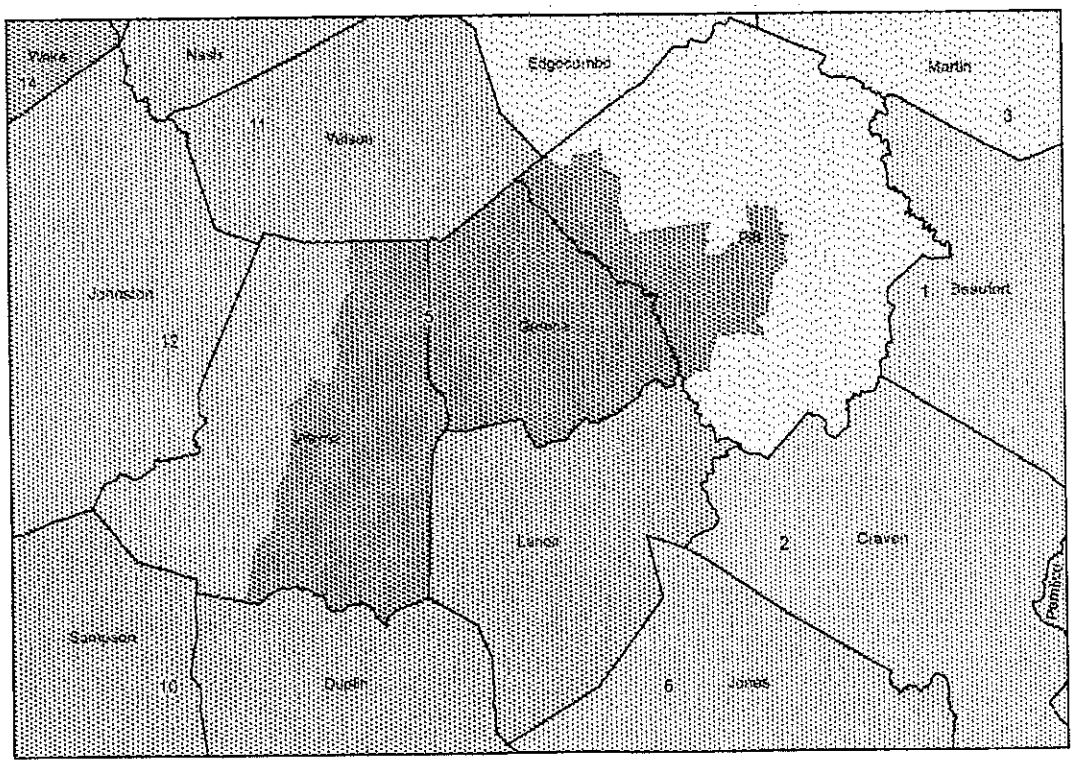
347. District 5 is subject to Section 5 preclearance. It includes Greene County in its entirety and then extends a southward tendril into Wayne and Lenoir Counties. Finally it extends northeast into Pitt County.

348. District 7 is the adjacent district, retaining the rest of Wayne, Lenoir and Pitt Counties.

349. Below is a map of Rucho Senate 2 Districts 5 and 7.



350. Below is a map of the equivalent area under the 2003 Senate Plan.



351. District 5 is a new district in the region, drawn to be a majority-minority district with a BVAP of 51.97 percent.

352. The drawing of this pair of districts in this manner is a racial classification, designed to increase the number of black voters in District 5 and decrease the number of black voters in District 7. In turn, the number of white voters in District 7 is increased.

353. The use of race in drawing these districts is not narrowly tailored to meet a compelling governmental interest.

354. The design of these two districts does not respect traditional communities of interest. In Districts 5 and 7, 40 precincts were split in each district.

355. The design of these districts also rejects the traditional redistricting principles of compactness. In measures of compactness, District 5 rated less compact than the equivalent district in the AFRAM plan on 7 out of 7 tests.

356. As a result of the inflated black population of District 5, minorities in District 7 have less ability to elect the candidate of their choice and less influence in the electoral process.

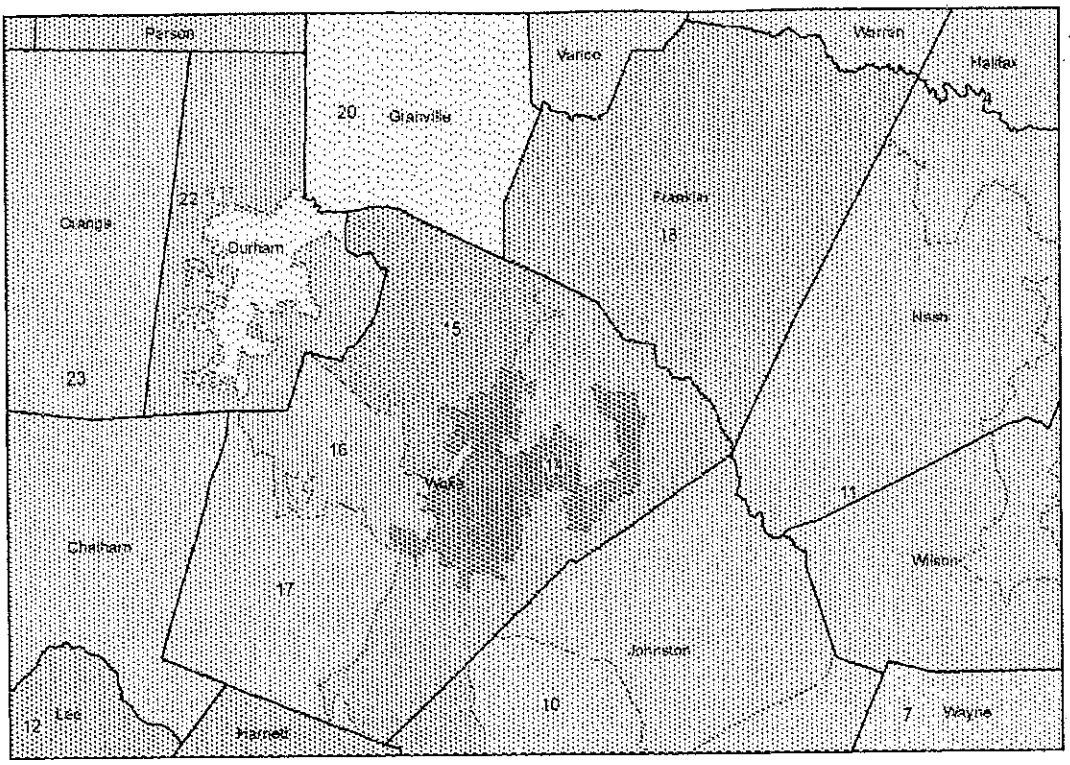
Wake County

357. The Rucho Senate 2 Plan draws District 14 and District 18 as a pair of convoluted districts within Wake and Franklin Counties to pack as many black voters as possible into District 14. In turn, the voting power of minorities remaining in District 18 is diluted. In creating this pair of districts, the Plan neglects the core redistricting principles of compactness and preserving communities of interest.

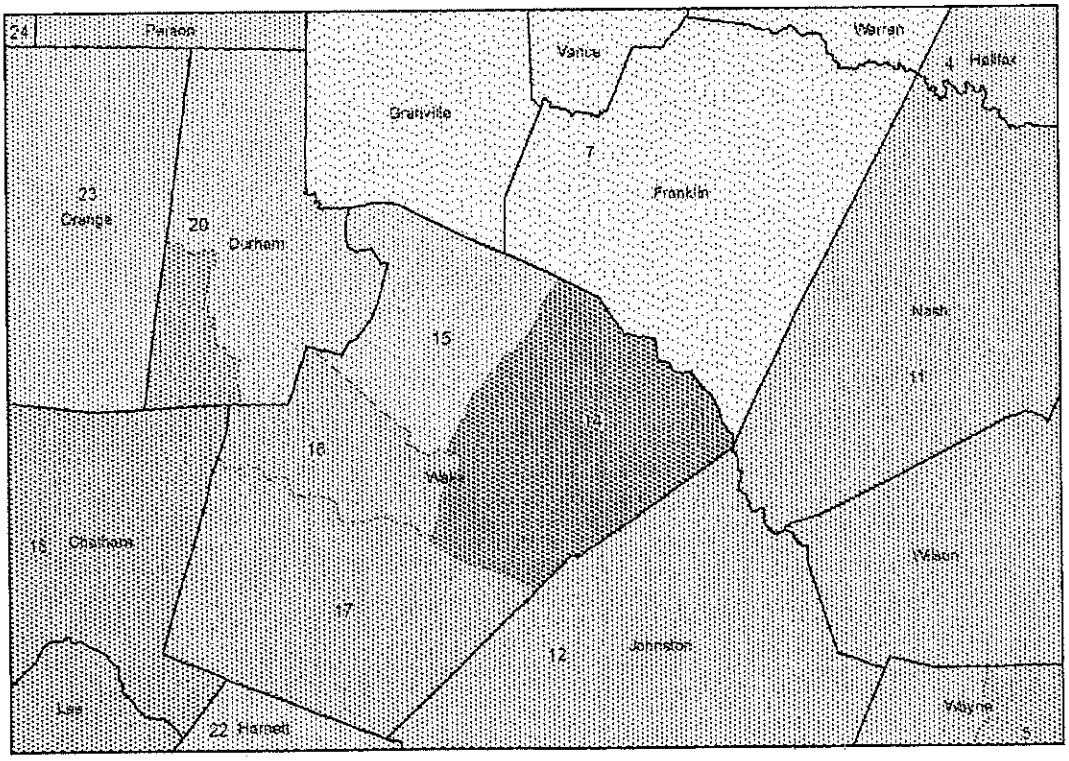
358. District 14 is entirely included in Wake County.

359. District 18 includes Franklin County in its entirety and parts of Wake County.

360. Below is a map of Rucho Senate 2 Districts 14 and 18.



361. Below is a map of the equivalent area under the 2003 Senate Plan.



362. In Senate District 14, represented by an African American, Sen. Dan Blue, the current BVAP of 42.62 percent increases to 51.28 percent.

363. District 14 was already effectively electing the black candidate of choice and complied with Section 2 of the Voting Rights Act.

364. The drawing of this pair of districts in this manner is a racial classification, designed to increase the number of black voters in District 14 and decrease the number of black voters in District 18. In turn, the number of white voters in District 18 is increased.

365. The use of race in drawing these districts is not narrowly tailored to meet a compelling governmental interest. The design of these two districts does not respect traditional communities of interest.

366. In District 14, 29 precincts were split. In District 18, 22 precincts were split

367. The design of these districts also rejects the traditional redistricting principles of compactness. In measures of compactness, District 14 rated less compact than the equivalent district in the AFRAM plan on 6 out of 7 tests.

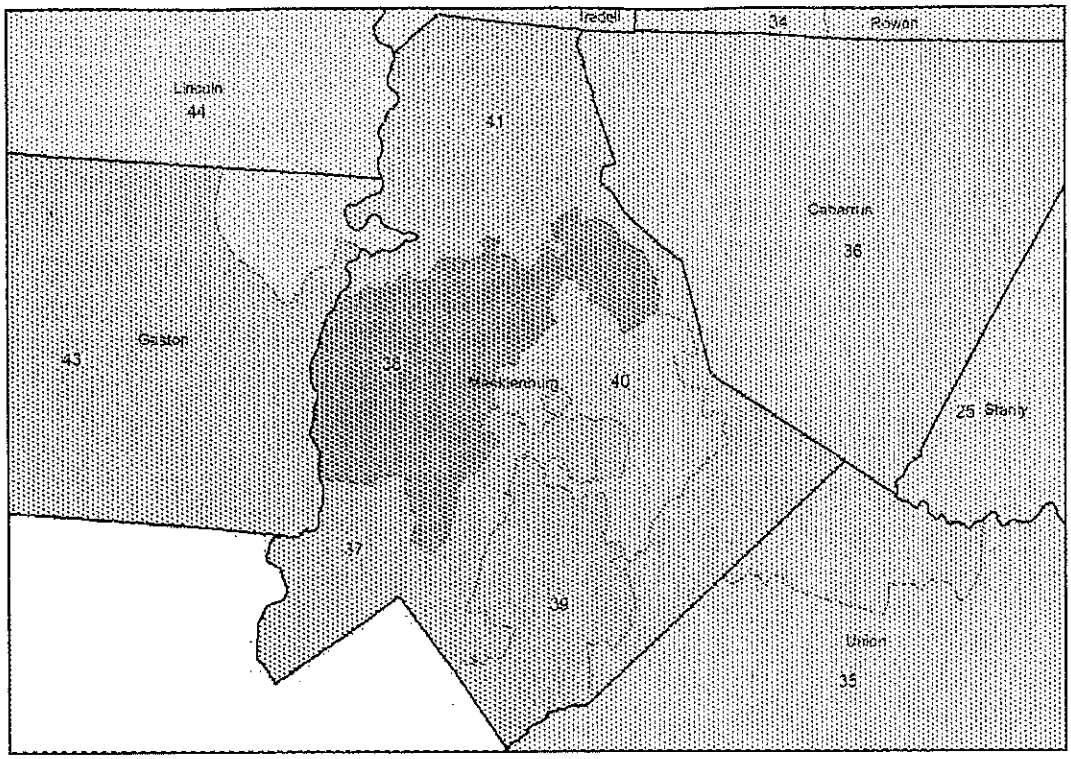
368. As a result of the inflated black population of District 14, minorities in the Wake County area of District 18 have less ability to elect the candidate of their choice and less influence in the electoral process.

The Mecklenburg Region

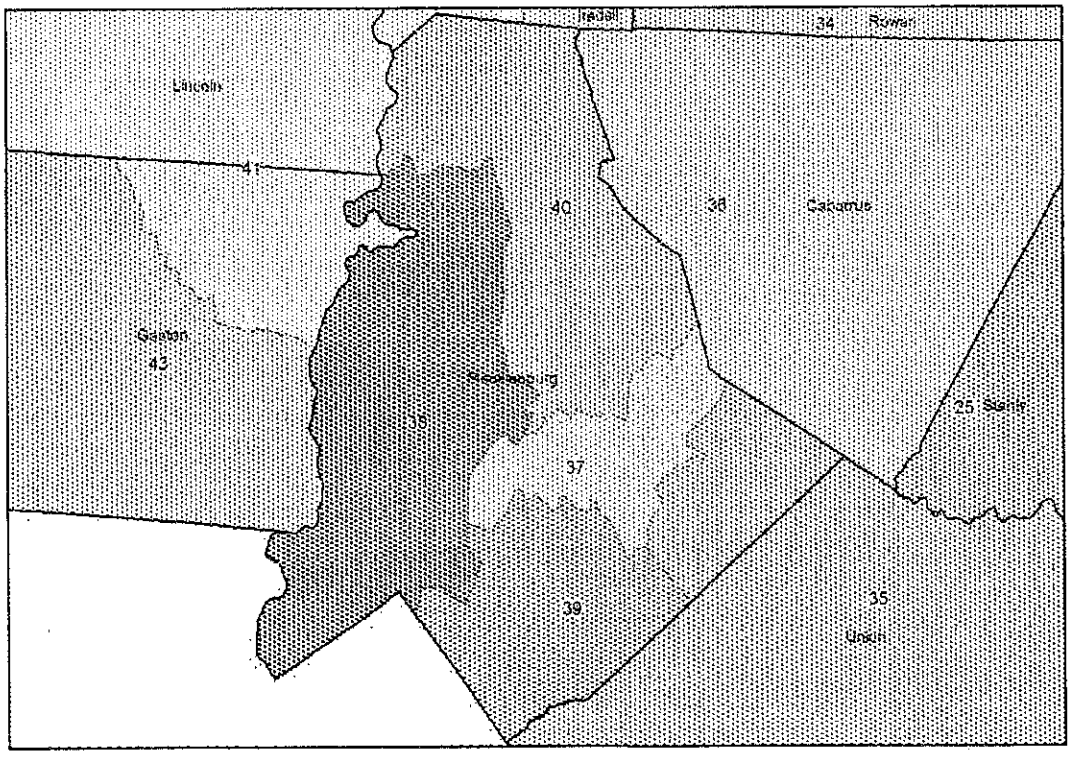
369. District 41 is a highly irregular shaped district, beginning in the north of Mecklenburg County. From there it tapers into a thin line hugging the western border of Mecklenburg, growing wide again in the southeast portion of the county.

370. Districts 38 and 40 border District 41 on the south.

371. Below is a map of Rucho Senate 2 Districts 38, 40, and 41.



372. Below is a map of the equivalent area under the 2003 Senate Plan.



373. District 41's strange shape is based on the exclusion of black voters from the District. Rucho Senate 2 draws District 41 with a remarkably low BVAP of 13.15 percent, down from 22.31 in the prior plan.

374. This BVAP is at least 7.5 percent lower than any of the alternative plans. The black voters excluded from District 41 are pushed into Districts 38 and 40.

375. The BVAP in District 38 rose from a BVAP of 46.97 to a new BVAP of 52.51 percent.

376. The BVAP of District 40 rose from 35.43 percent to 51.84 percent.

377. The drawing of this group of districts in this manner is a racial classification, designed to increase the number of black voters in Districts 38 and 40 and decrease the number of black voters in District 41. In turn, the number of white voters in District 41 is increased.

378. The use of race in drawing these districts is not narrowly tailored to meet a compelling governmental interest.

379. The design of these three districts does not respect traditional communities of interest.

380. In District 41, 16 precincts were split.

381. In District 38, 8 precincts were split.

382. In District 40, 16 precincts were split.

383. As a result of the deflated minority population in District 41, minorities in the district and greater Mecklenburg area have less ability to elect the candidate of their choice and less influence in the electoral process.

Congressional Redistricting

384. The Congressional Plan currently in effect is known as the "2001 Plan." The 2001 Plan was ratified in 2001, and was used in the 2002 through 2010 elections.

385. Sen. Rucho, Chair of the Senate Redistricting Committee, and Sen. Lewis, Chair of the House Redistricting introduced the 2011 Congressional Plan.

386. In addition to the 2011 Congressional Plan, two legislators introduced alternative plans: 1) the plan presented by Senator Josh Stein, called "Congressional Fair and Legal;" and (2) the plan presented by Senator Dan Blue, called "Fourth, Fair, Legal, Compact" Plan. In addition, a plan was developed by a coalition of community-based organizations called AFRAM (Alliance for Fair Redistricting and Minority Voting Rights), and submitted at the May 9, 2011 public hearing, "AFRAM Plan."

387. All three alternative plans adhered to the traditional redistricting criteria of compactness, contiguity, and preserving communities of interest. The maps also provided appropriate and effective voting districts for minority voters in compliance with Section 2 and Section 5 of the Voting Rights Act.

388. The 2011 Congressional Redistricting Plan, 2011 S.L. 403, was enacted on July 27, 2011.

389. On 7 out of 7 measures for compactness, the enacted plan scored less compact on average than the AFRAM Plan.

District 1

390. Race was the predominant factor in drawing District 1.

391. Under the benchmark plan, the BVAP of District 1 was 47.76 percent. In comparison, District 1 has a new BVAP of 52.65 percent, showing that the district was drawn to increase the percentage of black voters in the 2011 Plan.

392. As race was the predominant factor in drawing District 1, the district is a racial classification subject to strict scrutiny.

393. In District 1, 35 precincts were split.

394. District 1 fails to be narrowly tailored to serve a compelling state interest. The majority-minority district created by the plan is not required by the North Carolina State Constitution or by any federal statute, including the Voting Rights Act.

District 12

395. Race was the predominant factor in drawing District 12.

396. District 12 has a new BVAP of 50.66 percent, showing that the district was drawn to increase the percentage of black voters in the 2011 Plan.

397. As race was the predominant factor in drawing District 12, the district is a racial classification subject to strict scrutiny.

398. District 12 fails to be narrowly tailored to serve a compelling state interest. The majority-minority district created by the plan is not required by the North Carolina State Constitution or by any federal statute, including the Voting Rights Act.

District 4

399. The 2011 Congressional Plan draws District 4 to incorporated narrow segments of 7 counties: Alamance; Orange, Chatham, Durham, Wake, Harnett, and Cumberland into the District.

400. This assortment of county pieces fails to reflect existing and historic communities of interest.

401. District 4 reflects excessive partisanship that violates the North Carolina Constitution's "for the good of the whole" clause in Article I, § 2.

402. In District 4, 14 precincts were split.

403. In measures of compactness, District 4 scored less compact than the AFRAM Plan in 7 out of 7 measures.

District 10

404. The 2011 Congressional Plan irrationally excludes Asheville from the Mountain Region represented by District 11 and instead places it in District 10.

405. The Mountain Region of North Carolina is a vital community of interest with its own unique culture and economy.

406. Asheville has long been recognized as the urban center of the Mountain Region and an important part of its economic and political climate.

407. Never in the history of the State has a redistricting plan separated Asheville from the mountains.

408. In separating Asheville from the Mountain Region, the 2011 Congressional Plan places the city with communities in the Piedmont Region, such as Gastonia. These Piedmont communities have far less in common with Asheville than the communities of the Mountain Region.

409. District 10 reflects excessive partisanship that violates the North Carolina Constitution's "for the good of the whole" clause. Article I, § 2.

PLAINTIFFS' FIRST CLAIM FOR RELIEF
(Violation of the Equal Protection Clause, Article I, § 19 of the State Constitution, State House Redistricting Legislation, S.L. 416)

410. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

411. Under the Equal Protection Clause of the North Carolina State Constitution, no person shall "be denied the equal protection of the laws; nor ... be subjected to discrimination by the State because of race, color, religion, or national origin." N.C. Const. Art. I, § 19.

412. Art. I, § 19 requires the court to apply strict scrutiny of classifications based on race. To survive strict scrutiny, the State must demonstrate that the classification is narrowly tailored to advance a compelling state interest.

413. The Defendants' practice of dividing precincts based on race violates Article 1, § 19 of the North Carolina State Constitution which prohibits racial discrimination and guarantees equal protection of the laws.

414. A legislative district that amounts to a racial classification "reinforces racial stereotypes and threatens to undermine our system of representative democracy by signaling to elected officials that they represent a particular racial group rather than their constituency as a whole." *Shaw v. Reno*, 509 U.S. 630, 650 (U.S. 1993).

415. The Redistricting Committee Chairs admit moving black voters from one district to another based intentionally on the voters' race, thereby creating racial classifications.

416. House Districts 5, 21, 24, 29, 32, 38, 42, 48, 54, 57, 99, 102 and 106 are racial classifications designed to inflate the black voting age population of each district and decrease the black voting age population of adjacent districts.

417. House Districts 1,2, 4, 8, 30, 34, 45, 49, 51, 59, 66, and 103 are racial classifications designed to decrease the black voting age population of each district and increase the white voting age population.

418. The 2011 House Plan fails to meet the requirements of strict scrutiny. It is not narrowly tailored to advance a compelling state interest. The majority-minority districts created by the plan are not required by the North Carolina State Constitution or by the federal Voting Rights Act or any other federal statute.

419. The excessive number of split precincts in the enacted plan creates two large and unequal classes of citizens and voters: (1) a class of individuals who live in divided precincts –

and in counties with many divided precincts – who will experience voter-education gaps, elevated risks of election administration problems, and other harms described herein; and (2) a class of individuals living in whole precincts and counties with only whole precincts, who will experience "business as usual" in the election process. Individuals in the first class are also disproportionately African-American voters.

420. The enacted House Districts listed in paragraphs 387 and 388 above are not sufficiently compact to meet the equal protection clause's requirement of consistently recognizing local governmental subdivisions and geographical-based communities of interest, and they create a crazy quilt of districts unrelated to a legitimate governmental interest.

421. The individual and organizational plaintiffs suffer representational harms, impediments to their missions, activities and interests, a diminution in their ability to participate equally in the political process and inherent harm to their dignity by the racial discrimination and denial of equal protection described herein.

PLAINTIFFS' SECOND CLAIM FOR RELIEF
(Violation of Article I, § 19 of the State Constitution,
State Senate Redistricting Legislation, S.L. 413)

422. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

423. Under the Equal Protection Clause of the North Carolina State Constitution, no person shall "be denied the equal protection of the laws; nor ... be subjected to discrimination by the State because of race, color, religion, or national origin." N.C. Const. Art. I § 19.

424. Art. I, § 19 requires the court to apply strict scrutiny of classifications based on a race. To survive strict scrutiny, the State must demonstrate that the classification is narrowly tailored to advance a compelling state interest.

425. The Defendants' practice of dividing precincts based on race violates Article 1, § 19 of the North Carolina State Constitution which prohibits racial discrimination and guarantees equal protection of the laws.

426. A legislative district that amounts to a racial classification "reinforces racial stereotypes and threatens to undermine our system of representative democracy by signaling to elected officials that they represent a particular racial group rather than their constituency as a whole." *Shaw v. Reno*, 509 U.S. 630, 650 (U.S. 1993).

427. The Redistricting Committee Chairs admit moving black voters from one district to another based on the voters' race, thereby creating racial classifications.

428. Senate Districts 5, 14, 20, 21, 28, 32, 38 and 40 are racial classifications designed to inflate the black voting age population of each district and decrease the black voting age population of adjacent districts.

429. Senate Districts 7, 18, 19, 22, 27, 31, and 41 are racial classifications designed to decrease the black voting age population of each district and increase the white voting age population.

430. The 2011 Senate Plan fails to meet the requirements of strict scrutiny. It is not narrowly tailored to advance a compelling state interest. The majority-minority districts created by the plan are not required by the North Carolina State Constitution or by the federal Voting Rights Act or any other federal statute.

431. As a result of this racial gerrymander, the 2011 Senate Plan fails to comply with the traditional redistricting principles in *Stephenson v. Bartlett,* 355 NC 357 (2002). Following *Stephenson,* the legislature must strive for compactness, contiguity, and respect for political subdivisions. *Id.*

432. The excessive number of split precincts in the enacted plan creates two large and unequal classes of citizens and voters: (1) a class of individuals who live in divided precincts – and in counties with many divided precincts – who will experience voter-education gaps, elevated risks of election administration problems, and other harms described herein; and (2) a class of individuals living in whole precincts and counties with only whole precincts, who will experience "business as usual" in the election process. Individuals in the first class are also disproportionately African-American voters.

433. The enacted Senate Districts listed in paragraphs 399 and 400 above are not sufficiently compact to meet the equal protection clause's requirement of consistently recognizing local governmental subdivisions and geographical-based communities of interest, and they create a crazy quilt of districts unrelated to a legitimate governmental interest.

434. The individual and organizational plaintiffs suffer representational harms, impediments to their missions, activities and interests, a diminution in their ability to participate equally in the political process and inherent harm to their dignity by the racial discrimination and denial of equal protection described herein.

PLAINTIFFS' THIRD CLAIM FOR RELIEF
(Violation of Article I, § 19 of the State Constitution, Congressional Redistricting Legislation, S.L. 403)

435. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

436. Under the Equal Protection Clause of the North Carolina State Constitution, no person shall "be denied the equal protection of the laws; nor ... be subjected to discrimination by the State because of race, color, religion, or national origin." N.C. Const. Art. I, § 19.

437. Art. I, § 19 requires the court to apply strict scrutiny of classifications based on a race. To survive strict scrutiny, the State must demonstrate that the classification is narrowly tailored to advance a compelling state interest.

438. A legislative district that amounts to a racial classification "reinforces racial stereotypes and threatens to undermine our system of representative democracy by signaling to elected officials that they represent a particular racial group rather than their constituency as a whole." *Shaw v. Reno*, 509 U.S. 630, 650 (U.S. 1993).

439. The Redistricting Committee Chairs admit moving black voters from one district to another based on the voters' race, thereby creating racial classifications.

440. The 2011 Congressional Plan fails to meet the requirements of strict scrutiny. It is not narrowly tailored to advance a compelling state interest. The racially-based Districts 1 and 12 created by the plan are not required by the North Carolina State Constitution or by any federal statute, including the Voting Rights Act.

441. Districts 4 and 10 in the 2011 Congressional Plan are not sufficiently compact to meet the equal protection clause's requirement of consistently recognizing local governmental subdivisions and geographical-based communities of interest, and they create a crazy quilt of districts unrelated to a legitimate governmental interest.

442. The individual and organizational plaintiffs suffer representational harms, impediments to their missions, activities and interests, a diminution in their ability to participate equally in the political process and inherent harm to their dignity by the racial discrimination and denial of equal protection described herein.

PLAINTIFFS' FOURTH CLAIM FOR RELIEF
(Violation of Article II, § 3 of the State Constitution, Senate Redistricting Plan (Traditional Redistricting Principles))

443. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

444. Article II, § 3 of the North Carolina State Constitution provides: "No county shall be divided in the formation of a senate district," a provision that requires the General Assembly

to respect the traditional redistricting principles of compactness and respect for political subdivisions and communities of interest. *Stephenson v. Bartlett,* 355 NC 357 (2002).

445. Defendants divided an unprecedented number of precincts and communities of interest in addition to drawing non-compact districts in the 2011 Senate Plan without justification under the Constitution or federal statute.

446. The 2011 Senate Plan fails to comply with the traditional redistricting principles required by *Stephenson v. Bartlett,* 355 NC 357 (2002).

PLAINTIFFS' FIFTH CLAIM FOR RELIEF
(Violation of Article II, § 5 of the State Constitution, House Redistricting Plan)

447. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

448. Article II, § 5 of the North Carolina State Constitution reads: "No county shall be divided in the formation of a representative district," a provision that requires the General Assembly to respect the traditional redistricting principles of compactness and respect for political subdivisions and communities of interest. *Stephenson v. Bartlett,* 355 NC 357 (2002).

449. Defendants violated Plaintiffs' rights under Article II, § 5 of the Constitution in dividing an unprecedented number of precincts and communities of interest, in addition to drawing non-compact districts in the 2011 House Plan.

450. The Lewis-Dollar-Dockham 4 Plan fails to comply with the traditional redistricting principles required by *Stephenson v. Bartlett,* 355 NC 357 (2002).

PLAINTIFFS' SIXTH CLAIM FOR RELIEF
(Violation of Article I, § 2 of the State Constitution, House Plan)

451. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

452. Article II, § 5 of the Constitution mandates that Defendants redistrict the 120 seats in the House of Representatives following the 2010 census.

453. Article I § 2 of the North Carolina Constitution mandates that the General Assembly legislate "for the good of the whole."

454. The excessive partisanship exercised by Defendants in drawing the 2011 House Plan created non-compact districts and split precincts and communities of interest without justification.

455. Defendants have failed to act "for the good of the whole" in drawing the 2011 House Plan.

PLAINTIFFS' SEVENTH CLAIM FOR RELIEF
(Violation of Article I, § 2 of the State Constitution, Senate Plan)

456. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

457. Article II, § 3 of the Constitution imposed on Defendants the duty to redistrict the 50 seats in the State Senate following the 2010 census.

458. Article I, § 2 of the North Carolina Constitution mandates that the General Assembly legislate "for the good of the whole." The excessive partisanship exercised by Defendants in drawing the 2011 Senate Plan created non-compact districts and split precincts and communities of interest without justification. Defendants have failed to act "for the good of the whole" in drawing the 2011 Senate Plan.

PLAINTIFFS' EIGHTH CLAIM FOR RELIEF
(Violation of Article I, § 2 of the State Constitution, Congressional Plan)

459. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

460. Federal statute (2 U.S.C. §§ 22a and 2c) grants authority to the General Assembly to redistrict the 13 seats held by North Carolina in the United States House of Representatives.

461. Article I § 2 of the North Carolina Constitution mandates that the General Assembly legislate "for the good of the whole."

462. The excessive partisanship exercised by Defendants in drawing the 2011 Congressional Plan created non-compact districts and split precincts and communities of interest without justification.

463. Defendants have failed to act "for the good of the whole" in drawing Districts 4 and 10.

PLAINTIFFS' NINTH CLAIM FOR RELIEF
(Violation of the Equal Protection Clause of the 14th Amendment of the U.S. Constitution, House Plan)

464. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

465. The 14th Amendment to the United States Constitution forbids racial classifications unless narrowly tailored to serve a compelling interest.

466. The Defendants' practice of dividing precincts based on race violates the Equal Protection Clause of the 14th Amendment to the U.S. Constitution which prohibits racial discrimination and guarantees equal protection of the laws.

467. House Districts 5, 21, 24, 29, 32, 38, 42, 48, 54, 57, 99, 102 and 106 are racial classifications designed to create majority-black districts despite no requirement by the Voting Rights Act to do so.

468. House Districts 1,2, 4, 8, 30, 34, 45, 49, 51, 59, 66, and 103 are racial classifications designed to decrease the black voting age population of each district and increase the white voting age population.

469. Defendants failed to narrowly tailor these districts to meet any compelling interest, including any compelling interest in meeting the requirements of the federal Voting Rights Act.

470. Defendants' failure violated Plaintiffs' rights under the 14th Amendment and 42 U.S.C. 1983.

471. The individual and organizational plaintiffs suffer representational harms, impediments to their missions, activities and interests, a diminution in their ability to participate equally in the political process and inherent harm to their dignity by the racial discrimination and denial of equal protection described herein.

PLAINTIFFS' TENTH CLAIM FOR RELIEF
(Violation of the Equal Protection Clause of 14th Amendment of the U.S. Constitution, Senate Plan)

472. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

473. The 14th Amendment to the United States Constitution forbids racial classifications unless narrowly tailored to serve a compelling interest.

474. The Defendants' practice of dividing precincts based on race violates the Equal Protection Clause of the 14th Amendment to the U.S. Constitution which prohibits racial discrimination and guarantees equal protection of the laws.

475. Defendants drew district lines in Senate Districts 5, 14, 20, 21, 28, 32, 38 and 40 to increase the number of black voters in the district, despite no requirement by the Voting Rights Act to draw increased minority districts.

476. Senate Districts 7, 18, 19, 22, 27, 31, and 41 are racial classifications designed to decrease the black voting age population of each district and increase the white voting age population.

477. Defendants failed to narrowly draw these districts to meet any compelling interest including any compelling interest in meeting the requirements of the federal Voting Rights Act.

478. The Senate Districts drawn in this way constitute an unjustified use of racial classifications that violates Plaintiffs' rights under the 14th Amendment and 42 U.S.C. 1983.

479. The individual and organizational plaintiffs suffer representational harms, impediments to their missions, activities and interests, a diminution in their ability to participate

equally in the political process and inherent harm to their dignity by the racial discrimination and denial of equal protection described herein.

PLAINTIFFS' ELEVENTH CLAIM FOR RELIEF
(Violation of the Equal Protection Clause of the 14th Amendment of the U.S. Constitution, Congressional Plan)

480. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

481. The 14th Amendment to the United States Constitution forbids racial classifications unless narrowly tailored to serve a compelling interest.

482. Defendants drew district lines in Districts 1 and 12 to increase the number of black voters in the district despite no requirement by the Voting Rights Act to do so.

483. Districts 1 and 12 are racial classifications subject to strict scrutiny.

484. Defendants failed to narrowly draw these districts to meet any compelling interest including any compelling interest in meeting the requirements of the federal Voting Rights Act.

485. The excessive use of race in drawing Congressional Districts 1 and 12 violate Plaintiffs' rights under the 14th Amendment and 42 U.S.C. 1983.

486. The individual and organizational plaintiffs suffer representational harms, impediments to their missions, activities and interests, a diminution in their ability to participate equally in the political process and inherent harm to their dignity by the racial discrimination and denial of equal protection described herein.

PLAINTIFFS' TWELFTH CLAIM FOR RELIEF
(Violation of N.C. Gen. Stat. § 120-2.2, State House and State Senate)

487. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

488. The General Assembly may not divide any precincts in redistricting the House and Senate unless and until the United States Department of Justice fails to preclear the House plan or Senate plan following N.C. Gen. Stat. § 120-2.2. In the event that the plans fail

preclearance, the General Assembly may only divide the minimum number of precincts necessary to obtain preclearance.

489. The 2011 Senate Redistricting Plan divides 164 precincts in six counties not covered by Section 5 of the Voting Rights Act. Those six counties are: Durham, Forsyth, Johnston, Mecklenburg, New Hanover and Wake. The 2011 House Redistricting Plan divides 171 precincts in 16 counties not covered by Section 5 of the Voting Rights Act. Those counties are: Alamance, Brunswick, Buncombe, Duplin, Durham, Forsyth, Haywood, Johnston, Mecklenburg, Montgomery, Moore, New Hanover, Richmond, Sampson and Wake.

490. As the United States Department of Justice failed to preclear N.C. Gen. Stat. § 120-2.2, the statute does not govern the 40 counties covered by Section 5 of the Voting Rights Act. The statute, however, remains effective in the 60 counties not covered by Section 5.

491. In dividing precincts in counties not covered by Section 5 of the Voting Rights Act in both the 2011 House and Senate Redistricting Plans, Defendants violated N.C. Gen. Stat. § 120-2.2.

PLAINTIFFS' THIRTEENTH CLAIM FOR RELIEF
(Violation of N.C. Gen. Stat. § 163-261.2, Congressional Redistricting Plan)

492. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

493. General Assembly may not divide any precincts in redistricting North Carolina's seats in the United States House of Representatives unless and until the United States fails to preclear that plan, following N.C. Gen. Stat. § 163-261.2.

494. In the event that the Plans fail preclearance, the General Assembly may only divide the minimum number of precincts necessary to obtain preclearance.

495. As the United States Department of Justice failed to preclear N.C. Gen. Stat. § 163-261.2 so the statute does not govern the 40 counties covered by Section 5 of the Voting Rights Act. The statute however, remains in effect for the 60 counties not covered by Section 5.

496. The 2011 Congressional Redistricting Plan divided 17 precincts in 8 counties not covered by Section 5. Those counties are: Alamance, Buncombe, Catawba, Davidson, Iredell, New Hanover, Randolph and Wake.

497. In dividing precincts in counties not covered by Section 5 of the Voting Rights Act, Defendants violated N.C. Gen. Stat. § 163-261.2.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully move the court:

1. Declare that the State Senate Redistricting Plan (2011 S.L. 413), the State House Redistricting Plan (2011 S.L. 416), and the Congressional Redistricting Plan (2011 S.L. 403) establish racial classifications in violation of the equal protection provisions of Article I, Section 19 of the North Carolina Constitution.

2. Declare that the State Senate Redistricting Plan, the State House Redistricting Plan, and the Congressional Redistricting Plan establish racial classifications in violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution and 42 U.S.C 1983.

3. Declare that the State Senate Redistricting Plan, the State House Redistricting Plan, and the Congressional Redistricting Plan were not enacted for the "good of the whole," in violation of Article I, Section 2 of the North Carolina Constitution.

4. Declare that the State Senate Redistricting Plan and the State House Redistricting Plan split precincts in violation of N.C. Gen. Stat. § 120-2.2.

5. Declare that the Congressional Redistricting Plan split precincts in violation of N.C. Gen. Stat. § 163-261.2.

6. Enter a temporary restraining order, preliminary injunction, and a permanent injunction enjoining the Defendants, their agents, officers, and employees, from enforcing or giving any effect to the State Senate Redistricting Plan, the State House Redistricting Plan, and the Congressional Redistricting Plan, including enjoining the Defendants, their agents, officers, and employees from opening any filing period or conducting any primary election or general election based on the State Senate Redistricting Plan, the State House Redistricting Plan, or the Congressional Redistricting Plan.

7. Enter a preliminary and permanent injunction setting a place and time for the court to receive proposed redistricting plans for the Senate, House, and Congress from the parties that comply with the requirements of the United States and North Carolina Constitutions.

8. Enter a permanent injunction adopting redistricting plans for the Senate, House, and Congress for the 2012 primary elections that comply with the United States and North Carolina Constitution as an interim remedy, and that the General Assembly be ordered to enact re-districting plans for the Senate, House, and Congress that comply with the requirements of the United States and North Carolina Constitutions to be used in the General Election of 2014 and all subsequent elections until the Census Bureau issues its 2020 Decennial Census.

9. In the alternative, enter a preliminary and permanent injunction directing the General Assembly to enact re-districting plans for the Senate, House, and Congress that comply with the requirements of the United States and North Carolina Constitutions to be used in the General Election of 2012, provided such plans are enacted and precleared by the United States Attorney General no later than a specific time set by the court. If the General Assembly fails do so, the Court will adopt its own plans that meet constitutional requirements.

10. 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.

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

12. Require Defendants to pay Plaintiffs' reasonable attorneys fees pursuant to 42 U.S.C. § 1988.

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

This the 9th day of December, 2011.

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Clare Barnett (State Bar # 42678)
Allison Riggs (State Bar # 40028)
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has served a redlined draft copy of the foregoing *Amended Complaint* in the above titled action upon all other parties to this cause by email on December 5, 2011. A file-stamped copy of the foregoing *Amended Complaint* in the above titled action has been served by the undersigned today by:

[x] Hand delivering a copy hereof to Alexander McC. Peters and Susan K. Nichols;
[ ] Transmitting a copy hereof to each said party via facsimile transmittal;
[x] By email transmittal;
[] Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

Alexander McC. Peters
Special Deputy Attorney General
Susan K. Nichols
Special Deputy Attorney General
N.C. DEPARTMENT OF JUSTICE
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snichols@ncdoj.gov

COUNSEL FOR ALL DEFENDANTS

[ ] Hand delivering a copy hereof to each said party or to the attorney thereof;
[ ] Transmitting a copy hereof to each said party via facsimile transmittal;
[x] By email transmittal;
[x] Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

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COUNSEL FOR THE LEGISLATIVE DEFENDANTS

I further certify I have served this day a courtesy copy of the foregoing *Amended Complaint* on counsel for Plaintiffs in *Dickson v. Rucho* by email to the following persons at the following address:

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COUNSEL FOR *DICKSON* PLAINTIFFS

Anita S. Earls

Anita S. Earls

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
11-CVS-16896

MARGARET DICKSON; ALICIA CHISOLM; ETHEL CLARK; MATTHEW A. MCLEAN; MELISSA LEE ROLLIZO; C. DAVID GANTT; VALERIA TRUITT; ALICE GRAHAM UNDERHILL; ARMIN JANCIS; REBECCA JUDGE; ZETTIE WILLIAMS; TRACEY BURNS-VANN; LAWRENCE CAMPBELL; ROBINSON O. EVERETT, JR.; LINDA GARROU; HAYES MCNEILL; JIM SHAW; SIDNEY E. DUNSTON; ALMA ADAMS; R. STEVE BOWDEN; JASON EDWARD COLEY; KARL BERTRAND FIELDS; PAMLYN STUBBS; DON VAUGHAN; BOB ETHERIDGE; GEORGE GRAHAM, JR.; THOMAS M. CHUMLEY; AISHA DEW; GENEAL GREGORY; VILMA LEAKE; RODNEY W. MOORE; BRENDA MARTIN STEVENSON; JANE WHITLEY; I.T. ("TIM") VALENTINE; LOIS WATKINS; RICHARD JOYNER; MELVIN C. MCLAWHORN; RANDALL S. JONES; BOBBY CHARLES TOWNSEND; ALBERT KIRBY; TERRENCE WILLIAMS; NORMAN C. CAMP; MARY F. POOLE; STEPHEN T. SMITH; PHILIP A. BADDOUR; and DOUGLAS A. WILSON,

Plaintiffs,

v.

ROBERT RUCHO, in his official capacity only as the Chairman of the North Carolina Senate Redistricting Committee; DAVID LEWIS, in his official capacity only as the Chairman of the North Carolina House of Representatives Redistricting Committee; NELSON DOLLAR, in his official capacity only as the Co-Chairman of the North Carolina House of Representatives Redistricting Committee; JERRY DOCKHAM, in his official capacity only as the Co-Chairman of the North Carolina House of Representatives Redistricting Committee; PHILIP E. BERGER, in his official capacity only as the President Pro Tempore of the North Carolina Senate; THOM TILLIS, in his official capacity only as the Speaker of the North Carolina House of Representatives; THE STATE BOARD OF ELECTIONS; and THE STATE OF NORTH CAROLINA,

Defendants.

FILED
2011 DEC 12 PM 3:25
WAKE COUNTY, C.S.C.
BY

FIRST AMENDED COMPLAINT

(Three-Judge Court Pursuant To N.C. Gen. Stat. § 1-267.1)

Plaintiffs, complaining of Defendants, say and allege:

1. This is an action to declare unconstitutional and enjoin the implementation of legislation recently enacted by the North Carolina General Assembly redistricting the State Senate (2011 S.L. 402, as amended by 2011 S.L. 413) (collectively, the "Senate Redistricting Plan"), the State House (2011 S.L. 404, as amended by 2011 S.L. 416) (collectively, the "House Redistricting Plan"), and Congress (2011 S.L. 403, as amended by 2011 S.L. 414) (collectively, the "Congressional Redistricting Plan") (collectively, the "Legislation"):

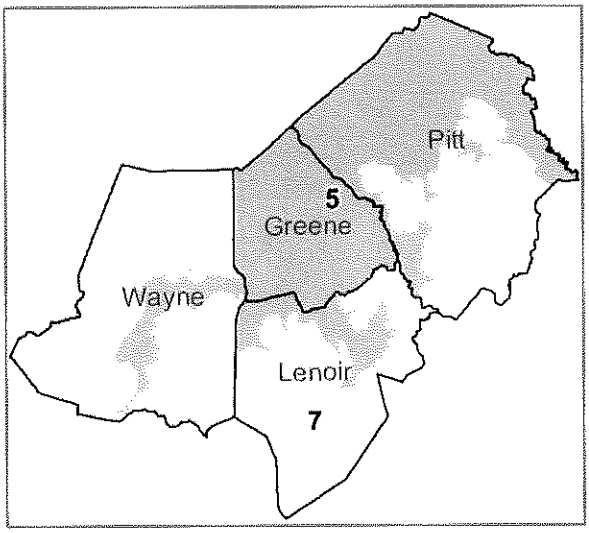
SUMMARY OF CLAIMS

2. In enacting this Legislation, the legislature transgressed limitations on its powers established by the North Carolina and United States Constitutions. Initially, the General Assembly violated the Supreme Court's holding in *Stephenson v. Bartlett*, 355 N.C. 354, 386 (2002) ("*Stephenson*") that the legislature must strictly comply with North Carolina's constitutional prohibition against dividing counties when redistricting the State Senate and State House, and that the legislature may deviate from that prohibition "only to the extent necessary to comply with federal law." The newly-enacted State Senate map splits 19 counties, and the State House district map splits 49 counties, but proposed alternative plans by Democratic representatives would have split only 14 counties for the State Senate and 44 counties for the State House. The number of counties split by the General Assembly in its plans is far in excess of the number of counties required to be divided by one-person, one-vote and voting rights requirements.

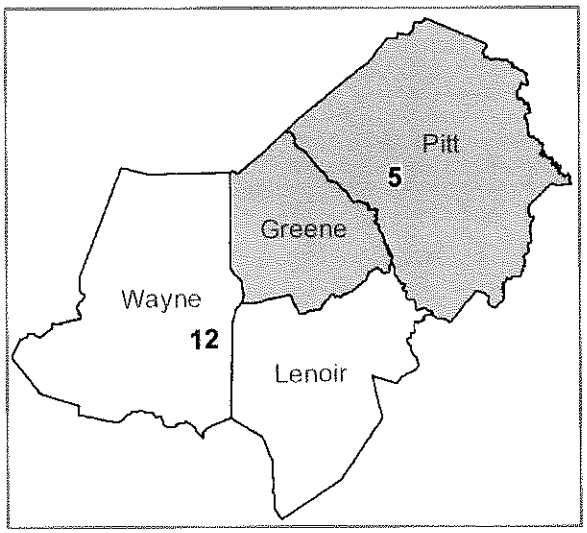
3. One example (of many) is Senate District 5, which, as drawn in the new Senate plan, consists of Greene County, as well as parts of Pitt County, Lenoir County, and Wayne

County. Senate District 5 is shown in the following map, compared to a competing map proposed by Senator Nesbitt:[1]

2011 Map of Senate District 5
(Newly-Enacted Version)



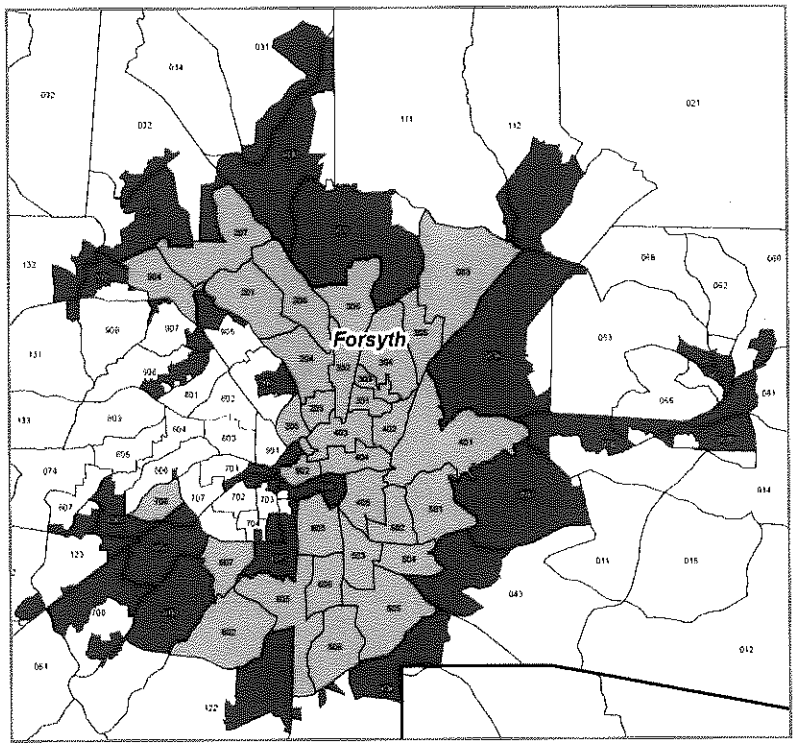
Sen. Nesbitt's Map of Senate District 5
(Proposed but not Enacted)



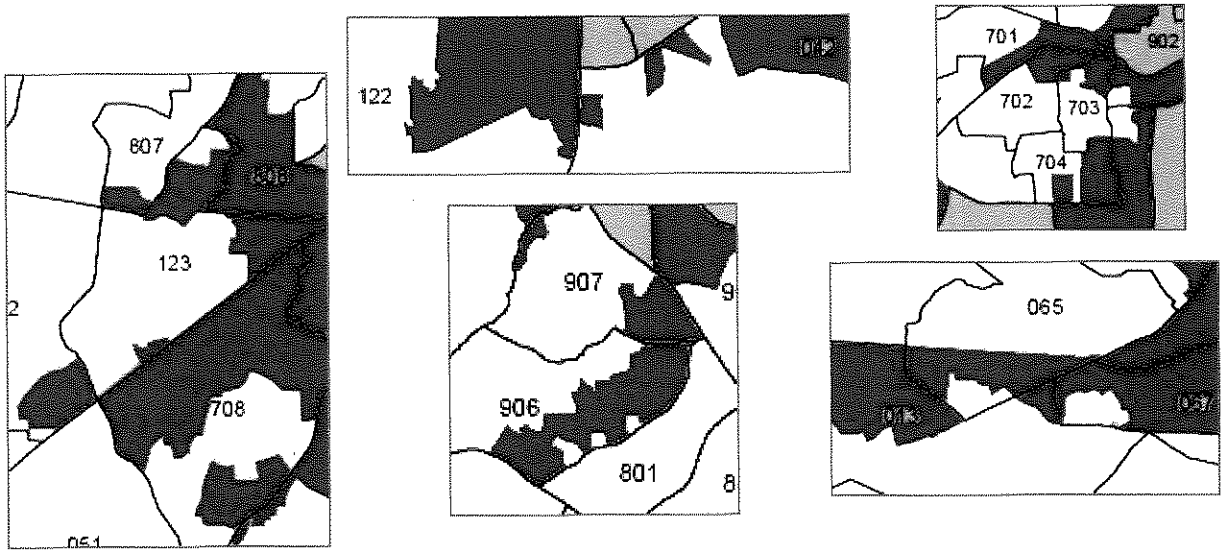
4. The General Assembly also transgressed constitutional limits on its powers and compromised the integrity of the voting process by arbitrarily and capriciously splitting hundreds of precincts and combining pieces of those split precincts to construct districts. One example (of many) is Senate District 32 in Forsyth County. In the following map, split precincts are shown in red, and non-split precincts appear in gray:

[1] All maps set forth in this Complaint may be reviewed on the North Carolina General Assembly's web site at http://www.ncleg.net/gis/randr07/redistricting.html.

Split Precincts in Senate District 32



Selected Detailed Views of Split Precincts in Senate District 32

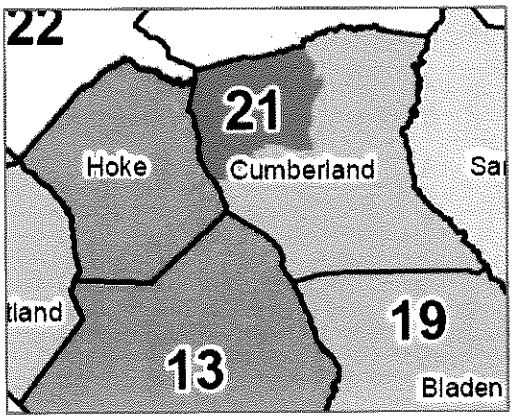


5. In unnecessarily dividing precincts (as well as towns, cities, and counties) in the enactment of the Legislation, Defendants violated Plaintiffs' rights under Article I, § 2 of the Constitution, which provides that that "all government of right originates from the people, is

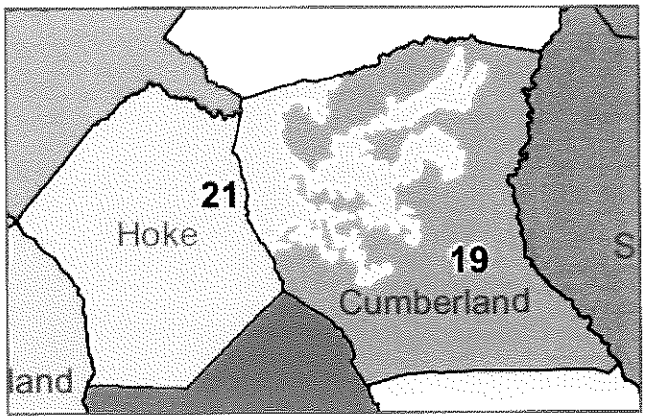
founded upon their will only, and is instituted solely for the good of the whole." The wholesale splitting of precincts is not "for the good of the whole." Moreover, the unnecessary division of existing political subdivisions (including precincts, but also extending to towns, cities, and counties) violates Plaintiffs' right to be free from arbitrary and capricious legislation guaranteed by the North Carolina Constitution. *See* N.C. Const. art. I, § 19 and art. VI, § 1.

6. Perhaps most egregiously, the General Assembly has isolated the State's Black citizens in a small number of districts. The plans for 50 new Senate districts and 120 new House districts concentrate about half the state's 2.2 million Black residents in 10 Senate districts and in 25 House districts. The process, which is colloquially known as "packing," violates the Equal Protection Clauses of the United States Constitution and the North Carolina Constitution. One example (of many) of voter packing is found in Senate District 21. The current Senator from District 21 is Eric Mansfield of Fayetteville, who is Black. Senator Mansfield won the last election with 67% of the vote. Despite Senator Mansfield's wide margin of victory in 2010, the General Assembly in 2011 chose to "pack" more Black voters into Senator Mansfield's district, increasing the Black voting age population of Senate District 21 from 44.93% under the prior plan, to more than 52% under the General Assembly's 2011 plan. Moreover, Senate District 21 now suffers from all the deficiencies already discussed above (including split precincts), as shown by the following comparison:

Senate District 21 (2003-2010)



Senate District 21 (Newly-Enacted Version)



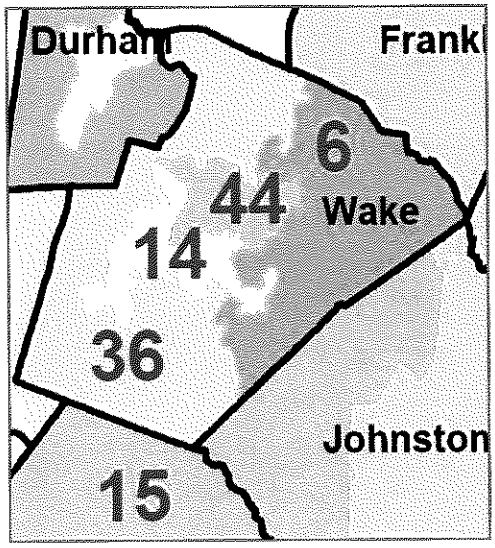
7. The new Legislation further violates other constitutional redistricting principles, such as compactness. One example (of many) is Senate District 14, in Wake County. For historical perspective, the Court may refer to *Stephenson v. Bartlett*, 357 N.C. 301, 310 (2004) ("*Stephenson II*"), in which the Supreme Court declared unconstitutional the General Assembly's 2002 maps,[2] including Senate District 14. The North Carolina Supreme Court described the constitutional flaws in the 2002 district as follows:

> [Senate] District 14 in Wake County is not compact. It is distinguished by 4 major appendages. Beginning in the northern tip, it moves southeast with jutting points that end in a downward facing cul-de-sac that embraces a portion of this plan's District 36. The boundary of District 14 then meanders toward the northeast, turns to the southeast and extends a curved "arm" that carves out a "bay" in the side of District 6.

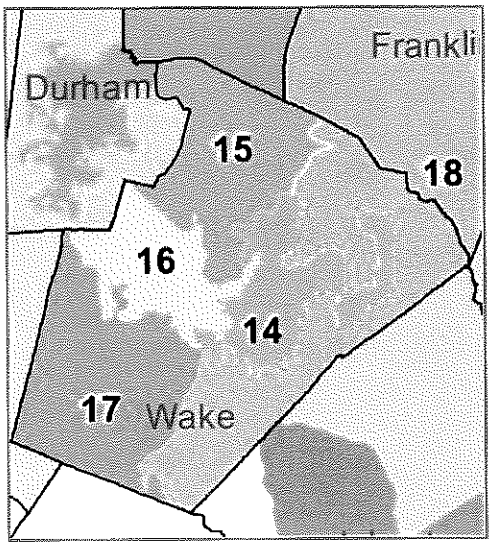
8. The new version of Senate District 14 is very similar to (but even less compact than) the unconstitutional 2002 version. The perimeter or "shape" of the unconstitutional 2002 of Senate District 14 simply appears to have been moved to the east and rotated slightly, with a much longer "arm" and "bay":

[2] The 2002 North Carolina Senate plan was known as the "Fewer Divided Counties Plan" and was enacted after the Supreme Court's decision in *Stephenson*. The Fewer Divided Counties Plan was never used in an election, because it was declared unconstitutional in the *Stephenson II* litigation. In 2003, the General Assembly created a North Carolina Senate map used from 2004-2010.

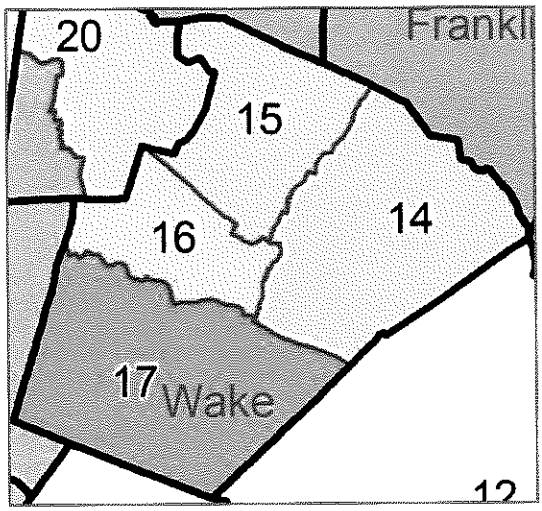
2002 Map of Senate District 14
(Declared Unconstitutional in *Stephenson II*)



2011 Map of Senate District 14
(Newly-Enacted Version)



9. There is no significant difference between the oddly-shaped new version of Senate District 14, and the 2002 version that was declared unconstitutional by the North Carolina Supreme Court. Moreover, the lack of compactness in the new version of Senate District 14 is plainly illustrated by comparing the 2011 district with the district ultimately approved in 2003 and used in the 2004 through 2010 elections:



10. Plaintiffs set forth their claims in detail hereinafter.

PLAINTIFFS

11. Plaintiff Margaret Dickson is a registered voter in Cumberland County residing at 501 Valley Road in Fayetteville. Under the challenged legislation, Ms. Dickson is assigned to House District 44, Senate District 21, and Congressional District 2.

12. Plaintiff Alicia Chisolm is a registered voter in Cumberland County residing at 1855 Cascade Street in Fayetteville. Under the challenged plans, she is assigned to House District 43, Senate District 21, and Congressional District 4.

13. Plaintiff Ethel Clark is a registered voter in Cumberland County residing at 1425 Milton Street in Spring Lake. Under the challenged plans, she is assigned to House District 42, Senate District 21, and Congressional District 2.

14. Plaintiff Matthew A. McLean is a registered voter in Cumberland County residing at 2910 Hermitage Avenue in Fayetteville. Under the challenged legislation, Mr. McLean is assigned to House District 44, Senate District 19, and Congressional District 2.

15. Plaintiff Melissa Lee Rollizo is a registered voter in Cumberland County residing at 5304 Blanco Drive in Parkton. Under the challenged plans, she resides in House District 45, Senate District 19, and Congressional District 2.

16. Plaintiff C. David Gantt is a registered voter in Buncombe County residing at 28 Troy Hill Road in Fletcher. Under the challenged plans, he is assigned to House District 116, Senate District 48, and Congressional District 10.

17. Plaintiff Valeria Truitt is a registered voter in Craven County residing at 2407 Brices Creek Road in New Bern. Under the challenged plans, she is assigned to House District 3, Senate District 2, and Congressional District 3.

18. Plaintiff Alice Graham Underhill is a registered voter in Craven County residing at 3910 Country Club Road in New Bern. Under the challenged plans, Ms. Underhill resides in House District 10, Senate District 2, and Congressional District 3.

19. Plaintiff Armin Jancis is a registered voter in Duplin County residing at 512 East Chelly Street in Warsaw. Under the challenged plans, he is assigned to House District 21, Senate District 10, and Congressional District 7.

20. Plaintiff Rebecca Judge is a registered voter in Duplin County residing at 1401 South NC Hwy. 41/111 in Beulaville. Under the challenged plans, she is assigned to House District 4, Senate District 10, and Congressional District 7.

21. Plaintiff Zettie Williams is a registered voter in Duplin County residing at 770 S. Old NC 903 Hwy. in Magnolia. Under the challenged plans, Ms. Williams is assigned to House District 21, Senate District 10, and Congressional District 7.

22. Plaintiff Tracey Burns-Vann is a registered voter in Durham County residing at 5 Stoneleigh Court in Durham. Under the challenged plans, Ms. Burns-Vann is assigned to House District 31, Senate District 20, and Congressional District 1.

23. Plaintiff Lawrence Campbell is a registered voter in Durham County residing at 2105 Duncan Street in Durham. Under the challenged plans, he is assigned to House District 29, Senate District 20, and Congressional District 1.

24. Plaintiff Robinson O. Everett, Jr. is a registered voter in Durham County residing at 8 Chancery Place in Durham. Under the challenged plans, he is assigned to House District 30, Senate District 22, and Congressional District 4.

25. Plaintiff Linda Garrou is a registered voter in Forsyth County residing at 3910 Camerille Farm Road in Winston-Salem. Under the challenged plans, she is assigned to House District 72, Senate District 31, and Congressional District 5.

26. Plaintiff Hayes McNeill is a registered voter in Forsyth County residing at 1118 S. Hawthorne Road in Winston-Salem. Under the challenged plans, he is assigned to House District 75, Senate District 31, and Congressional District 5.

27. Plaintiff Jim Shaw is a registered voter in Forsyth County residing at 3471 Cumberland Road in Winston-Salem. Under the challenged plans, Mr. Shaw is assigned to House District 79, Senate District 32, and Congressional District 12.

28. Plaintiff Rev. Sidney E. Dunston is a registered voter in Franklin County residing at 129 George Leonard Road in Louisburg. Under the challenged plans, Rev. Dunston is assigned to House District 7, Senate District 18, and Congressional District 1.

29. Plaintiff Alma Adams is a registered voter in Guilford County residing at 2109 Liberty Valley Road in Greensboro. Under the challenged plans, Ms. Adams is assigned to House District 58, Senate District 28, and Congressional District 12.

30. Plaintiff R. Steve Bowden is a registered voter in Guilford County residing at 3504 Glen Forest Court in Greensboro. Under the challenged plans, he is assigned to House District 59, Senate District 26, and Congressional District 6.

31. Plaintiff Jason Edward Coley is a registered voter in Guilford County residing at 2986 Collington Court in Jamestown. Under the challenged plans, he resides in House District 62, Senate District 27, and Congressional District 6.

32. Plaintiff Dr. Karl Bertrand Fields is a registered voter in Guilford County residing at 902 Carolina Street in Greensboro. Under the challenged plans, Dr. Fields is assigned to House District 57, Senate District 28, and Congressional District 6.

33. Plaintiff Pamlyn Stubbs is a registered voter in Guilford County residing at 2621 Darden Road in Greensboro. Under the challenged plans, Ms. Stubbs is assigned to House District 60, Senate District 28, and Congressional District 12.

34. Plaintiff Don Vaughan is a registered voter in Guilford County residing at 902 Sunset Drive in Greensboro. Under the challenged plans, Mr. Vaughan is assigned to House District 58, Senate District 26, and Congressional District 6.

35. Plaintiff Bob Etheridge is a registered voter in Harnett County residing at 1106 Summerville-Mamers Road in Lillington. Under the challenged plans, Mr. Etheridge is assigned to House District 53, Senate District 12, and Congressional District 4.

36. Plaintiff George Graham, Jr. is a registered voter in Lenoir county residing at 419 Duggins Drive in Kinston. Under the challenged plans, Mr. Graham is assigned to House District 12, Senate District 5, and Congressional District 1.

37. Plaintiff Thomas M. Chumley is a registered voter in Mecklenburg County, residing at 13701 Alexander Lane in Huntersville. Under the challenged plans, he is assigned to House District 98, Senate District 41, and Congressional District 9.

38. Plaintiff Aisha Dew is a registered in Mecklenburg County residing at 2112 Saint Luke Street in Charlotte. Under the challenged plans, she is assigned to House District 107, Senate District 40, and Congressional District 12.

39. Plaintiff Geneal Gregory is a registered voter in Mecklenburg County residing at 6633 Lakeside Drive in Charlotte. Under the challenged plans, she resides in House District 99, Senate District 40, and Congressional District 12.

40. Plaintiff Vilma Leake is a registered voter in Mecklenburg County residing at 1736 Chatham Ridge Circle in Charlotte. Under the challenged plans, she is assigned to House District 102, Senate District 37, and Congressional District 12.

41. Plaintiff Rodney W. Moore is a registered voter in Mecklenburg County residing at 9042 Burnt Umber Drive in Charlotte. Under the challenged plans, he resides in House District 99, Senate District 40, and Congressional District 12.

42. Plaintiff Reverend Brenda Martin Stevenson is a registered voter in Mecklenburg County residing at 3900 Gossett Avenue in Charlotte. Under the challenged plans, she is assigned to House District 106, Senate District 38, and Congressional District 12.

43. Plaintiff Jane Whitley is a registered voter in Mecklenburg County residing at 3144 East Ford Road in Charlotte. Under the challenged plans, she is assigned to House District 100, Senate District 37, and Congressional District 9.

44. Plaintiff I. T. (Tim) Valentine is a registered voter in Nash County residing at 205 South Fort Street in Nashville. Under the challenged plans, he is assigned to House District 25, Senate District 11, and Congressional District 2.

45. Plaintiff Lois Watkins is a registered voter in Nash County residing at 700 Burton Street in Rocky Mount. Under the challenged plans, she is assigned to House District 7, Senate District 4, and Congressional District 1.

46. Plaintiff Rev. Richard Joyner is a registered voter in Pitt County residing at 5183 Toddy Rd. in Farmville. Under the challenged plans, Rev. Joyner is assigned to House District 24, Senate District 5, and Congressional District 1.

47. Plaintiff Melvin C. McLawhorn is a registered voter in Pitt County residing at 100 Allendale Drive in Greenville. Under the challenged plans, Mr. McLawhorn is assigned to House District 24, Senate District 5, and Congressional District 1.

48. Plaintiff Randall S. Jones is a registered voter in Robeson County residing at 2681 N.C. Highway 710 in Rowland. Under the challenged plans, he resides in House District 47, Senate District 13, and Congressional District 8.

49. Plaintiff Bobby Charles Townsend is a registered voter in Robeson County residing at 410 Jackson Street in Fairmont. Under the challenged plans, he resides in House District 48, Senate District 13, and Congressional District 8.

50. Plaintiff Albert Kirby is a registered voter in Sampson County residing at 820 Southwest Blvd. in Clinton. Under the challenged plans, Mr. Kirby resides in House District 21, Senate District 10, and Congressional District 7.

51. Plaintiff Terrence Williams is a registered voter in Scotland County residing at 10321 Scotland Farms Road in Laurinburg. Under the challenged plans, he resides in House District 66, Senate District 25, and Congressional District 8.

52. Plaintiff Dr. Norman C. Camp is a registered voter residing in Wake County at 2216 Sanderford Road in Raleigh. Under the challenged plans, Dr. Camp is assigned to House District 33, Senate District 14, and Congressional District 4.

53. Plaintiff Mary F. Poole is a registered voter in Wake County residing at 801 Delaney Drive in Raleigh. Under the challenged plans, she resides in House District 38, Senate District 14, and Congressional District 4.

54. Plaintiff Stephen T. Smith is a registered voter in Wake County residing at 1313 College Place in Raleigh. Under the challenged plans, Mr. Smith resides in House District 34, Senate District 16, and Congressional District 4.

55. Plaintiff Philip A. Baddour is a registered voter in Wayne County residing at 125 Pine Ridge Lane in Goldsboro. Under the challenged plans, Mr. Baddour is assigned to House District 21, Senate District 7, and Congressional District 1.

56. Plaintiff Douglas A. Wilson is a registered voter in Mecklenburg County residing at 15163 Deshler Ct. in Charlotte. Under the challenged plans, Mr. Wilson is assigned to House District 92, Senate District 37, and Congressional District 9.

DEFENDANTS

57. Defendant Robert Rucho is a member of the North Carolina Senate, having been elected to that office by the voters residing in Senate District 39. Defendant Berger appointed Defendant Rucho Chair of the Senate Redistricting Committee. Defendant Rucho is sued in his official capacity only.

58. Defendant David Lewis is a member of the House of Representatives, having been elected to that office by the voters in House District 53. Defendant Lewis was appointed Chair of the House Redistricting Committee by Defendant Tillis. Defendant Lewis is sued in his official capacity only.

59. Defendant Nelson Dollar is a member of the House of Representatives, having been elected to the office by the voters in House District 36. Defendant Dollar was appointed

Co-Chair of the House Redistricting Committee by Defendant Tillis. Defendant Dollar is sued in his official capacity only.

60. Defendant Jerry Dockham is a member of the House of Representatives, having been elected to that office by the voters of District 80. Defendant Dockham was appointed Co-Chair of the House Redistricting Committee by Defendant Tillis. Defendant Dockham is sued in his official capacity only.

61. Defendant Philip E. Berger is a member of the North Carolina Senate, having been elected to that office by voters residing in Senate District 26. Senator Berger has been selected by the other Senators to serve as President Pro Tempore of the Senate. Among the powers of the President Pro Tempore is to name the officers and members of Senate committees. Senator Berger is sued in his official capacity only.

62. Defendant Thom Tillis is a member of the North Carolina House of Representatives, having been elected to that office by the voters residing in House District 98. Defendant Tillis has been selected by the other Representatives to serve as Speaker of the House. Among the powers of the Speaker are to appoint the officers and members of House committees. Defendant Tillis is sued in his official capacity only.

63. Defendant State Board of Elections is an agency of the State of North Carolina established by Chapter 163, Article 3 of the North Carolina General Statutes. It has "general supervision over the primaries and elections in the State." N.C. Gen. Stat. § 163-22(a).

64. Defendant State of North Carolina is one of the 50 sovereign states in the United States. Article I of the State's Constitution establishes "principles of liberty and free government," which the General Assembly and its members must honor in enacting legislation for the State and its citizens.

JURISDICTION AND VENUE

65. This Court has jurisdiction of the state claims action pursuant to Articles 26 and 26A of Chapter 1 of the General Statutes. The Court has jurisdiction of the federal claims pursuant to 42 U.S.C. § 1983.

66. Pursuant to N.C. Gen. Stat. § 1-81.1, the exclusive venue for this action is the Wake County Superior Court.

THREE-JUDGE COURT

67. A three-judge court is required to be convened in this matter pursuant to N.C. Gen. Stat. § 1-267.1, because this action challenges the validity of redistricting plans enacted by the General Assembly.

FACTUAL ALLEGATIONS

An Overview of Defendants' Unlawful Goals

68. The 2011 Regular Session of the North Carolina General Assembly convened on January 26, 2011.

69. Article II, Sections 3 and 5 of the North Carolina Constitution imposed on the General Assembly the duty to revise Senate and House districts, and 2 U.S.C. §§ 2a and 2c authorized the General Assembly to revise Congressional districts.

70. As a result of the 2010 general elections, the Republican Party gained control of both the Senate and House. Of the 50 Senators elected in 2010, 31 are members of the Republican Party, and 19 are members of the Democratic Party. Of the 120 Representatives elected in 2010, 67 are members of the Republican Party and 53 are members of the Democratic Party.

71. Soon after the General Assembly convened Defendant Berger was elected President Pro Tempore of the Senate, and Defendant Thom Tillis was elected Speaker of the House.

72. On January 27, 2011, Defendant Berger appointed the officers and members of the Senate Redistricting Committee. All officers of the Committee were Republican and 10 of the 15 members were Republican.

73. On February 15, 2011, Defendant Tillis appointed the officers and members of the House Redistricting Committee. All officers of the Committee were Republican and a majority of the members were Republican.

74. The House Redistricting Committee had primary responsibility for developing and proposing a plan for redistricting the House, and the Senate Redistricting Committee had primary responsibility for developing and proposing a plan for redistricting the Senate. Primary responsibility for developing and proposing a Congressional Redistricting Plan was exercised jointly by the House and Senate Committees.

75. Defendants Berger, Rucho, Tillis, Lewis, Dollar, and Dockham tightly controlled and directed the redistricting process for the Senate, the House, and Congress, and only nominally involved the Redistricting Committees and legislative staff in this process.

76. To maintain tight control of the redistricting process, Defendant Rucho convened only one meeting of the Senate Redistricting Committee between its creation in January 2011 and July 1, 2011 and at no point asked legislative staff to design or draw any plan. For this same purpose, Defendant Lewis convened only one meeting of the House Redistricting Committee between its creation in July 2011 and July 1, 2011, and at no point asked any legislative staff to design or draw any proposed plan.

77. Instead of actively involving the Committee and legislative staff, Defendants Berger, Rucho, Tillis, and Lewis, without the approval of the Redistricting Committees, used public funds to hire consultants to design and draw redistricting plans for the Senate, the House and Congress. Thomas Hoffler, a long-time redistricting consultant to the Republican National Committee, was one of the consultants retained.

78. Defendants Berger, Rucho, Tillis, Lewis, Dollar, and Dockham instructed their consultants to prepare Senate, House, and Congressional plans that would maximize the election prospects for Republican candidates.

79. To assure that this goal could be achieved, Defendants Berger, Rucho, Tillis, and Lewis further instructed their fellow Republican members of the Senate and House not to introduce any competing redistricting plans or prepare any amendment to any plan proposed by Senate Rucho or Lewis without their consent.

80. Based on the advice of their consultants, Defendants Berger, Rucho, Tillis, Lewis, Dollar, and Dockham determined that they could best achieve their goal of maximizing the election prospects for Republican candidates by drawing plans that created as many districts as possible in which Black voters constituted a majority of voters. In a public statement issued on June 17, 2011, Defendant Rucho and Defendant Lewis stated: "[I]n constructing VRA [Voting Rights Act] majority [B]lack districts, the Chairs recommend that, where possible, these districts be drawn at a level equal to at least 50% plus one 'BVAP' [Black Voting Age Population]."

81. Defendants subordinated all legitimate redistricting factors to achieving their goal. They hid their goal behind the façade of the spurious legal theory that Sections 2 and 5 of the Voting Rights Act of 1965, 42 U.S.C. §§ 1973 and 1973c, required them to maximize the

assignment of Black citizens to separate districts in which Black citizens of voting age constituted at least a majority of voters.

The Importance of Traditional Redistricting Standards to the Integrity of the Elections Process

82. Precincts are the building blocks on which the elections process is built.

83. Precinct boundaries are drawn by local officials who apply established criteria and use their specific knowledge of local geographic and demographic factors to construct precincts to protect the integrity of the voting process and to assure an informed electorate.

84. Dividing precincts in the formation of electoral districts compromises the integrity of the voting process, increases the costs of elections, increases the costs of campaigning for candidates, and creates voter confusion.

85. Citizens residing within precincts constitute communities of interest that should be maintained in the formation of State Senate, State House and Congressional Districts. Dividing precincts fractures the communities encompassed within the boundaries of those precincts.

86. Defendant State of North Carolina has longstanding laws and policies against dividing precincts in the formation of electoral districts.

87. In 1995, the General Assembly enacted legislation prohibiting the dividing of precincts in the redrawing of House, Senate, and Congressional districts except in certain narrow circumstances. 1995 S.L. 355 (enacting G.S. § 120-2.2 and G.S. § 163-201.2). Though the United States Department of Justice refused to preclear this legislation, 1995 S.L. 355 remains effective in the 60 counties not covered by Section 5 of the Voting Rights Act.

88. More recently, legislation was enacted requiring participation in various census programs "so the State will be able to revise districts at all levels without splitting precincts and

in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965 as amended." 2006 S.L. 264, s. 75.5(b) (adding G.S. § 163-132.1B) and 2009 S.L. 541, s. 17 (amending G.S. § 132.1B(a)).

89. Most recently, by a vote of 113-1 in the House and 46-2 in the Senate, the General Assembly in July 2011, contemporaneously with its consideration of 2011 S.L. 402, 403, and 404, directed the Guilford County Board of Commissioners to "minimize the dividing of precincts" in drawing new county commissioner districts. 2011 S.L. 172.

90. Locally elected officials also establish the boundaries of town and cities in order to meet the needs of their citizens and their community.

91. These boundaries reflect the informed judgment of these locally elected representatives regarding the interests and needs of their constituents. Citizens residing within these locally-defined boundaries constitute communities of interest that should be maintained in the formation of State Senate, State House, and Congressional Districts. Dividing towns fractures the communities encompassed within the boundaries of those towns.

92. Defendants have acknowledged the importance of using locally established municipal boundaries in the formation of State Senate, State House, and Congressional districts.

93. With regard to counties, the North Carolina Supreme Court has held that counties "constitute a distinguishing feature in our free system of government. It is through them, in large degree, that the people enjoy the benefits arising from local self-government, and foster and perpetuate the spirit of independence and love of liberty that withers and dies under the painful influence of centralized systems of government." *Stephenson*, 355 N.C. at 386.

94. The Supreme Court has also observed that "Counties play a vital role in many areas touching the everyday lives of North Carolinians. Not surprisingly, people identify

themselves as residents of their counties and customarily interact most frequently with their government at the county level." *Id.*

95. Article II, §§ 3 and 5 of the Constitution, provide that "no county shall be divided in the formation of a (senate or house) district."

96. The North Carolina Supreme Court in *Stephenson* declared the Defendants must strictly adhere to the requirements of Article II, §§ 3 and 5 of the Constitution in redistricting the State House and State Senate, except in those narrow circumstances where federal law mandates otherwise.

The Senate Redistricting Plan

97. 2011 S.L. 402 was enacted on July 27, 2011, and precleared by the United States Department of Justice on November 1, 2011. 2011 S.L. 413 was enacted on November 11, 2011, and precleared by the United States Department of Justice on December 8, 2011.

98. In recognition of Defendant Rucho's pivotal role in its design and enactment, the plan was labeled "Rucho Senate 2."

99. No Black Senator or Representative voted in favor of this legislation. Consistent with Defendants' strategy, Defendants assigned approximately one-half of the State's Black citizens to 10 Senate districts without regard for traditional redistricting standards.

100. Defendants constructed many of the districts in Rucho Senate 2 by stringing together bits and pieces of precincts. Defendants' plan divides 257 precincts between two or more districts. More than 1,300,000 citizens reside within these divided precincts. More than one-half of the precincts in Cumberland County (33 of 48) and Durham County (35 of 56) are divided. In Forsyth County, 43 precincts are divided; in Wake County, 33 precincts are divided; and in Mecklenburg County, 30 precincts are divided.

101. Never in the history of the State has a Senate redistricting plan divided so many precincts. Five times more precincts are split by the 2011 Senate plan than by the Senate plan enacted by the General Assembly in 2003 and used for the 2004-2010 elections.

102. There is no lawful or rational basis for the division of those precincts. Fully lawful and rational plans that would have divided far fewer precincts than Rucho Senate 2 were introduced in the General Assembly, but rejected by Defendants. Senator Nesbitt introduced a plan that would have divided only 6 precincts.

103. Plaintiffs, the citizens residing in these divided precincts and citizens across the State, have been harmed by Defendants' actions in dividing those precincts. Divided precincts confuse voters and thereby abridge their right to vote; increase the costs of elections for counties and taxpayers; increase the costs of campaigning for candidates; and create uncertainty for elected office holders regarding the identity of their constituents.

104. Equal population obligations require that larger cities be divided into two or more districts. Rucho Senate 2, however, unnecessarily divides 51 towns and small cities located within a single county into two or more districts. Among the towns divided in Rucho Senate 2 are three with populations under 1000. These towns are Dortches (935); Bethania (328); and Grimesland (441).

105. There is no lawful or rational basis for dividing those towns. Fully lawful and rational plans that would have divided fewer towns were introduced in the General Assembly but rejected by Defendants. Senator Nesbitt introduced a plan that would have divided only 25 towns located within a single county.

106. Plaintiffs, the citizens residing within these divided towns and citizens across the State, have been harmed by Defendants' actions in dividing those towns.

107. Rucho Senate 2 divides 19 counties: Buncombe, Cumberland, Durham, Forsyth, Gaston, Guilford, Iredell, Johnston, Lenoir, Mecklenburg, Nash, New Hanover, Pitt, Randolph, Rowan, Union, Wake, Wayne, and Wilson.

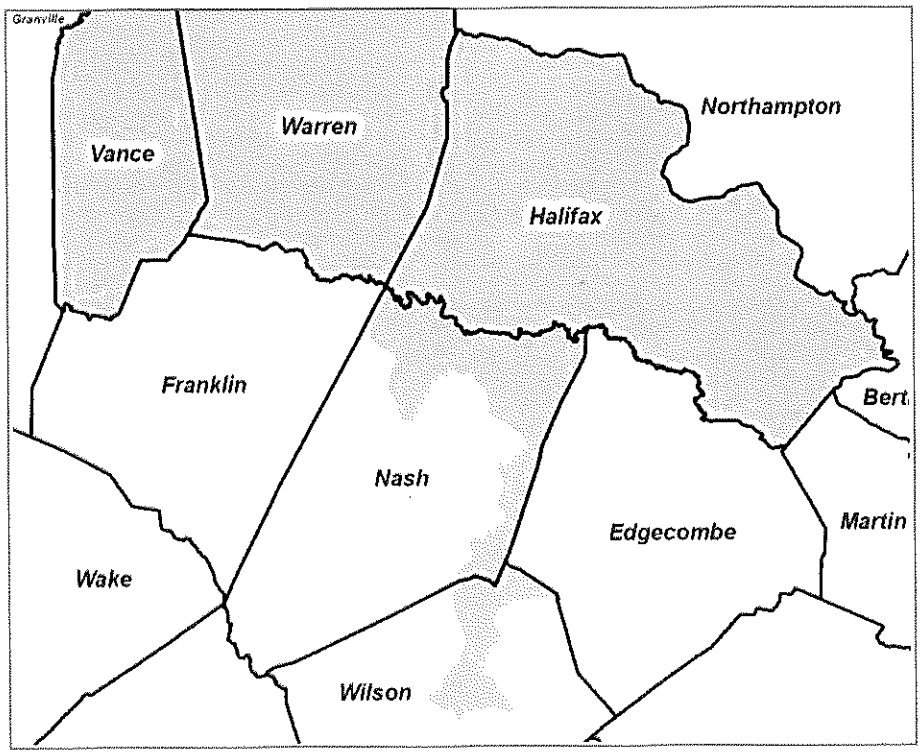
108. There is no lawful or rational basis for dividing this many counties. Fully lawful and rational plans that would have divided fewer counties were introduced in the General Assembly, but rejected by Defendants. Senator Nesbitt introduced a plan that would have divided only 14 counties: Buncombe, Catawba, Cumberland, Davidson, Durham, Forsyth, Gaston, Guilford, Harnett, Johnston, Mecklenburg, New Hanover, Union, and Wake.

109. Plaintiffs, citizens residing in the 19 counties divided in 2011 S.L. 402 and 2011 S.L. 413, and citizens across the State, have been harmed by Defendants' actions.

Senate District 4

110. District 4 in Rucho Senate 2 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in Vance, Warren, and Halifax Counties and in parts of Nash and Wilson Counties. It was not necessary to divide Nash and Wilson counties in forming this district.

111. A true and accurate copy of the Defendants' map depicting Senate District 4 is shown below.



112. District 4 divides Dortches, Red Oak, Rocky Mount, Sharpsburg, Whitakers, and Wilson. There is no lawful or rational basis for dividing these towns.

113. One measure of District 4's non-compact and irrational shape is the length of its perimeter. Based on Defendants' calculations, the length of the perimeter of District 4 is 361.70 miles, which is approximately the distance from Wilson to Philadelphia, Pennsylvania.

114. Race was the dominant factor in drawing District 4. Defendants drew District 4 so that its Black voting age population is 52.75%.

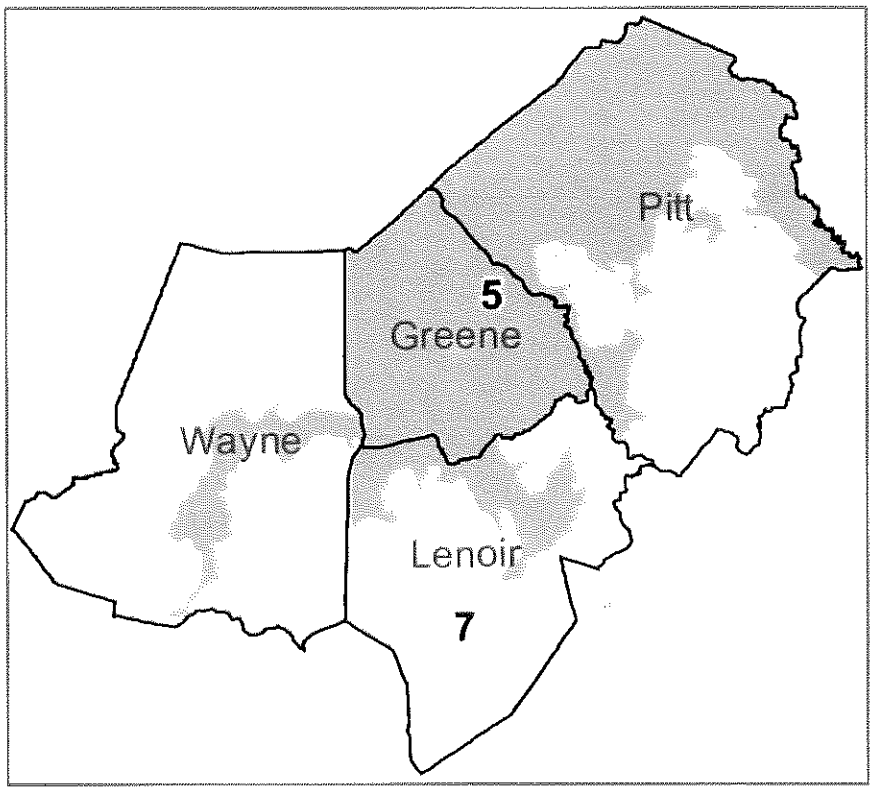
115. District 4 constitutes an unconstitutional racial classification unless it is narrowly tailored to meet a compelling interest.

116. Defendants failed to narrowly tailor District 4 to serve any compelling interest they may have had, including any compelling interest they had in drawing that district to comply with the Sections 2 and 5 of the Voting Rights Act.

Senate District 5

117. District 5 in Rucho Senate 2 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in Greene County and in parts of Wayne, Lenoir and Pitt Counties. It was not necessary to divide Wayne, Lenoir, and Pitt counties in forming this district.

118. A true and accurate copy of the Defendants' map depicting Senate District 5 is shown below.



119. Pieces of precincts are a major component of District 5. In constructing District 5, Defendants used pieces of 40 precincts: 16 in Pitt County, 16 in Wayne County, and 8 in Lenoir County. Defendants also used pieces of towns to construct District 5. Those split towns are: Ayden, Goldsboro, Greenville, Grifton, Grimesland, Kinston, Mt. Olive, and Winterville. There is no lawful or rational basis for dividing these precincts and towns.

120. One measure of the non-compact and irrational shape of District 5 is the length of its perimeter. Based on Defendants' calculations, the length of the perimeter of District 5 is 394.60 miles, which is approximately the distance from Greenville to Trenton, New Jersey.

121. Race was the dominant factor in drawing District 5. The Black voting age population in the district is 51.97%.

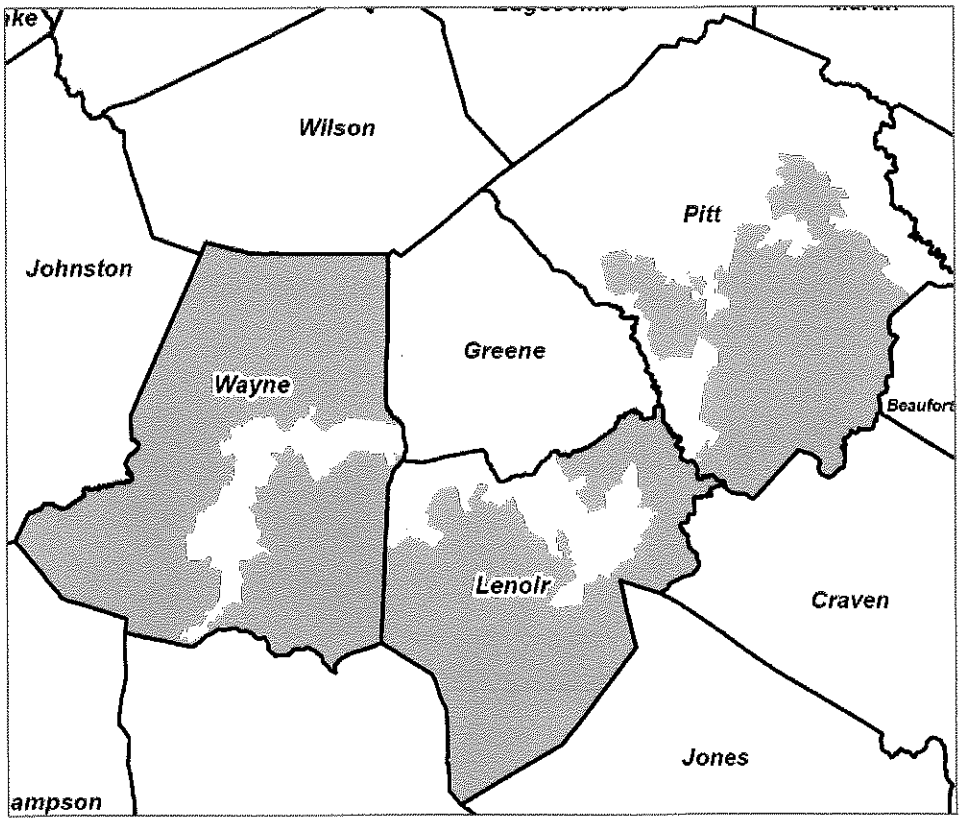
122. District 5 constitutes an unconstitutional racial classification unless it is narrowly tailored to serve a compelling interest.

123. Defendants failed to narrowly tailor District 5 to serve any compelling interest they may have had, including any compelling interest in complying with Sections 2 and 5 of the Voting Rights Act.

Senate District 7

124. District 7 in Rucho Senate 2 is a non-compact and irrationally shaped district which was drawn without regard for communities of interest, and which unnecessarily divides Wayne, Lenoir, and Pitt counties.

125. A true and accurate copy of the Defendants' map depicting Senate District 7 is shown below:



126. Pieces of precincts are a major component of District 7. Forty (40) of the precincts Defendants used to construct District 7 are split precincts. Sixteen (16) of these split precincts are in Pitt County; 16 are in Wayne County; and 8 are in Lenoir County. Defendants also used pieces of eight (8) towns to construct District 7. These towns are Ayden, Goldsboro, Greenville, Grifton, Grimesland, Kinston, Mt. Olive and Winterville. There is no lawful or rational basis for dividing these precincts and towns.

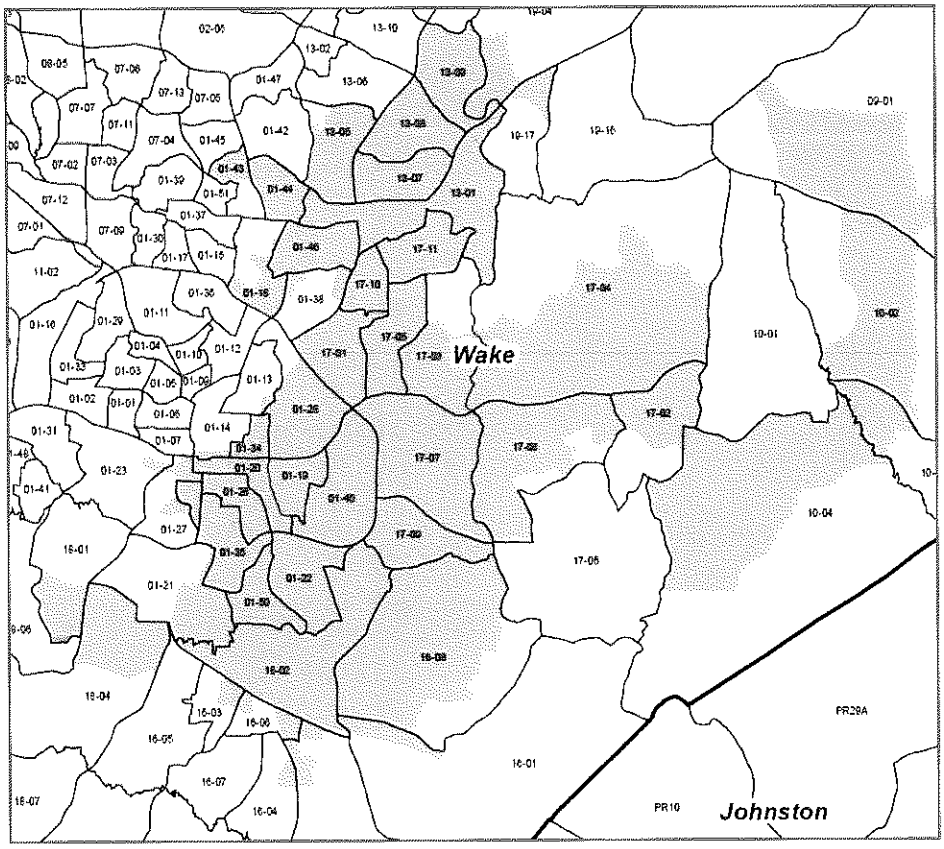
127. One measure of District 7's non-compact and irrational shape is its length. Based on calculations performed by Defendants, the length of the perimeter of District 7 is 477.20 miles, or approximately the distance from Greenville to New York City.

128. The Defendants did not draw District 7 to comply with any law. Approximately 78% of the voting age population in District 7 is White.

Senate District 14

129. District 14 in Rucho Senate 2 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in part of Wake County.

130. A true and accurate copy of the Defendants' map depicting Senate District 14 is shown below.



131. Pieces of precincts are the major component of District 14. In constructing District 14, Defendants used pieces of 27 precincts. Defendants also used pieces of towns in constructing District 14. In addition to Raleigh, District 14 divides Garner, Knightdale, and Wendell. There is no lawful or rational basis for dividing these precincts, and towns.

132. One measure of the non-compact and irrational shape of District 14 is the length of its perimeter. Based on Defendants' calculations, the length of the perimeter of District 14 is 133.62 miles, or approximately the distance from Raleigh to Chesapeake, Virginia.

133. Race was the dominant factor in drawing District 14. Defendants drew District 14 so that its Black voting age population is 51.28%.

134. District 14 constitutes an unconstitutional racial classification unless it is narrowly tailored to meet a compelling interest.

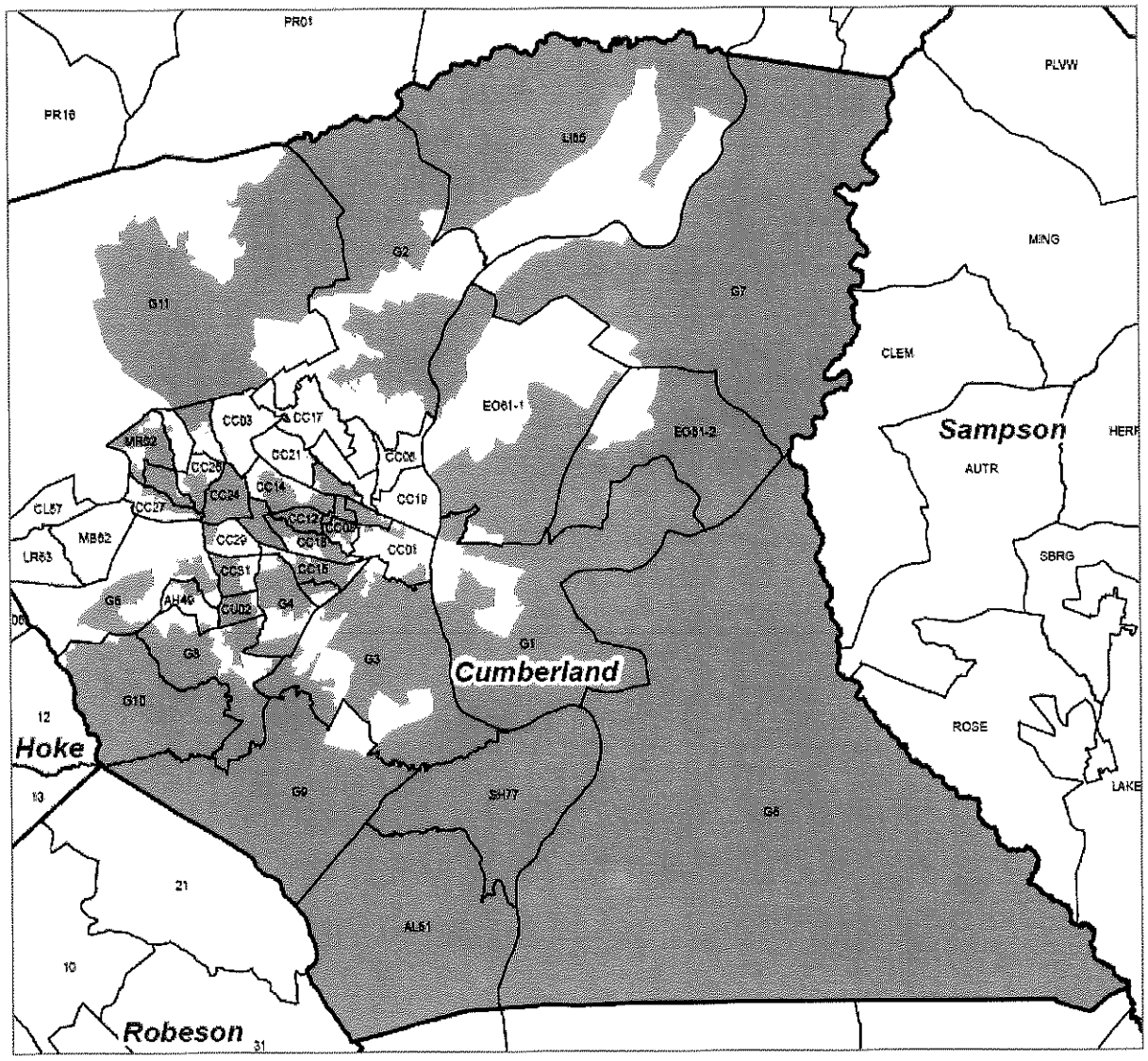
135. Defendants failed to narrowly tailor District 14 to serve any compelling interest they may have had, including any compelling interest they may have had in drawing that district to comply with Section 2 of the Voting Rights Act. Defendants artificially inflated the Black voting age population in District 14 to a level greater than required to comply with Section 2.

136. In drawing District 14, Defendants knew that District 14 as drawn by the General Assembly in 2003 had a Black voting age population substantially lower than in their plan—41.62% in the prior plan; 51.27% in the Defendants' 2011 plan. Defendants also knew that the Black candidate had defeated the White candidate by a substantial margin at each of the four general elections held under the 2003 Senate Redistricting Plan. At the 2004 general election, the Black candidate (Vernon Malone) defeated the White candidate by 64.1% to 35.9%. At the 2006 general election, Senator Malone defeated the White candidate by 65.9% to 34.1%. At the 2008 general election, Senator Malone defeated the White candidate 69.45% to 30.55%. At the 2010 general election, the Black candidate (Dan Blue) defeated the White candidate 65.9% to 34.1%.

Senate District 19

137. District 19 in Rucho Senate 2 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in part of Cumberland County.

138. A true and accurate copy of the Defendants' map depicting Senate District 19 is shown below.



139. Pieces of precincts are the major component of District 19. In constructing Distinct 19, Defendants used pieces of 33 precincts. Defendants also used pieces of towns in constructing District 19. These towns are: Eastover, Fayetteville, Hope Mills, and Spring Lake. There is no lawful or rational basis for dividing these precincts and towns.

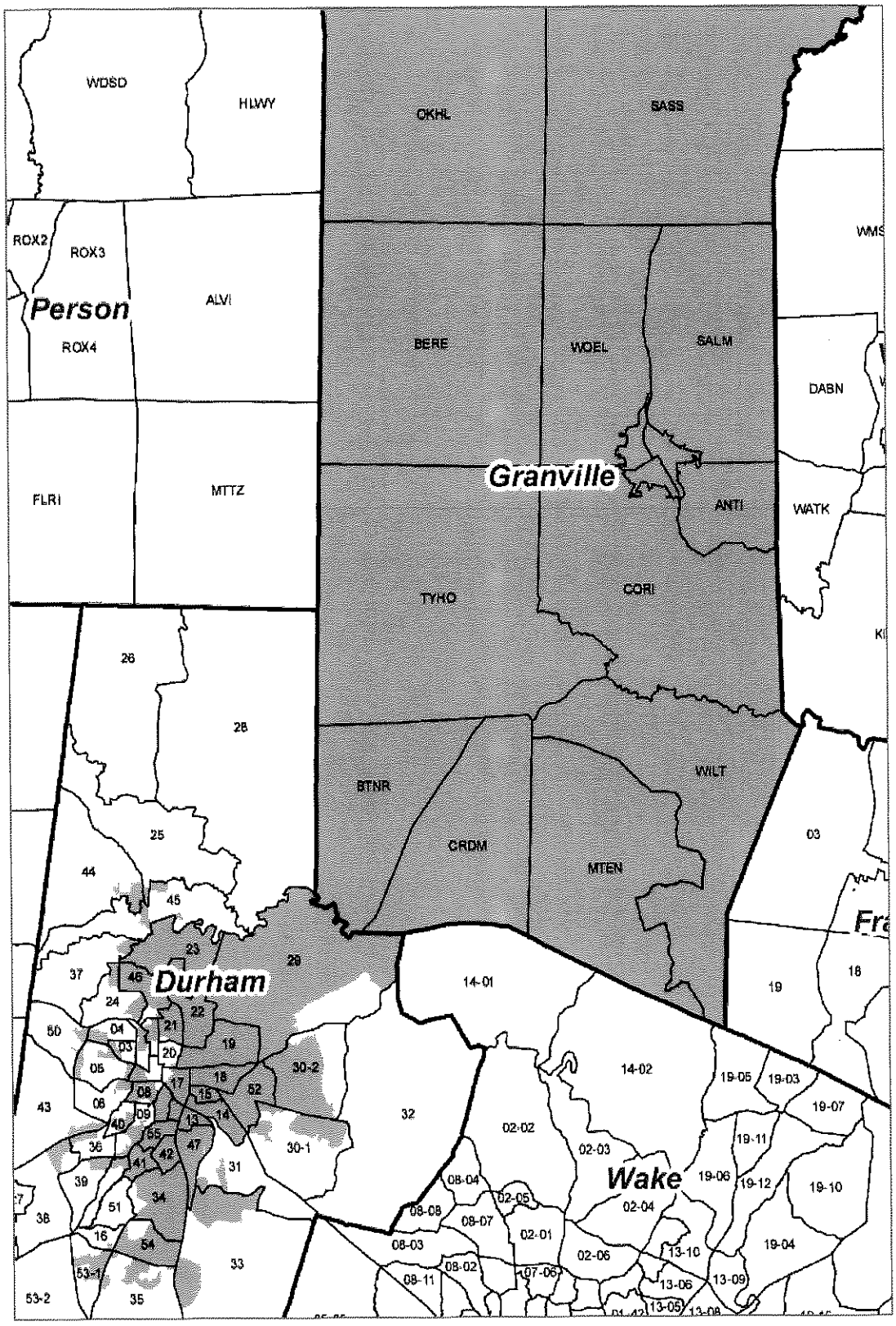
140. One measure of District 19's non-compact and irrational shape is its length. Based on calculations preformed by Defendants, the length of the perimeter of District 19 is 364.10 miles, or approximately the distance from Fayetteville to Atlanta.

141. District 19 was not drawn to comply with the Voting Rights Act. Approximately 69% of the population in the district is White.

Senate District 20

142. District 20 in Rucho Senate 2 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in Granville County and in part of Durham County.

143. A true and accurate copy of the Defendants' map depicting Senate District 20 is shown below.


WDSD
HLWY
OKHL
SASS
ROX2
ROX3
Person
ROX4
ALVI
BERE
WOEL
SALM
DABN
Granville
FLRI
MTTZ
ANTI
WATK
TYRO
CORI
BTNR
CRDM
MTEN
WILT
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Durham
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18
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53-2

144. Pieces of precincts are the major component of the portion of District 20 located in Durham County. It contains pieces of 35 precincts. There is no lawful or rational basis for dividing these precincts.

145. One measure of the non-compact and irrational shape of District 20 is the length of its perimeter. Based on Defendants' calculations, the length of the perimeter of District 20 is 235.52 miles, or approximately the distance from Durham to Washington, D.C.

146. Race was the predominant factor in drawing District 20. Defendants drew District 20 so that its Black voting age population is 51.04%.

147. District 20 constitutes an unconstitutional racial classification unless it was narrowly tailored to serve some compelling interest.

148. Defendants failed to narrowly tailor District 20 to serve any compelling interest they may have had, including any compelling interest they may have had in drawing the District to comply with Section 5 or Section 2 of the Voting Rights Act. Defendants artificially inflated the Black voting age population in District 20 to a level greater than required to comply with Section 2.

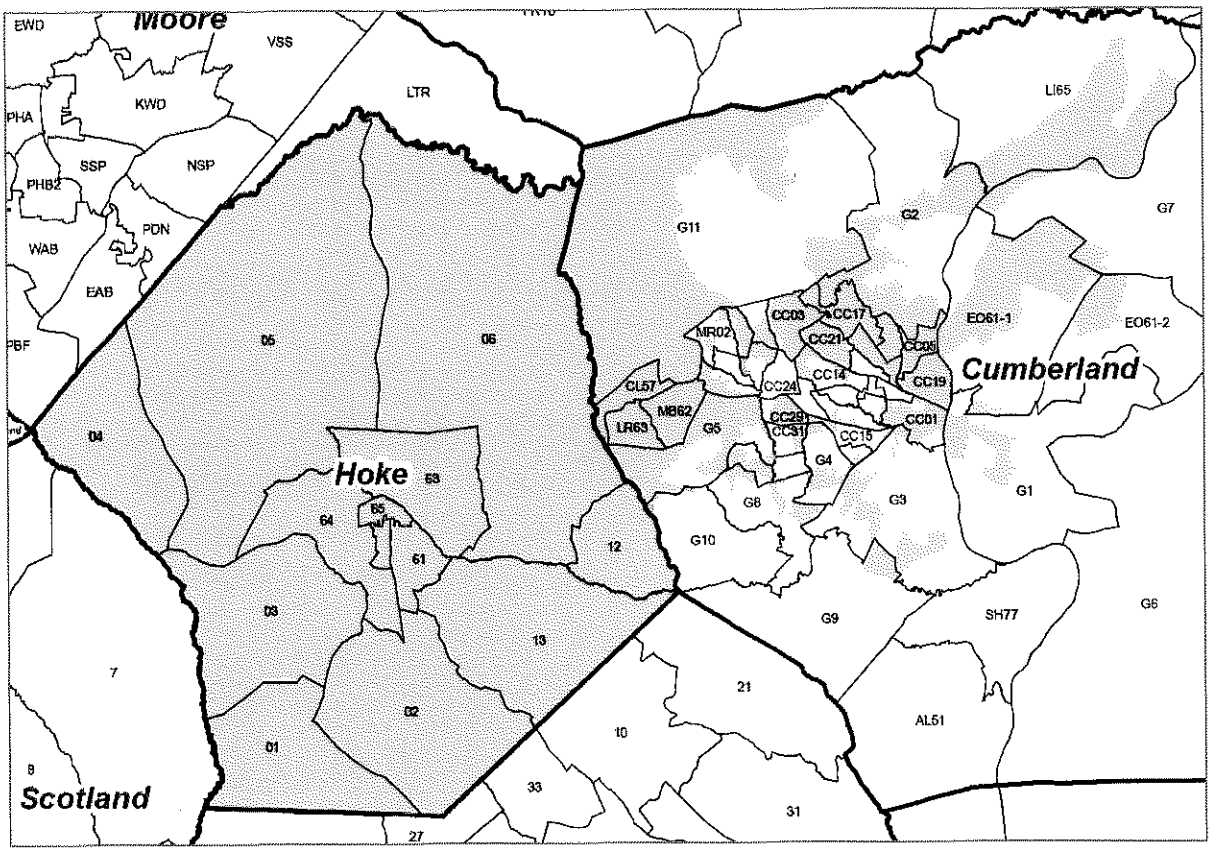
149. In drawing District 20, Defendants knew that District 20 as drawn by the General Assembly in 2003 had a Black voting age population substantially lower than in their plan—44.64% in the prior plan; 51.04% in Defendants' 2011 plan. Defendants also knew that a Black candidate had defeated a White candidate by a substantial margin or was not opposed in the four elections held under the 2003 plan. At the 2004 general election, the Black candidate (Lucas) defeated the White candidate (Ubinger) 90.2% to 9.8%. At the 2006 general election, Senator Lucas was not opposed. At the 2008 and 2010 general elections, the Black candidate

(McKissick) defeated White opponents, respectively, by 73.58% to 22.55% (and a third-party candidate by 3.87%), and by 73.11% to 26.89%.

Senate District 21

150. District 21 in Rucho Senate 2 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in Hoke County and in part of Cumberland County.

151. A true and accurate copy of the Defendants' map depicting Senate District 21 is shown below.



152. Pieces of precincts are the major component of the portion of District 21 in Cumberland County. It contains pieces of 33 precincts in Cumberland. Defendants also used pieces of towns in constructing District 21. In addition to Fayetteville, District 21 divides

Eastover, Hope Mills, and Spring Lake. There is no lawful or rational basis for dividing these precincts, towns and cities.

153. One measure of District 21's non-compact and irrational shape is the length of its perimeter. Based on Defendants' calculations, the length of the perimeter of the District is 350.17 miles, or approximately the distance from Fayetteville to Atlanta, Georgia.

154. Race was the dominant factor in drawing District 21. Defendants drew the District so that its Black voting age population is 51.34%.

155. District 21 constitutes an unconstitutional racial classification unless it was narrowly drawn by Defendants to meet some compelling interest.

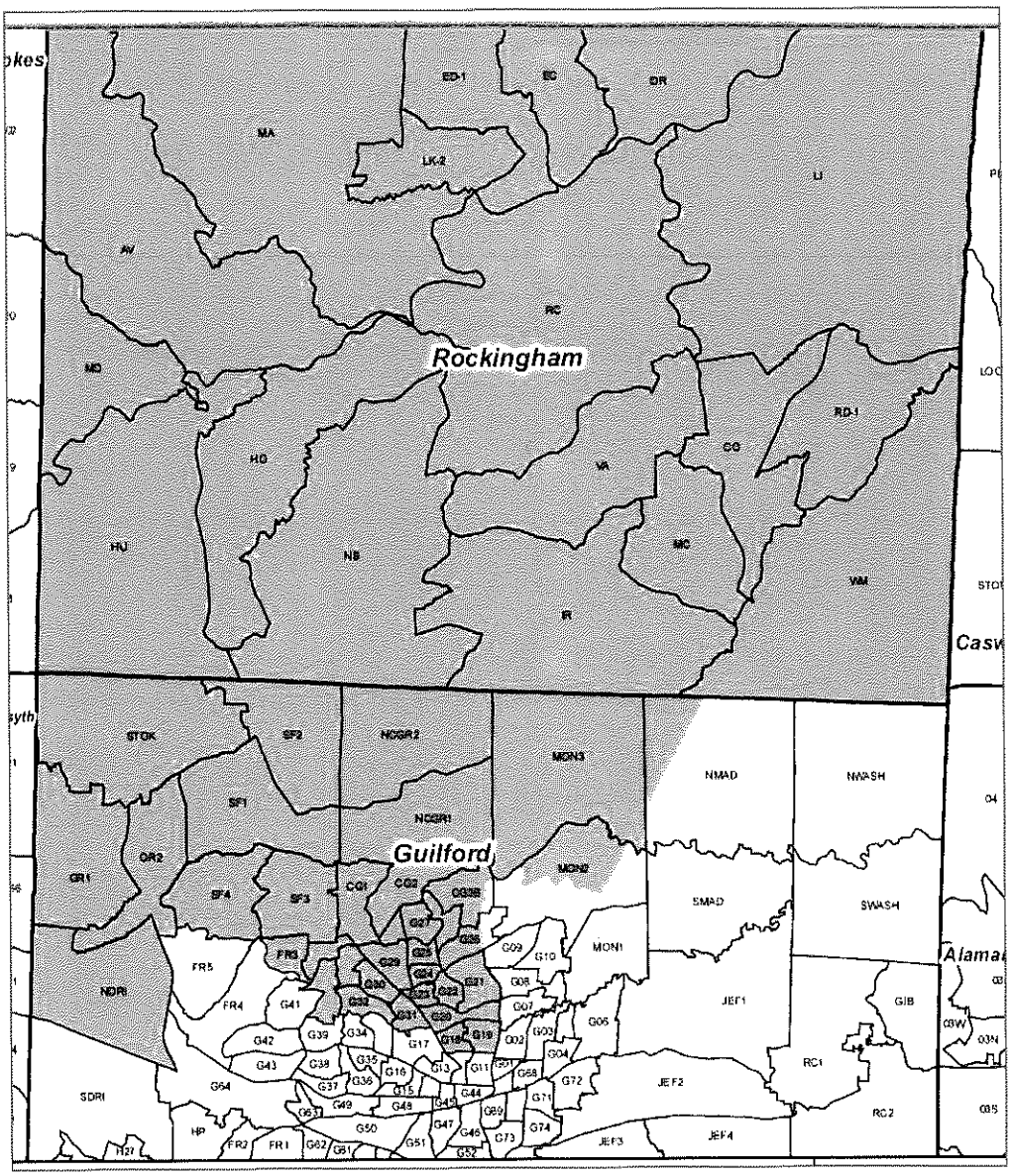
156. Defendants failed to narrowly tailor District 21 to serve any compelling interest they may have had, including any compelling interest they may have had in complying with Section 5 or Section 2 of the Voting Rights Act. Defendants artificially inflated the Black voting age population in District 21 to a level greater than required to comply with Section 2.

157. In drawing District 21, Defendants knew that District 21 as drawn by the General Assembly in 2003 had a Black voting age population of 44.93%, or 6.6% lower than the Black voting age population encompassed within their District 21. Defendants also knew that the Black candidate was unopposed or had defeated a White candidate by a substantial margin at each of the four general elections held under the 2003 Senate Redistricting Plan. At the 2004 general election, the Black candidate (Larry Shaw) received 61.21% of the vote, the White candidate received 36.09% of the vote, and a third party candidate received 2.69% of the votes. At the 2006 general election, Senator Shaw defeated the White candidate by 61.6% to 38.4%. At the 2008 general election, Senator Shaw was unopposed. At the 2010 general election, the Black candidate (Mansfield) defeated the White candidate 67.6% to 33.4%.

Senate District 26

158. District 26 in Rucho Senate 2 is located in Rockingham County and in part of Guilford County. The part of District 26 located in Guilford County is non-compact, irrationally shaped, and was drawn without regard for communities of interest.

159. A true and accurate copy of the Defendants' map depicting Senate District 26 is shown below.



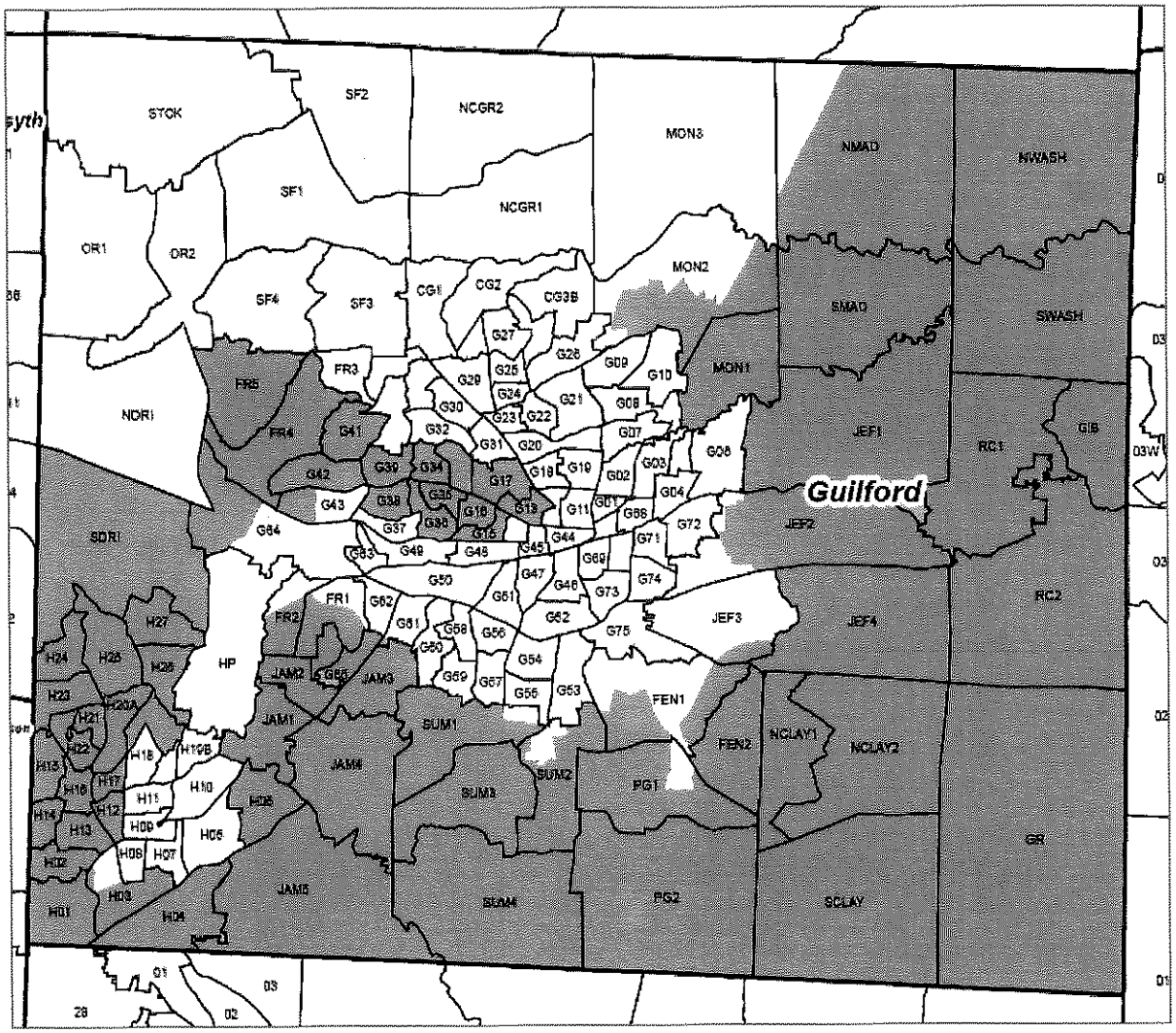
160. Pieces of precincts are a component of District 26. District 26 divides the City of Greensboro. There is no lawful or rational basis for dividing these precincts or the City of Greensboro.

161. District 26 was not drawn to comply with the Voting Rights Act. Approximately 80% of the population of the district is White.

Senate District 27

162. District 27 in Rucho Senate 2 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in part of Guilford County.

163. A true and accurate copy of the Defendants' map depicting Senate District 27 is shown below.



164. Pieces of precincts are a major component of District 27. Fourteen (14) of the precincts Defendants used in constructing District 27 are pieces of precincts. Defendants also used pieces of several cities and towns in constructing District 27. In addition to Greensboro and High Point, District 27 divides Archdale, Burlington, Gibsonville, Jamestown, and Pleasant Garden. There is no lawful or rational basis for dividing these precincts and towns.

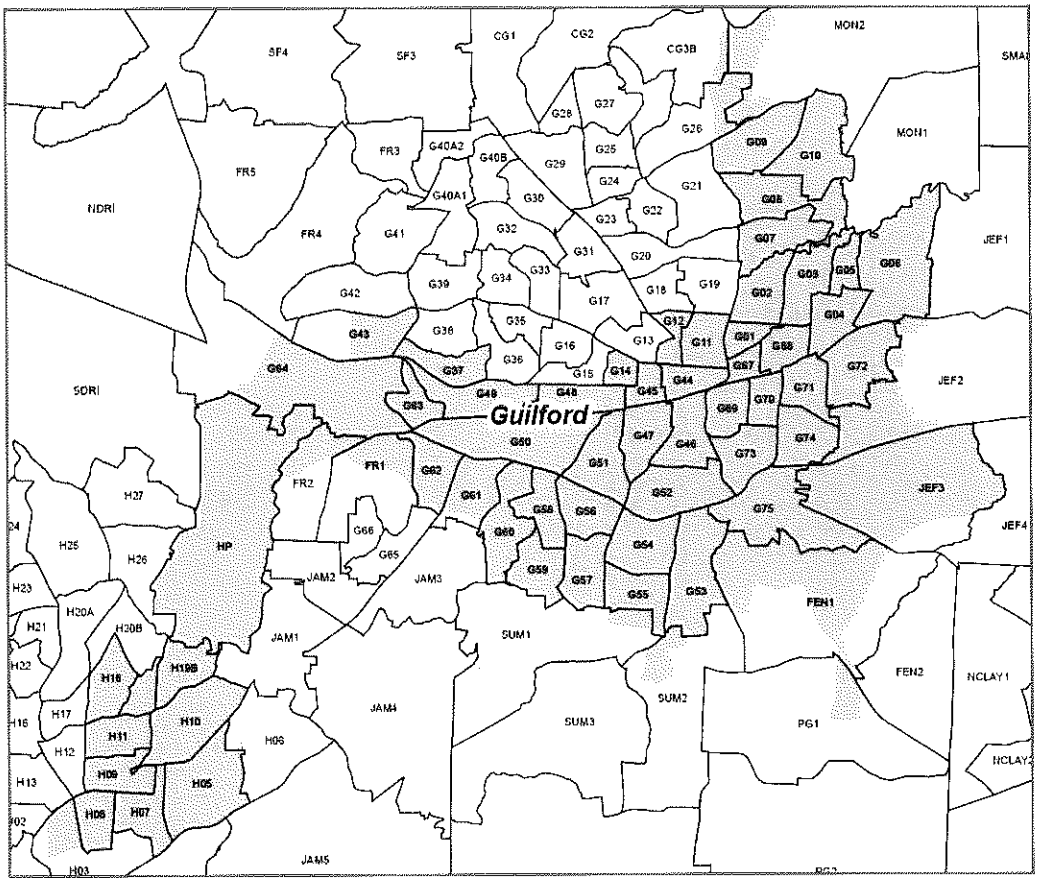
165. One measure of District 27's non-compact and irrational shape is its length. Based on calculations prepared by Defendants the length of the perimeter of District 27 is 195.60 miles, which is approximately the distance from Greensboro to Chesapeake, Virginia.

166. District 27 was not drawn to comply with the Voting Rights Act. Approximately 76% of the population of the district is White.

Senate District 28

167. District 28 in Rucho Senate 2 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in part of Guilford County.

168. A true and accurate copy of the Defendants' map depicting Senate District 28 is shown below.



169. Pieces of precincts are a major component of District 28. It contains pieces of 15 precincts. Defendants also used pieces of several towns in constructing District 28. In addition to Greensboro and High Point, District 28 divides Pleasant Garden and Jamestown. There is no lawful or rational basis for dividing these precincts.

170. Race was the dominant factor used by Defendants in drawing the boundaries of District 28. Approximately 56.49% of the voting age population encompassed within the boundaries of the District is Black.

171. District 28 is an unconstitutional racial classification unless it was drawn by Defendants to meet a compelling interest.

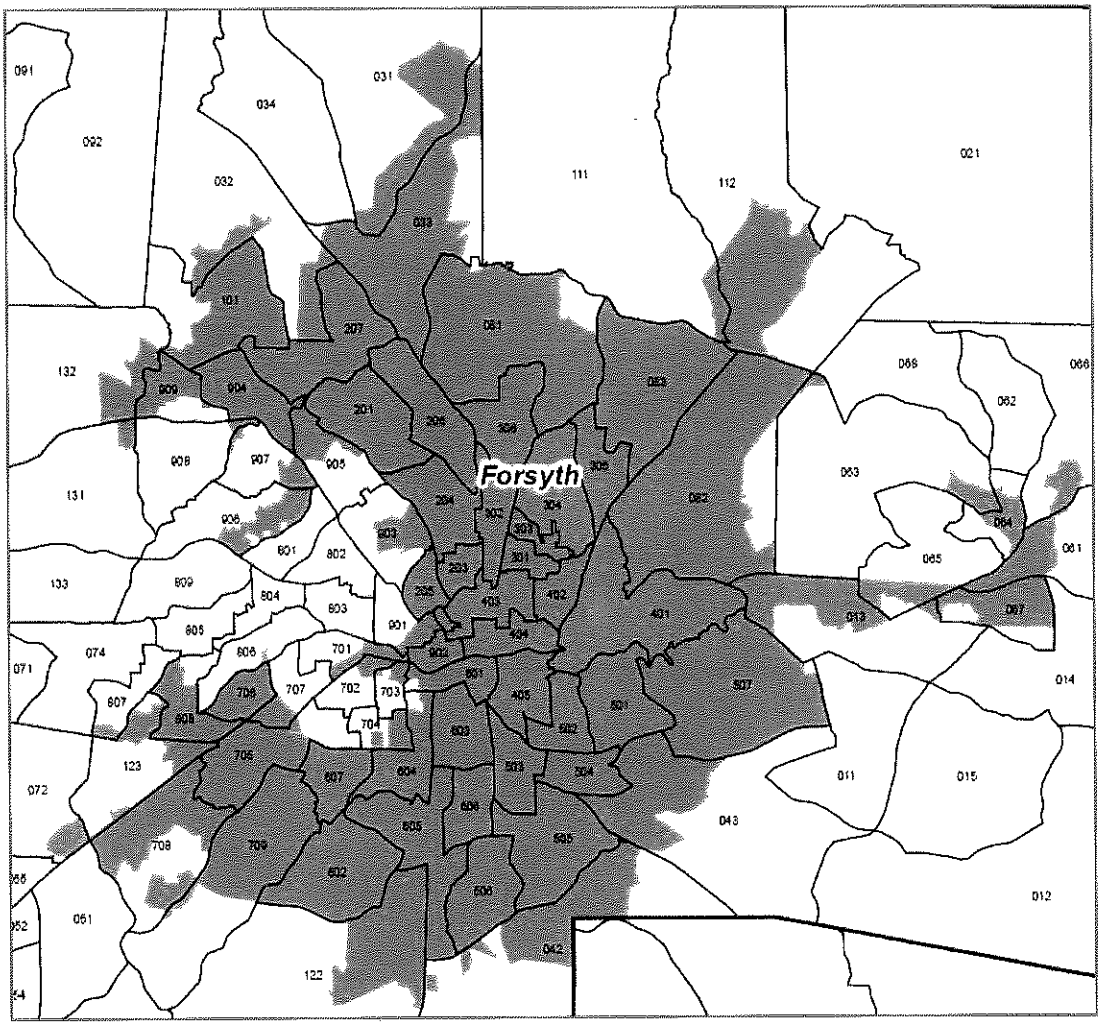
172. Defendants failed to narrowly tailor the District to meet any compelling interest they may have had, including any compelling interest they may have had in drawing the boundaries of the district to meet the requirements of Section 5 or Section 2 of the Voting Rights Act. They artificially inflated the Black voting age population in the District to a level greater than required to comply with Section 2.

173. In drawing District 28, Defendants knew that District 28 as drawn in the 2003 Senate Redistricting Plan had a Black voting age population of 47.20%, which is 9.29% lower than the Black voting age population encompassed within their District 28. Defendants also knew that a Black candidate had not been opposed or had soundly defeated a White candidate at each of the four elections held under the 2003 Senate Redistricting Plan. At the 2004 and 2006 general elections, the Black candidate (Katie Dorsett) was not opposed. In the 2008 general election, Senator Dorsett was not opposed. In the 2010 general election, the Black candidate (Robinson) defeated one White candidate and one Black candidate, 47.84% to 38.69% to 13.47%.

Senate District 32

174. District 32 in Rucho Senate 2 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in part of Forsyth County.

175. A true and accurate copy of the Defendants' map depicting Senate District 32 is shown below.



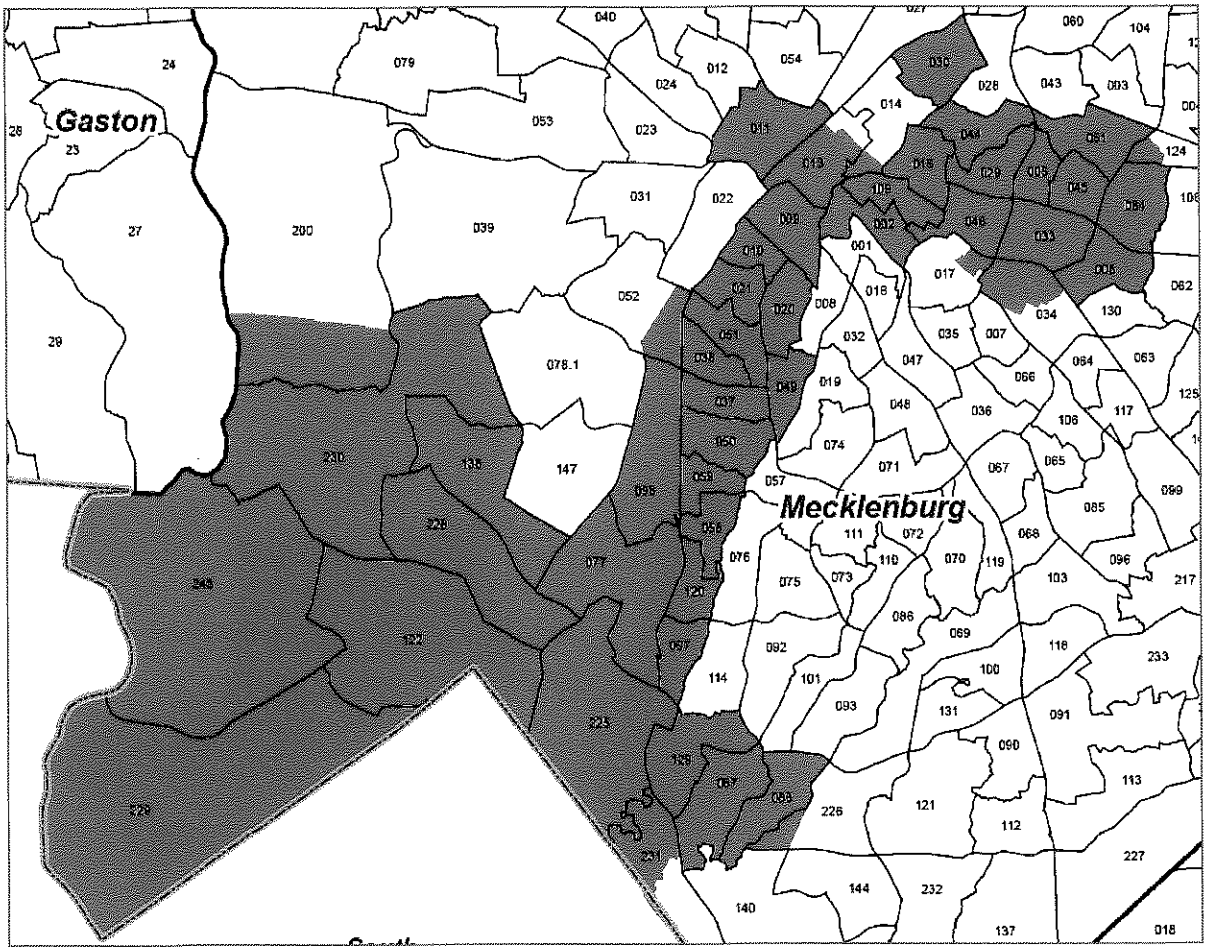
176. Pieces of precincts are a major component of District 32. It contains pieces of 43 precincts. Defendants also used pieces of towns in constructing District 32. In addition to Winston-Salem, District 32 divides Bethania, Clemmons, Kernersville, and Walkertown. There is no lawful or rational basis for dividing these precincts and towns.

177. One measure of District 32's non-compact and irrational shape is its length. Based on calculations performed by Defendants, the length of the perimeter of District 32 is 149.05 miles, which is approximately the distance from Winston-Salem to Bristol, Virginia.

Senate District 37

178. District 37 in Rucho Senate 2 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in part of Mecklenburg County.

179. A true and accurate copy of Defendants' map depicting District 37 is shown below.



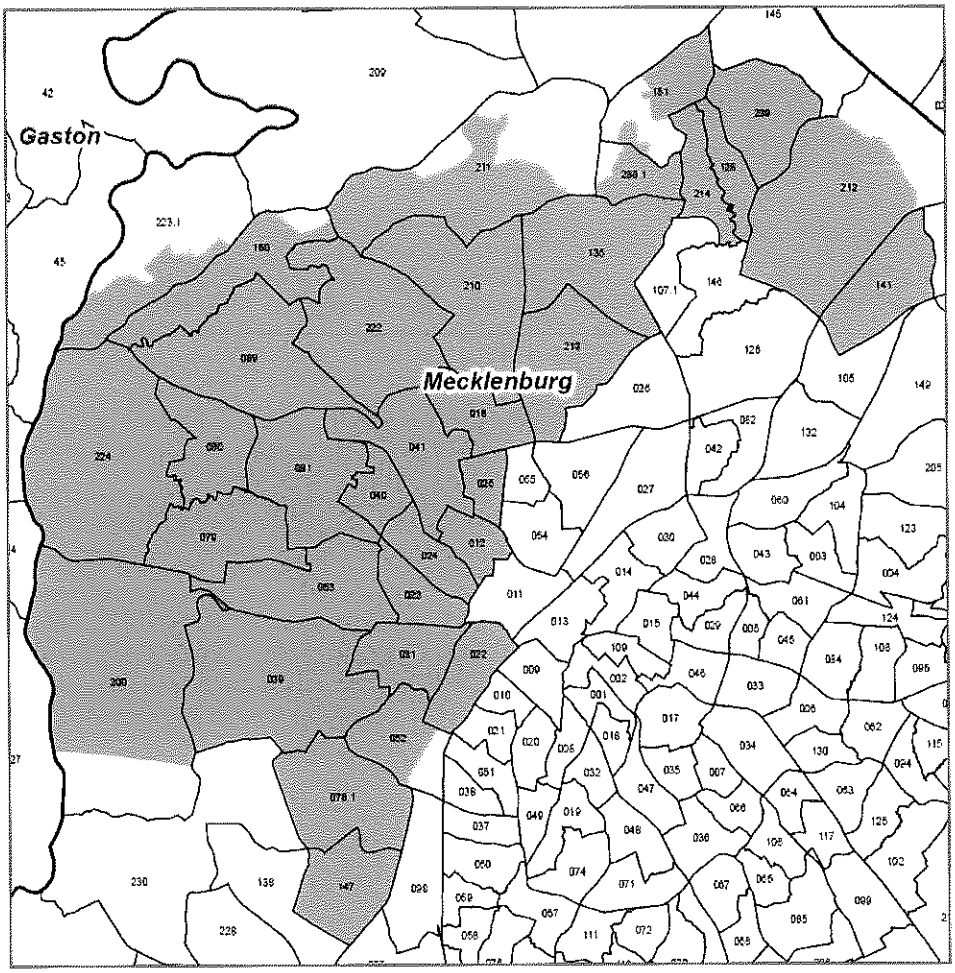
180. In constructing District 37, Defendants used pieces of 9 precincts. There is no lawful or rational basis for dividing these precincts.

181. Defendants did not draw District 37 to comply with the Voting Rights Act. Approximately 58% of the voting age population in District 37 is White.

Senate District 38

182. District 38 in Rucho Senate 2 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in part of Mecklenburg County.

183. A true and accurate copy of the Defendants' map depicting Senate District 38 is shown below.



184. In constructing District 38, Defendants used pieces of 8 precincts. There is no lawful or rational basis for splitting these precincts.

185. Race was the dominant factor used by Defendants in drawing the boundaries of District 38. Approximately 53% (52.51%) of the voting age population encompassed within the boundaries of the District is Black.

186. District 38 is an unconstitutional racial classification unless narrowly drawn to meet some compelling interest.

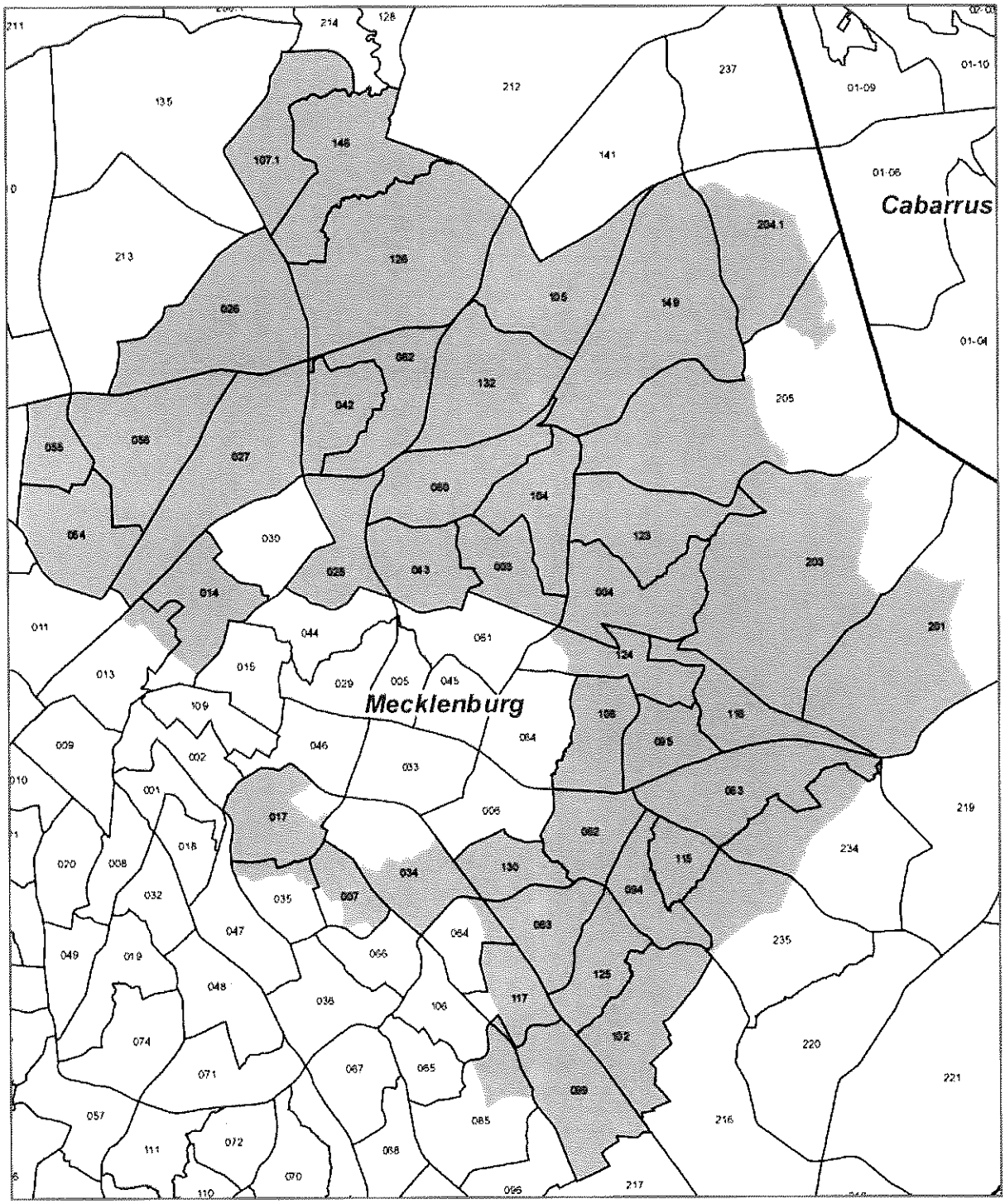
187. Defendants failed to narrowly tailor the District to meet any compelling interest they may have had in complying with Section 2 of the Voting Rights Act, including any compelling interest they may have had in complying with Section 2 of the Voting Rights Act. They artificially inflated the Black voting age population in the District to a level greater than necessary to comply with Section 2.

188. In drawing the district, Defendants knew that District 38 as drawn in the 2003 Senate Redistricting Plan had a substantially lower Black voting age population than in their plan—46.97% in the prior plan; 52.51% in Defendants' 2011 plan. They also knew that in all four elections held in District 38 under the 2003 plan, the Black candidate was either not opposed or soundly defeated a White candidate. At the 2004 and 2006 general elections, the Black candidate (Charlie Dannelly) was unopposed. At the 2008 and 2010 general elections, Senator Dannelly defeated his White opponent by wide margins—73.33% to 23.87% in 2008, and 68.67% to 31.33% in 2010.

Senate District 40

189. District 40 in Rucho Senate 2 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in part of Mecklenburg County.

190. A true and accurate copy of the Defendants' map depicting Senate District 40 is shown below.


Cabarrus
Mecklenburg
211
214
128
212
237
01-09
01-10
135
107.1
146
141
01-06
213
126
204.1
105
149
026
01-04
082
132
042
205
055
056
027
060
164
054
030
123
203
025
043
003
004
014
201
011
044
051
134
013
016
029
005
045
109
168
115
009
046
064
033
002
010
001
083
017
006
219
082
020
008
018
234
034
130
115
032
035
007
084
047
083
235
049
019
064
066
125
048
038
106
117
074
152
220
071
067
065
099
221
057
085
216
111
072
068
070
110
096
217

191. Pieces of precincts are a major component of District 40. In constructing District 40, Defendants used pieces of 16 precincts. Defendants also used a piece of Mint Hill in building District 40. There is no lawful or rational basis for dividing these precincts and towns.

192. Race was the dominant factor used by Defendants in drawing District 40. Almost 52% (51.84%) of the voting age population encompassed within the boundary of the District is Black.

193. District 40 constitutes an unconstitutional racial classification unless it was narrowly tailored by Defendants to achieve some compelling interest.

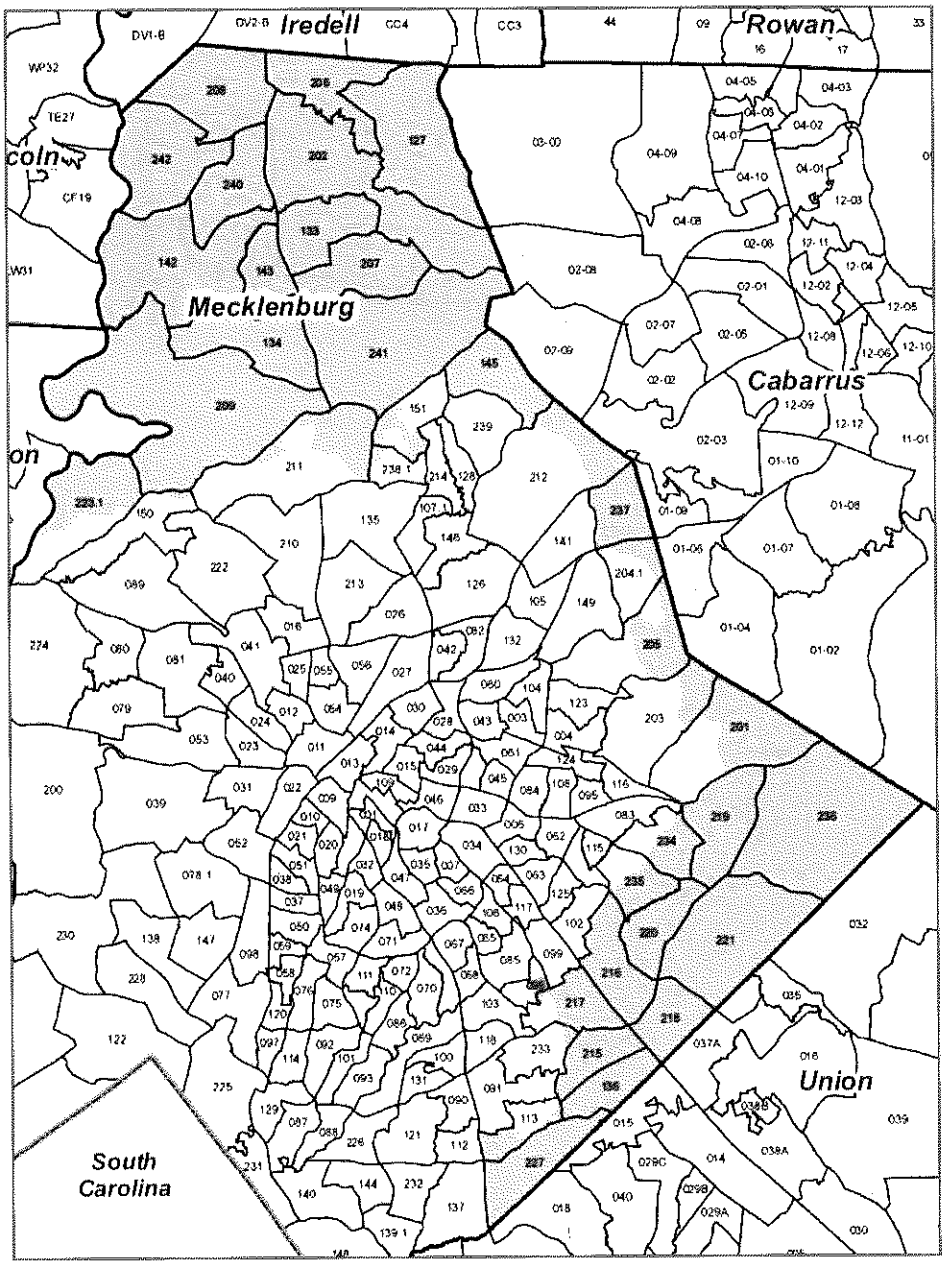
194. Defendants failed to narrowly tailor District 40 to meet any compelling interest they may have had, including any interest they may have had in complying with Section 2 of the Voting Rights Act. They artificially inflated the Black voting age population in the District to a level greater than required to comply with Section 2.

195. In drawing District 40, Defendants knew that District 40 as drawn in the 2003 Senate Redistricting Plan had a substantially lower Black voting age population than in their plan—35.43% in the 2003 Plan; 51.84% in Defendants 2011 Plan. Defendants also knew that in the four elections held under the 2003 Plan, a Black candidate had soundly defeated his opponent. At the 2004 general election, the Black candidate (Malcom Graham) defeated his opponent by 57.88% to 42.11%. At the 2006 general election, Senator Graham was reelected by 61.47% to 38.52%; at the 2008 general election, he was re-elected by 66.96% to 33.04%; and at the 2010 general election, he was re-elected by 58.16% to 41.84%.

Senate District 41

196. District 41 in Rucho Senate 2 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in part of Mecklenburg County.

197. A true and accurate copy of the Defendants' map depicting Senate District 41 is shown below.



198. Pieces of precincts are a major component of District 41. In constructing District 41, Defendants used pieces of 16 precincts. In addition District 41 unnecessarily divides

Matthews and Mint Hill. There is no lawful or rational basis for dividing these precincts and towns.

199. One measure of District 41's non-compact and irrational shape is its length. District 41 is 141.39 miles in length, which is approximately the distance from Charlotte to Augusta, Georgia.

200. Defendants did not draw District 41 to comply with the Voting Rights Act. Approximately 80% of the voting age population in District 41 is White.

The House Redistricting Plan

201. 2011 S.L. 404 was enacted on July 28, 2011, and precleared by the United States Department of Justice on November 1, 2011. 2011 S.L. 416 was enacted on November 7, 2011, and precleared by the United States Department of Justice on December 8, 2011.

202. In recognition of the pivotal role Defendants Lewis, Dollar, and Dockham played in its enactment, this legislation was labeled "Lewis-Dollar-Dockham 4."

203. No Black Representative or Senator voted in favor of this legislation. Consistent with Defendants' strategy, they assigned approximately one-half of the State's Black citizens to 25 House districts without regard for traditional redistricting standards.

204. Defendants constructed many districts in Lewis-Dollar-Dockham 4 by stringing together bits and pieces of precincts. Their plan divides 395 precincts. More than 1,800,000 citizens reside within these divided precincts. Fifty percent (50%) or more of the precincts are split in Craven County (23 of 27), Greene County (5 of 10), Lee County (5 of 10), Nash County (15 of 27) and Scotland County (5 of 10). In Mecklenburg County, 49 precincts are divided; in Wake County, 43 precincts are divided; in Guilford County, 37 precincts are divided; and in Cumberland County, 27 precincts are divided.

205. Never in the history of the State has a House redistricting plan divided so many precincts. Two times more precincts are split by the 2011 House plan than by the House plans used for the 2002-2010 elections.

206. There is no lawful or rational basis for the division of those precincts. Fully lawful and rational plans that would have divided far fewer precincts than Lewis Dollar Dockham 4 were introduced in the General Assembly, but rejected by Defendants. Representative Martin introduced a plan that would have divided only 129 precincts.

207. In drawing districts in Franklin County, Defendants divided seven (7) precincts, but they rejected a plan by Representatives Martin that would have kept Franklin County whole and divided no precincts. In drawing districts in Richmond County, Defendants divided 10 precincts, but they rejected a plan introduced by Representative Martin that would have kept Richmond County whole and divided no precincts. In drawing districts in Nash County, Defendants divided 15 precincts, but they rejected a plan introduced by Representative Martin that did not divide any precincts in Nash County. In drawing districts in Buncombe County, Defendants divided 11 precincts, but they rejected a plan introduced by Representative Martin that would have divided only one (1) precinct in Buncombe County. In drawing districts in Mecklenburg County, Defendants divided 45 precincts, but they rejected a plan introduced by Representative Martin that would have divided only five (5) precincts in Mecklenburg County. In drawing districts in Wake County, Defendants divided 41 precincts, but they rejected a plan that would have divided only three (3) precincts in Wake County.

208. Plaintiffs, the citizens residing in these divided precincts and citizens across the State, have been harmed by Defendants' actions in dividing those precincts. Divided precincts confuse voters and thereby abridge their right to vote; increase the costs of elections for counties

and taxpayers; increase the costs of campaigning for candidates; and create uncertainty for elected office holders regarding the identity of their constituents.

209. Equal population obligations require that larger cities be divided into two or more districts. Lewis-Dollar-Dockham 4, however, divides 111 towns that are each located within a single county. Six of these towns have populations under 1000. These are Brookford (382); Castalia (268); Dortches (935); Kenansville (855); Sedalia (623); and Teachey (376). Among the towns divided among three districts in Lewis-Dollar-Dockham 4 are Apex, Holly Springs, Locust, Morrisville, and Mt. Olive.

210. There is no lawful or rational basis for dividing those towns and cities. Fully lawful and rational plans that would have divided fewer towns were introduced in the general Assembly but rejected by Defendants. Representative Martin introduced a plan that would have divided only 84 towns located in a single county, instead of 111.

211. Plaintiffs, citizens residing within these divided towns and citizens across the State, have been harmed by Defendants' actions.

212. Lewis-Dollar-Dockham 4 divides 49 counties: Alamance, Beaufort, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Catawba, Cleveland, Craven, Cumberland, Davidson, Duplin, Durham, Forsyth, Franklin, Gaston, Granville, Greene, Guilford, Harnett, Haywood, Henderson, Hoke, Iredell, Johnston, Lee, Lenoir, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pitt, Randolph, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Union, Wake, Wayne, Wilkes, and Wilson.

213. There is no lawful or rational basis for dividing this many counties. Fully lawful and rational plans that would have divided fewer counties were introduced in the General Assembly and rejected by Defendants. Representatives Martin introduced a plan that would

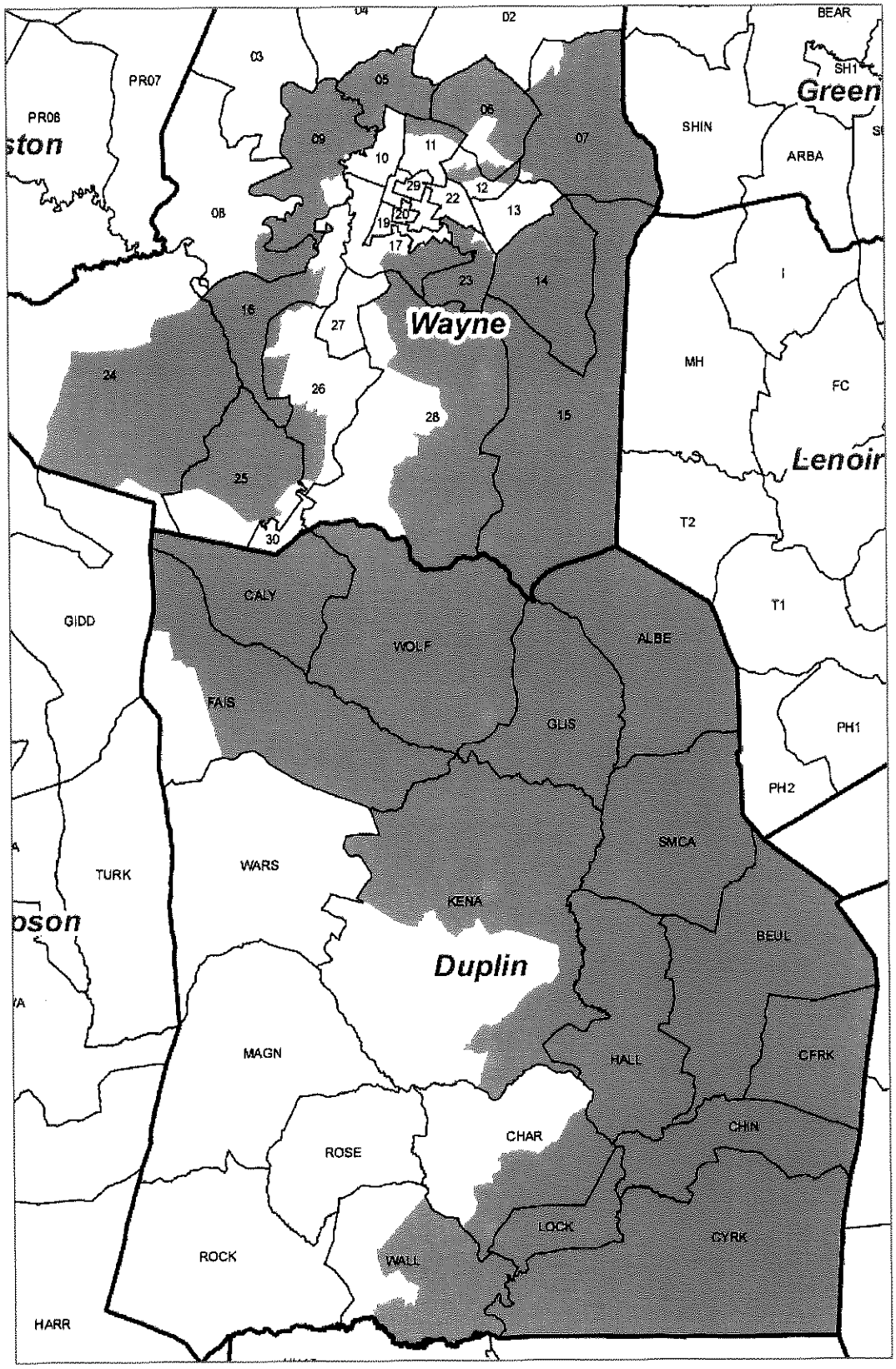
have divided only 44 counties instead of 49 counties: Alamance, Brunswick, Buncombe, Burke, Cabarrus, Catawba, Cleveland, Craven, Cumberland, Davidson, Davie, Durham, Edgecombe, Forsyth, Gaston, Granville, Guilford, Harnett, Haywood, Henderson, Hoke, Iredell, Johnston, Lenoir, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Onslow, Orange, Pender, Pitt, Randolph, Robeson, Rockingham, Rowan, Sampson, Scotland, Union, Wake, Wayne, Wilkes, and Wilson.

214. Plaintiffs, citizens residing in these 49 divided counties and citizens across the State, have been harmed by Defendants' actions in dividing these counties.

House District 4

215. House District 4 in Lewis-Dollar-Dockham 4 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It unnecessarily divides Wayne and Duplin Counties.

216. A true and accurate copy of the Defendants' map depicting House District 4 is shown below.


BEAR
SH1
Green
SHIN
ARBA
PR07
PR06
03
05
06
07
08
09
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11
12
13
14
15
16
17
18
19
20
22
23
24
25
26
27
28
29
30
Wayne
MH
FC
Lenoir
T2
T1
CALY
GIDD
WOLF
ALBE
FAIS
GLIS
PH1
PH2
SWCA
TURK
WARS
KENA
BEUL
Duplin
MAGN
HALE
CFRK
CHIN
CHAR
ROSE
LOCK
CYRK
ROCK
WALL
HARR

217. The Wayne County portion of District 4 is largely comprised of pieces of precincts. The part of District 4 within Wayne County is comprised of four (4) whole precincts and 13 split precincts. The part of District 4 within Duplin County contains four (4) more split precincts. There is no lawful or rational basis for dividing these precincts.

218. District 4 splits six (6) towns and small cities: Goldsboro, Kenansville, Mount Olive, Teachey, Wallace, and Warsaw. There is no lawful or rational basis for dividing these towns.

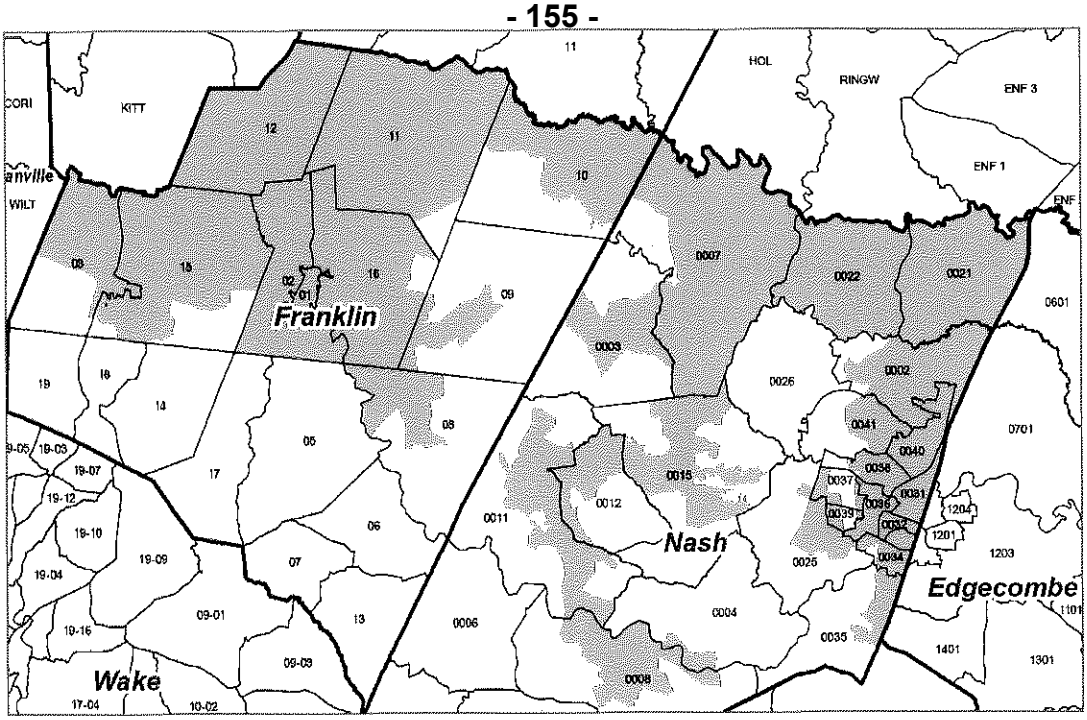
219. One measure of the non-compact and irrational shape of District 4 is its length. Based on calculations performed by Defendants, the length of the perimeter of the District is 303.41 miles, or approximately the distance from Goldsboro to Baltimore.

220. Defendants did not design District 4 to comply with the Voting Rights Act. Approximately 74% of the voting age population in the District is White.

House District 7

221. House District 7 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It unnecessarily divides Franklin and Nash Counties.

222. A true and accurate copy of the Defendants' map depicting House District 7 is shown below.



223. District 7 is largely comprised of pieces of precincts. The part of District 7 in Nash County is comprised of 15 pieces of precincts and only five (5) whole precincts. The part of District 7 in Franklin County is comprised of seven (7) pieces of precincts and only three (3) whole precincts. Of the nine (9) towns in District 7, Defendants split seven (7). The split towns are Castalia, Dortches, Nashville, Rocky Mount, Sharpsburg, Spring Hope, and Whitakers. There is no lawful or rational basis for dividing these precincts, and towns.

224. One measure of the non-compact and irrational shape of District 7 is the length of its perimeter. Based on Defendants' calculations, the length of the perimeter of District 7 is 366.43 miles, or approximately the distance from Rocky Mount to Clemson, South Carolina.

225. Race was the dominant factor used by Defendants in constructing District 7. Approximately 51% (50.67%) of the voting age population in District 7 is Black.

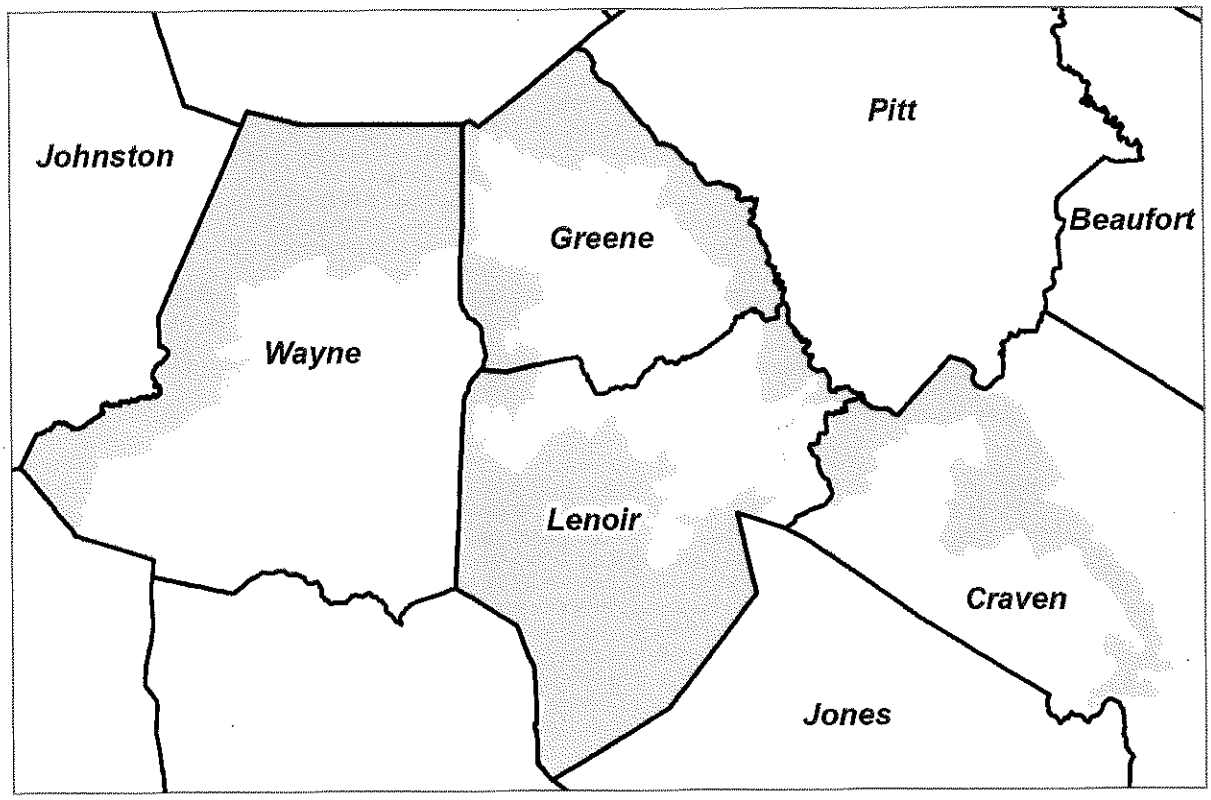
226. District 7 constitutes an unconstitutional racial classification unless narrowly tailored to achieve some compelling interest.

227. Defendants failed to narrowly tailor District 7 to serve any compelling interest they may have had, including any compelling interest they may have had in complying with Section 5 or Section 2 of the Voting Rights Act.

House District 10

228. District 10 in Lewis-Dollar-Dockham 4 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It unnecessarily divides Wayne, Greene, Lenoir, and Craven Counties.

229. A true and accurate copy of the Defendants' map depicting House District 10 is shown below.



230. The portion of District 10 in Greene and Craven counties is largely comprised of pieces of precincts. The part of District 10 in Greene County contains five (5) split precincts. The part of District 10 in Craven County contains 14 split precincts. The part of District 10 in

Wayne County contains three (3) more split precincts and the part of District 10 in Lenoir County contains seven (7) more split precincts. District 10 also splits five (5) towns: Kinston, Grifton, New Bern, River Bend, and Trent Woods. There is no lawful or rational basis for dividing these precincts and towns.

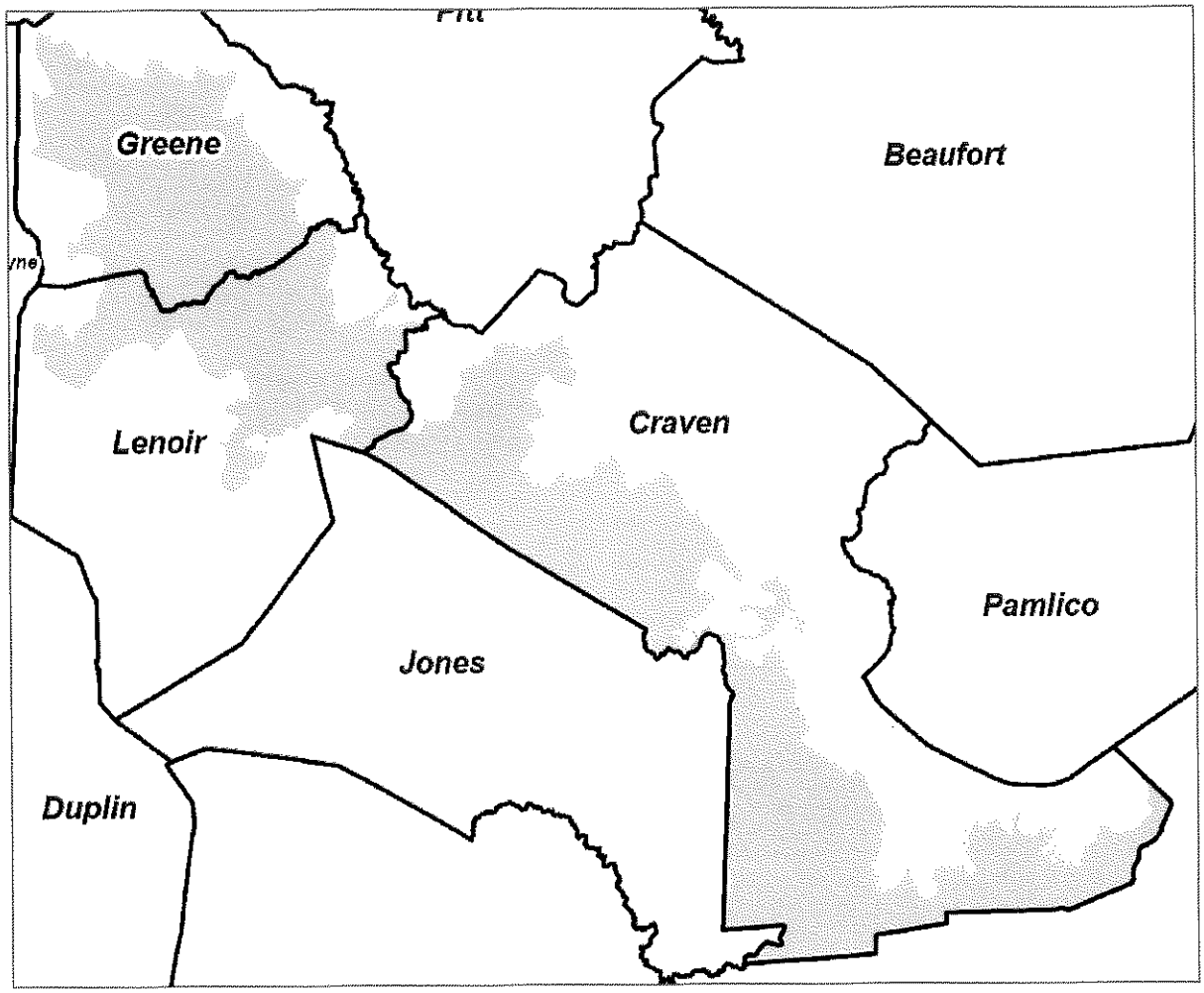
231. One measure of the non-compact and irrational shape of District 10 is the length of its perimeter. Based on calculations performed by Defendants, the length of the perimeter of the District is 471.47 miles, or approximately the distance from New Bern to Philadelphia, Pennsylvania.

232. Defendants did not design District 4 to comply with federal law. Approximately 80% of the voting age population in the District is White.

House District 12

233. House District 12 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It unnecessarily divides Greene, Lenoir, and Craven Counties.

234. A true and accurate copy of the Defendants' map depicting House District 12 is shown below.



235. District 12 is predominantly constructed from pieces of precincts. The part of District 12 in Greene County includes five (5) split precincts; the part of District 12 in Lenoir County includes seven (7) split precincts; and the part of District 12 in Craven County includes 22 split precincts. Half of the towns in District 12 (Havelock, Kinston, New Bern, River Bend, and Trent Woods) are also split between District 12 and some other district. There is no lawful or rational basis for dividing these precincts and towns.

236. One measure of the non-compact and irrational shape of the District is the length of its perimeter. Based on Defendants' calculations, the length of the perimeter of District 12 is 400.97 miles, or approximately the distance from New Bern to Cullowhee.

237. Race was the predominant factor used by Defendants in constructing District 12. Approximately 51% (50.60%) of the voting age population of the District is Black.

238. District 12 constitutes an unconstitutional racial classification unless narrowly tailored to achieve a compelling interest.

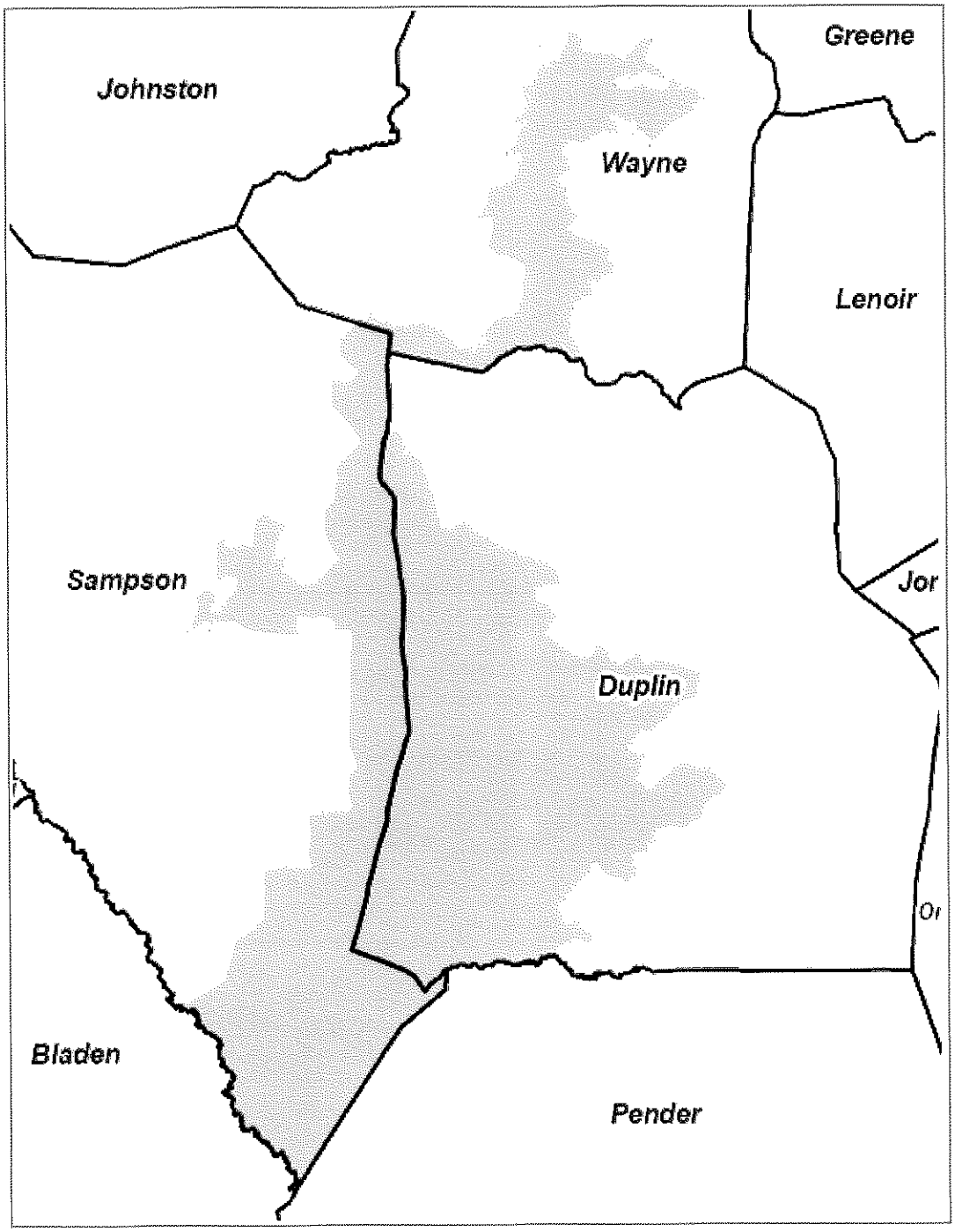
239. In constructing District 12, Defendants failed to narrowly tailor District 12 to achieve any compelling interest they may have had, including any compelling interest they may have had in complying with Section 5 or Section 2 of the Voting Rights Act. They artificially inflated the Black voting age population in the district to a level greater than required to comply with Section 2 and Section 5 of the Voting Rights Act

240. In drawing District 12, Defendants knew that the Black voting age population in the prior plan was substantially lower than in their plan—46.45% in the prior plan; 50.60% in the Defendants' 2011 plan. Defendants also knew that at the four general elections under the prior plan the Black candidate had defeated a White candidate. The Black candidate, Representative Wainwright, prevailed at the 2004, 2006, 2008, and 2010 general elections, respectively, by 64.49% to 35.50%, 66.27% to 33.72%, 69.13% to 30.86% and 60.20% to 39.79%

House District 21

241. District 21 in Lewis-Dollar-Dockham 4 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It unnecessarily divides Sampson, Duplin, and Wayne Counties.

242. A true and accurate copy of the Defendants' map depicting House District 21 is shown below.



243. Pieces of precincts and towns are the principal components of District 21. The part of Wayne County in District 21 includes 12 split precincts; the part of Duplin County in District 21 includes four (4) split precincts; and the part of Sampson County in District 21

includes nine (9) split precincts. Of the 14 towns included in District, seven (7) are split between Distract 21 and some other district. The split towns are Clinton, Goldsboro, Kenansville, Mt. Olive, Teachey, Wallace, and Warsaw. There is no lawful or rational basis for dividing these precincts, towns and cities.

244. One measure of the non-compact and irrational shape of District 21 is the length of its perimeter. Based on Defendants' calculation, the length of the perimeter of District 21 is 301.16 miles, or approximately the distance from Goldsboro to Asheville.

245. Race was the dominant factor used by Defendants in drawing District 21. Almost 52% (51.90%) of the voting age population in the district is African American.

246. District 21 constitutes an unconditional racial classification unless it was narrowly drawn by Defendants to meet some compelling interest.

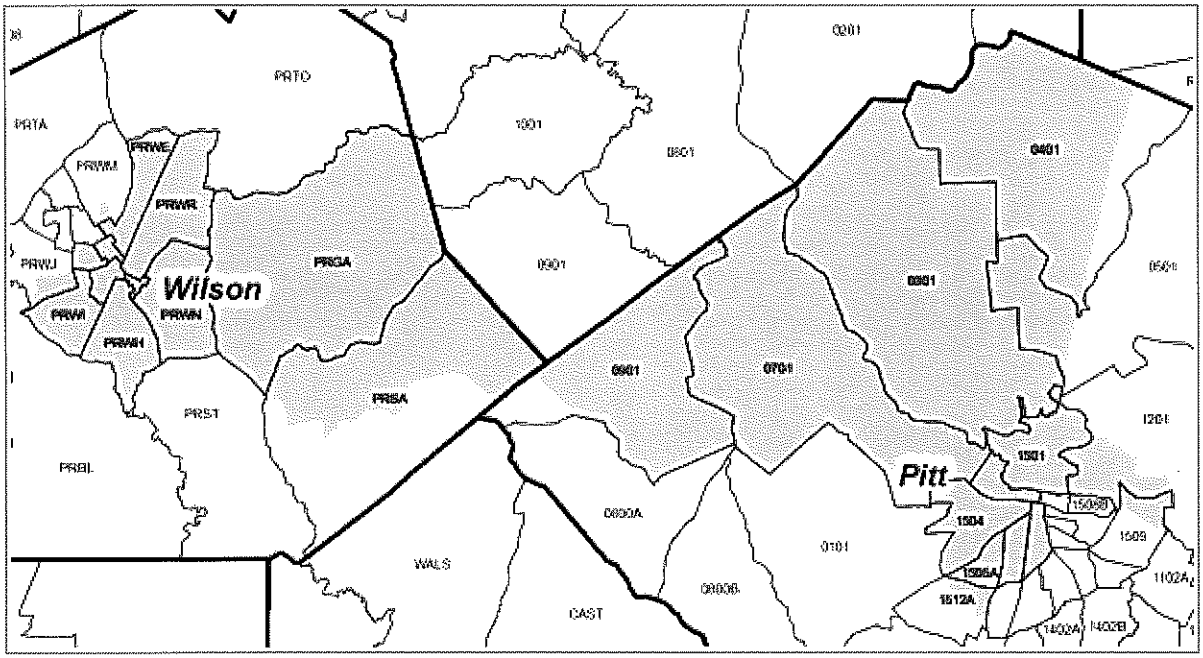
247. Defendants failed to narrowly tailor District 21 to meet any compelling interest they may have had, including any compelling interest they may have had in complying with Section 2 of the Voting Rights Act.

248. In drawing District 21, Defendants knew that District 21 as drawn in the previous House Redistricting Plan had a substantially lower Black voting age population than in their plan—46.25% in the prior plan; 51.90% in Defendants' 2011 plan. Defendants also knew that in the four elections held under the previous plan, the Black candidate had no opponent or soundly defeated his opponent. At the 2004, 2006, and 2008 elections, the Black candidate (Larry Bell) was unopposed. At the 2010 general election Representative Bell defeated a White opponent by 65.59% to 34.40%.

House District 24

249. House District 24 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in parts of Wilson and Pitt Counties.

250. A true and accurate copy of the Defendants' map depicting House District 24 is shown below.



251. In constructing District 24, Defendants divided 12 precincts, eight (8) in Pitt and four (4) in Wilson. There was no lawful or rational basis for these actions.

252. Race was the predominant factor used by Defendants in constructing District 24. Approximately 57% (57.33%) of the voting age population of the District is Black.

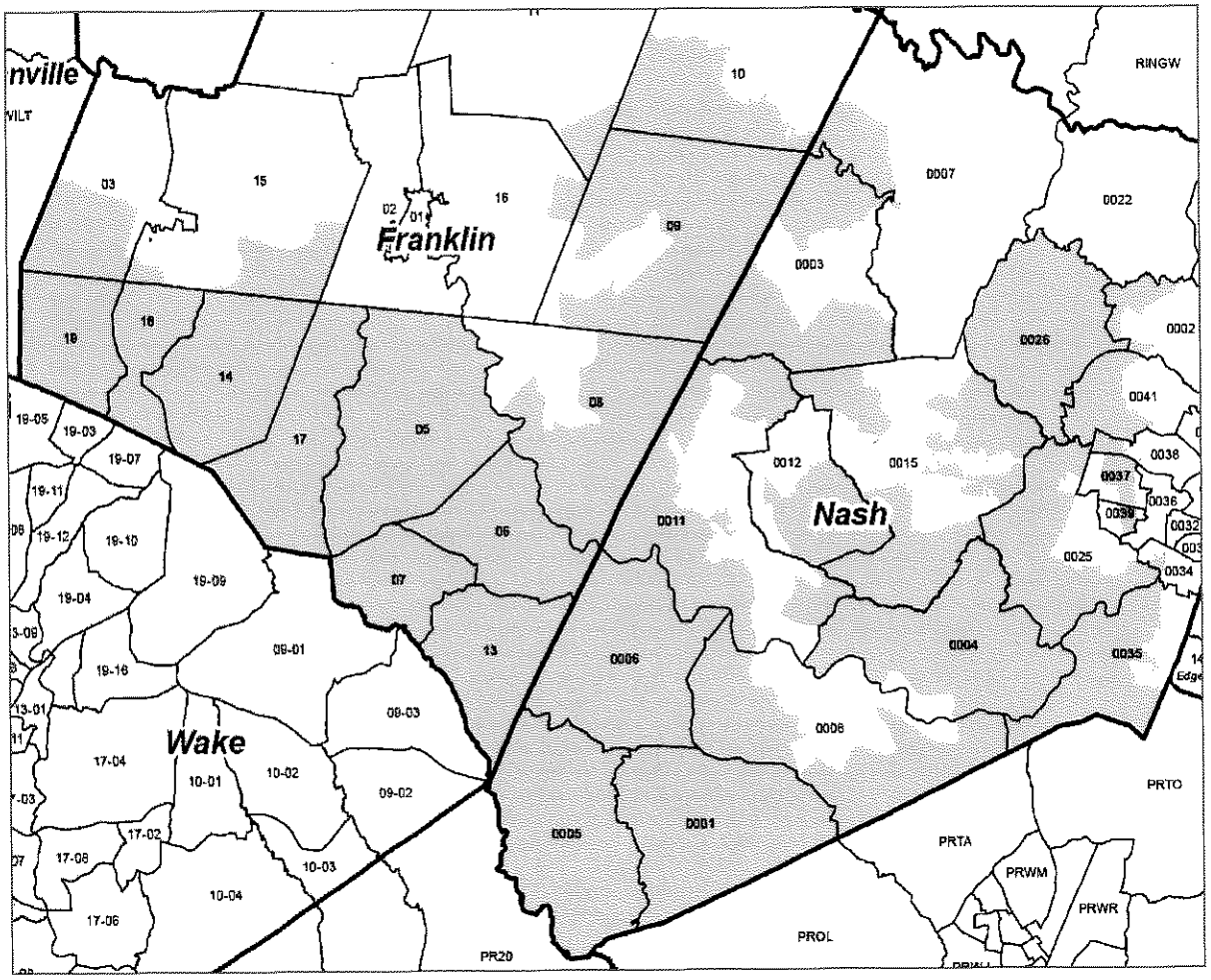
253. District 24 is an unconstitutional racial classification unless narrowly tailored to achieve some compelling interest.

254. In constructing District 24, Defendants failed to narrowly tailor District 24 to achieve any compelling interest they may have had, including any interest they may have had in complying with Section 2 or Section 5 of the Voting Rights Act.

House District 25

255. District 25 in Lewis-Dollar-Dockham is a non-compact and irrationally shaped district drawn without regard for communities of interest. It unnecessarily divides Franklin and Nash Counties.

256. A true and accurate copy of the Defendants' map depicting House District 25 is shown below.



257. The part of District 25 in Nash County is largely comprised of pieces of precincts. Of the 19 Nash County precincts in District 25, 15 are split precincts and four (4) are whole precincts. In the Franklin County part of District 25, seven (7) precincts are split precincts and

eight (8) are whole precincts. District 25 also divides six (6) towns: Bunn, Nashville, Rocky Mount, Sharpsburg, Spring Hope, and Wake Forest. There is no lawful or rational basis for dividing these precincts and towns.

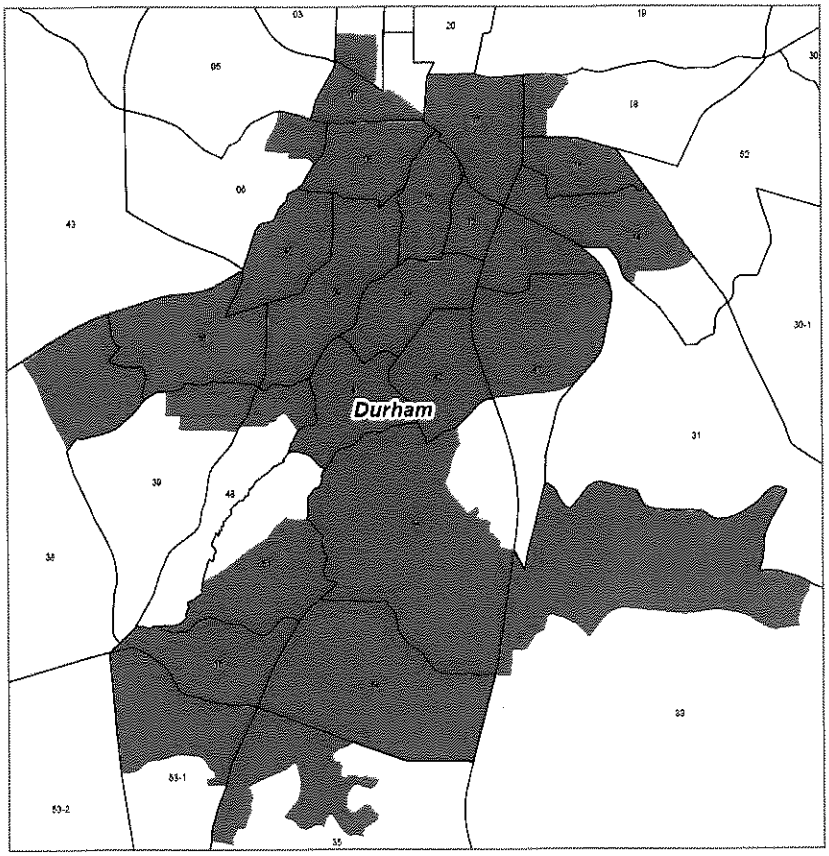
258. One measure of the non-compact and irrational shape of District 25 is the length of its perimeter. Based on calculations performed by Defendants, the length of the perimeter of the District is 332.05 miles, or approximately the distance from Rocky Mount to Savannah, Georgia.

259. Defendants did not draw District 25 to comply with federal law. Approximately 79% of the voting age population in the District is White.

House District 29

260. District 29 in Lewis-Dollar-Dockham 4 is a non-compact district and irrationally shaped district drawn without regard for communities of interest. It is located in part of Durham County.

261. A true and accurate copy of the Defendants' map depicting House District 29 is shown below.



262. Pieces of precincts are a major component of District 29. Fourteen (14) of the 29 precincts Defendants included in District 29 are split precincts. There is no lawful or rational basis for using these split precincts to construct District 29 these precincts.

263. Race was the dominant factor used by Defendants in drawing District 29. Approximately 51% (51.34%) of the voting age population encompassed within the boundaries of District 29 is Black.

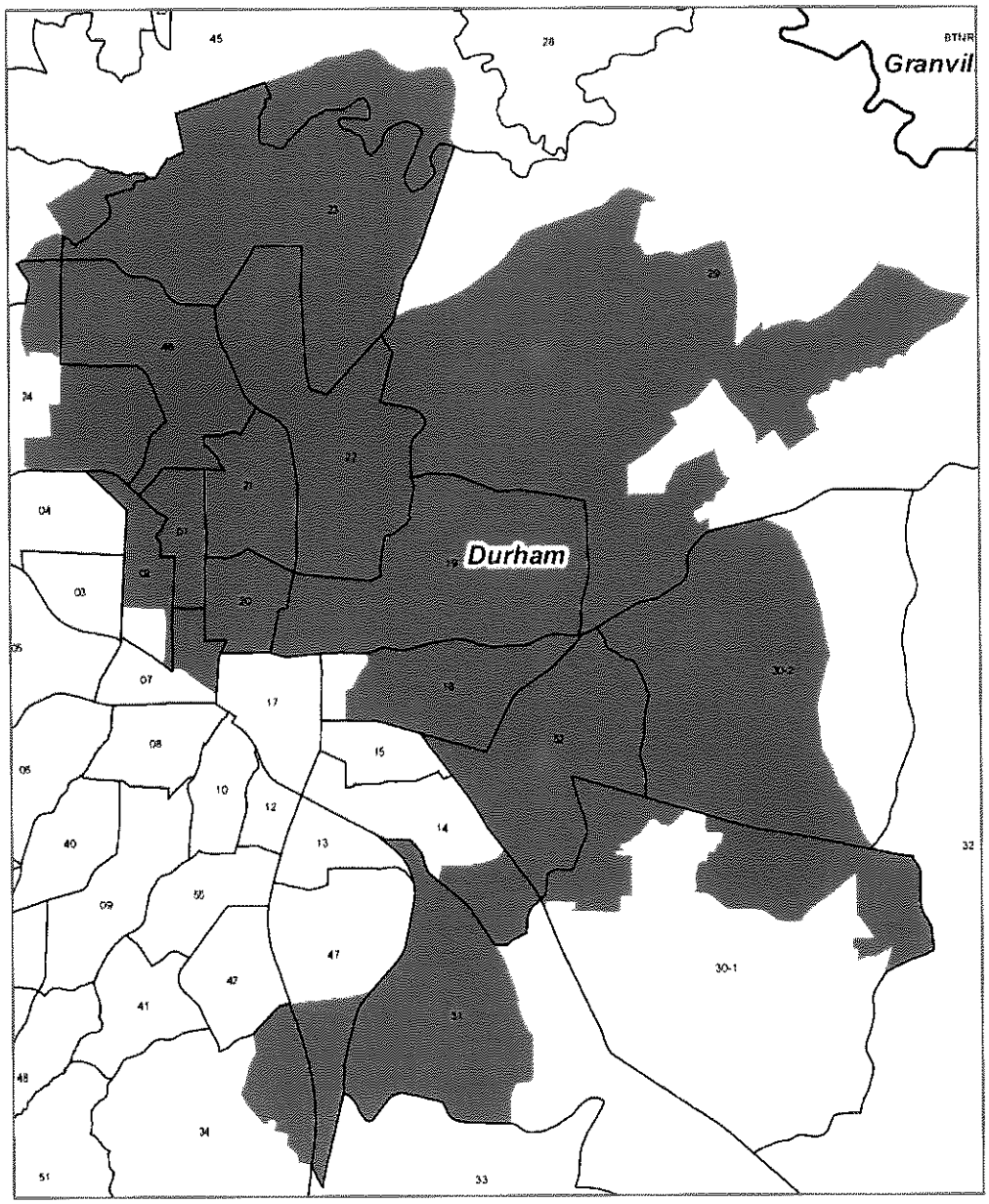
264. Defendants failed to narrowly tailor District 29 to meet any compelling interest they may have had, including any compelling interest they may have had in drawing the boundaries of the District to comply with Section 2 of the Voting Rights Act. Defendants artificially inflated the Black voting age population in the District to a level higher than required to comply with Section 2.

265. In drawing District 29, Defendants knew that District 29 was drawn by the General Assembly in the previous plan was significantly lower than in the their plan—39.99% in the prior plan; 51.34% in Defendants' 2011 plan. Defendants also knew that at all four elections under the prior plan the Black candidate did not have an opponent or had soundly defeated his opponent. Representative Larry Hall is Black. In 2004, 2006, and 2010, Representative Hall ran without opposition. In 2008, Representative Hall defeated his opponent 90.73% to 9.27%.

House District 31

266. District 31 in Lewis-Dollar-Dockham 4 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in part of Durham County.

267. A true and accurate copy of the Defendants' map depicting House District 31 is shown below.



268. Defendants used pieces of 13 precincts to build District 31. There is no lawful or rational basis for using these split precincts to build District 31.

269. Race was the dominant factor used by Defendants in drawing District 31. Approximately 52% (51.81%) of the voting age population encompassed within the boundaries of District 31 is Black.

270. District 31 constitutes an unconstitutional racial classification unless Defendants narrowly tailored it to meet some compelling interest.

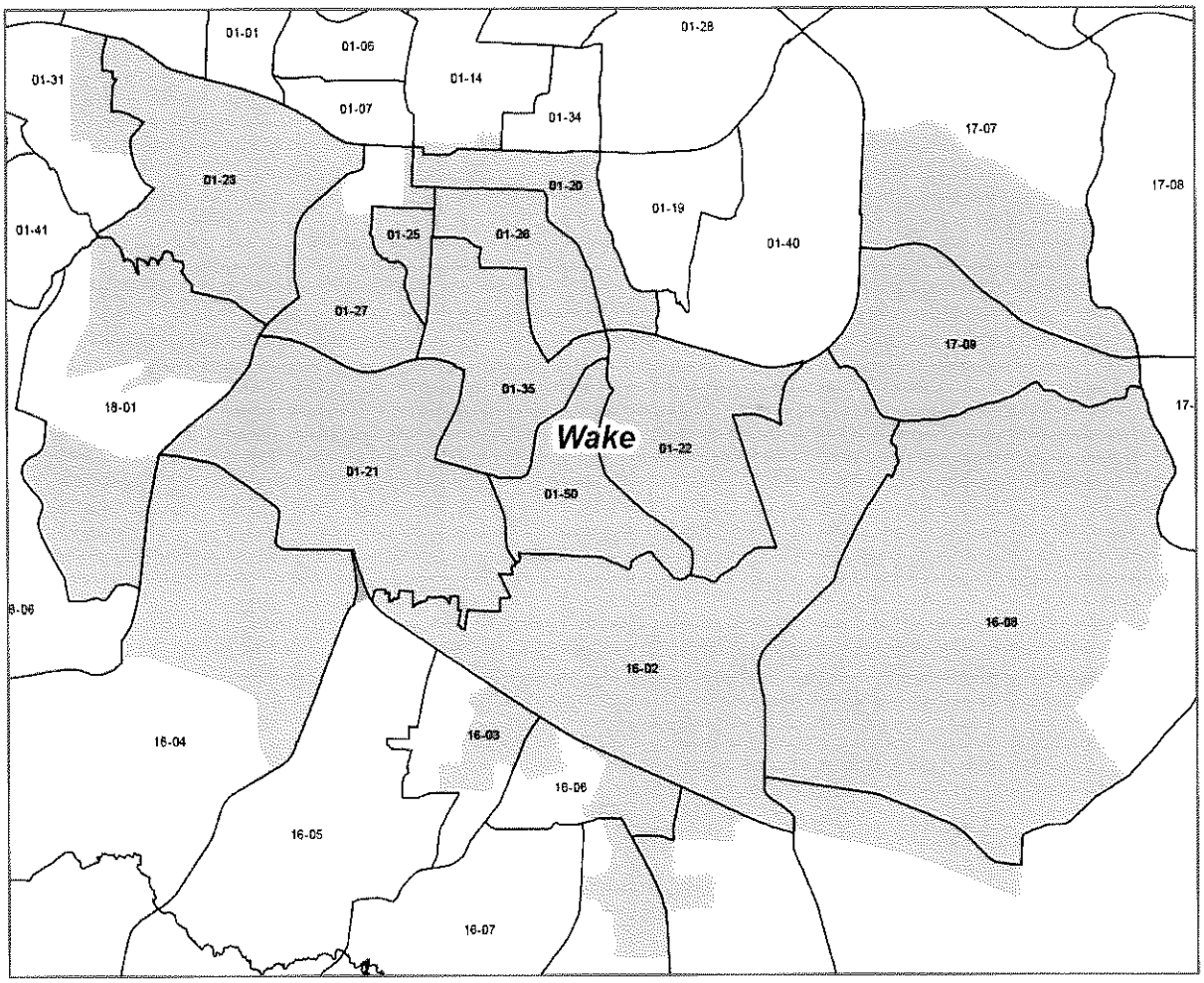
271. Defendants failed to narrowly tailor District 31 to meet any compelling interest they may have had, including any compelling interest they may have had in complying with Section 2 of the Voting Rights Act.

272. In drawing District 31, Defendants knew that District 31 as drawn in the prior plan had a substantially lower Black voting age population than in their plan—47.23% in the prior plan; 51.81% in Defendants' 2011 plan. Defendants also knew that in the four elections held under the prior plan, the Black candidate, Representative Michaux, had no opposition or soundly defeated his opponent. At the 2006 and 2008 general elections, Representative Michaux did not have an opponent. At the 2004 general election, Representative Michaux defeated his opponent by 85.97% to 14.02% and at the 2010 election, he defeated his opponent 75.5% to 24.5%.

House District 33

273. District 33 is a non-compact, irrationally shaped district drawn without regard for communities of interest. It is located in part of Wake County.

274. A true and accurate copy of the Defendants' map depicting House District 33 is shown below.



275. Pieces of precincts are a principal component of District 33. It contains pieces of 13 precincts. There is no lawful or rational basis for constructing this district with pieces of precincts.

276. Race was the dominant factor used by Defendants in drawing District 33. Approximately 52% (51.74%) of the voting age population encompassed within the boundaries of District 33 is Black.

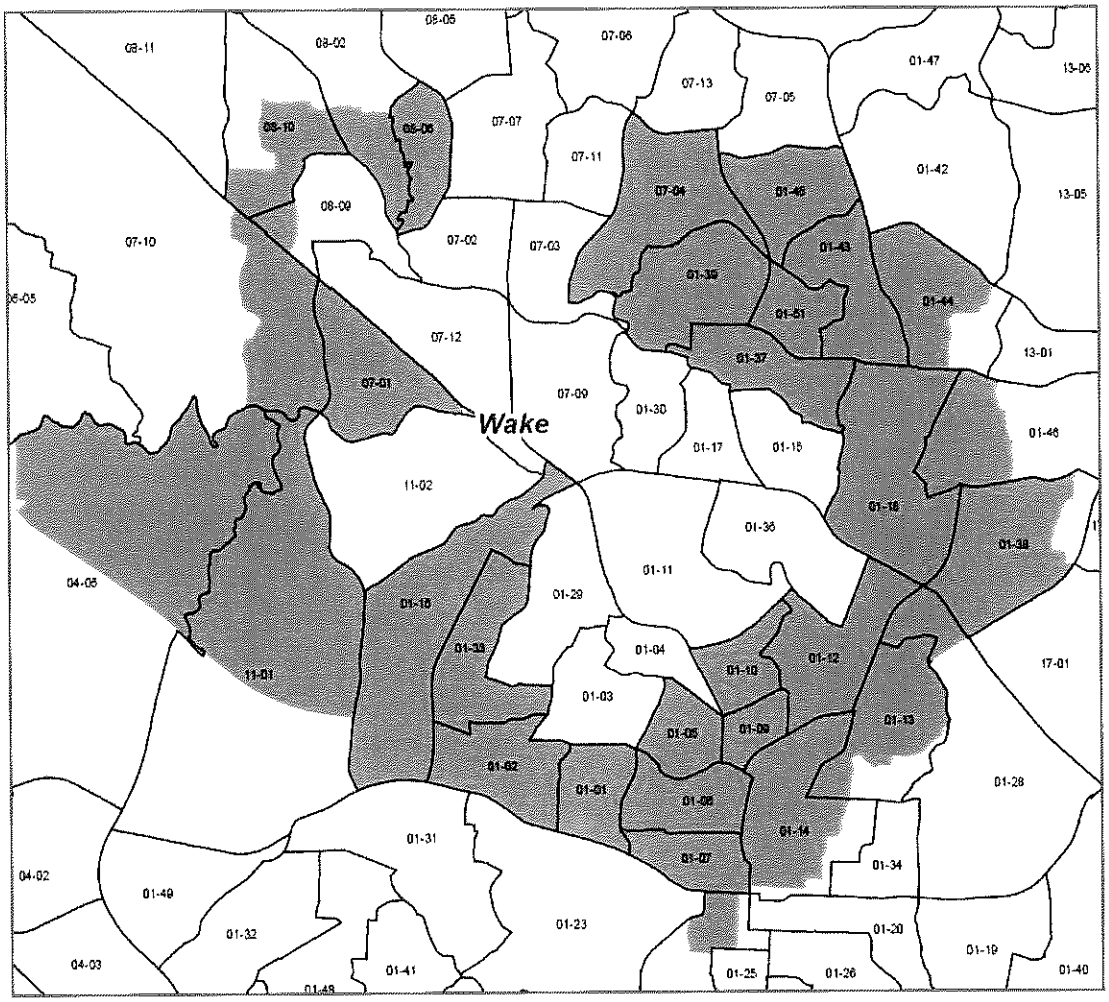
277. District 33 constitutes an unconstitutional racial classification unless Defendants narrowly tailored it to meet some compelling interest.

278. Defendants failed to narrowly tailor District 33 to meet any compelling interest they may have had, including any compelling interest they may have had in complying with Section 2 of the Voting Rights Act.

House District 34

279. District 34 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located partly in Wake County. It has been described in the media as resembling a "mutant crab."

280. A true and accurate copy of the Defendants' map depicting House District 34 is shown below.



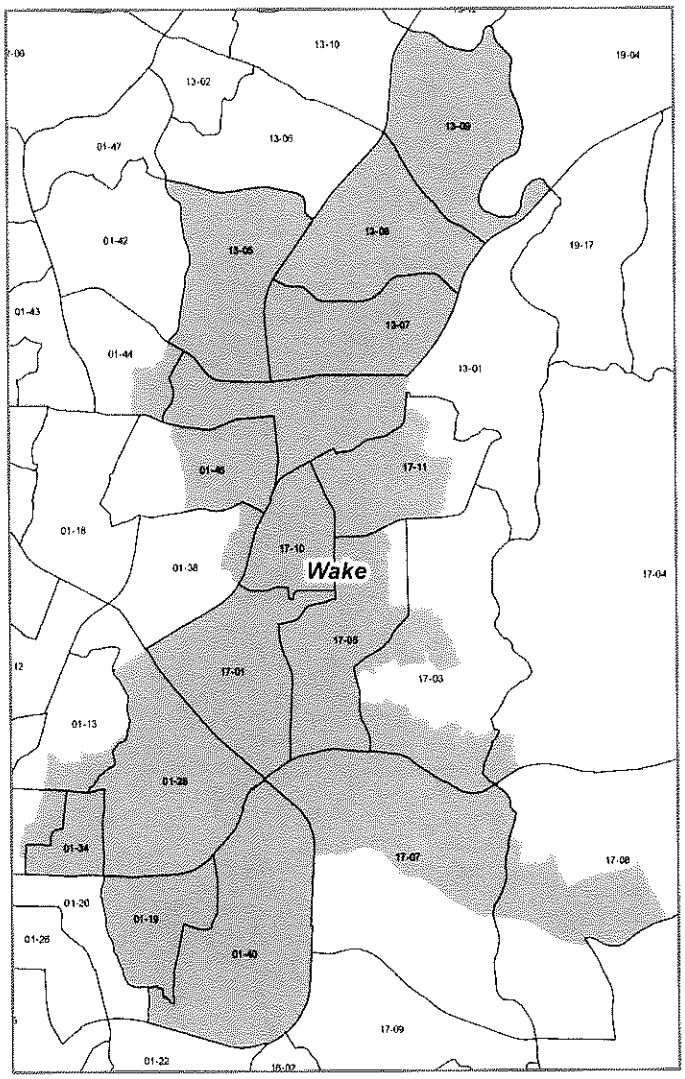
281. Almost half of the precincts in District 34 (14 of 30) are pieces of precincts. There is no lawful or rational basis for dividing these precincts.

282. Defendants did not draw District 34 to comply with federal law. Approximately 74% of the voting age population in the District is White.

House District 38

283. District 38 is a non-compact, illogically shaped district drawn without regard for communities of interest. It is located in part of Wake County.

284. A true and accurate copy of the Defendants' map depicting House District 38 is shown below.



285. Pieces of precincts are a principal component of District 38. It contains pieces of 13 precincts. There is no lawful or rational basis for constructing this district with pieces of precincts.

286. Race was the dominant factor used by Defendants in drawing District 38. Approximately 52% (51.37%) of the voting age population encompassed within the boundaries of District 38 is Black.

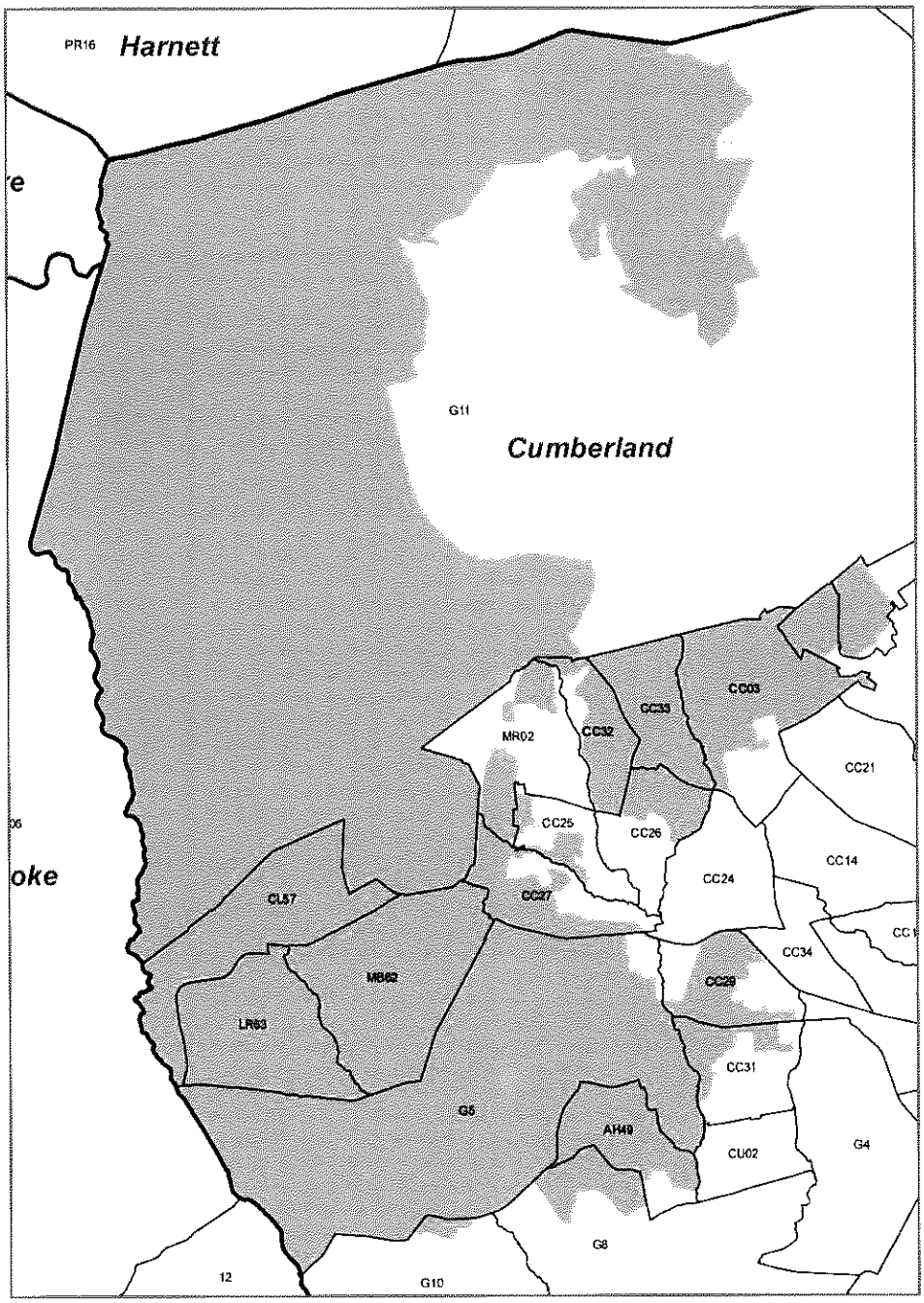
287. District 38 constitutes an unconstitutional racial classification unless Defendants narrowly tailored it to meet some compelling interest.

288. Defendants failed to narrowly tailor District 38 to meet any compelling interest they may have had, including any compelling interest they may have had in complying with Section 2 of the Voting Rights Act.

House District 42

289. District 42 is a non-compact, illogically shaped district drawn without regard for communities of interest. It is located in part of Cumberland County

290. A true and accurate copy of the Defendants' map depicting House District 42 is shown below.



291. Pieces of precincts are a principal component of District 42. It contains pieces of 15 precincts. There is no lawful or rational basis for constructing this district with pieces of precincts.

292. Race was the dominant factor used by Defendants in drawing District 42. Approximately 53% (52.56%) of the voting age population encompassed within the boundaries of District 38 is Black.

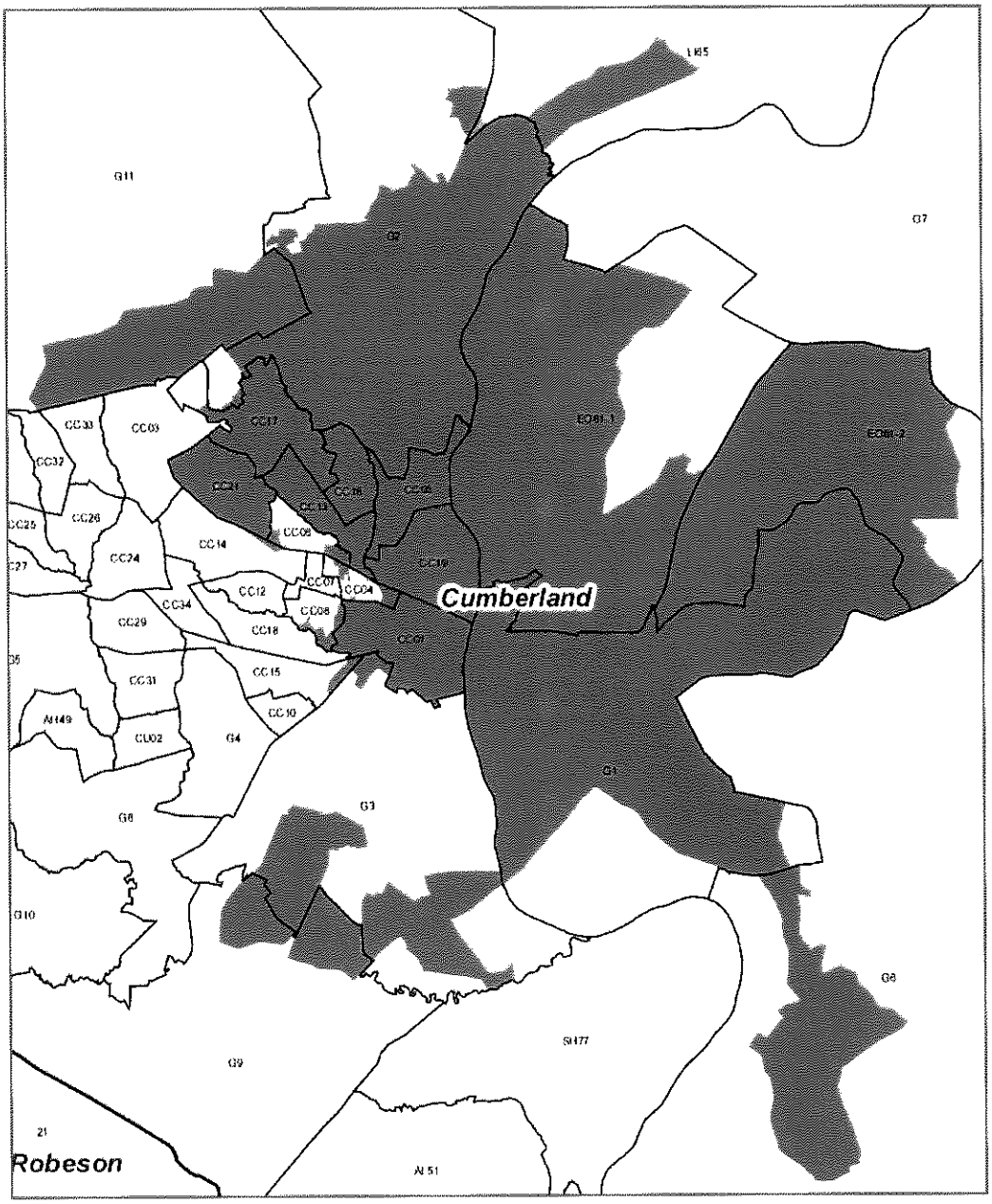
293. District 42 constitutes an unconstitutional racial classification unless Defendants narrowly tailored it to meet some compelling interest.

294. Defendants failed to narrowly tailor District 42 to serve any compelling interest they may have had in drawing District 42, including any interest they may have had in complying with Section 2 of the Voting Rights Act.

House District 43

295. District 43 is a non-compact, illogically shaped district drawn without regard for communities of interest. It is located in part of Cumberland County.

296. A true and accurate copy of the Defendants' map depicting House District 43 is shown below.



297. Pieces of precincts are the major component of District 43. It contains pieces of 15 precincts. There is no lawful or logical basis for constructing this district from pieces of precincts.

298. Race was the dominant factor used by Defendants in drawing District 43. Approximately 51% (51.45%) of the voting age population encompassed within the boundaries of District 38 is Black.

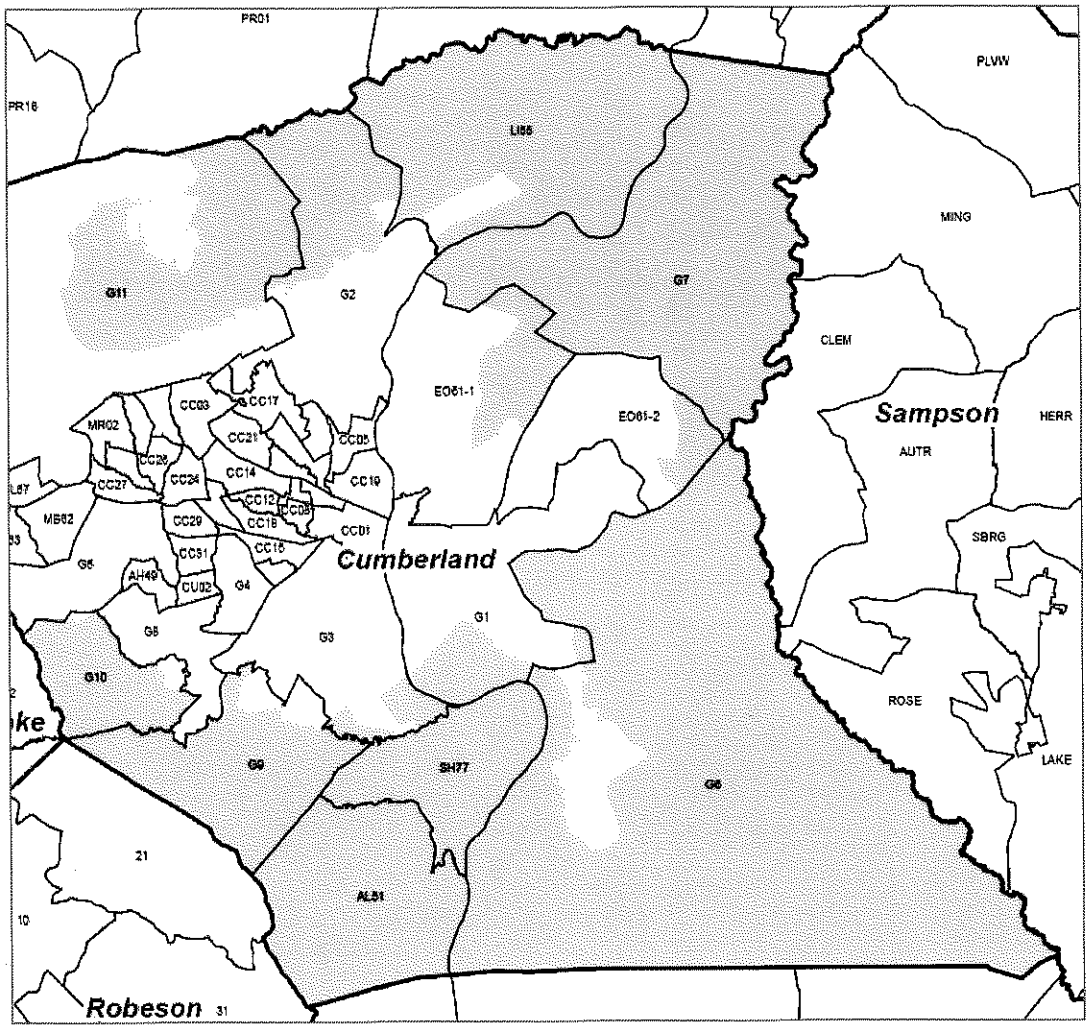
299. District 43 constitutes an unconstitutional racial classification unless Defendants narrowly tailored it to meet some compelling interest.

300. Defendants failed to narrowly tailor District 43 to meet any compelling interest they may have had, including any compelling interest they may have had in complying with Section 2 and Section 5 of the Voting Rights Act.

House District 45

301. District 45 in Lewis-Dollar-Dockham 4 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in part of Cumberland County.

302. A true and accurate copy of the Defendants' map depicting House District 45 is shown below.



303. District 45 is largely comprised of pieces of precincts. It contains 10 pieces of precincts. There is no lawful or rational basis for dividing these precincts.

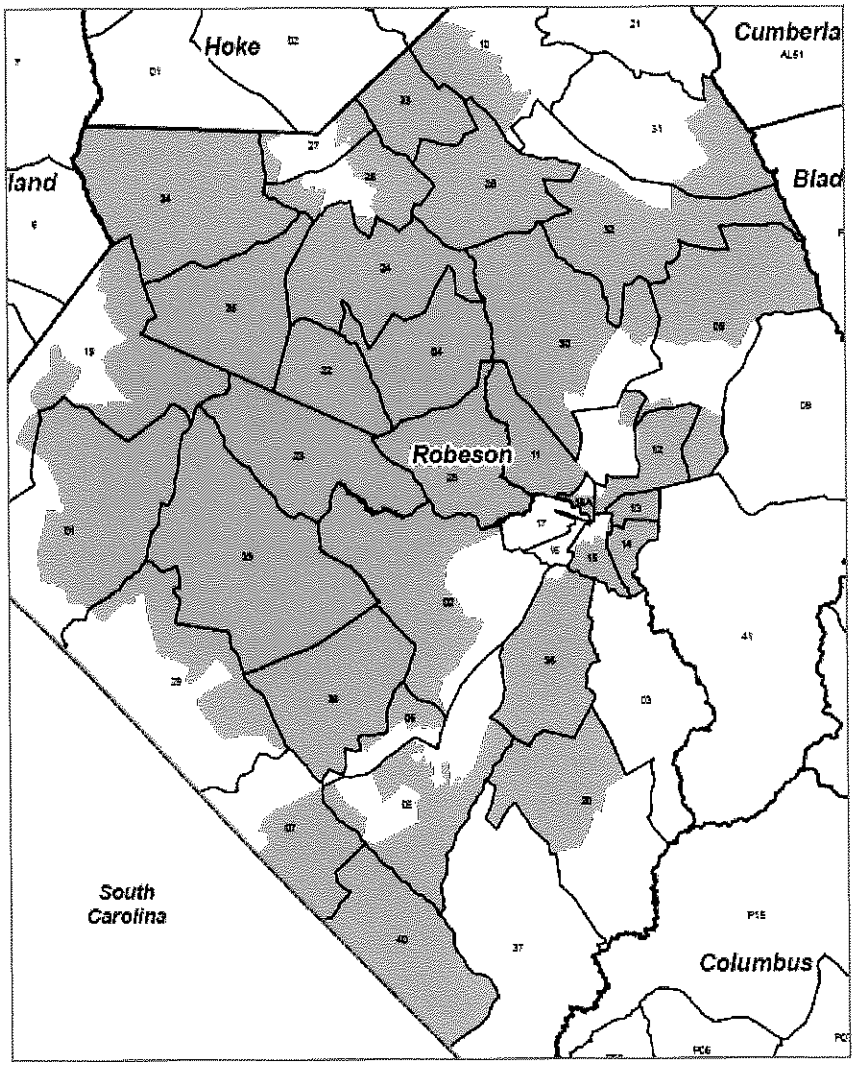
304. One measure of the non-compact and irrational shape of District 45 is the length of its perimeter. Based on calculations performed by Defendants, the length of the perimeter of the District is 242.86 miles, or approximately the distance from Fayetteville to Asheville.

305. Defendants did not draw District 45 to comply with federal law. Approximately 72% of the voting age population of District 45 is White.

House District 47

306. House District 47 is a non-compact, illogically shaped district drawn without regard for communities of interest. It is located in part of Robeson County.

307. A true and accurate copy of the Defendants' map depicting House District 47 is shown below.

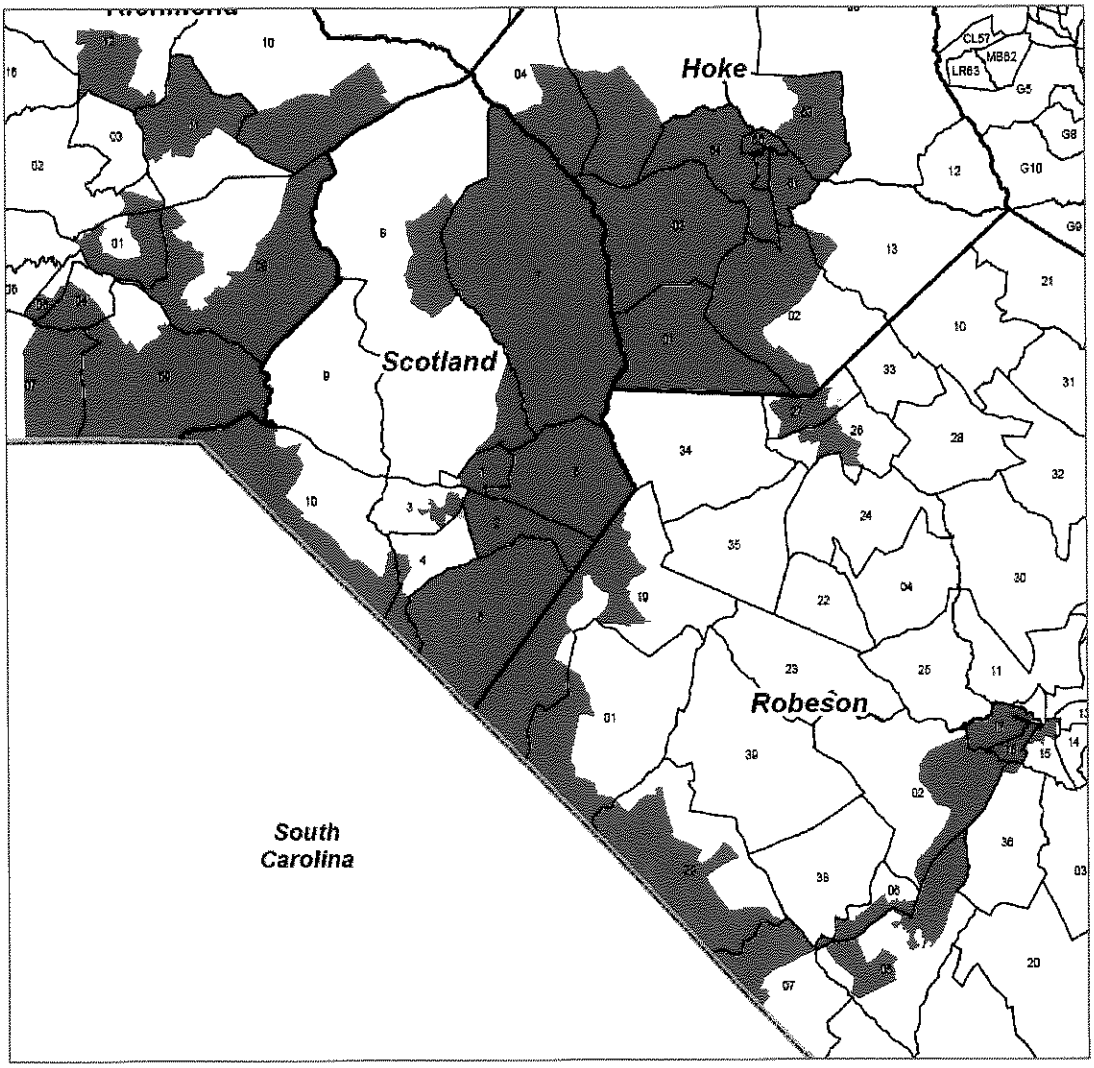


308. Pieces of precincts are the major component of District 47. Of the 33 precincts Defendants included in District 47, 20 are pieces of precincts. There is no lawful or logical basis for constructing this district out of pieces of precincts.

House District 48

309. District 48 is a non-compact, irrationally shaped district drawn without regard for communities of interest. It is located in parts of four counties: Richmond, Scotland, Hoke, and Robeson Counties.

310. A true and accurate copy of the Defendants' map depicting House District 48 is shown below.



311. Pieces of precincts are a major component of District 48. It includes nine (9) pieces of precincts from Robeson County; 10 pieces of precincts from Richmond County; and

five (5) pieces of precincts from both Scotland and Hoke counties. Parts of towns are also a major components of District 48. Of the 17 towns included in District 48, seven (7) are split between District 48 and some other district. The split towns are Ellerbe, Fairmont, Hamlet, Laurinburg, Lumberton, Red Springs, and Rockingham. There was no rational or lawful basis for these actions.

312. One measure of the non-compact and irrational shape of the district is the length of its perimeter. Based on Defendants' calculations, the length of the perimeter of the District is 407.84 miles, or approximately the distance from Lumberton to Charleston West Virginia.

313. Race was the predominant factor used by Defendants in constructing District 48. Almost 51% (51.27%) of the voting age population in the District is Black.

314. District 48 is an unconstitutional racial classification unless narrowly tailored to serve some compelling interest. Defendants failed to narrowly tailor District 38 to meet any compelling interest they may have had, including any compelling interest they may have had in complying with Section 2 of the Voting Rights Act.

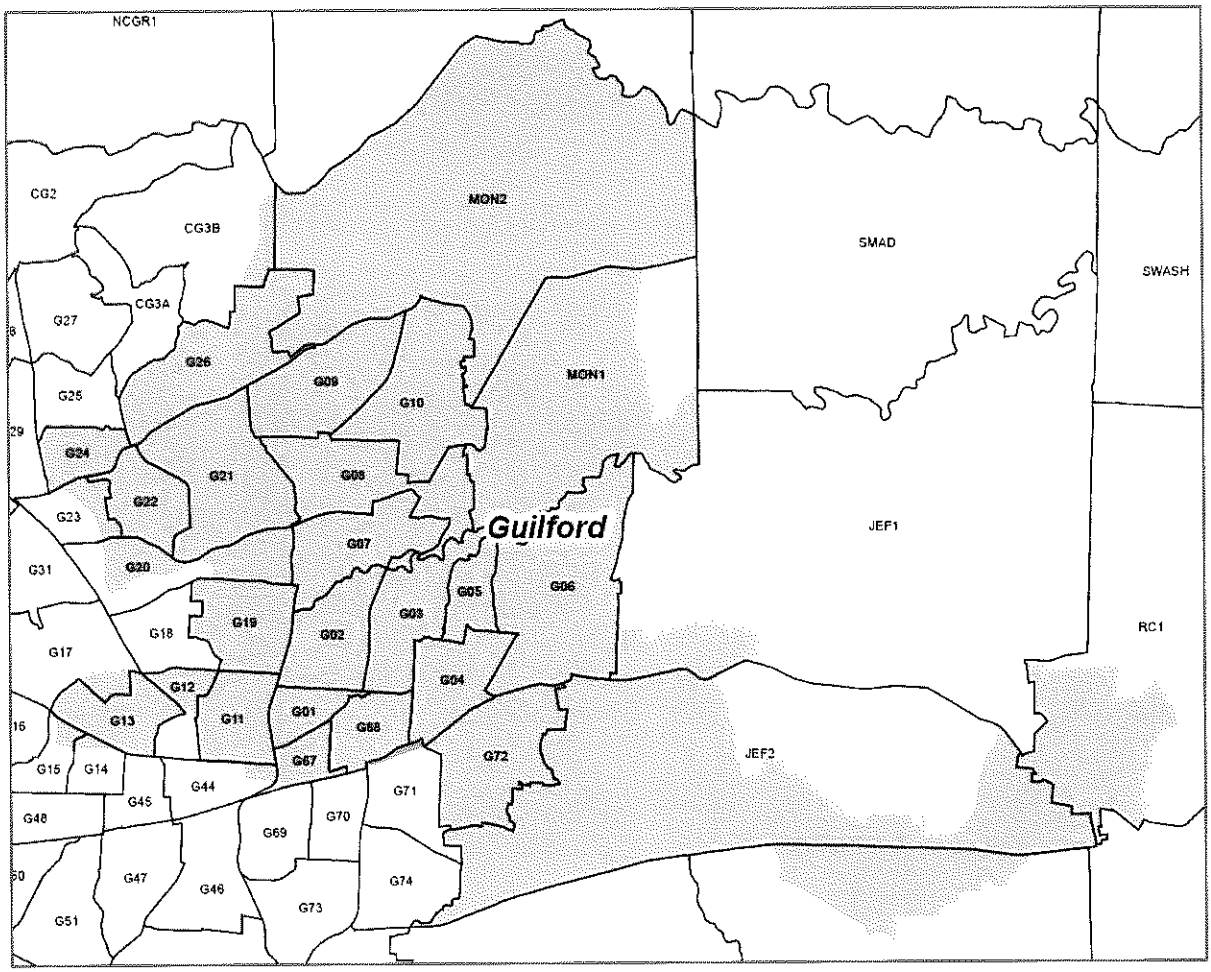
315. Defendants artificially inflated the Black voting age population in the district to a level greater than required to comply with Section 5 or Section 2 of the Voting Rights Act

316. In drawing District 48, Defendants knew that the Black voting age population in the prior district was substantially lower than in their plan—45.56% in the prior plan; 51.27% in the Defendants' 2011 plan. Defendants also knew that at the four general elections under the prior plan the Black candidate, Representative Pierce, did not have an opponent or soundly defeated his opponent. At the 2004, 2006, and 2008 general elections, Representative Pierce did not have an opponent. At the 2010 general election, Representative Pierce defeated his White opponent 73.75% to 26.25%.

House District 57

317. District 57 is a non-compact, illogically shaped district drawn without regard for communities of interest. It is located in part of Guilford County.

318. A true and accurate copy of the Defendants' map depicting House District 57 is shown below.



319. Pieces of precincts are a major component of District 57. It contains pieces of 15 precincts. There is no lawful or rational basis for constructing this district from pieces of precincts.

320. Race was the dominant factor used by Defendants in drawing District 57. Approximately 51% (51.69%) of the voting age population in the District is Black.

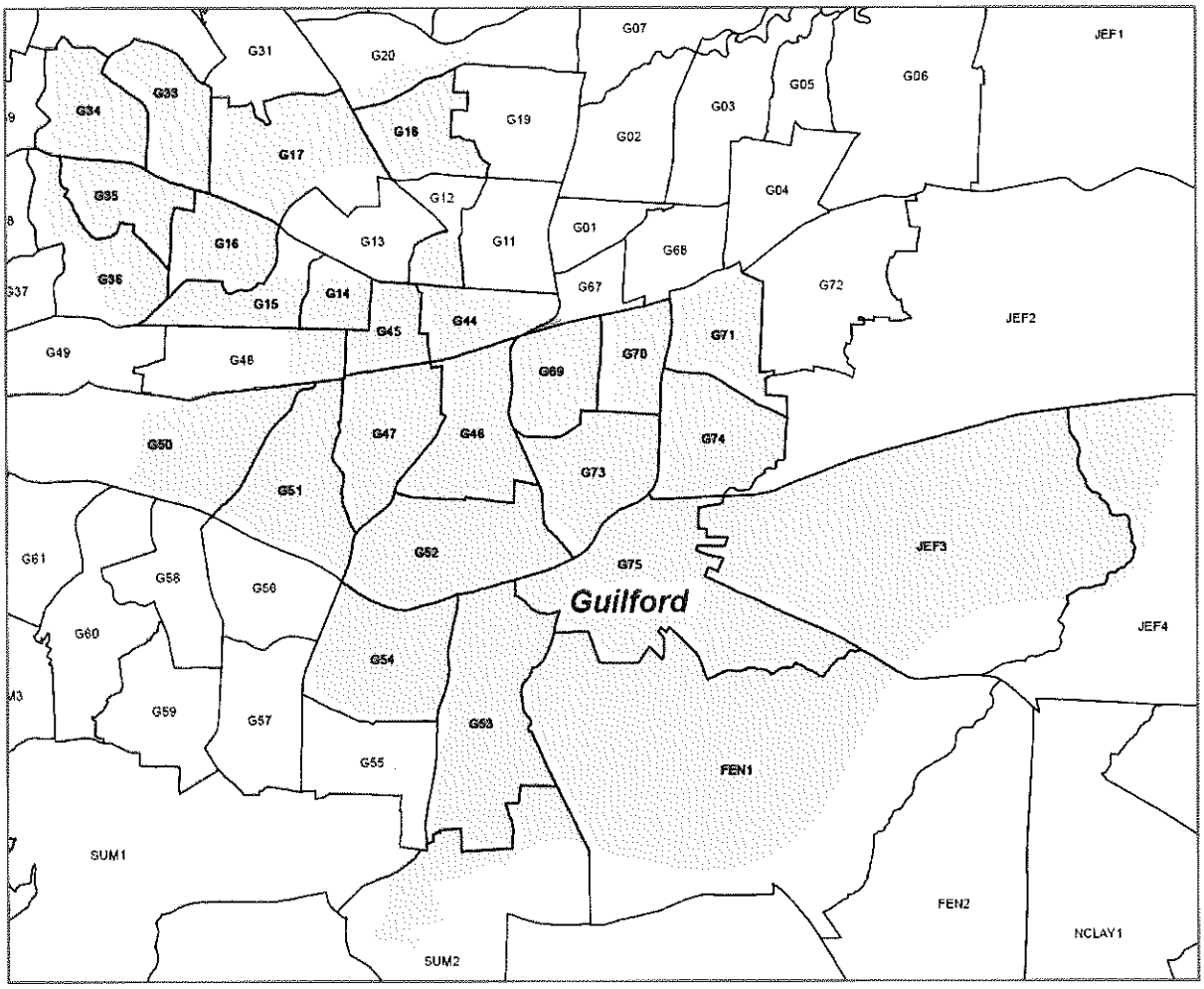
321. District 57 is an unconstitutional racial classification unless it was narrowly drawn to serve a compelling interest.

322. Defendants failed to narrowly tailor District 57 to serve any compelling interest, including any compelling interest they may have had in complying with Section 2 of the Voting Rights Act.

House District 58

323. District 58 is a non-compact, illogically shaped district drawn without regard for communities of interest. It is located in part of Guilford County.

324. A true and accurate copy of the Defendants' map depicting House District 58 is shown below.



325. Pieces of precincts are a major component of District 58. It contains pieces of 15 precincts. There is no lawful or rational basis for constructing this district with pieces of precincts.

326. Race was the dominant factor used by Defendants in drawing District 58. Approximately 51% (51.11%) of the voting age population in the District is Black.

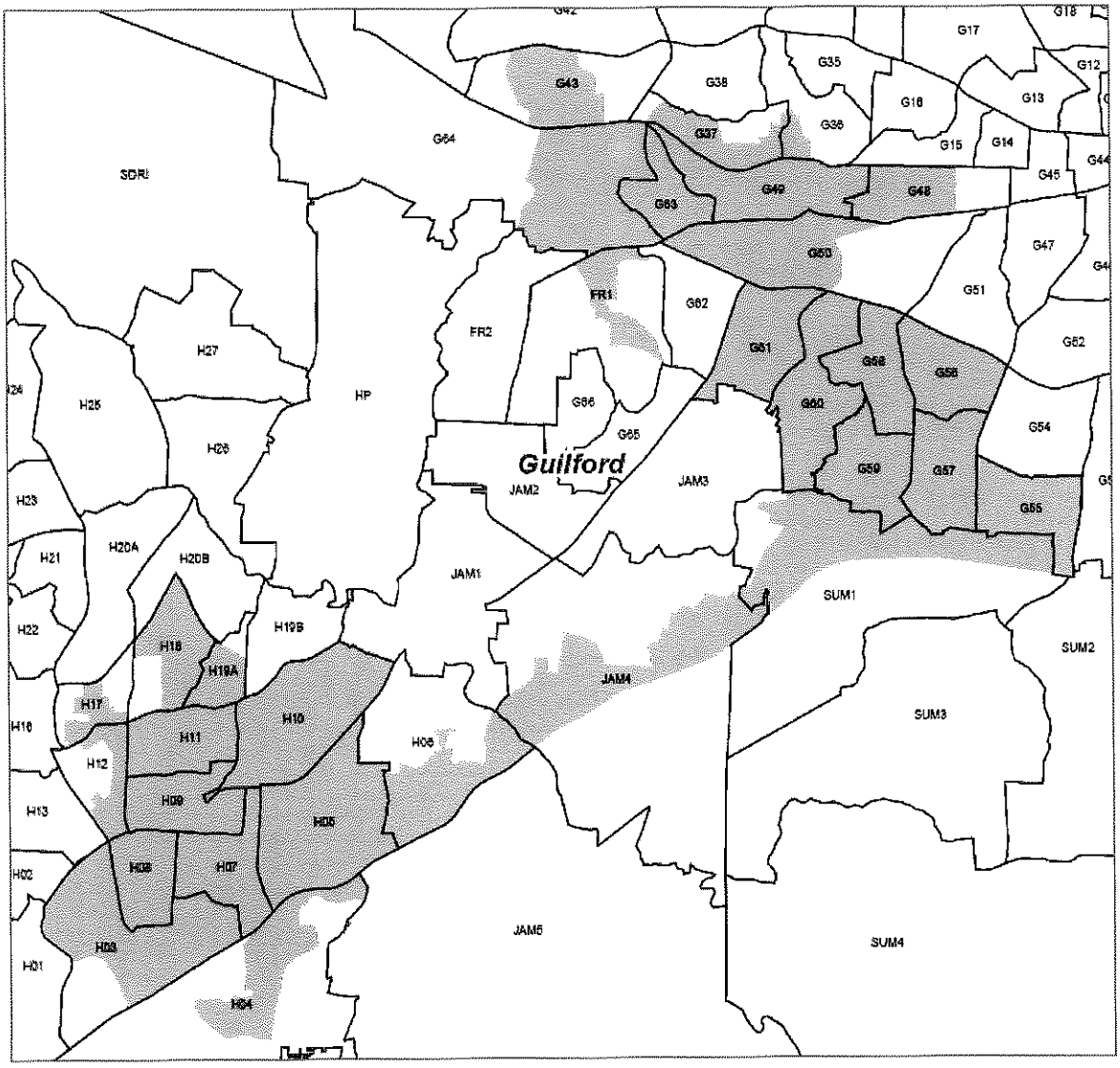
327. District 58 is an unconstitutional racial classification unless it was narrowly drawn to serve a compelling interest.

328. Defendants failed to narrowly tailor District 58 to serve any compelling interest, including any compelling interest they may have had in complying with Section 2 or Section 5 of the Voting Rights Act.

House District 60

329. District 60 is a non-compact, illogically shaped district drawn without regard for communities of interest. It is located in part of Guilford County.

330. A true and accurate copy of the Defendants' map depicting House District 60 is shown below.



331. Pieces of precincts are a major component of District 60. It contains pieces of 16 precincts. There is no lawful or rational basis for constructing this district with pieces of precincts.

332. Race was the dominant factor used by Defendants in drawing District 60. Approximately 51% (51.36%) of the voting age population in the District is Black.

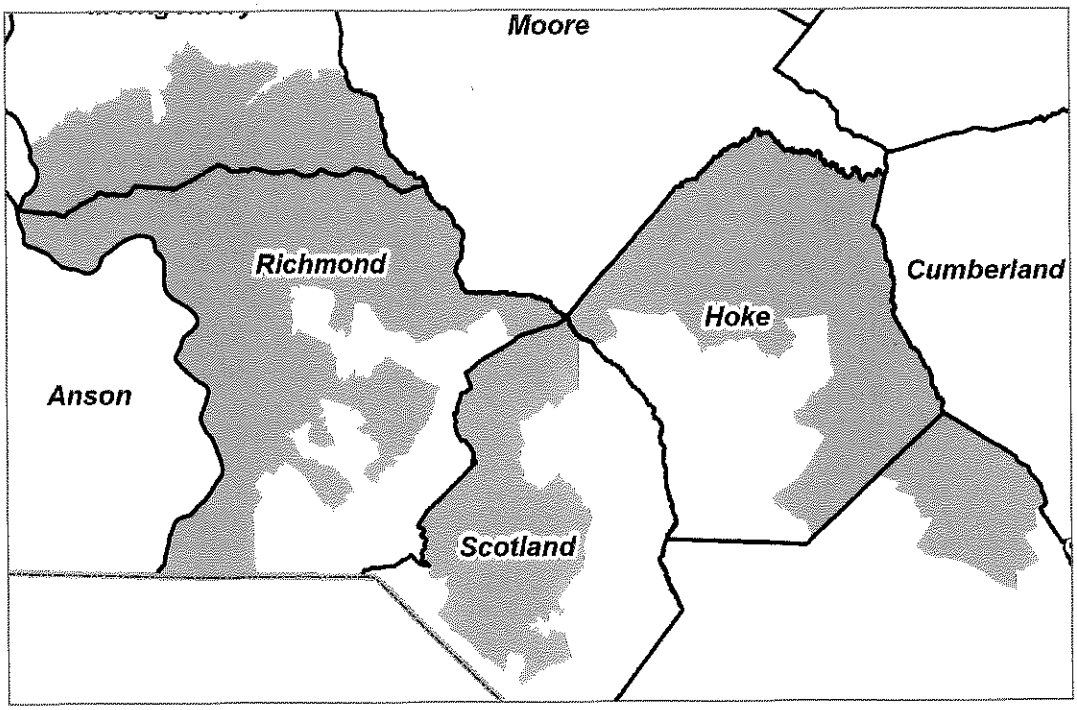
333. District 60 is an unconstitutional racial classification unless it was narrowly drawn to serve a compelling interest.

334. Defendants failed to narrowly tailor District 60 to serve any compelling interest, including any compelling interest they may have had in complying with Section 2 or Section 5 of the Voting Rights Act.

House District 66

335. District 66 in Lewis-Dollar-Dockham 4 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It unnecessarily divides Montgomery, Richmond, Scotland, Robeson and Hoke Counties.

336. A true and accurate copy of the Defendants' map depicting House District 66 is shown below.



337. Defendants divided 24 precincts in five (5) different counties in forming District 66: ten (10) in Richmond County; five (5) in Scotland County; five (5) in Hoke county; three (3) in Robeson County; and one (1) in Montgomery county. They also divided five (5) towns: Mt. Gilead, Laurinburg, Hamlet, Ellerbe and Rockingham. There is no lawful or rational basis for dividing these precincts and towns.

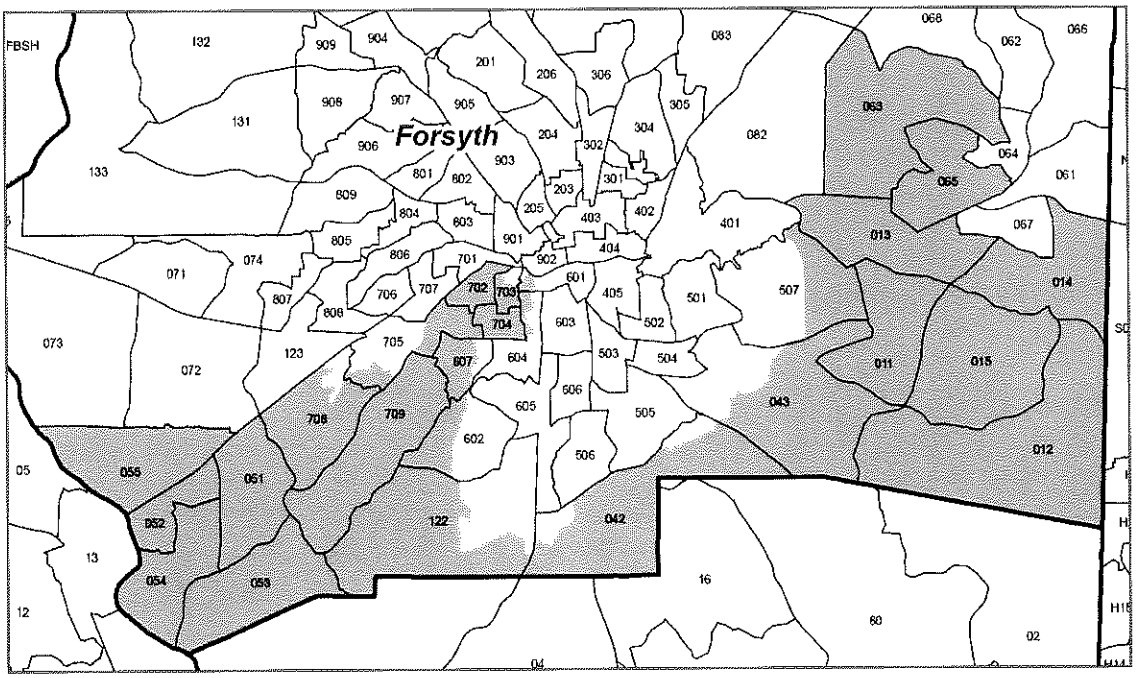
338. One measure of the non-compact and irrational shape of District 66 is the length of its perimeter. Based on calculations performed by Defendants, the length of the perimeter of the District is 428.08 miles, or approximately the distance from Rockingham to Jacksonville, Florida.

339. Defendants did not design District 66 to comply with federal law. Approximately 66% of the voting age population in the District is White.

House District 75

340. District 75 is a non-compact and irrationally structured district drawn without regard for communities of interest. It is located in part of Forsyth County.

341. A true and accurate copy of the Defendants' map depicting House District 75 is shown below.



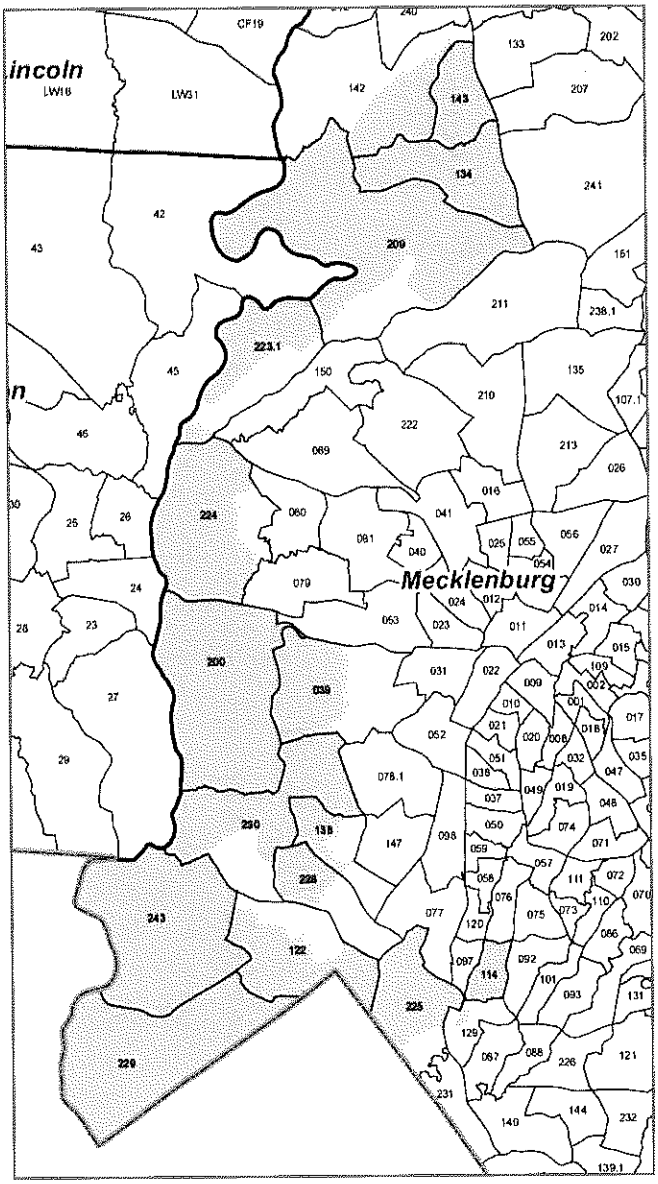
342. It divides 11 precincts and Clemmons, Kernersville and Walkertown. There is no lawful or rational basis for dividing these precincts, towns and cities.

343. Defendants did not design District 75 to comply with federal law. Approximately 82% of the voting age population in the District is White.

House District 92

344. District 92 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It is located in part of Mecklenburg County.

345. A true and accurate copy of the Defendants' map depicting House District 92 is shown below.



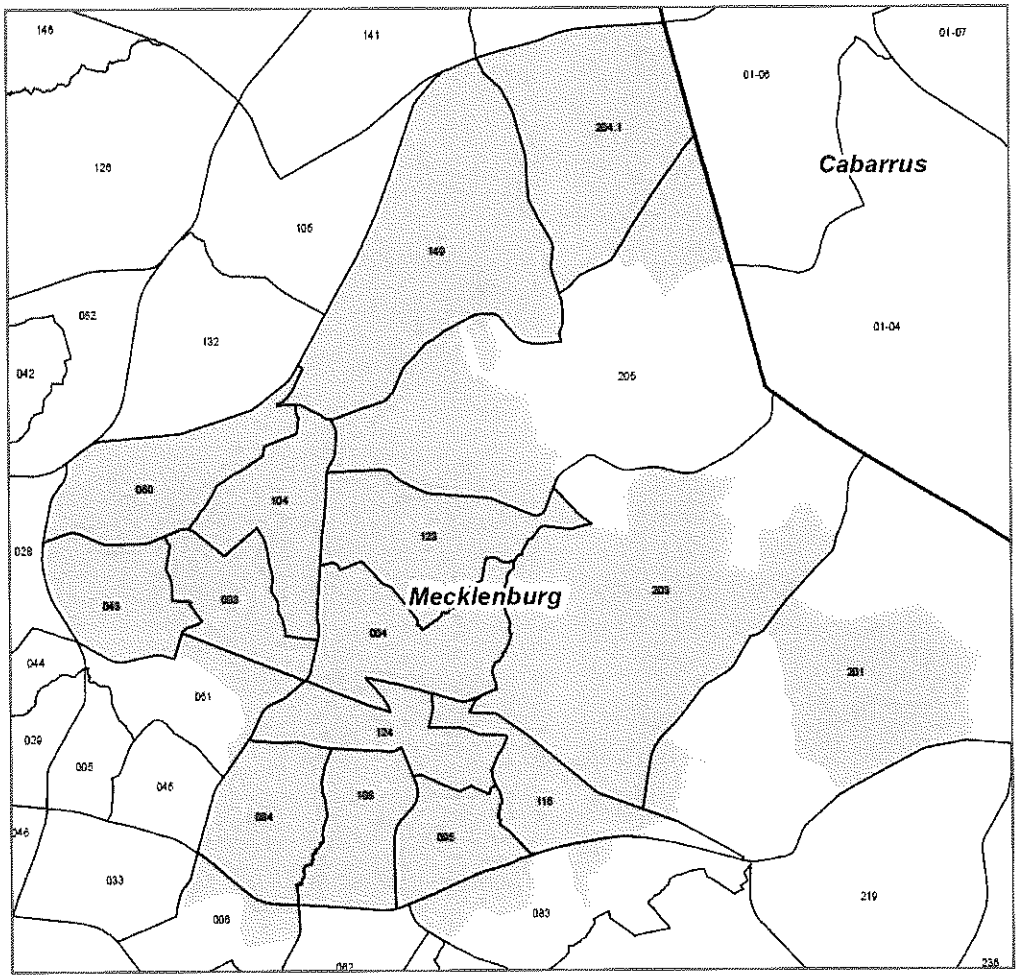
346. District 92 is largely comprised of pieces of precincts. It contains pieces of 11 precincts. The district also unnecessarily splits the towns of Pineville and Huntersville. There is no lawful or rational basis for dividing these precincts and towns.

347. Defendants did not design District 92 to comply with federal law. Approximately 71% of the voting age population of District 92 is White.

House District 99

348. District 99 is a non-compact, irrationally shaped district drawn without regard for communities of interest. It is located in part of Mecklenburg County.

349. A true and accurate copy of the Defendants' map depicting House District 99 is shown below.



350. Pieces of precincts are a major component of District 99. It contains pieces of 7 precincts. There is no lawful or rational basis for constructing this district with pieces of precincts.

351. Race was the dominant factor used by Defendants in drawing District 99. Approximately 55% (54.65%) of the voting age population in the District is Black.

352. District 99 is an unconstitutional racial classification unless it was narrowly drawn to serve a compelling interest.

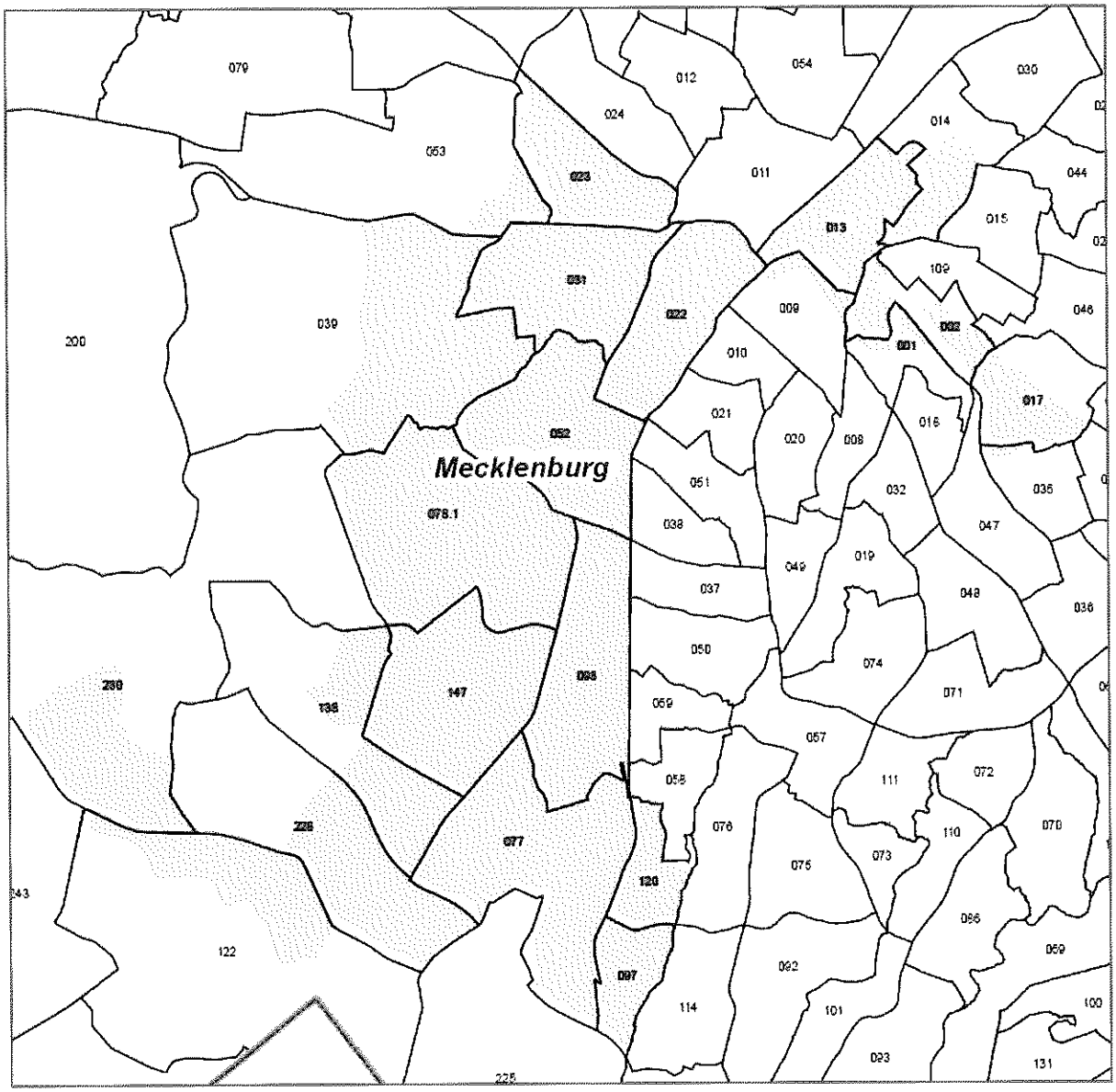
353. Defendants failed to narrowly tailor District 99 to serve any compelling interest, including any compelling interest they may have had in complying with Section 2 of the Voting Rights Act.

354. In drawing the District, the Defendants knew that the Black voting age population in the present plan was substantially lower than in their Plan—41.26% in the prior plan; 54.65% in the Defendants' 2011 plan. Defendants also knew that at the 2008 general election, the Black candidate, Nick Mackey, defeated his opponent 65.32% to 34.68%, and at the 2010 general election, the Black candidate, Rodney Moore, defeated his opponent 72.01% to 27.99%.

House District 102

355. District 102 is a non-compact illogically shaped district drawn without regard for communities of interest. It is located in part of Mecklenburg County.

356. A true and accurate copy of the Defendants' map depicting House District 102 is shown below.



357. Pieces of precincts are a major component of District 102. It contains pieces of 12 precincts. There is no lawful or rational basis for constructing this district with pieces of precincts.

358. Race was the dominant factor used by Defendants in drawing District 102. Approximately 53% (53.53%) of the voting age population in the District is Black.

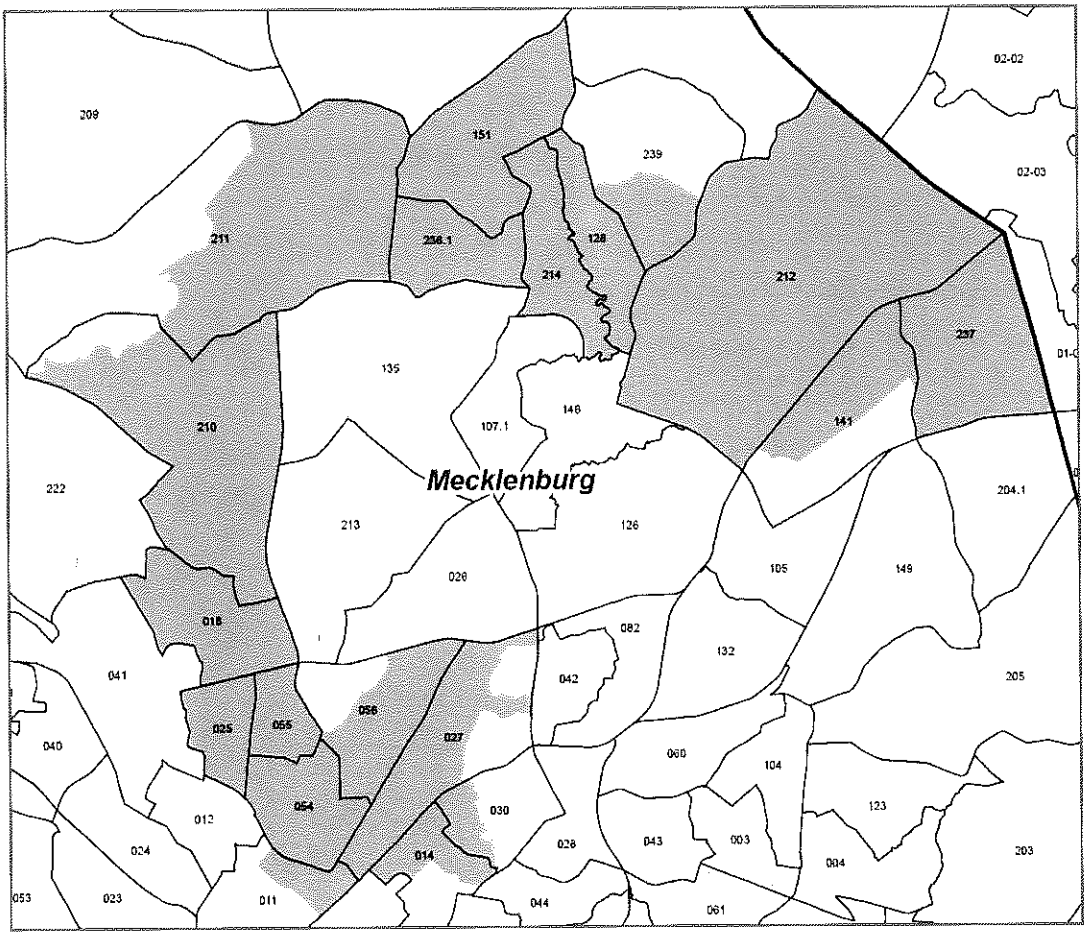
359. District 102 is an unconstitutional racial classification unless it was narrowly drawn to serve a compelling interest.

360. Defendants failed to narrowly tailor District 102 to serve any compelling interest, including any compelling interest they may have had in complying with Section 2 of the Voting Rights Act.

House District 107

361. District 107 is a non-compact, irrationally shaped district drawn without regard for communities of interest. It is located in part of Mecklenburg County.

362. A true and accurate copy of the Defendants' map depicting House District 107 is shown below.



363. Pieces of precincts are a major component of District 107. Of the 19 precincts included in District 99, nine (9) are pieces of precincts. There is no lawful or rational basis for constructing this district with pieces of precincts.

364. Race was the dominant factor used by Defendants in drawing District 107. Approximately 53% of the voting age population in the District is Black.

365. District 107 is an unconstitutional racial classification unless it was narrowly tailored to serve a compelling interest.

366. Defendants failed to narrowly tailor District 107 to serve any compelling interest they may have had, including any compelling interest they may have had in complying with Section 2 of the Voting Rights Act. In drawing District 107, Defendants knew that the Black voting age population in the previous plan was substantially lower than in their Plan—47.14% in the prior plan; 52.25% in Defendants' 2011 Plan. Defendants also knew that in the four elections held under the previous plan, the Black candidate soundly defeated his opponent. At the 2004 general election, the Black candidate, Pete Cunningham, defeated his opponent 68.2% to 31.8%. At the 2006 general election, Representative Cunningham did not have an opponent. At the 2008 and 2010 elections, the Black candidate, Kelly Alexander, defeated his opponent 75.26% to 24.74% and 67.26% to 32.74%.

The 2011 Congressional Redistricting Plan

367. 2011 S.L. 403 was enacted on July 27, 2011, and precleared by the United States Department of Justice on November 1, 2011. 2011 S.L. 414 was enacted on November 7, 2011, and precleared by the United States Department of Justice on December 8, 2011.

368. No Black member of the General Assembly voted in favor of this legislation.

369. Consistent with Defendants' strategy, they assigned approximately one-half of the State's Black citizens to just three (3) of the State's 13 Congressional Districts without regard for traditional redistricting standards.

370. The 2011 Congressional Redistricting Plan divides 68 precincts in 24 counties. Approximately 270,000 citizens reside in these precincts.

371. The 2011 Congressional Redistricting Plan divides 40 counties. The counties divided are: Alamance, Beaufort, Buncombe, Cabarrus, Catawba, Chatham, Chowan, Craven, Cumberland, Davidson, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Harnett, Hoke, Iredell, Lenoir, Martin, Mecklenburg, Nash, New Hanover, Orange, Pasquotank, Pender, Perquimans, Pitt, Randolph, Robeson, Rowan, Union, Vance, Wake, Washington, Wayne, and Wilson

372. No constitutional congressional redistricting plan previously enacted by the General Assembly divided 40 counties. The 1991 Congressional Redistricting Plan did divide 40 counties, but that plan was declared unconstitutional.

373. Upon information and belief, no congressional redistricting plan adopted by any State has ever divided 40% of its counties.

374. Four of the 13 districts in the 2011 Congressional Plan (Districts 4, 9, 12 and 13) are comprised entirely of pieces of counties, and four (4) other districts (1, 2, 3, and 8) contain more pieces of counties than whole counties.

375. Defendants did not have any lawful or rational basis for dividing 40 counties. Fully lawful and rational plans which would have divided fewer counties were introduced in the General Assembly, but rejected by Defendants. Senator Stein introduced a plan that would have divided only 26 counties: Beaufort, Cabarrus, Chatham, Craven, Cumberland, Davidson,

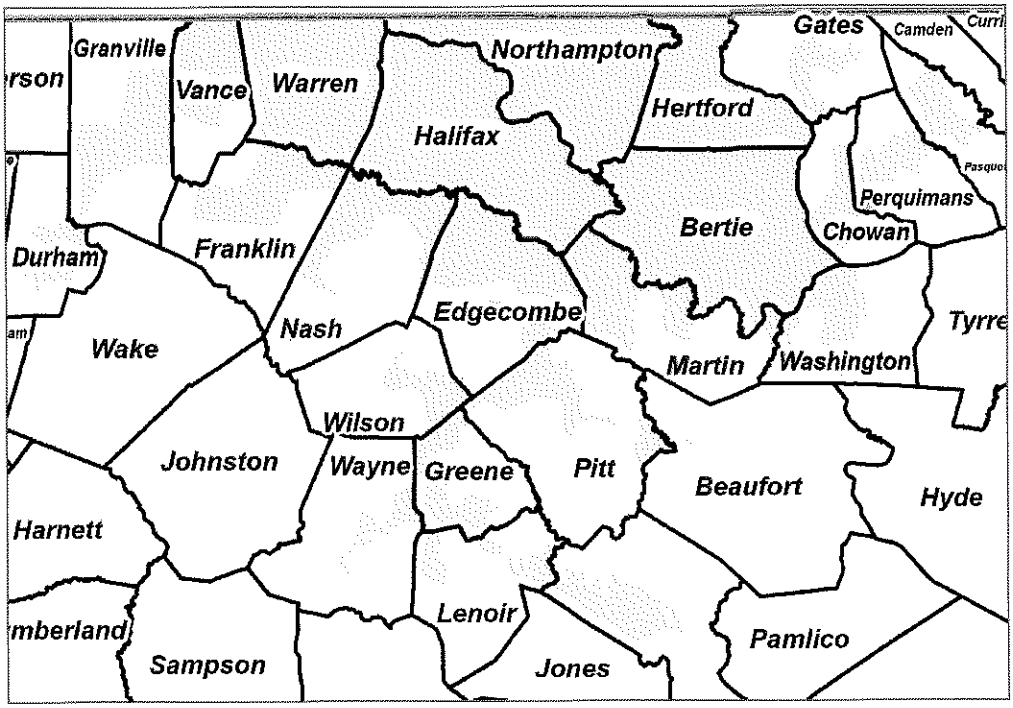
Duplin, Forsyth, Gaston, Granville, Guilford, Jones, Lenoir, Mecklenburg, Moore, Nash, Pasquotank, Pitt, Rockingham, Rowan, Rutherford, Sampson, Stokes, Wake, Wayne, and Wilson.

376. Plaintiffs, citizens residing within some or all of the 40 counties divided by Defendants and citizens across the State, have been harmed by Defendants' actions.

Congressional District 1

377. Congressional District 1 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It encompasses only five (5) whole counties and parts of 19 counties.

378. A true and accurate copy of the Defendants' map depicting Congressional District 1 is shown below.



379. One measure of the non-compact and irrational shape of District 1 is the length of its perimeter. Based on Defendants' calculations, the length of the perimeter of District 1 is 1319.43 miles, or approximately the distance from Rocky Mount to Minneapolis.

380. Race was the predominate factor used by Defendants in constructing District 1. Approximately 53% (52.65%) of the voting age population in the District is Black.

381. District 1 constitutes an unconstitutional racial classification unless narrowly tailored to achieve a compelling interest.

382. In constructing District 1, Defendants failed to narrowly tailor District 1 to achieve any compelling interest they may have had, including any compelling interest they may have had in complying with Section 5 or Section 2 of the Voting Rights Act. They artificially inflated the Black voting age population in the district to a level greater than required to comply with the Voting Rights Act.

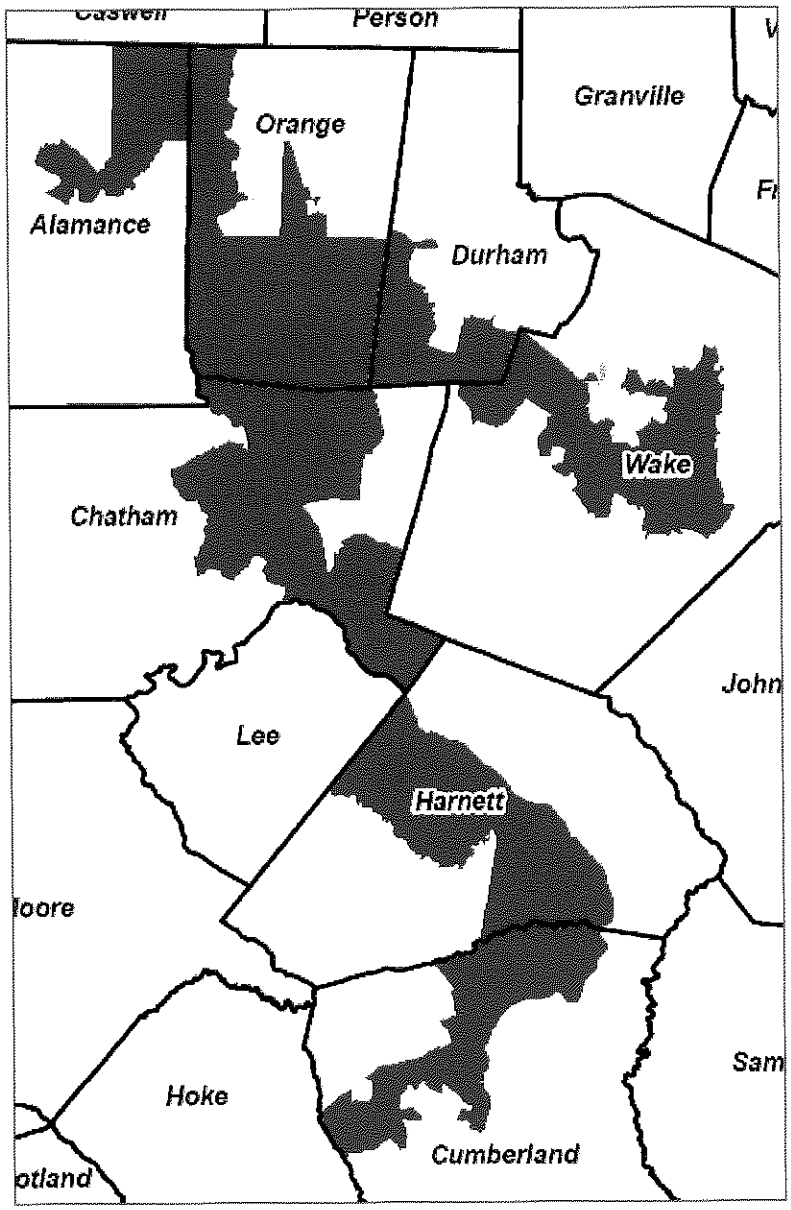
383. In drawing District 1, Defendants knew that the Black voting age population in the 2001 Congressional Redistricting Plan was substantially lower than in their plan: 48.63% in the prior plan; 52.65% in the Defendants' 2011 plan. Defendants also knew that in the five general election under the 2001 plan, the Black candidate soundly defeated a White candidate. In 2002, the Black candidate, Frank Ballance, received 63.73% of the vote. In 2004, the Black candidate, Representative Butterfield, defeated a White candidate 63.97% to 36.02%. In 2006, Representative Butterfield was not opposed. In 2008 and 2010, Representative Butterfield defeated a White candidate by 70.28% to 29.72% and 59.31% to 40.69%, respectively.

Congressional District 4

384. Congressional District 4 is a non-compact and irrationally shaped district beginning in the northeast corner of Alamance County and extending eastward into part of Orange County. From Orange County, one branch of the district continues eastward into a part of the southern part of Durham County, and then continues further east, gobbling up a vaguely sea-horse shaped part of central Wake County. The other branch of the district extends southward from Orange County into Chatham County, exiting Chatham into Harnett County at a

point contiguous only in some abstract mathematical sense. From this point the district extends further south, dividing Harnett County into two (2) parts, finally ending in the middle of Cumberland County. It is drawn without regard for communities of interest.

385. A true and accurate copy of the Defendants' map depicting Congressional District 4 is shown below.



386. District 4's tortured path does not encompass all of any county, consisting instead of parts of 7 counties.

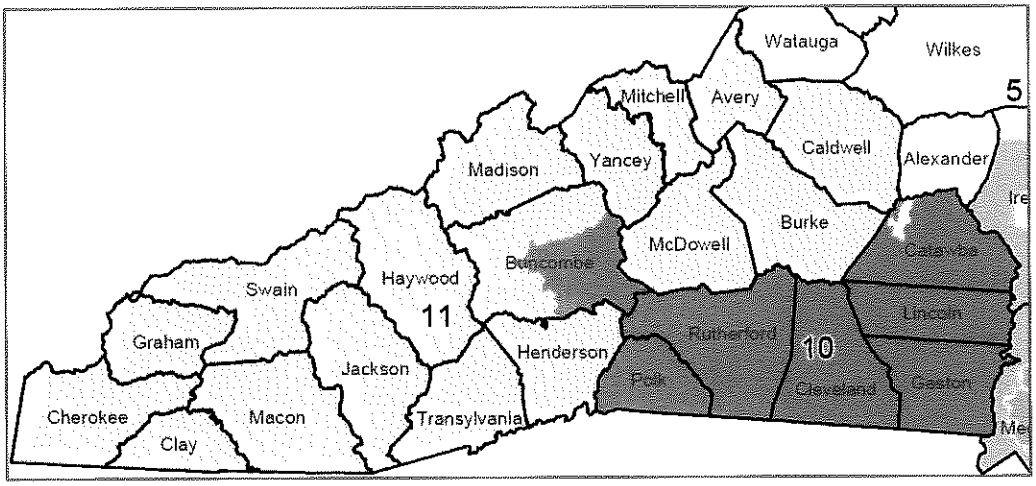
387. In forming this district, Defendants split precincts in Alamance, Cumberland, Harnett and Wake Counties.

388. No coherent or recognizable communities of interest are enclosed within District 4.

389. There is no lawful or rational explanation for the shape of District 4.

Congressional Districts 10 and 11

390. A true and accurate copy of the Defendants' map depicting Congressional Districts 10 and 11 is shown below.



391. North Carolina's Mountains constitute a separate and distinct community of interest.

392. Asheville is the historic, economic, and cultural heart of North Carolina's Mountains.

393. The Congressional Redistricting Plan arbitrarily and capriciously separates Asheville from the Mountains by extending District 10, a district otherwise located entirely in the Piedmont, to encompass Asheville and by excluding Asheville from District 11, which is located entirely within the Mountains.

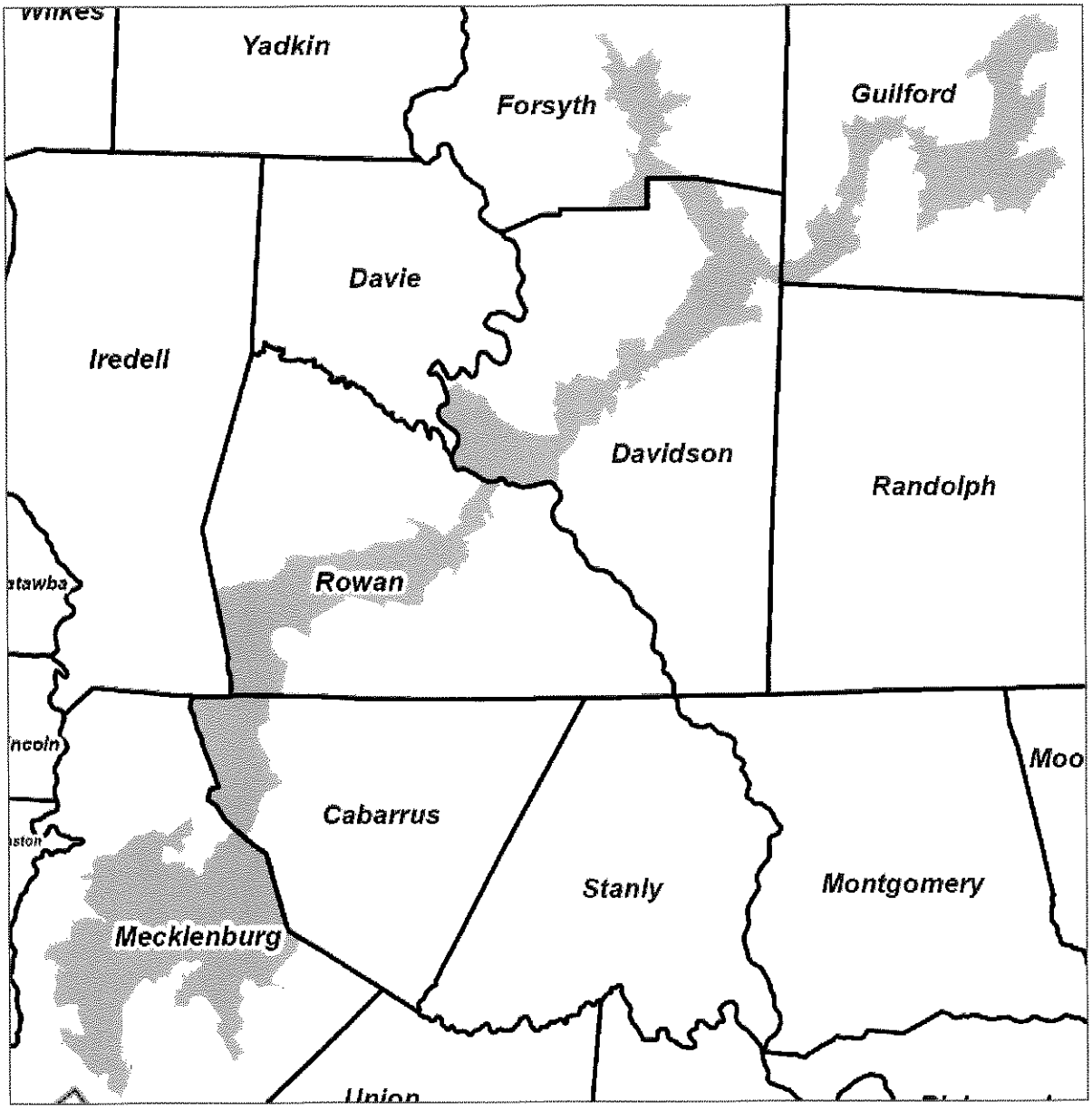
394. Never in the history of the State has a redistricting plan separated Asheville from the Mountains.

395. There is no lawful or rational basis for separating Asheville from the Mountains.

Congressional District 12

396. Congressional District 12 is a non-compact and irrationally shaped district drawn without regard for communities of interest. It encompasses narrow pieces of six counties (Mecklenburg, Cabarrus, Rowan, Davidson, Forsyth, and Guilford counties) and no whole counties.

397. A true and accurate copy of the Defendants' map depicting Congressional District 12 is shown below.



398. Race was the predominate factor used by Defendants in drawing District 12. Approximately 51% (50.66%) of the District's voting age population is Black.

399. District 12 is a racial classification unconstitutional unless narrowly tailored to serve a compelling interest.

400. In constructing District 12, Defendants failed to narrowly tailor District 12 to meet any compelling interest they may have had, including any interest they may have had in

meeting the requirements of Sections 5 or 2 of the Voting Rights Act. They artificially inflated the Black voting age population in the district to a level greater than required to meet the requirements of the Voting Rights Act.

401. In drawing District 12, Defendants knew that the Black voting age population in the 2001 Congressional Redistricting Plan was substantially lower than in their plan: 43.77% in the 2001 plan; 50.66% in their plan. Defendants also knew that in the five general election held under the 2001 plan, the Black candidate, Representative Watt, soundly defeated his opponent. At the 2002, 2004, 2006, 2008, and 2010 general elections, Representative Watt received 65.34%, 66.82%, 67.60%, 71.55%, and 63.88% of the vote, respectively.

FIRST CLAIM FOR RELIEF
(Violation of Article I, § 2 of the State Constitution, State House Redistricting Plan)

402. All of the preceding paragraphs of this Complaint are realleged as if set forth fully herein.

403. Article I of the North Carolina Constitution establishes "the great, general and essential principles of liberty and free government." Among those "great, general and essential principles" is that "all government of right originates from the people, is founded upon their will only, and *is instituted solely for the good of the whole*." N.C. Const. art. I, § 2 (emphasis supplied).

404. Article II, § 5 of the Constitution imposed a duty on Defendants to redistrict the 120 seats in the House of Representatives following the 2010 census.

405. Article I, § 2 of the Constitution forbids the Defendants from performing that duty in a manner not "instituted solely for the good of the whole."

406. Defendants unnecessarily divided precincts, communities of interest, and towns in enacting 2011 S.L. 404 and 2011 S.L. 416, particularly in drawing House Districts 4, 7, 10, 12, 21, 24, 25, 29, 31, 33, 34, 38, 42, 43, 45, 47, 48, 57, 58, 60, 66, 75, 92, 99, 102, and 107.

407. Absent some compelling reason, dividing counties, towns, communities of interest, and precincts in redistricting the House of Representatives is not solely for the good of the whole.

408. In unnecessarily dividing counties, towns, and precincts in the enactment of 2011 S.L. 404 and 2011 S.L. 416, Defendants violated Plaintiffs' rights under Article I, § 2 of the Constitution.

SECOND CLAIM FOR RELIEF
(Violation of Article I, § 2 of the State Constitution, State Senate Redistricting Plan)

409. All of the preceding paragraphs of this Complaint are realleged as if set forth fully herein.

410. Article I of the North Carolina Constitution establishes "the great, general and essential principles of liberty and free government." Among those "great, general and essential principles" is that all government of right originates from the people, is founded on their will only, and is instituted solely for the good of the whole." N.C. Const. art. I, § 2.

411. Article II, § 3 of the Constitution imposed on Defendants the duty to redistrict the 50 seats in the State Senate following the 2010 census.

412. Article I, § 2 of the Constitution forbids the Defendants from performing that duty in a manner not "instituted solely for the good of the whole."

413. Defendants unnecessarily divided precincts, communities of interest, and towns in enacting 2011 S.L. 402 and 2011 S.L. 413, particularly in drawing Senate Districts 4, 5, 7, 14, 19, 20, 21, 26, 27, 28, 32, 37, 38, 40, and 41.

414. Absent some compelling reason, dividing counties, towns, communities of interest, and precincts in redistricting the Senate is not solely for the good of the whole.

415. In unnecessarily dividing counties, towns, communities of interest and precincts in the enactment of 2011 S.L. 402 and 2011 S.L. 413, Defendants violated Plaintiffs' rights under Article I, § 2 of the Constitution.

THIRD CLAIM FOR RELIEF
(Violation of Article I, § 2 of the State Constitution, Congressional Redistricting Plan)

416. All of the preceding paragraphs of this Complaint are realleged as if set forth fully herein.

417. Federal law (2 U.S.C. §§ 22a and 2c) grants authority to the Defendants to redistrict North Carolina's 13 seats in the United States House of Representatives.

418. Article I, § 2 of the North Carolina Constitution has not been superseded by any Act of Congress, and it forbids the Defendants from redistricting North Carolina's seats in Congress in a manner not "instituted solely for the good of the whole."

419. Absent some compelling reason, dividing counties, towns, communities of interest, and precincts in redistricting North Carolina's seats in the United States House of Representatives is not solely for the good of the whole.

420. In unnecessarily dividing counties, towns, communities of interest, and precincts in enacting 2011 S.L. 403 and 2011 S.L. 414, Defendants violated Plaintiffs' rights under Article I, § 2 of the North Carolina Constitution.

FOURTH CLAIM FOR RELIEF
(Violation of Article I, § 2 of the State Constitution, Congressional Redistricting Plan)

421. All of the preceding paragraphs of this Complaint are realleged as if set forth fully herein.

422. Federal law (2 U.S.C. §§ 22a and 2c) grants authority to the Defendants to redistrict North Carolina's 13 seats in the United States House of Representatives.

423. Article I, § 2 of the North Carolina Constitution has not been superseded by any Act of Congress, and it forbids the Defendants from redistricting North Carolina's seats in Congress in a manner not "instituted solely for the good of the whole."

424. Assigning Asheville to a district separate from other Mountain communities is not solely for the good of the whole.

425. In assigning Asheville to District 10, Defendants violated Plaintiffs' rights under Article I, § 2 of the North Carolina Constitution.

FIFTH CLAIM FOR RELIEF
(Violation of Article I, § 19 of the State Constitution, State House Redistricting Plan)

426. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

427. One of the "great, general and essential principles of free liberty and free government" established by Article I of the Constitution and enjoyed by the Plaintiffs is not to be "disseized" of their "liberties or privileges . . . or in any manner deprived of [their] life, liberty or property, but by the law of the land." N.C. Const. art. I, § 19.

428. Article I, § 19 of the Constitution forbids Defendants from enacting legislation that is arbitrary or capricious and does not have a rational relationship to a valid objective.

429. Defendants unnecessarily divided precincts, communities of interest, and towns in enacting 2011 S.L. 404 and 2011 S.L. 416, particularly in drawing House Districts 4, 7, 10, 12, 21, 24, 25, 29, 31, 33, 34, 38, 42, 43, 45, 47, 48, 57, 58, 60, 66, 75, 92, 99, 102, and 107.

430. Absent some compelling reason, dividing precincts, communities of interest, towns, and counties in the formation of House districts is arbitrary or capricious and does not bear a rational relationship to any valid objective.

431. In unnecessarily dividing precincts, towns and counties in the enactment of 2011 S.L. 402 and 2011 S.L. 413, the Defendants violated Plaintiffs' rights under Article I, § 19 of the Constitution.

SIXTH CLAIM FOR RELIEF
(Violation of Article I, § 19 of the State Constitution, Senate Redistricting Plan)

432. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

433. One of the "great, general and essential principles of free liberty and free government" established by Article I of the Constitution and enjoyed by the Plaintiffs is not to be "disseized" of their "liberties or privileges . . . or in any manner deprived of [their] life, liberty or property, but by the law of the land." N.C. Const. art. I, § 19.

434. Article I, § 19 of the Constitution forbids Defendants from enacting legislation that is arbitrary or capricious and does not have a rational relationship to a valid objective.

435. Defendants unnecessarily divided precincts, communities of interest, and towns in enacting 2011 S.L. 402 and 2011 S.L. 413, particularly in drawing Senate Districts 4, 5, 7, 14, 19, 20, 21, 26, 27, 28, 32, 37, 38, 40, and 41.

436. Absent some compelling reason, dividing precincts, communities of interest, towns, and counties in the formation of Senate districts is arbitrary or capricious and does not bear a rational relationship to any valid objective.

437. In unnecessarily dividing precincts, communities of interest, towns and counties in the enactment of 2011 S.L. 404 and 2011 S.L. 416, the Defendants violated Plaintiffs' rights under Article I, § 19 of the Constitution.

SEVENTH CLAIM FOR RELIEF
(Violation of Article I, § 19 of the State Constitution, Congressional Redistricting Plan)

438. All of the preceding paragraphs of this Complaint are realleged as if set forth fully herein.

439. Article I, § 19 of the North Carolina Constitution has not been superseded by the federal law and forbids Defendants from redistricting North Carolina's seats in Congress in a manner that is arbitrary or capricious and not rationally related to a valid objective.

440. Absent some compelling reason, unnecessarily dividing counties, towns, communities of interest, and precincts in redistricting North Carolina's seats in the United States House of Representatives is arbitrary or capricious and not rationally related to a valid objective.

441. In unnecessarily dividing counties, towns, communities of interest and precincts in the enactment of 2011 S.L. 403 and 2011 S.L. 414, Defendants violated Plaintiffs' rights under Article I, § 19 of the North Carolina Constitution.

EIGHTH CLAIM FOR RELIEF
(Violation of Article I, § 19 of the State Constitution, Congressional Redistricting Plan)

442. All of the preceding paragraphs of this Complaint are realleged as if set forth fully herein.

443. Article I, § 19 of the North Carolina Constitution has not been superseded by the federal law and forbids Defendants from redistricting North Carolina's seats in Congress in a manner that is arbitrary or capricious and not rationally related to a valid objective.

444. Assigning Asheville to a district outside the Mountains is arbitrary and capricious act unrelated to any valid objective.

445. In assigning Asheville to District 10, Defendants violated Plaintiffs' rights under Article 1, § 19 of the Constitution.

NINTH CLAIM FOR RELIEF
(Violation of Article VI, § 1 and Article I, § 19 of the State Constitution, House Redistricting Plan)

446. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

447. Article VI, Section 1 of the North Carolina Constitution guarantees citizens over age 18 the right to vote and Article I, § 19 of the North Carolina Constitution prohibits Defendants from infringing that fundamental right except for compelling reasons narrowly tailored.

448. The House Redistricting Plan assigns approximately 1,800,000 voters to 395 split precincts. Assigning these voters to split precincts substantially burdens their right to vote.

449. No compelling reason supports this burdening of the right to vote.

450. Defendants violated Plaintiffs' rights under Article VI, § 1 and Article I, § 19 of the North Carolina Constitution in assigning voters to split precincts.

TENTH CLAIM FOR RELIEF
(Violation of Article VI, § 1 and Article I, § 19 of the State Constitution, Senate Redistricting Plan)

451. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

452. Article VI, § 1 of the North Carolina Constitution guarantees citizens over age 18 the right to vote, and Article I, § 19 of the North Carolina Constitution prohibits Defendants from infringing that fundamental right except for compelling reasons narrowly tailored.

453. The Senate Redistricting Plan assigns approximately 1,300,000 voters to 257 split precincts. Assigning these voters to split precincts substantially burdens their right to vote.

454. No compelling reason supports this burdening of the right to vote.

455. Defendants violated Plaintiffs' rights under Article VI, § 1 and Article I, § 19 of the North Carolina Constitution in assigning voters to split precincts.

ELEVENTH CLAIM FOR RELIEF
(Violation of Article II, § 5 of the State Constitution, House Redistricting Plan)

456. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

457. Article II, § 5 of the State Constitution provides: "No county shall be divided in the formation of a representative district."

458. Defendants divided 49 counties in the formation of representative districts in 2011 S.L. 404 and 2011 S.L. 416. No lawful or rational reason supported dividing 49 counties in constructing 2011 S.L. 404 and 2011 S.L. 416.

459. Defendants violated Plaintiffs' rights under Article II, § 5 of the Constitution in dividing 49 counties in enacting 2011 S.L. 404 and 2011 S.L. 416.

TWELFTH CLAIM FOR RELIEF
(Violation of Article II, § 3 of the State Constitution, Senate Redistricting Plan)

460. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

461. Article II, § 3 of the State Constitution provides: "No county shall be divided in the formation of a senate district."

462. Defendants divided 19 counties in the formation of senate districts in 2011 S.L. 402 and 2011 S.L. 413. No lawful or rational reason supported dividing 19 counties in constructing 2011 S.L. 402 and 2011 S.L. 413.

463. Defendants violated Plaintiffs' rights under Article II, § 5 of the Constitution in dividing 19 counties in enacting 2011 S.L. 402 and 2011 S.L. 413.

THIRTEENTH CLAIM FOR RELIEF
(Violation of Article II, § 5 of the State Constitution, House Districts 4, 10, 25, 66)

464. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

465. Article II, § 5 of the State Constitution provides: "No county shall be divided in the formation of a representative district."

466. House Districts 4, 10, 25, and 66 all include parts of multiple counties.

467. Dividing these counties was not required by the Voting Rights Act.

468. Defendants violated Plaintiffs' rights under Article II, § 5 of the State Constitution in drawing House Districts 4, 10, 25, and 66.

FOURTEENTH CLAIM FOR RELIEF
(Violation of Article II, § 3 of the State Constitution, Senate District 7)

469. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

470. Article II, § 3 of the State Constitution provides: "No county shall be divided in the formation of a senate district."

471. Senate District 7 includes parts of multiple counties.

472. Dividing these counties was not required by any federal law.

473. Defendants violated Plaintiffs' rights under Article II, § 5 of the State Constitution in drawing Senate District 7.

FIFTEENTH CLAIM FOR RELIEF
(Violation of Article II, § 5 of the State Constitution, House Districts 7, 12, 21, 24, and 48)

474. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

475. Article II, § 5 of the Constitution provides: No county shall be divided in the formation of a representative district."

476. House Districts 7, 12, 21, 24, and 48 all include parts of multiple counties. Defendants ostensibly divided counties in drawing these districts for the purpose of complying with the requirement of the federal Voting Rights Act. Compliance with the Voting Rights Act did not require dividing these counties.

477. Defendants violated Plaintiffs' rights under Article II, § 5 of the State Constitution in drawing House Districts 7, 12, 21, 24, and 48.

SIXTEENTH CLAIM FOR RELIEF
(Violation of Article II, § 3 of the State Constitution, Senate Districts 4, 5, 20 and 21)

478. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

479. Article II, § 3 of the Constitution provides: No county shall be divided in the formation of a senate district."

480. Senate Districts 4, 5, 20 and 21 include parts of multiple counties. Defendants ostensibly divided counties in drawing these districts for the purpose of complying with the requirement of the federal Voting Rights Act. Compliance with the Voting Rights Act did not require dividing these counties.

481. Defendants violated Plaintiffs' rights under Article II, § 3 of the State Constitution in drawing Senate Districts 4, 5, 20, and 21.

SEVENTEENTH CLAIM FOR RELIEF
(Violation of N.C. Gen. Stat. § 120-2.2, State House and State Senate)

482. All of the preceding paragraphs of this Complaint are realleged as if set forth fully herein.

483. G.S. § 120-2.2 forbids the General Assembly from dividing any precincts in redistricting the House and Senate unless and until the United States Department of Justice or the federal courts fails to preclear the House plan or Senate plan. That statute further provides that in the event a House plan or Senate plan, the General Assembly "may only divide the minimum number of precincts necessary to obtain preclearance."

484. The 2011 Senate Redistricting Plan divides 164 precincts in six counties not covered by Section 5 of the Voting Rights Act. Those six counties are: Durham, Forsyth, Johnston, Mecklenburg, New Hannover, and Wake.

485. The 2011 House Redistricting Plan divides 171 precincts in 24 counties not covered by Section 5 of the Voting Rights Act. Those counties are: Alamance, Brunswick, Buncombe, Burke, Cabarrus, Catawba, Davidson, Duplin, Durham, Forsyth, Haywood, Henderson, Johnston, Mecklenburg, Montgomery, Moore, New Hanover, Orange, Randolph, Richmond, Rowan, Sampson, Wake, and Wilkes.

486. Because the United States Department of Justice failed to preclear G.S. § 120-2.2, that statute is not effective in the 40 counties covered by Section 5 of the Voting Rights Act. G.S. § 126.2.2, however, remains effective in the 60 counties not covered by Section 5.

487. In dividing precincts in counties not covered by Section 5 of the Voting Rights Act in both the 2011 House and Senate redistricting Plans, Defendants violated G.S. § 120-2.2.

EIGHTEENTH CLAIM FOR RELIEF
(Violation of N.C. Gen. Stat. § 163- 261.2, Congressional Redistricting Plan)

488. All of the preceding paragraphs of this Complaint are realleged.

489. G.S. § 163-261.2 forbids the General Assembly from dividing any precincts in redistricting North Carolina's seats in the United States House of Representatives unless and until the United States fails to preclear that plan. That statute further provides that in the event of denial of precedence, the General Assembly "may only divide the minimum number of precincts necessary to obtain" preclearance.

490. Because the United States Department of Justice failed to preclear G.S. § 163-201.2, that statute is not effective in the 40 counties covered by Section 5 of the Voting Rights Act. G.S. § 163-201.2, however, remains in effect for the 60 counties not covered by Section 5.

491. The 2011 Congressional Redistricting Plan divided 17 precincts in 8 counties not covered by Section 5. Those counties are: Alamance, Buncombe, Catawba, Davidson, Iredell, New Hanover, Randolph, and Wake.

492. In dividing precincts in counties not covered by Section 5 of the Voting Rights Act, Defendants violated G.S. § 163-201.2.

NINETEENTH CLAIM FOR RELIEF
(Violation of Article I, § 19 of the State Constitution, House Districts 7, 12, 21, 24, 29, 31, 33, 48, 99, and 107)

493. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

494. Article I, § 19 of the State Constitution forbids racial classification unless narrowly drawn to serve a compelling interest.

495. Race was the predominant factor in the drawing of House Districts 7, 12, 21, 24, 29, 31, 33, 48, 99, and 107 and those districts thus constitute racial classifications. Defendants

did not narrowly draw these districts to serve any compelling interest they may have had, including any compelling interests they may have had in complying with the federal Voting Rights Act.

496. Defendants' failure violated Plaintiffs' rights under Article I, § 19 of the State Constitution.

TWENTIETH CLAIM FOR RELIEF
(Violation of Article I, § 19 of the State Constitution, Senate Districts 4, 5, 14, 20, 21, 28, 38, and 40)

497. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

498. Article I, § 19 of the State Constitution forbids racial classification unless narrowly drawn to serve a compelling interest.

499. Race was the predominant factor in the drawing of Senate Districts 4, 5, 14, 20, 21, 28, 38, and 40, and those districts thus constitute racial classifications. Defendants did not narrowly draw these districts to serve any compelling interest they may have had under the federal Voting Rights Act.

500. Defendants' failure violated Plaintiffs' rights under Article I, § 19 of the State Constitution.

TWENTY-FIRST CLAIM FOR RELIEF
(Violation of Article I, § 19 of the State Constitution, Congressional Districts 1 and 12)

501. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

502. Article I, § 19 of the State Constitution forbids racial classification unless narrowly drawn to serve a compelling interest.

503. Race was the predominant factor in the drawing of Congressional Districts 1 and 12, and those districts thus constitute racial classifications. Defendants did not narrowly draw these districts to serve any compelling interest they may have had under the federal Voting Rights Act.

504. Defendants' failure violated Plaintiffs' rights under Article I, § 19 of the State Constitution.

TWENTY-SECOND CLAIM FOR RELIEF
(Violation of Fourteenth Amendment of the U.S. Constitution, House Districts 7, 12, 21, 24, 29, 31, 33, 48, 99, and 107)

505. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

506. The Fourteenth Amendment to the United States Constitution forbids racial classifications unless narrowly tailored to serve a compelling interest.

507. Race was the predominate factor in the drawing of House Districts 7, 12, 21, 24, 29, 31, 33, 48, 99, and 107, and those districts thus constitute racial classifications.

508. Defendants did not narrowly draw these districts to meet any compelling interest they may have had, including any compelling interest they may have had in meeting the requirements of the federal Voting Rights Act.

509. Defendants' failure violated Plaintiffs' rights under the Fourteenth Amendment and 42 U.S.C. § 1983.

TWENTY-THIRD CLAIM FOR RELIEF
(Violation of Fourteenth Amendment of the U.S. Constitution, Senate Districts 4, 5, 14, 20, 21, 28, 38, and 40)

510. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

511. The Fourteenth Amendment to the United States Constitution forbids racial classifications unless narrowly tailored to serve a compelling interest.

512. Race was the predominant factor in the drawing of Senate Districts 4, 5, 14, 20, 21, 28, 38, and 40, and those districts thus constitute racial classifications.

513. Defendants did not narrowly draw these districts to meet any compelling interest they may have had, including any compelling interest they may have had in meeting the requirements of the federal Voting Rights Act.

514. Defendants' failure violated Plaintiffs' rights under the Fourteenth Amendment and 42 U.S.C. § 1983.

TWENTY-FOURTH CLAIM FOR RELIEF
(Violation of Fourteenth Amendment of the U.S. Constitution, Congressional Districts 1 and 12)

515. All of the preceding paragraphs of this Complaint are realleged as if fully set forth herein.

516. The Fourteenth Amendment to the United States Constitution forbids racial classifications unless narrowly tailored to serve a compelling interest.

517. Race was the predominate factor in the drawing of Congressional Districts 1 and 12, and those districts thus constitute racial classifications.

518. Defendants did not narrowly draw these districts to meet any compelling interest they may have had, including any compelling interest they may have had in meeting the requirements of the federal Voting Rights Act.

519. Defendants' failure violated Plaintiffs' rights under the Fourteenth Amendment and 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

1. Declare that the State Senate Redistricting Plan (2011 S.L. 402 and 2011 S.L. 413) and the State House Redistricting Plan (2011 S.L. 404 and 2011 S.L. 416) unnecessarily divide counties in violation of Article II, §§ 3 and 5 of the North Carolina Constitution.

2. Declare that the State Senate Redistricting Plan, the State House Redistricting Plan and the Congressional redistricting Plan (2011 S.L. 403 and 2011 S.L. 414) were not enacted for the "good of the whole," in violation of Article I, § 2 of the North Carolina Constitution.

3. Declare that the State Senate Redistricting Plan, the State House Redistricting Plan, and the Congressional Redistricting Plan constitute arbitrary and capricious legislation in violation of Article I, § 19 of the North Carolina Constitution.

4. Declare that the Senate Redistricting Plan and the House Redistricting Plan abridge the right of citizens to vote in violation of Article I, § 19 and Article VI, § 1 of the North Carolina Constitution.

5. Declare that the Senate Redistricting Plan and the House Redistricting Plan abridge the right of citizens to vote on account of their race in violation of Article I, § 19 and Article VI, § 1 of the North Carolina Constitution and in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

6. Declare that the State Senate Redistricting Plan, the State House Redistricting Plan, and the Congressional Redistricting Plan establish racial classifications in violation of the equal protection provisions of Article I, § 19 of the North Carolina Constitution.

7. Declare that the State Senate Redistricting Plan, the State House Redistricting Plan, and the Congressional Redistricting Plan establish racial classification in violations of the Fourteenth and Fifteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

8. Declare that the Senate Redistricting Plan and the House Redistricting Plan divide precincts in violations of G.S. § 120-2.2.

9. Declare that the Congressional Redistricting Plan divides precincts in violation of G.S. § 163-201.2.

10. Issue a permanent injunction enjoining the Defendants, their agents, officers, and employees, from enforcing or giving any effect to the State Senate Redistricting Plan, the State House Redistricting Plan, and the Congressional Redistricting Plan, including enjoining the Defendants, their agents, officers, and employees from opening any filing period or conducting any primary election or general election based on the State Senate Redistricting Plan, the State House Redistricting Plan, or the Congressional Redistricting Plan.

11. 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.

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

13. Require Defendants to pay Plaintiffs' reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

14. Grant Plaintiffs such other and further relief as may be paper and just.

Respectfully submitted this the 12th day of December, 2011.

POYNER SPRUILL LLP

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing ***FIRST AMENDED COMPLAINT*** on counsel for Defendants by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, addressed to the following persons at the following addresses:

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Additionally, a courtesy copy of the foregoing document was served on counsel for Plaintiffs in *NAACP v. State of North Carolina*, Wake County Superior Court Case No. 11-CVS-16940, via e-mail to the following e-mail addresses:

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This the 12th day of December, 2011.

Edwin M. Speas

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

MARGARET DICKSON, *et al.*, *Plaintiffs,* v. ROBERT RUCHO, *et al.*, *Defendants.*	11 CVS 16896
NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP, *et al.*, *Plaintiffs,* v. THE STATE OF NORTH CAROLINA, *et al.*, *Defendants.*	11 CVS 16940 *(Consolidated)*

JUDGMENT and MEMORANDUM OF DECISION

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VI. DO THE ENACTED PLANS VIOLATE THE EQUAL PROTECTION GUARANTEES OF THE UNITED STATES OR NORTH CAROLINA CONSTITUTIONS BY DISREGARDING

I. INTRODUCTION

Redistricting in North Carolina is an inherently political and intensely partisan process that results in political winners and, of course, political losers. The political party controlling the General Assembly hopes, through redistricting legislation, to apportion the citizens of North Carolina in a manner that will secure the prevailing party's political gain for at least another decade. While one might suggest that there are more expedient, and less manipulative, methods of apportioning voters, our redistricting process, as it has been for decades, is ultimately the product of democratic elections and is a compelling reminder that, indeed, "elections have consequences."

Political losses and partisan disadvantage are not the proper subject for judicial review, and those whose power or influence is stripped away by shifting political winds cannot seek a remedy from courts of law, but they must find relief from courts of public opinion in future elections. Our North Carolina Supreme Court has observed that "we do not believe the political process is enhanced if the power of the courts is consistently invoked to second-guess the General Assembly's redistricting decisions." *Pender County v. Bartlett,* 361 N.C. 491, 506 (2007) [hereinafter *Pender County*] *aff'd sub nom. Bartlett v. Strickland*, 556 U.S. 1 (2009). Rather, the role of the court in the redistricting process is to ensure that North Carolinians' constitutional rights – not their political rights or preferences -- are secure. In so doing, this trial court must apply prevailing law, consider arguments, and examine facts dispassionately and in a manner that is consistent with each judge's oath of office -- namely "without favoritism to anyone or to the State."

This case has benefited from exceptionally well-qualified legal counsel who have zealously represented their clients and their respective positions. The court has

benefited from thorough briefing, a well-developed factual record, and persuasive arguments. The court has carefully considered the positions advocated by each of the parties and the many appellate decisions governing this field of law, and the court has pored over thousands of pages of legal briefs, evidence and supporting material. The trial court's judgment, as reflected in this memorandum of decision, is the product of due consideration of all arguments and matters of record.

It is the ultimate holding of this trial court that the redistricting plans enacted by the General Assembly in 2011 must be upheld and that the Enacted Plans do not impair the constitutional rights of the citizens of North Carolina as those rights are defined by law. This decision was reached unanimously by the trial court. In other words, each of the three judges on the trial court --appointed by the North Carolina Chief Justice from different geographic regions and each with differing ideological and political outlooks -- independently and collectively arrived at the conclusions that are set out below. The decision of the unanimous trial court follows.

II. PROCEDURAL HISTORY

On July 27 and 28, 2011, following the 2010 Decennial Census, the North Carolina General Assembly enacted new redistricting plans for the North Carolina House of Representatives,[1] North Carolina Senate,[2] and United States House of Representatives[3] pursuant to Article II, §§ 3 and 5 of the North Carolina Constitution and Title 2, § 2a and 2c of the United States Code. On September, 2, 2011, the North Carolina Attorney

[1] Session Law 2011-404 (July 28, 2011) also known as "Lewis-Dollar-Dockham 4 [hereinafter "Enacted House Plan"].
[2] Session Law 2011-402 (July 27, 2011) also known as "Rucho Senate 3 [hereinafter "Enacted Senate Plan"]."
[3] Session law 2011-403 (July 28, 2011) also known as "Rucho-Lewis Congress 3 [hereinafter "Enacted Congressional Plan"]. Collectively, the 2011 plans are referred to as the "Enacted Plans."

General sought administrative preclearance from the United States Attorney General as required by § 5 of the Voting Rights Act ("VRA"). 42 U.S.C. § 1973c (2013). The redistricting plans were pre-cleared administratively by the United States Attorney General on November 1, 2011.

On November 1, 2011, the General Assembly also alerted the United States Department of Justice that an error in the computer software program used to draw the redistricting plans had caused certain areas of the state to be omitted from the original plans. The General Assembly passed legislation on November 1, 2011 to cure this technical defect. The United States Attorney General pre-cleared the revised plans on December 8, 2011.

Meanwhile, Plaintiffs filed separate suits on November 3 and 4, 2011, challenging the constitutionality of the redistricting plans and seeking a preliminary injunction to prevent Defendants[4] from conducting elections using the Enacted Plans. In accordance with N. C. Gen. Stat. § 1-267.1, the Chief Justice appointed a three-judge panel to hear both actions [hereinafter the "trial court"].

On December 19, 2011, the trial court consolidated the cases. On the same day Defendants filed their answers and moved to dismiss the suit. Thereafter, on January 20, 2012, the trial court entered an order denying Plaintiffs' motion for a preliminary injunction. The trial court also entered an order on February 6, 2012 allowing in part and denying in part Defendants' motion to dismiss.[5]

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[4] The Defendants are the State of North Carolina, the State Board of Elections and various members of the North Carolina General Assembly named only in their official capacity. The Defendants are collectively referred to in this Memorandum as "the Defendants" or "the General Assembly."

[5] The Court, in its February 6, 2012 order, allowed Defendants' Motions to Dismiss as to claims for relief 6, 7, 8, 12 and 13 of the *NC State Conference of the Branches of the NAACP et al. v. The State of North Carolina et al.* complaint and claims for relief 1, 2, 3, 4, 5, 6, 7, 8, 17 and 18 of the *Dickson et al. v. Rucho et al.* complaint.

On April 20, 2012, the trial court entered an order compelling the production of certain documents. The trial court's order was appealed as a matter of right to the North Carolina Supreme Court ("N.C. Supreme Court"). On January 25, 2013, the N.C. Supreme Court issued its ruling on that interlocutory matter.

During the week of February 25, 2013, the trial court conducted hearings on cross-motions for summary judgment filed by the parties. Following the hearings, the trial court took those matters under advisement.

On May 13, 2013, the trial court, pursuant to Rule 42(b)(1) of the North Carolina Rules of Civil Procedure, ordered that two issues be separated from the remaining pending issues and that a bench trial be held on those two issues.[6] A bench trial was held on June 5 and 6, 2013, before the three judges of the trial court, who received evidence through witnesses and designations of the record.

The trial court, having considered all matters of record and the arguments of counsel, now enters this Judgment.

III. SUMMARY JUDGMENT STANDARD

Summary judgment must be granted when the "pleadings, depositions, answers to interrogatories, and the admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law." N.C. R. Civ. P. 56(c). The rule is "designed to eliminate the necessity of a formal trial where only questions of law are involved and a fatal weakness

[6] The two issues separated for trial in the May 13, 2013 order were: "(A) Assuming application of a strict scrutiny standard and, in considering whether the Enacted Plans were narrowly tailored, was each challenged Voting Rights Act ("VRA") district drawn in a place where a remedy or potential remedy for racially polarized voting was reasonable for purposes of preclearance or protection of the State from vote dilution claims under the Constitution or under § 2 of the VRA?" and "(B) For six specific districts (Senate Districts 31 and 32, House Districts 51 and 54 and Congressional Districts 4 and 12 – none of which is identified as a VRA district), what was the predominant factor in the drawing of those districts?"

in the claim of a party is exposed." *Dalton v. Camp*, 353 N.C. 647, 650 (2001). "When considering a motion for summary judgment, the trial judge must view the presented evidence in a light most favorable to the non-moving party. Moreover the party moving for summary judgment bears the burden of establishing the lack of any triable issue." *Id.* at 651 (citation omitted).

Pending before the trial court is the Defendants' Motion for Summary Judgment seeking judgment in Defendants' favor on each of Plaintiffs' claims. Also pending is the Plaintiffs' Motion for Partial Summary Judgment seeking judgment in Plaintiffs' favor on many of their claims against the Defendants. The trial court, in considering these cross-motions for summary judgment, has concluded that certain discrete issues present genuine issues of material fact and thus, as to those issues, summary judgment would be inappropriate. In the trial court's May 13, 2013 order (*supra.* at fn. 6), those discrete issues were identified and separated from the remaining issues in the case and, in accordance with that order, a bench trial, limited to evidence on those issues, has occurred. The trial court's findings of fact and conclusions of law with respect to those discrete issues are set out and incorporated into this Judgment.

As for the remaining issues raised by the parties' cross-motions for summary judgment, the trial court concludes that no genuine issues of material fact exist, and that the remaining issues present only issues of law.[7] Therefore, all remaining issues can be resolved through summary judgment. The trial court's conclusions of law on each of these issues are also set forth in this Judgment.[8]

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[7] See further, fn. 12, *infra*.

[8] Traditionally, in granting or denying summary judgment, trial courts' written orders are general and non-specific, and trial courts often refrain from elaborating upon their reasoning. In this matter, perhaps ignoring the advice of Will Rogers to "never miss a good chance to shut up," the trial court has opted to

IV. ARE THE CHALLENGED DISTRICTS A RACIAL GERRYMANDER THAT VIOLATES THE EQUAL PROTECTION GUARANTEES OF THE UNITED STATES OR NORTH CAROLINA CONSTITUTIONS? (*Dickson amended complaint, Claims 19-24; NAACP amended complaint Claims 1-3 & 9-11)*

Plaintiffs contend that the challenged districts of the Enacted Plans violate the equal protection clauses of the North Carolina and United States constitutions by unlawfully classifying voters and otherwise discriminating against voters on the basis of race. The trial court has concluded that the determination of this issue is a mixed question of law and fact.

A. Burden of Proof

With respect to redistricting, because the task is one that ordinarily falls within a legislature's sphere of competence, the United States Supreme Court (hereinafter "Supreme Court") has made it clear that the legislature must have discretion to exercise political judgment necessary to balance competing interests. Thus, in reviewing the legality of a redistricting plan, "courts must 'exercise extraordinary caution' in adjudicating claims that a State has drawn district lines on the basis of race." *Easley v. Cromartie*, 532 U.S. 234, 242 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)) [hereinafter *Cromartie II*].

The Plaintiffs bear the burden of proof of establishing that the Enacted Plans violate equal protection guarantees. This remains true even in the context of the strict

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share its reasoning because the issues presented are ones of important public concern. The trial court has not endeavored to address all arguments supporting the results set out herein, fully recognizing that any appellate review of this matter, with the exception of matters of evidence, is *de novo*. Rather, the trial court has set out its reasoning on the issues it has concluded are salient and essential to the outcome.

scrutiny analysis discussed below. Under strict scrutiny, the burden of proof as to whether race was the overriding consideration behind a redistricting plan "rests squarely with the Plaintiffs." *Johnson v. Miller,* 864 F. Supp. 1354, 1378-79 (S.D. Ga. 1994) *aff'd* 515 U.S. 900 (1995). If the Plaintiffs meet that burden, the state then has the burden of "producing evidence that the plan's use of race is narrowly tailored to further a compelling state interest, and the plaintiffs bear the ultimate burden of persuading the court either that the proffered justification is not compelling or that the plan is not narrowly tailored to further it." *Shaw v. Hunt*, 861 F. Supp. 408, 436 (E.D. N.C. 1994). The state's burden of production is a heavy burden because "the purpose of strict scrutiny is to 'smoke out' illegitimate uses of race by assuring that the [government] is pursuing a goal important enough to warrant use of a highly suspect tool." *Richmond v. J.A. Croson*, 488 U.S. 469, 493 (1989). Racial classifications are "presumptively invalid and can be upheld only upon an extraordinary justification" by the state. *Shaw v. Reno*, 509 U.S. 630, 643-44 (1993) [hereinafter *Shaw I*] (quoting *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979)).

The heavy duty of production upon the state was affirmed in the Supreme Court's most recent equal protection analysis in *Fisher v. University of Texas,* 570 U.S. __ (2013) where, in the context of an affirmative action plan at an academic institution, the Court said:

> the University must prove that the means chosen by the University to attain diversity are narrowly tailored to that goal. On this point, the University receives no deference. . . . it is for the courts, not the university administrators, to ensure that "the means chosen to accomplish the government's asserted purpose must be specifically and narrowly framed to accomplish that purpose."

Id. at No. 11-345, slip op. at 10, (citing *Grutter v. Bollinger*, 539 U.S. 306, 333, 337 (2003)). The Court summarized the respective burdens as follows: "[a] plaintiff, of course, bears the burden of placing the validity of a university's adoption of an affirmative action plan in issue. But strict scrutiny imposes on the university the ultimate burden of demonstrating, before turning to racial classifications, that available, workable race-neutral alternatives do not suffice." *Id.* at 11.

The *Fisher* Court also provides instructive language to the trial court for the judicial review of an equal protection claim by explaining that "narrow tailoring also requires that the reviewing court verify that it is 'necessary' for a university to use race to achieve the educational benefits of diversity. . . . Although 'narrow tailoring does not require exhaustion of every *conceivable* race-neutral alternative,' strict scrutiny does require a court to examine with care, and not defer to, a university's 'serious good faith consideration of workable race neutral alternatives.'" *Id.* at 10 (emphasis original).

There are, however, two important distinctions that must be noted between the *Fisher* holding, which relates to strict scrutiny of university enrollment policies, and judicial review of claims of racial gerrymandering. The first has already been noted: redistricting, unlike university enrollment, is an inherently political process delegated to the legislative branch of government. Second, unlike academic admission policies, where a university can create affirmative action plans on the basis of relatively easily measured current and historic enrollment data, in redistricting, a legislature must, to a certain extent, tailor its redistricting plans according to its best predictions of how a future court or the U.S. Department of Justice will, at a future date after enactment, view those plans if challenged in litigation or when submitted for preclearance. A legislature

must, in legislative redistricting, peer into the future somewhat because it must take into account the compelling governmental interests of avoiding *future* liability under § 2 of the VRA and ensuring *future* preclearance of the redistricting plans under § 5 of the VRA. *See*, *Shaw v. Hunt*, 517 U.S. 899, 916 (1996) [hereinafter *Shaw II*] ("the legislative action must, at a minimum, remedy the *anticipated* violation or achieve compliance to be narrowly tailored." (emphasis added)). Consequently, any judicial standard of review that requires the reviewing court to strike a racial classification that is not "necessary," in absolute terms, to avoid some yet unknown liability or yet unknown objection to preclearance would be an impossibly stringent standard for both the legislature to meet or the court to apply. Recognizing this, the Supreme Court has instructed, with respect to redistricting plans designed to avoid future § 2 liability or to ensure § 5 preclearance, "that the 'narrow tailoring' requirement of strict scrutiny allows the States a limited degree of leeway in furthering such interests. If the State has a 'strong basis in evidence' for concluding that creation of a majority-minority district is reasonably necessary to comply with § 2, and the districting that is based on race 'substantially addresses the § 2 violation,' it satisfies strict scrutiny." *Bush v. Vera*, 517 U.S. 952, 977 (1996) (citations omitted) (rejecting as "impossibly stringent" the lower court's view of the narrow tailoring requirement that "a district must have the least possible amount of irregularity in shape, making allowances for traditional districting criteria") (citing *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 291 (1986) ("state actors should not be 'trapped between the competing hazards of liability' by the imposition of unattainable requirements under the rubric of strict scrutiny.")).

B. Level of Scrutiny

Generally, all racial classifications imposed by a government must be analyzed by a reviewing court under strict scrutiny, even if the laws are "remedial" or "benign" in nature. *Johnson v. California,* 543 U.S. 499, 505 (2005); *Shaw I*, 509 U.S. at 656; *Wygant,* 476 U.S. 267. However, strict scrutiny does not apply to redistricting plans merely because the drafters prepared plans with a "consciousness of race." Nor does it apply to all cases of intentional creation of majority-minority districts, or where race was a motivation for the drawing of such districts. *Vera*, 517 U.S. at 958. Indeed, because of the VRA, race is "obviously a valid consideration in redistricting, but a voting district that is *so* beholden to racial concerns that it is inexplicable on other grounds becomes, *ipso facto*, a racial classification." *Johnson v. Miller*, 864 F. Supp. at 1369.

Rather, in redistricting cases, strict scrutiny is an appropriate level of scrutiny when plaintiffs establish that "all other legislative districting principles were subordinated to race and that race was the predominant factor motivating the legislature's redistricting decision." *Cromartie v. Hunt*, 133 F. Supp. 2d 407 (2000) (citing *Miller v. Johnson*, 515 U.S. 900, 916 (1995)); *Vera*, 517 U.S. at 959 (citing *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). The districts must be unexplainable on grounds other than race, and it must be established that the legislature neglected all traditional redistricting criteria such as compactness, continuity, respect for political subdivisions and incumbency protection. *Cromartie v. Hunt*, 133 F. Supp. 2d 407; *Vera*, 517 U.S. at 959.

Unless the legislature acknowledges that race was the predominant factor motivating redistricting decisions, the determination by the trial court of the legislature's motive and, hence, the appropriate level of scrutiny, is an inherently factual inquiry

requiring "a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). In the absence of direct evidence of racial motivation, circumstantial evidence, such as dramatically irregular shapes of districts, may serve as a "proxy for direct evidence of a legislature's intentions." *Johnson v. Miller*, 864 F. Supp. at 1370 (citing *Shaw I*, 509 U.S. at 647). Indeed, a dramatically irregular shaped district has been called the "smoking gun," revealing the racial intent needed for an Equal Protection claim. *Id.*

In this litigation, however, the trial court concludes that it is able to by-pass this factual inquiry for some, but not all, of the challenged districts. The Plaintiffs collectively challenge as racial gerrymanders 9 Senate, 18 House and 3 U.S. Congressional districts created by the General Assembly in the Enacted Plans.[9] Of those 30 challenged districts, it is undisputed that the General Assembly intended to create 26 of the challenged districts to be "Voting Rights Act districts" [hereinafter "VRA districts"] and that it set about to draw each of these VRA districts so as to include at least 50% Total Black Voting Age Population [hereinafter "TBVAP"].[10] Defs.' Mem. Supp. Summ. J. 3. Moreover, the General Assembly acknowledges that it intended to create as many VRA districts as needed to achieve a "roughly proportionate" number of Senate, House and Congressional districts as compared to the Black population in North Carolina. *Id.* To draw districts based upon these criteria necessarily requires the drafters of districts to classify residents by race so as to include a sufficient number of

[9] Plaintiffs collectively challenge as racial gerrymanders Senate Districts 4, 5, 14, 20, 21, 28, 32, 38 and 40, House Districts 5, 7, 12, 21, 24, 29, 31, 32, 33, 38, 42, 48, 54, 57, 99, 102, 106 and 107, and Congressional Districts 1, 4 and 12.

[10] Of the challenged districts listed in fn. 9, *supra*, all but Senate District 32, House District 54 and Congressional Districts 4 and 12 were created by the General Assembly as VRA Districts.

black voters inside such districts, and consequently exclude white voters from the districts, in an effort to achieve a desired racial composition of >50% TBVAP and the desired "rough proportionality." This is a racial classification.

Racial and ethnic classifications of any sort are "inherently suspect and call for the most exacting judicial scrutiny." *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 291 (Powell, J., 1978). "Political judgments regarding the necessity for the particular classification may be weighed in the constitutional balance, *Korematsu* v. *United States*, 323 U.S. 214 (1944), but the standard of justification will remain constant. . . . When [classifications] touch upon an individual's race or ethnic background, he is entitled to a judicial determination that the burden he is asked to bear on that basis is precisely tailored to serve a compelling governmental interest." *Bakke, supra* at 299. Thus, the trial court concludes, for the purpose of this analysis, that in drawing VRA districts -- even though legislative intent may have been remedial and the districts may have been drawn to conform with federal and state law to provide Black voters in those districts with an opportunity to elect their preferred candidate of choice -- the shape, location and racial composition of each VRA district was predominantly determined by a racial objective and was the result of a racial classification sufficient to trigger the application of strict scrutiny as a matter of law.

In choosing to apply strict scrutiny, the trial court acknowledges that a persuasive argument can be made that compliance with the VRA is but one of several competing redistricting criteria balanced by the General Assembly and that a lesser standard of review might be appropriate. *See, e.g.*, *Vera*, 517 U.S. at 958; *Wilkins v. West*, 264 Va. 447 (2002). Nonetheless, the trial court employs the strict scrutiny standard of review

for two additional reasons: (1) the methodology developed by our appellate courts for analysis of constitutional claims under the strict scrutiny standard provides a convenient and systematic roadmap for judicial review, *see, e.g.*, *Fisher v. Univ. of Tex.*, 631 F.3d 213, 231 (5th Cir. Tex. 2011) *vacated and remanded* 570 U.S. __ (2013); and (2) if the Enacted Plans are found to be lawful under a strict scrutiny standard of review, and the evidence considered in a light most favorable to the Plaintiffs, then, *a fortiori*, the Enacted Plans would necessarily withstand review, and therefore be lawful, if a lesser standard of review is indeed warranted and a less exacting level of scrutiny applied.

As for the remaining four challenged districts, namely those not created by the General Assembly as VRA Districts, the trial court has received and examined evidence regarding the General Assembly's motive so as to ascertain whether race was the predominant factor motivating the shape and composition of these districts. The trial court's findings of fact and conclusions are set out below at § IV(D).

C. *Analysis of the Voting Rights Act Districts created in the Enacted Plans under the Strict Scrutiny Standard of Review*

Under the strict scrutiny analysis, the trial court must determine (1) whether the Enacted Plans further a "compelling governmental interest" and (2) whether the Enacted Plans are "narrowly tailored" to further that interest. *Wygant*, 476 U.S. at 274. In this case, the Defendants assert that the VRA Districts in the Enacted Plans were drawn to protect the State from liability under § 2 of the VRA, and to ensure preclearance of the Enacted Plans under § 5 of the VRA.

1. Compelling Governmental Interest

In general, compliance with the Voting Rights Act can be a compelling governmental interest.[11] A redistricting plan furthers a compelling governmental interest if the challenged districts are "reasonably established" to avoid liability under § 2 of the VRA or the challenged districts are "reasonably necessary" to obtain preclearance of the plan under § 5 of the VRA. *Shaw I*, 509 U.S. at 655; *Vera*, 517 U.S. at 977; *Cromartie v. Hunt*, 133 F. Supp. 2d at 423.

To determine whether, as a matter of law, the Enacted Plans further compelling governmental interests, the trial court must examine evidence before the General Assembly at the time the plans were adopted and determine, from that evidence, whether the General Assembly has made a showing that it had a "strong basis in evidence" to conclude that the districts, as drawn, were reasonably necessary to avoid liability and obtain preclearance under the VRA. *Cromartie v. Hunt*, 133 F. Supp. 2d 407; *Shaw II*, 517 U.S. at 910.[12]

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[11] In *Vera*, five members of the Court "assumed without deciding" that compliance with § 2 of the Voting Rights Act is a compelling state interest. 517 U.S. at 977 (plurality opinion); *Id.* at 1003 (concurring opinion of Thomas, J., joined by Scalia, J.). Justice O'Connor, however, who authored the plurality opinion, also wrote a separate concurring opinion in which she expressed her opinion that compliance with the Act is a compelling state interest, *Id.* at 992 (concurring opinion of O'Connor, J.), a view that seems to be shared by the four dissenting justices as well, *Id.* at 1004 (dissenting opinion of Stevens, J., joined by Ginsberg and Breyer, JJ.); 517 U.S. at 1065 (Souter, J., dissenting, joined by Ginsberg and Breyer, JJ.). *See further, Cromartie v. Hunt*, 133 F. Supp. 2d at 423 (finding compliance with VRA § 2 and § 5 to be compelling state interests).

[12] The Plaintiffs and Defendants are in agreement that substantially all of the issues in this litigation can be determined as a matter of law through summary judgment. The Plaintiffs' inform the trial court that: "[i]n applying strict scrutiny, this court should examine the evidence that the legislature had before it when drawing each of the challenged districts and determine: (1) whether *as a matter of law* that evidence constitutes strong evidence that the districts created were necessary to meet the identified compelling public interest; and (2) whether *as a matter of law* that evidence constitutes strong evidence that the legislature used race in drawing the districts only to the extent necessary to achieve some compelling goal." The Plaintiffs further acknowledge that "*there is no material dispute* here over the *process* that the legislature used in drawing the challenged districts or the *information* upon which the legislature says it relied to justify the districts it drew." Plts' Supp. Mem. Summ. J. 3 (emphasis added). The Defendants likewise agree that substantially all issues in this litigation are appropriately resolved by summary judgment, although the Defendants further suggest that the "strong basis in evidence" test resembles the

a. *Avoiding Voting Rights Act §2 Liability*

Avoiding liability under § 2 of the VRA can be a compelling governmental interest. *Vera*, 517 U.S. at 977; *Cromartie v. Hunt*, 133 F. Supp. 2d at 423. The General Assembly is not required to have proof of a certain § 2 violation before drawing districts to avoid § 2 liability but, rather, the trial court is required to defer to the General Assembly's "reasonable fears of, and their reasonable efforts to avoid, § 2 liability." *Vera*, 517 U.S. at 978.

The General Assembly's "reasonable fears" must be based upon strong evidence in the legislative record that three factors, known as the *Gingles* factors, existed in North Carolina when the Enacted Plans were adopted. The *Gingles* factors, which are a mandatory precondition to any § 2 claim against the State, are (1) that a minority group exists within the area affected by the Enacted Plans, and that this group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) that the group is politically cohesive; and (3) that racial bloc voting usually will work to defeat the minority's preferred candidate. *Vera*, 517 U.S. at 978; *Johnson v. De Grandy*, 512 U.S. 997, 1006-09 (1994); *Growe v. Emison*, 507 U.S. 25, 40, 41 (1993); *see also*

"substantial evidence based upon the whole record" standard used by the North Carolina Supreme Court and federal courts to review agency decisions. See, e.g. *N.C. Dep't of Env't and Natural Res. v. Carroll*, 358 N.C. 649, 660 (2004). Defs.' Memo in Response to the Court's Inquiry of April 5, 2013, p. 3. This analogy is helpful – while the "strong basis in evidence" test certainly implies a more critical, and less deferential, standard of review than the "substantial evidence test," the substantial evidence test is a question of law for the reviewing court, as Defendants argue should be the case here. This suggestion has some support in persuasive authority. *See, e.g. Contractors Ass'n v. City of Philadelphia*, 91 F.3d 586, 596 (3d Cir. 1996) ("ultimately, whether a strong basis in evidence of past or present discrimination exists, thereby establishing a compelling state interest for the municipality to enact a race-conscious ordinance, is a question of law, subject to plenary review. The same is true of the issue of whether there is a strong basis in evidence for concluding that the scope of the ordinance is narrowly tailored to remedy the identified past or present discrimination")(citations omitted). In any event, whether applying the Plaintiffs' rationale or the Defendants', both reach the same conclusion, as does the trial court, that the issues before the trial court are predominantly issues of law appropriate for summary judgment.

Thornburg v. Gingles, 478 U.S. 30, 50-51 (1986). In a §2 lawsuit, once the three *Gingles* factors are established, the trial court must consider the "totality of the circumstances" to determine whether a majority-minority district is appropriate to remedy vote dilution. *Shaw II*, 517 U.S. at 914.[13] In judicial review of the Enacted Plans, the trial court must examine the record before the General Assembly to determine, as a matter of law,[14] whether this strong basis in evidence exists.

The legislative record that existed at the time of the enactment of the Enacted Plans included:

- testimony from lay witnesses at numerous public hearings conducted throughout the state both before and after draft redistricting plans were proposed by the General Assembly;
- testimony and correspondence from representatives of interest groups and advocacy organizations, including the Southern Coalition for Social Justice ("SCSJ"), the Alliance for Fair Redistricting and Minority Voting Rights ("AFRAM") , the NC NAACP, Democracy NC, and the League of Women Voters;
- Legal opinions from faculty from the UNC School of Government;
- Scholarly writings regarding voting rights in North Carolina;

[13] None of the Supreme Court's racial gerrymandering decisions have imposed the "totality of the circumstances" requirement upon a state legislature, which suggests that the legislature has discretion to enact majority-minority districts if there is a strong basis in the legislative record of just the three *Gingles* factors. However, in reviewing the record before the General Assembly at the time of the enactment of the Enacted Plans, the trial court has considered whether there was a strong basis in evidence to conclude not only that the *Gingles* factors existed, but also whether there was a strong basis in evidence to conclude that the "totality of the circumstances" would support the creation of majority-minority districts.

[14] *See* fn. 12, *supra.*

- Law review articles submitted to the General Assembly's Redistricting Committee by various individuals or entities;
- Election results for elections conducted through and including 2010;
- An American Community Service survey of North Carolina household incomes, education levels, employment and other demographic data by county based upon race;
- An expert report from Dr. Ray Block offered by SCSJ and AFRAM;
- An expert report from Dr. Thomas Brunell, retained by the General Assembly;
- Prior redistricting plans; and
- Alternative redistricting plans proposed by SCSJ and AFRAM, Democratic leaders, and the Legislative Black Caucus ("LBC").[15]

A partial listing of the categories of evidence before the General Assembly is referenced in greater detail in **Appendix A** of this Judgment. This listing illustrates both the scope and detail of the information before the General Assembly at the time of the passage of the Enacted Plans, as well as the evidentiary strength of the record.

The trial court concludes, as a matter of law, based upon a review of the entire record before the General Assembly at the time of the passage of the Enacted Plans, that the General Assembly had a strong basis in evidence to conclude that each of the *Gingles* preconditions was present in substantial portions of North Carolina and that, based upon

[15] The alternative plans received by the General Assembly prior to the enactment of the Enacted Plans were as follows: Congressional Fair and Legal, Senate Fair and Legal and House Fair and Legal, all entered into the Legislative Record during floor debate on July 25, 2011 (also referred to as "Fair and Legal" or "F&L"), the Possible Senate Districts and the Possible House Districts, also entered into the Legislative Record during the floor debate on July 25, 2011 (also referred to as "PSD" and "PHD" plans or, alternatively "Legislative Black Caucus Plans" or "LBC" plans), and Senate, House and Congressional Possible Maps prepared by the AFRAM and the SCSJ, presented at public hearings held on May 9 and June 23, 2011 (also referred to as "SCSJ" maps).

the totality of circumstances, VRA districts were required to remedy against vote dilution. Therefore, the trial court concludes, the General Assembly had a compelling governmental interest of avoiding § 2 liability and was justified in crafting redistricting plans reasonably necessary to avoid such liability.

b. Ensuring Voting Rights Act §5 Preclearance

Ensuring preclearance of redistricting plans under § 5 of the VRA can also be a compelling governmental interest. *Vera,* 517 U.S. at 982.[16] Forty counties in North Carolina are "covered jurisdictions" under § 5 of the VRA. Section 5 suspends all changes to a covered jurisdiction's elections procedures, including changes to district lines by redistricting legislation, until those changes are submitted to and approved by the United States Attorney General or a three-judge panel of the United States District Court for the District of Columbia. *Perry v. Perez*, 132 S. Ct. 934, 939 (2012).

A newly-enacted redistricting plan may not be used until the jurisdiction has demonstrated that the plan does not have a discriminatory purpose or effect, and the newly-enacted plan may not undo or defeat rights afforded by the most recent legally enforceable redistricting plan in force or effect in the covered jurisdiction (the "benchmark" plan). *Riley v. Kennedy*, 553 U.S. 406 (2008); 28 C.F.R. § 51.54(b)(1).

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[16] In its June 25, 2013 opinion in *Shelby Co. v. Holder,* 570 U.S. ___ (2013), the Supreme Court struck down § 4 of the Voting Rights Act, holding that its formula could no longer be used as a basis for subjecting jurisdictions to preclearance. This holding has no practical effect upon the outcome of this case because the measure of the constitutionality of the Enacted Plans depends upon the compelling governmental interests *at the time of the enactment* of the Enacted Plans. At the time of enactment in 2011, preclearance by the USDOJ was required of all North Carolina legislative and congressional redistricting plans. Moreover, *Shelby County*, in *dicta,* reaffirms that "§ 2 is permanent, applies nationwide, and is not at issue in this case." *Id*, at No. 12-96, slip op. at 3. Thus, regardless of any retroactive application of *Shelby County* to § 5, the legitimate governmental interest of avoiding § 2 liability remains.

A legislature's efforts to ensure preclearance must be based upon its reasonable interpretation of the legal requirements of § 5 of the VRA, including the effect of a 2006 amendment that clarified that § 5 expressly prohibits "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the *purpose* of or will have the *effect* of diminishing the ability of citizens of the United States on account of race or color . . . *to elect their preferred candidate of choice.*" Pub. L. No. 109-246, § 5, 120 Stat. 577, 580-81 (2006) (emphasis added). This amendment aligned the language of § 5 with the same language in § 2 of the VRA to the extent that both now refer to the ability of minority groups to "elect their preferred candidate of choice." The Supreme Court has recently recognized that the effect of the 2006 amendment to § 5 is that "the bar that covered jurisdictions must clear has been raised." *Shelby County*, *supra* note 13, at 16-17 (citing *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 336 (2000)).

The trial court concludes, as a matter of law, based upon the review of the entire record before the General Assembly at the time of the passage of the Enacted Plans, that the General Assembly had a strong basis in evidence to conclude that the Enacted Plans must be precleared, and that they must meet the heightened requirements of preclearance under the 2006 amendments to § 5 of the VRA. Therefore, the General Assembly had a compelling governmental interest in enacting redistricting plans designed to ensure preclearance under § 5 of the VRA.[17]

[17] It has been observed that a compelling interest of a jurisdiction subject to § 5 preclearance is "initially assumed" since the plan cannot be enacted without compliance. The more relevant question is that of narrow tailoring. *See Johnson v. Miller*, 864 F. Supp. at 1382-83.

2. Narrow Tailoring

The trial court now considers, in light of the foregoing conclusions regarding the existence of compelling governmental interests, whether the Enacted Plans were narrowly tailored to avoid § 2 liability and ensure § 5 preclearance. In other words, in responding to these compelling interests, the General Assembly is not granted "*carte blanche* to engage in racial gerrymandering." *Shaw I*, 509 U.S. at 655. The trial court must "bear in mind the difference between what the law permits, and what it requires." *Id.* at 654. The VRA cannot justify all actions taken in its name, but only those narrowly tailored to give effect to its requirements.

The Plaintiffs contend that the Enacted Plans are not narrowly tailored because:

1. The Enacted Plans contain significantly more VRA districts (i.e. districts intentionally created by the General Assembly as majority-minority districts to avoid § 2 liability or to ensure § 5 preclearance) than reasonably necessary to comply with the VRA (Pl.'s Mem. Supp. Partial Summ. J. 82);
2. The VRA districts are unnecessarily "packed" with Black voters (Pl.'s Mem. Supp. Partial Summ, J. 84);
3. The VRA districts are placed in geographic locations where there is insufficient evidence of a reasonable threat of § 2 liability (Pl.'s Mem. Supp. Partial Summ. J. 77); and
4. The shape of the VRA districts are non-compact and irregular (Pl.'s Mem. Supp. Partial Summ. J. 85).

The trial court considers each of these contentions in turn.

a. Did the General Assembly fail to narrowly tailor the Enacted Plans by creating more Voting Rights Act districts than reasonably necessary to comply with the Act?

Purportedly to avoid VRA § 2 liability and to ensure VRA § 5 preclearance, the General Assembly created majority-minority districts throughout the State. The Plaintiffs draw the trial court's attention to the increased number of such districts compared to prior enacted plans. The Enacted House Plan contains 23 districts with a TBVAP in excess of 50% as compared to 10 such districts in the 2009 House Plan -- the last plan in effect before the Enacted House Plan. The Enacted Senate Plan contains 9 districts with a TBVAP in excess of 50% as compared to zero in its predecessor, the 2003 Senate Plan. This seemingly dramatic increase in the number of VRA districts, Plaintiffs contend, would suggest that "one would assume that race relations in North Carolina had to be among the worst in the country, if such extreme racial remedies were required." Pl.'s Mem. Opp'n 44.

However, a closer look at the data is warranted. The following tables compares the Enacted Plans with the alternative plans proffered or supported by the Plaintiffs and, in addition to focusing on the number of districts in prior or competing plans with TBVAP > 50%, also considers the number of districts in each plan where TBVAP is greater than 40%.

Table 1: ***Comparison of Number of Senate Districts > 40% TBVAP among all plans***

	Enacted Plan	2003 Plan	SCSJ	F&L	LBC
# of Districts > 50% TBVAP	9	0	5	1	0
# of Districts >40% but <50% TBVAP	1	8	4	6	8
Total # Districts >40 TBVAP	10	8	9	7	8

Table 2: ***Comparison of Number of House Districts > 40% TBVAP among all plans***

	Enacted Plan	2003 Plan	SCSJ	F&L	LBC
# of Districts > 50% TBVAP	23	10	11	9	10
# of Districts >40% but <50% TBVAP	2	10	10	11	13
Total # Districts >40 TBVAP	25	20	21	20	23

These tables show that when comparing the aggregate number of districts with TBVAP > 40% in the Enacted Plan with all other plans, the difference between the plans is not as dramatic. This is significant when taken in the context of the parties' disagreement over what constitutes a lawful VRA district. *(See further infra* § IV(C)(2)(b), discussion regarding cross-over districts (i.e. districts with TBVAP >40%) and majority-minority districts (districts with TBVAP >50%)). All parties, this data suggests, agree that a significant number of VRA districts – however that term is defined – are required in North Carolina. For example, in the proposed SCSJ Senate Plan, the drafters would create 9 VRA Senate districts, compared to 10 in the Enacted Senate Plan. Likewise, in the proposed LBC plan, the drafters would create 23 VRA districts compared to 25 in the Enacted House Plan. In the trial court's consideration of the strong basis of evidence

that existed in the legislative record at the time of the enactment of the Enacted Plans, it is compelling that all of the alternative plans propounded or endorsed by the Plaintiffs contain a large number of voting districts created to increase TBVAP so as to provide minority voters with the opportunity to elect their candidate of choice.

The undisputed evidence establishes that the General Assembly, in drafting the Enacted Plans, endeavored to create VRA districts in roughly the same proportion as the ratio of Black population to total population in North Carolina. In other words, because the 2010 census figures established that 21% of North Carolina's population over 18 years of age was "any part Black," the corresponding rough proportion of Senate seats, out of 50 seats, would be 10 seats, and hence 10 VRA Senate districts. Likewise, of the 120 House seats, 21% of those seats would be roughly 25 House seats, and hence 25 VRA districts.

The General Assembly, in using "rough proportionality" as a benchmark for the number of VRA districts it created in the Enacted Plans, relies upon Supreme Court precedent that favorably endorses "rough proportionality" as a means by which a redistricting plan can provide minority voters with an equal opportunity to elect candidates of choice. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 429-30 (2006) [hereinafter *LULAC*]; *Shaw II*, 517 U.S. at 916 n.8; *De Grandy,* 512 U.S. at 1000. In *De Grandy,* the Supreme Court said that "no violation of § 2 can be found ..., where, in spite of continuing discrimination and racial bloc voting, minority voters form effective voting majorities in a number of districts roughly proportional to the minority voters' respective shares in the voting-age population." 512 U.S. at 1013-1015. Where a State's election districts reflect substantial proportionality between majority and minority

populations, the Supreme Court explained, such districts would "thwart the historical tendency to exclude [the minority population], not encourage or perpetuate it."[18] *Id.* at 1014. It is reasonable for the General Assembly to rely upon this unequivocal holding of the Supreme Court in drafting a plan to avoid § 2 liability. When the Supreme Court says "no violation of § 2 can be found" under certain circumstances, prudence dictates that the General Assembly should be given the leeway to seek to emulate those circumstances in its Enacted Plans.

Drafting districts so as to achieve "rough proportionality" is also favorably endorsed by Plaintiffs' retained expert, Dr. Theodore S. Arrington, an expert with over 40 years in the field of districting, reapportionment and racial voting patterns. In deposition testimony, Dr. Arrington said:

> [I]f I'm sitting down and somebody asks me to draw districts for North Carolina that will be good districts, I would want to draw districts in such a way as blacks have a reasonable opportunity to get something close to proportion of the seats in the General Assembly to reflect their proportion of the population.

Arrington Dep., 30-31. Moreover, Dr. Arrington, who is often requested by the Department of Justice to draw illustrative redistricting maps in the § 5 preclearance

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[18] The Supreme Court distinguishes "rough proportionality," as it is used here to "link[] the number of majority-minority voting districts to minority members' share of the relevant population" from the constitutionally-suspect concept of "proportional representation" which suggests a "right to have members of a protected class elected in numbers equal to their proportion in the population." *De Grandy*, 512 U.S. at 1013-1015 ("The concept is distinct from the subject of the proportional representation clause of § 2, which provides that 'nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.' 42 U.S.C. § 1973(b). This proviso speaks to the success of minority candidates, as distinct from the political or electoral power of minority voters. (citations omitted.) And the proviso also confirms what is otherwise clear from the text of the statute, namely, that the ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race." *Id.* at n.11).

process, was not aware of a single instance "where a legislative plan has provided black voters with roughly proportional number of districts for the entire state where that plan has been found to discriminate against black voters." Arrington Dep., 192.

As such, based upon the law and the undisputed facts, and allowing for the limited degree of leeway that permits the General Assembly to exercise political discretion in its reasonable efforts to address compelling governmental interests, the trial court finds that the General Assembly had a strong basis in evidence for concluding that "rough proportionality" was reasonably necessary to protect the State from anticipated liability under § 2 of the VRA and ensuring preclearance under § 5 of the VRA. The trial court further finds that, notwithstanding the racial classification inherent in "rough proportionality," the Enacted Plans substantially address the threat of anticipated § 2 liability and challenges to preclearance under § 5 of the VRA. The trial court therefore concludes that the number of VRA districts created by the General Assembly in the Enacted Plans is not inconsistent with the General Assembly's obligation to narrowly tailor the plans under strict scrutiny.

b. Did the General Assembly fail to narrowly tailor the Enacted Plans by "packing" the Voting Rights Act Districts?

The trial court next considers whether the majority-minority districts created in the Enacted Plans are "packed" with Black voters to a greater degree than would be necessary under a narrow tailoring of the Plans to meet the compelling governmental interests of avoiding § 2 liability and obtaining preclearance under § 5 of the VRA. This issue is best understood by re-examining **Tables 1** and **2** above, and noting that one of the

most significant differences between the Enacted Plans and all other plans is the greater frequency of districts in the Enacted Plans with TBVAP > 50%, whereas the predecessor plans, as well as all proposed plans, have significantly fewer districts with TBVAP >50%, but significantly greater numbers of districts with TBVAP between 40% and 50%.

Plaintiffs cast this issue as follows: "Does § 2 or § 5 of the VRA require the challenged districts to be drawn as majority-minority districts in which more than 50% of the population in the district was Black?" Pls.' Mem. Opp'n 31. Plaintiffs urge the trial court to answer this question "no" and find, on the contrary, that the General Assembly's insistence that 23 of the House districts and 9 of the Senate districts in the Enacted Plans have >50% TBVAP exceeds the narrow tailoring required to address compelling governmental interests.

Specifically, the Plaintiffs further argue that the General Assembly should have been more exacting in determining whether a district created to avoid VRA liability should be populated with >50% TBVAP, or whether liability could be avoided, and the minority-preferred candidate elected, by instead creating the same district with less than 50% TBVAP. The Plaintiffs argue that while a remedy of > 50% TBVAP may be necessary in certain places where polarization between the races is particularly acute, there are some locales – notably those areas where some percentage of white voters consistently "cross-over" and vote for Black candidates – where some VRA remedy is still necessary, but the remedy need not be a district with >50% TBVAP. Rather, the Plaintiffs urge that the General Assembly should have determined some appropriate lesser concentration of Black voters – enough to permit Black voters the opportunity to

elect the candidates of their choice, but not too many – and that the General Assembly's failure to do so renders the Enacted Plans unconstitutional.

Plaintiffs' argument on this point is not in accord with the appellate court precedents that bind this trial court.[19] Specifically, in *Pender County*, 361 N.C. 491, the N.C. Supreme Court considered the 2003 version of House District 18. House District 18 was drawn by the General Assembly in its 2003 redistricting plan with 39.36% Black voting age population. The district included portions of Pender County and an adjoining county. Keeping Pender County whole would have resulted in a Black voting age population of 35.33%. The legislators' rationale was that splitting Pender County gave Black voters a greater opportunity to join with white voters to elect the minority group's candidate of choice, while leaving Pender County whole would have violated § 2 of the Voting Rights Act. Pender County and others filed suit against the State (and other officials), alleging that the redistricting plan violated the Whole County Provision of the N.C. Constitution. [20] The State answered that dividing Pender County was required by § 2. *Bartlett v. Strickland,* 556 U.S. 1, 7-8 (2009) [hereinafter *Strickland*].

The State's position, in defending House District 18 as drawn, was that the language of both *Gingles* and § 2 did not necessarily require the creation of majority-minority districts, but allowed for other types of legislative districts, such as coalition, crossover, and influence districts. The State considered House District 18 to be an "effective minority district" that functioned as a "single-member crossover district" in

[19] Dr. Theodore Arrington, an expert retained by Plaintiffs, explained his view on this topic as follows: "Some court decisions seem to indicate that a remedy for a violation of Section 2 or an attempt to avoid retrogression under Section 5 requires the construction of districts in which a majority of the voting age population or registered voters are minority – a so-called 'minority-majority' district. I do not believe that this is the best standard." Arrington Dep. 78. Dr. Arrington also testified that: "Of course, to make it different the Congress would need to change it." *Id.* at 80.

[20] *See further infra* § V.

which the total Black voting age population of 39.36% could predictably draw votes from a white majority to elect the candidate of its choice, and argued that as such, the district, as drawn, was permitted by § 2 and *Gingles*. *Pender County, supra* at 502.

The plaintiffs in *Pender County*, on the other hand, contended that a minority group must constitute a numerical majority of the voting population in the area under consideration before § 2 of the VRA requires the creation of a legislative district to prevent dilution of the votes of that minority group. They pointed to the wording of the first *Gingles* precondition, that says a minority group must be "sufficiently large and geographically compact to constitute a *majority* in a single-member district," *Gingles*, 478 U.S. at 50 (emphasis added), and claimed this language permits only majority-minority districts to be formed in response to a § 2 claim. *Pender County*, 361 N.C. at 501.

The N.C. Supreme Court agreed with the *Pender County* plaintiffs, and found their position to be "more logical and more readily applicable in practice." *Id.* at 503. The Court concluded that "when a district must be created pursuant to Section 2, it must be a majority-minority district."[21] *Id.* Recognizing that the majority-minority requirement could be considered a "bright-line" rule, the Court reasoned as follows:

> This bright line rule, requiring a minority group that otherwise meets the *Gingles* preconditions to constitute a numerical majority of citizens of voting age, can be applied fairly, equally, and consistently throughout the redistricting process. With a straightforward and easily administered standard, Section 2 legislative districts will be more uniform and less susceptible to ephemeral political voting patterns, transitory population shifts, and questionable predictions of future voting trends. A bright line rule for the first *Gingles* precondition "promotes ease

[21] A "majority-minority" district was defined by the Court as "a district in which >50% of the population in the district are voting age citizens of a specific minority group." *Id.* at 501

> of application without distorting the statute or the intent underlying it."
>
> In addition, a bright line rule provides our General Assembly a safe harbor for the redistricting process. Redistricting should be a legislative responsibility for the General Assembly, not a legal process for the courts. Without a majority requirement, each legislative district is exposed to a potential legal challenge by a numerically modest minority group with claims that its voting power has been diluted and that a district therefore must be configured to give it control over the election of candidates. In such a case, courts would be asked to decide just how small a minority population can be and still claim that Section 2 mandates the drawing of a legislative district to prevent vote dilution.

Id. at 504-505 (citation omitted).

The Court concluded its opinion with this directive to future General Assemblies:

> Any legislative district designated as a Section 2 district under the current redistricting plan, and any future plans, must either satisfy the numerical majority requirement as defined herein, or be redrawn in compliance with the Whole County provision of the Constitution of North Carolina and with *Stephenson I* requirements.

Id. at 510.

The United States Supreme Court affirmed the N.C. Supreme Court's *Pender County* ruling. In its plurality opinion, the Supreme Court held that the General Assembly's contention that § 2 of the VRA required that House District 18 be drawn as a crossover district with a minority population of 39.26% must be rejected. *Strickland*, 556 U.S. at 14. Rather, districts created to avoid § 2 liability must be majority-minority districts that contain a numerical, working majority of the voting age population of a minority group. *Id.* at 13, 15. The Court went on to note that this majority-minority rule

found support not only in the language of § 2 of the VRA, but also in the need for workable standards and sound judicial and legislative administration:

> The [majority-minority] rule draws clear lines for courts and legislatures alike. The same cannot be said of a less exacting standard that would mandate crossover districts under § 2. Determining whether a § 2 claim would lie – i.e. determining whether potential districts could function as crossover districts – would place courts in the untenable position of predicting many political variables and tying them to race-based assumptions. The judiciary would be directed to make predictions or adopt premises that even experienced polling analysts and political experts could not assess with certainty.

Id. at 17-18. The Supreme Court continued:

> The majority-minority rule relies upon an objective, numerical test: Do minorities make up more than 50 percent of the voting-age population in the relevant geographic area? That rule provides straightforward guidance to courts and to those officials charged with drawing district lines to comply with § 2. Where an election district could be drawn in which minority voters form a majority but such a district is not drawn, or where a majority-minority district is cracked by assigning some voters elsewhere, then--assuming the other *Gingles* factors are also satisfied--denial of the opportunity to elect a candidate of choice is a present and discernible wrong . . . .

Id. at 18 (citations omitted).

The Supreme Court added that its "holding that § 2 does not require crossover districts does not consider the permissibility of such districts as a matter of legislative choice or discretion." The Court cautioned that its ruling "should not be interpreted to entrench majority-minority districts by statutory command, for that, too, could pose constitutional concerns. *See Miller* v. *Johnson,* 515 U.S. 900 (1995); *Shaw I,* 509 U.S. 630. States that wish to draw crossover districts are free to do so where no other prohibition exists." *Strickland, supra* at 23-24. But the ultimate holding of the Court is

inescapable – when the State has a strong basis in evidence to have a reasonable fear of § 2 liability, the State must be afforded the leeway to avail itself of the "bright line rule" and create majority-minority districts, rather than cross-over districts, in those areas where there is a sufficiently large and geographically compact minority population and racial polarization exist.

Plaintiffs express grave concerns regarding the public policy implications of a bright-line 50% rule that they fear "balkanizes" Black voters and white voters and discourages cross-over coalitions among the races. The Plaintiffs' concerns parallel the same concerns voiced by the dissenting justices in the *Strickland* case. Justice Souter, writing for the dissenters, said that "the plurality has eliminated the protection of § 2 for the districts that best vindicate the goals of the State, and has done all it can to force the States to perpetuate racially concentrated districts, the quintessential manifestations of race consciousness in American politics." *Strickland*, 556 U.S. at 44 (Souter, J., dissenting). Justice Ginsberg, also dissenting, succinctly summed up her views by stating that: "The plurality's interpretation of § 2 of the Voting Rights Act of 1965 is difficult to fathom and severely undermines the statute's estimable aim. Today's decision returns the ball to Congress' court." *Id.* (Ginsberg, J., dissenting).

But even in these dissents, the position of the General Assembly in defending the Enacted Plans is strengthened. Justice Souter, in his dissent, predicted that based upon the *Strickland* plurality opinion:

> A State like North Carolina faced with the plurality's opinion, whether it wants to comply with § 2 or simply to avoid litigation, will, therefore, have no reason to create crossover districts. Section 2 recognizes no need for such districts, from which it follows that they can neither be required nor be created to help the State meet its obligation

> of equal electoral opportunity under § 2. And if a legislature were induced to draw a crossover district by the plurality's encouragement to create them voluntarily, . . . it would open itself to attack by the plurality based upon that the pointed suggestion that a policy favoring crossover districts runs counter to *Shaw*. The plurality has thus boiled § 2 down to one option: the best way to avoid suit under §2, and the only way to comply with § 2, is by drawing district lines in a way that packs minority voters into majority-minority districts, probably eradicating crossover districts in the process.

Id. at 43 (Souter, J., dissenting) (emphasis added) (citations omitted). The undisputed evidence establishes that the General Assembly, in crafting the Enacted Plans, interpreted the law of the land just as Justice Souter did – in its effort to avoid liability under § 2 of the VRA, the General Assembly eschewed crossover districts and, applying the bright line test endorsed by the N.C. Supreme Court in *Pender County* and the U.S. Supreme Court in *Strickland*, opted for the safe-harbor from § 2 liability by creating majority-minority districts with >50% TBVAP. In the context of narrow tailoring, the General Assembly's understanding of the law – as reflected in the Enacted Plans it created -- cannot be considered unreasonable, and the trial court is required to give leeway to the General Assembly's "reasonable efforts to avoid § 2 liability." *Vera*, 517 U.S. at 977.

As such, based upon the law and the undisputed facts, and allowing for the limited degree of leeway that permits the General Assembly to exercise political discretion in its reasonable efforts to address compelling governmental interests, the trial court finds that the General Assembly had a strong basis in evidence for concluding that it was reasonably necessary to endeavor to create all VRA districts within the Enacted Plans with 50% TBVAP to protect the state from anticipated liability under § 2 of the VRA and

to ensure preclearance under § 5 of the VRA.[22] The trial court further finds that, notwithstanding the racial classification inherent in the creation of >50% TBVAP VRA districts, the Enacted Plans substantially address the threat of anticipated § 2 liability and challenges to preclearance under § 5 of the VRA. The trial court therefore concludes that the creation of >50% TBVAP VRA districts by the General Assembly in the Enacted Plans is not inconsistent with the General Assembly's obligation to narrowly tailor the plans under strict scrutiny.

c. ***Did the General Assembly fail to narrowly tailor the Enacted Plans by placing the Voting Rights Act districts in geographic locations where there is insufficient evidence of a reasonable threat of § 2 liability?***

As the trial court concluded above in § IV(C)(1)(a), at the time of the enactment of the Enacted Plans, the General Assembly had strong evidence in the legislative record that each of the *Gingles* factors was present in substantial portions of North Carolina and that, based upon the totality of circumstances, majority-minority voting districts were required to remedy against vote dilution. Narrow tailoring requires that, to the extent that the General Assembly created VRA districts as part of its efforts to avoid § 2 liability, the VRA districts be located only in those geographic areas where a remedy against vote-dilution would be reasonably required. Plaintiffs challenge the geographic location of some VRA districts in the Enacted Plan, arguing that "for defendants to justify any

[22] With respect to ensuring § 5 preclearance, Plaintiffs' retained expert, Dr. Arrington, testified that when he consults on behalf of the USDOJ and draws illustrative plans in their preclearance process, "[the USDOJ] ask me to draw it specifically at more than 50%, and the reason for that is that that means there's no question . . . so that eliminates one legal question about satisfying *Gingles* one, the first *Gingles* prong." Arrington Dep. 191.

majority black district as being required by Section 2, they must satisfy the third prong of *Gingles* by establishing that white voters in that district - not somewhere else or in the state at large - vote 'sufficiently as a bloc to enable [them]...usually to defeat the minority's preferred candidate.'" *Gingles*, 478 U.S. at 50-51; *see also*, *Shaw II*, 517 U.S. at 917 ("if a § 2 violation is proved for a particular area,... [t]he vote-dilution injuries suffered by these persons are not remedied by creating a safe majority-black district somewhere else in the State."); Pl.'s Mem. Supp. Partial Summ. J. 77. To consider this issue, the trial court must consider whether the area affected by each VRA district displays a sufficient degree of "racial polarization" to justify a narrowly tailored remedy of a safe majority-black district at that location.

"Racial polarization" refers to the combined effect of the second and third *Gingles* factors, that is, political cohesion by the minority and white bloc voting by the white majority. *Old Person v. Cooney*, 230 F.3d 1113, 1123 (9th Cir. 2000) (citing *Ruiz v. City of Santa Maria*, 160 F.3d 543, 551 (1998) (citing *Gingles*, 478 U.S. at 56)). Polarized voting occurs when minority and white communities cast ballots along racial or language minority lines, voting in blocs. *Texas v. United States*, 831 F. Supp. 2d 244 (D.D.C. 2011) (quoting H.R. Rep. No. 109-478, at 34 (2006)). An expert relied upon by the Plaintiffs, Dr. Ray Block, whose report *Racially Polarized Voting in 2006, 2008 and 2010 in North Carolina State Legislative Contests* was proffered to the General Assembly at its public hearings prior to the enactment of the Enacted Plans, defines "racial polarization" as:

> The proportion of black voters who prefer a black candidate is noticeably higher in an electoral contest as compared to those of non blacks, and the proportion of black candidates who win elections is noticeably higher in

> majority minority districts than in non majority minority districts. . . . Racially polarized voting can be identified as occurring when there is a consistent relationship between the race of a voter and the way in which she/he votes.

Rucho Aff. Ex. 8, at 3 (Jan. 19, 2012) It is undisputed that racially polarized voting continues to be a "pervasive pattern" of North Carolina politics. Arrington Dep. 93.

Using these definitions, the trial court has concluded that the determination of whether there is a "consistent relationship between the race of a voter and the way in which she/he votes" sufficient to "usually defeat the minority's preferred candidate" in each of the locations selected by the General Assembly for the establishment of a VRA district is an issue of fact that must be determined by the trial court through an evaluation of evidence, and not as a matter of law through summary judgment. *East Jefferson Coalition for Leadership & Dev. v. Parish of Jefferson* 926 F.2d 487, 491 (5th Cir. 1991) ("Each *Gingles* precondition is an issue of fact. . . An ultimate finding of vote dilution is a question of fact . . ."). To determine this factual issue, the trial court received evidence through witness testimony and designation of the record at a bench trial conducted June 5-6, 2013, on the issue of:

> Assuming application of a strict scrutiny standard and, in considering whether the Enacted Plans were narrowly tailored, was each challenged VRA district drawn in a place where a remedy or potential remedy for racially polarized voting was reasonable for purposes of preclearance or protection of the State from vote dilution claims under the Constitution or under § 2 of the VRA?

Order of the Trial Ct., May 13, 2013.

The Findings of Fact of the trial court on this issue are set out in **Appendix A** attached hereto and incorporated by reference.

Based upon the law and the facts as found by the trial court, and allowing for the limited degree of leeway that permits the General Assembly to exercise political discretion in its reasonable efforts to address compelling governmental interests, the trial court finds that the General Assembly had a strong basis in evidence for concluding that the each of the VRA districts in the Enacted Plans were placed in a location that was reasonably necessary to protect the State from anticipated liability under § 2 of the VRA and ensuring preclearance under § 5 of the VRA. The trial court further finds that, notwithstanding the racial classification inherent in the creation and placement of VRA districts, the Enacted Plans substantially address the threat of anticipated § 2 liability and challenges to preclearance under § 5 of the VRA. The trial court therefore concludes that the placement of the VRA Districts by the General Assembly in the Enacted Plans is not inconsistent with the General Assembly's obligation to narrowly tailor the plans under strict scrutiny.

d. ***Did the General Assembly fail to narrowly tailor the Enacted Plans by crafting irregularly shaped and non-compact Voting Rights Act districts or by otherwise disregarding traditional redistricting principles such as communities of interest and precinct boundaries?***

The Plaintiffs contend that VRA districts in the Enacted Plans, even if justified by the compelling governmental interests of avoiding § 2 liability or ensuring preclearance under § 5 of the VRA, are not narrowly tailored because they are drawn with a disregard of traditional redistricting principles resulting in lack of compactness, irregular shapes, and too many split counties and split precincts.

The Supreme Court has held that a "district drawn in order to satisfy § 2 must not subordinate traditional districting principles to race substantially more than is 'reasonably necessary' to avoid § 2 liability." *Vera*, 517 U.S. at 979. On the other hand, the same Court said that narrow tailoring does not require a district have the "least possible amount of irregularity in shape, making allowances for traditional districting criteria" because that standard would be "impossibly stringent." *Id.* at 977. "Districts not drawn for impermissible reasons or according to impermissible criteria may take any shape, even a bizarre one," provided that the bizarre shapes are not "attributable to race-based districting unjustified by a compelling interest." *Id.* at 999 (Kennedy, J. concurring). In sum, a VRA district that is based on a reasonably compact minority population, that also takes into account traditional redistricting principles, "may pass strict scrutiny without having to defeat rival compact districts designed by plaintiffs' experts in endless 'beauty contest.'" *Id.* at 977. The General Assembly, even under strict scrutiny, must be accorded a "limited degree of leeway" in tailoring its redistricting plan. *Id.*

Another three-judge panel, in considering this same legal issue in Georgia, said that:

> We agree with the North Carolina court that the Supreme Court will probably not adopt a definition of "narrow tailoring" in the redistricting context that requires consideration of whether the challenged plan deviates from "traditional" notions of compactness, contiguity, and respect for political subdivisions to a greater degree than is necessary to accomplish the state's compelling purpose. *Shaw v. Hunt,* supra, at 87. Such a standard would elevate to constitutional status that which was intended only as a barometer for determining whether a district adequately serves its constituents. Observance of those traditional principles is also difficult to judge at the exacting level required for a narrow tailoring determination, and such judging would force the judiciary to meddle with legislative

> prerogatives to an undesirable degree. Nothing, however, precludes the Court from considering traditional districting principles as guideposts in a narrow tailoring analysis; while not required, they are potentially useful indicators of where the legislature could have done less violence to the electoral landscape.

Johnson v. Miller, 864 F. Supp. at 1387.

The judicial determination of whether the degree to which a redistricting plan comports with "traditional notions of redistricting" such as compactness, contiguity, and respect for political subdivisions is a difficult task because of the subjective nature of each of these concepts. There is no litmus test for these concepts; for example, "compactness" has been described as "such a hazy and ill-defined concept that it seems impossible to apply it in any rigorous sense in matters of law." *Id.* at 1388. *See also Karcher v. Daggett,* 462 U.S. 725, 756 (1983) (stating that compactness requirements have been of limited use because of vague definitions and imprecise application). (See further, discussion *infra* in § VI regarding equal protection claims associated with compactness and split precincts).

The trial court is cognizant of its duty, under a narrow tailoring analysis, to examine the "fit" of a remedy against the "ends" to ensure that the Enacted Plans are the least restrictive means of advancing legitimate governmental interests. *Boos v. Barry*, 485 U.S. 312, 329 (1988); *Wygant,* 476 U.S. at 280 n.6. In so doing, the trial court is obligated to consider whether lawful alternatives and less restrictive means could have been used, regardless of whether the General Assembly considered those alternatives. *Boos v. Barry*, 485 U.S. at 329; *Wygant*, 476 U.S. at 280 n.6. But the obligation of the trial court to consider all lawful alternatives must be harmonized with the Plaintiffs' burden of persuasion; even with the heavy burden of production resting upon the General

Assembly, the Plaintiffs have some obligation to persuade the trial court that lawful alternatives in fact exist that could be compared in some meaningful way to the Enacted Plans and that, after such comparison, do "less violence to the electoral landscape." *Johnson v. Miller,* 864 F. Supp. at 1387 n.40. The trial court cannot exhaust "every conceivable race-neutral alternative," *Fisher v. Univ. of Texas, supra.* at slip op. p. 10, to discern whether a hypothetical alternative plan exists that better conforms with traditional notions of redistricting, and the Plaintiffs have failed to persuade the trial court that one exists.

Plaintiffs' arguments are not persuasive because Plaintiffs have not produced alternative plans that are of value to the trial court for comparison in this narrow tailoring analysis.[23] None of the alternative plans proposed or endorsed by the Plaintiffs contain VRA districts in rough proportion to the Black population in North Carolina. None of the alternative plans seek to comply with the General Assembly's reasonable interpretation of *Strickland* by populating each VRA district with >50% TBVAP. None of the alternative plans comply with the N.C. Supreme Court's mandate in *Stephenson v. Bartlett* to "group[ ] the minimum number of whole, contiguous counties necessary to comply with the at or within plus or minus five percent 'one-person, one-vote' standard."

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[23] To the extent that the trial court's application of strict scrutiny of the Enacted Plans is too stringent a standard of review (see, *supra* § IV(B)) and if the trial court accepted as fact, as the Supreme Court has done previously done, and the Plaintiffs admit, a high degree of correlation between black votes and Democratic votes in North Carolina (*See Hunt v. Cromartie*, 526 U.S. 541, 549-50 (1999) [hereinafter *Cromartie I*]; *Cromartie II*, 532 U.S. at 251, 257-58; Arrington Dep. 58-60), this issue would be foreclosed by the Supreme Court's ruling in *Cromartie II*, that held:

> We can put the matter more generally as follows: In a case such as this one where majority-minority districts (or the approximate equivalent) are at issue and where racial identification correlates highly with political affiliation, the party attacking the legislatively drawn boundaries must show at the least that the General Assembly could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles. That party must also show that those districting alternatives would have brought about significantly greater racial balance.

532 U.S. at 258.

355 N.C. 354, 384 (2002) [hereinafter *Stephenson I*], (see § V, *infra,* regarding the Whole County Provisions). As such, the trial court is left to speculate that a redistricting plan exists – one that protects the State from § 2 liability, ensures § 5 preclearance, and accomplishes all of the legitimate legislative objectives of the General Assembly, including political gain, protection of incumbency, and population equalization – yet appears, on some subjective measure, to be more "compact" or less "irregular."

Moreover, Plaintiffs' retained expert, Dr. Arrington, seems to suggest that traditional notions of redistricting have little practical relevance, or little real benefit, in considering whether legislative districts are narrowly tailored. He says, in deposition testimony:

> There is no evidence from political science research that the shape of the district makes any difference at all. . . It doesn't increase the extent to which voters know who they're voting for. It doesn't affect the extent to which candidates can campaign effectively. It doesn't . . . necessarily affect either the campaigning or the voting. It simply has no effect as such. Shape has little or nothing to do with that. That has to do with other things. And so to make the decision that a district is okay or not okay on the basis of shape is leading us in the wrong direction.

Arrington Dep. 119. Likewise, regarding respecting communities of interest as a traditional notion of redistricting, Dr. Arrington says:

> Anyone who wants districts drawn differently than they were or is advocating a particular set of districts will undoubtedly argue, whether they have good reason to do so or not, that their districts define a community of interest. Because community of interest can mean almost anything one chooses, it is rarely operationalized in a fashion to make it useful in either drawing or evaluating districts.

Id. at 99-100. Simply put, the trial court is not persuaded, and cannot itself discern, that a lack of respect for traditional notions of redistricting can be shown in the Enacted Plans,

or even if present to some extent, is sufficient to defeat the obligation of the General Assembly to narrowly tailor the VRA districts.

As such, based upon the law and the undisputed facts, and allowing for the limited degree of leeway that permits the General Assembly to exercise political discretion in its reasonable efforts to address compelling governmental interests, the trial court finds that the General Assembly had a strong basis in evidence for concluding that the VRA districts in the Enacted Plans, as drawn, were reasonably necessary to protect the State from anticipated liability under § 2 of the VRA and ensuring preclearance under § 5 of the VRA. The trial court further finds that, notwithstanding the racial classification inherent in the VRA districts, as drawn, the Enacted Plans substantially address the threat of anticipated § 2 liability and challenges to preclearance under § 5 of the VRA. The trial court therefore concludes that the VRA districts, as drawn in the Enacted Plans, are sufficiently compact and regular, and are not inconsistent with the General Assembly's obligation to narrowly tailor the plans under strict scrutiny.

3. *NC-NAACP Plaintiffs' Equal Protection claim of diminution of political influence.*

In Claims for Relief 9 through 11 of the NAACP Plaintiffs' Amended Complaint, the Plaintiffs allege that in voting districts adjoining to those created in the Enacted Plans as VRA Districts, Black voters suffer a diminution of political influence. The Plaintiffs contend that by creating VRA districts with >50% TBVAP, Black voters were siphoned from adjoining counties, thereby lessening the political influence of the Black voters in those adjoining counties. The NAACP Plaintiffs contend this is a denial of equal protection under the United States and North Carolina constitutions.

The trial court concludes that this claim is not supported by prevailing law. No N.C. Supreme Court or United States Supreme Court decision has ever found a legislative or congressional redistricting plan unconstitutional because it deprived a group of plaintiffs of political influence. Indeed, the United States Supreme Court has warned against the constitutional dangers underlying Plaintiffs' influence theories. In *LULAC*, the Court rejected an argument that the § 2 "effects" test might be violated because of the failure to create a minority "influence" district. The Court held that "if Section 2 were interpreted to protect this kind of influence, it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions." *LULAC*, 548 U.S. at 445-46 (citing *Georgia v. Ashcroft*, 539 U.S. 461, 491 (2003) (Kennedy, J., concurring)). Recognizing a claim on behalf of Black voters for influence or crossover districts "would grant minority voters 'a right to preserve their strength for the purposes of forging an advantageous political alliance,'" a right that is not available to any other voters. *Strickland*, 556 U.S. at 15 (citing *Hall v. Virginia*, 385 F.3d 421, 431 (4th Cir. 2004), *cert. denied*, 544 U.S. 961 (2005)). This argument also raises the question of whether such a claim would itself run afoul of the equal protection guarantees of the Fourteenth Amendment and of the North Carolina Constitution. Nothing in federal law "grants special protection to a minority group's right to form political coalitions." *Strickland*, 556 U.S. at 15. Nor does federal law grant minority groups any right to the maximum possible voting strength. *Id.* at 15-16.

Thus, as a matter of law, the trial court concludes that the Plaintiffs' claims of denial of equal protection premised upon diminished influence of Black voters in districts adjoining VRA districts must be denied.

D. Did racial motives predominate in the creation of the Non-Voting Rights Act districts?

As discussed above by the trial court in § IV(B), strict scrutiny is only the appropriate level of scrutiny for legislatively enacted redistricting plans when Plaintiffs establish that "all other legislative districting principles were subordinated to race and that race was the predominant factor motivating the legislature's redistricting decision." *Vera,* 517 U.S. at 959. The districts must be unexplainable on grounds other than race, and it must be established that the legislature neglected all traditional redistricting criteria such as compactness, continuity, respect for political subdivisions and incumbency protection. *Id.* For the 26 VRA districts created in the three Enacted Plans, the trial court concluded, for the purposes of analysis, that strict scrutiny was appropriate because the General Assembly's predominant motive was to create each of those VRA districts with >50% TBVAP and to create a sufficient number of VRA districts to achieve "rough proportionality." However, four districts that were not created by the General Assembly as VRA districts were also challenged by the Plaintiffs as being the product of racial gerrymander – the 12th and 4th Congressional Districts, Senate District 32, and House District 54. As to each of these four districts, for strict scrutiny to apply the trial court must make inquiry into whether race was the General Assembly's predominant motive.

"The legislature's motivation is itself a factual question." *Hunt v. Cromartie*, 526 U.S. 541, 549 (U.S. 1999) [hereinafter *Cromartie I*] (citing *Shaw II*, 517 U.S. at 905); *Miller v. Johnson*, 515 U.S. at 910. As such, determination of this issue is not appropriate for summary judgment, but instead requires the consideration and weighing of evidence by the trial court. To determine this factual issue, the trial court received

evidence through witness testimony and designation of the record at a bench trial conducted June 5-6, 2013, on the issue of:

> For six specific districts (Senate Districts 31 and 32, House Districts 51 and 54 and Congressional Districts 4 and 12 – none of which is identified as a VRA district), what was the predominant factor in the drawing of those districts? [24]

Order of the Trial Ct., May 13, 2013.

The Findings of Fact of the trial court on this issue are set out in **Appendix B** attached hereto and incorporated by reference.

Based upon these findings of fact, the trial court concludes that the shape, location and composition of the four non-VRA districts challenged by the Plaintiffs as racial gerrymanders was dictated by a number of factors, which included a desire of the General Assembly to avoid § 2 liability and to ensure preclearance under § 5 of the VRA, but also included equally dominant legislative motivations to comply with the Whole County Provision, to equalize population among the districts, to protect incumbents, and to satisfy the General Assembly's desire to enact redistricting plans that were more competitive for Republican candidates than the plans used in past decades or any of the alternative plans.

Based upon the foregoing, the trial court concludes that the appropriate standard of review for the trial court's consideration of the four non-VRA districts is not strict scrutiny, but instead the "rational relationship" review. *Wilkins v. West*, 264 Va. 447, 467 (2001). Under the rational relationship test, the challenged governmental action must be upheld "if there is any reasonably conceivable state of facts that could provide a rational

[24] Although Senate District 31 and House District 51 were not challenged by the Plaintiffs as racial gerrymanders, they adjoin the non-VRA districts that were challenged by the Plaintiffs, and hence the trial court received evidence on the General Assembly's motivation in creating these two districts as well.

basis for the action.'" *See generally, e.g. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 544 (3d Cir. 2011). The trial court also concludes that the General Assembly has articulated a reasonably conceivable state of facts, other than a racial motivation, that provides a rational basis for creating the non-VRA districts as drawn in the Enacted Plans.

The trial court further concludes, based upon the undisputed record,[25] that in North Carolina, racial identification correlates highly with political affiliation. *Cromartie II*, 532 U.S. at 242. The Plaintiffs have not proffered, as they must in this instance, *Id.* at 258, any alternative redistricting plans that show that the General Assembly could have met its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles, and that any such alternative plan would have brought about significantly greater racial balance. *Id.* (emphasis added). The Plaintiffs have failed to meet their burden of persuasion that alternative plans could achieve the same lawful objectives. Therefore, the Plaintiffs' challenge to the non-VRA districts must fail.

Thus, to summarize, in considering the over-arching issue of whether the challenged districts are a racial gerrymander that violate the equal protection clauses of the United States Constitution or the North Carolina Constitution, the trial court has reviewed each district created by the General Assembly. For those districts created as VRA districts, the trial court has applied strict scrutiny, and has found as a matter of law that a strong basis in evidence supported the enactment of redistricting plans designed to protect the State from § 2 liability and to ensure preclearance under § 5. Further, the trial court has found, based upon a strong basis in evidence in the record, and according the

[25] *See* fn. 23, *supra*.

General Assembly a limited degree of leeway, that the Enacted Plans are narrowly tailored to meet these compelling governmental interests. To the extent that the most exacting level of review, strict scrutiny, is not warranted by the facts of this case, the trial court concludes that under a lesser standard of review, such as a rational relationship test, the creation of the VRA districts as drawn was supported by a number of rational bases. For those districts in the Enacted Plans that are not VRA districts, the trial court finds, based upon the evidence before it, that race was not the predominant motive in the creation of those districts and thus, under a rational relationship standard of review, the trial court finds that the General Assembly had a rational basis for creating the non-VRA districts as drawn. Therefore, the trial court concludes that the Plaintiffs' equal protection claims associated with racial gerrymandering must fail.

V. DO THE ENACTED SENATE AND HOUSE PLANS VIOLATE THE WHOLE COUNTY PROVISIONS OF THE NORTH CAROLINA CONSTITUTION? (*Dickson amended complaint, Claims 11-16; NAACP amended complaint Claims 4-5)*

The Plaintiffs contend that the Enacted Senate and House Plans violate the Whole County Provisions ("WCP") of the North Carolina Constitution. The language of the WCP is alluringly simple: Article II, § 3(3) simply says "no county shall be divided in the formation of a senate district, and Article II, § 5(3) similarly says "no county shall be divided in the formation of a representative district." However, because an inflexible application of the plain language of the WCP would violate federal law mandates that pre-empt state law – notably the Voting Rights Act and the one-person, one-vote

principle – the N.C. Supreme Court, in *Stephenson I,* 355 N.C. 354, harmonized the WCP with controlling federal law so as "to give effect to the intent of the framers of the organic law and of the people adopting it." *Id.* at 370.

The undisputed evidence of record establishes that the General Assembly, in its Enacted Senate and House Plans, endeavored to "group the minimum number of counties necessary to comply with the one person, one vote standard into clusters of counties." Pl.'s Mem. Supp. Partial Summ. J. 82. The Plaintiffs, on the other hand, endorsed and proposed alternative House and Senate plans that yielded a fewer number of split counties, and consequently more counties kept whole, than the Enacted Plans. However, the Plaintiffs' plans did not adhere strictly to the rubric of creating clusters with minimum numbers of counties. Plaintiffs urge that the number of counties split ought to be the standard by which compliance with the WCP is measured.

In *Stephenson I,* the N.C. Supreme Court articulated the criteria that must be followed by the General Assembly to give effect to the requirements of the WCP while reconciling them with the requirements of superseding federal law. These criteria are set out by the Supreme Court as a hierarchy of constitutional rules that are to be followed in sequence in the drafting of legislative districts. Specifically, rules 3, 5, 6 and 7 are most relevant to this issue, and they are as follows:

> . . .
>
> [3.] In counties having a census population sufficient to support the formation of one non-VRA legislative district falling at or within plus or minus five percent deviation from the ideal population consistent with "one-person, one-vote" requirements, the WCP requires that the physical boundaries of any such non-VRA legislative district not cross or traverse the exterior geographic line of any such county.
>
> . . .

> [5.] In counties having a non-VRA population pool which cannot support at least one legislative district at or within plus or minus five percent of the ideal population for a legislative district or, alternatively, counties having a non-VRA population pool which, if divided into districts, would not comply with the at or within plus or minus five percent "one-person, one-vote" standard, *the requirements of the WCP are met by combining or grouping the minimum number of whole, contiguous counties necessary to comply with the at or within plus or minus five percent "one-person, one-vote" standard.* Within such contiguous multi-county groupings, compact districts shall be formed, consistent with the at or within plus or minus five percent standard, whose boundary lines do not cross or traverse the "exterior" line of the multi-county grouping, provided, however, that the resulting interior county lines created by any such groupings may be crossed or traversed in the creation of districts within said multi-county grouping but only to the extent necessary to comply with the at or within plus or minus five percent "one-person, one-vote" standard.
>
> [6.] The intent underlying the WCP must be enforced to the maximum extent possible; thus, *only the smallest number of counties necessary to comply with the at or within plus or minus five percent "one-person, one-vote" standard shall be combined.*
>
> [7.] Communities of interest should be considered in the formation of compact and contiguous electoral districts.

Stephenson v. Bartlett, 357 N.C. 301, 305-07 (2003) [hereinafter *Stephenson II*]. *See further*, *Stephenson I*, at 383-84 (emphasis added).

The crux of the Plaintiffs' argument is whether the WCP and the *Stephenson I* and *II* decisions require the division of the fewest counties possible or do they require that counties be grouped into the smallest groupings possible. Plaintiffs urge that compliance with the WCP is measured by the former, namely the number of counties kept whole, and not by the grouping of minimum number of whole, contiguous counties necessary to comply with the one person, one vote standard.

The following table illustrates the county groupings contained within the Enacted Plan compared with all other alternative plans suggested by the Plaintiffs:[26]

Table 3: ***Number of Counties in Groupings – Comparison of Enacted Plan with Alternatives***

Number of Counties in Grouping	1	2	3	4	5	6	7	8	9	10	11	20	46	Total
Enacted House Plan	11	15	4	2	2	0	0	0	1	0	0	1	0	36
House Fair & Legal	11	9	6	4	3	1	1	0	1	0	0	0	0	36
LBC	10	8	4	5	6	2	0	0	0	0	0	0	0	35
SCSJ House	8	8	3	4	1	0	0	0	0	0	0	0	1	25
Enacted Senate Plan	1	11	4	3	1	1	1	2	1	1	0	0	0	26
Senate Fair & Legal	1	11	3	7	1	2	2	0	1	0	0	0	0	28
Possible Senate Districts	1	5	4	5	4	1	2	1	1	0	0	0	0	24
SCSJ Senate	1	4	7	2	3	2	1	1	1	0	1	0	0	23

In examining the data in **Table 3**, comparison of the Enacted House Plan and the House Fair & Legal Plan rows illustrates the difference between the approaches advocated by the Plaintiffs and General Assembly in the Enacted Plans. Both the House Fair & Legal Plan and the Enacted House Plan contain 11 one-county groupings – namely counties where the population is sufficient within one county to permit one or more districts to be drawn wholly within the county lines. The Enacted House Plan contains 15 two-county groupings, while the House Fair and Legal plan contains only 9 two-county groupings.

At issue is the mandate of the N.C. Supreme Court in *Stephenson I*, as set out above in rule 5: ". . . the requirements of the WCP are met by combining or grouping the minimum number of whole, contiguous counties necessary to comply with the at or

[26] Direct comparison between the Enacted Plans and each of the alternative plans proposed or endorsed by the Plaintiffs cannot be made because the alternative plans diverge from the Enacted Plans in not creating as many VRA districts as were created by the General Assembly in the Enacted House and Senate Plans. See *supra* at § IV(C)(2)(a). The trial court has concluded that the creation of these VRA districts by the General Assembly is consistent with narrow tailoring requirements. The Plaintiffs have proffered no alternative plan that adopts the General Assembly's VRA districts yet shows that greater compliance with the WCP could have been achieved.

within plus or minus five percent 'one-person, one-vote' standard." *Stephenson II*, 357 N.C. at 306. The undisputed evidences establishes that in seeking to comply with this mandate, the drafters of the Enacted House and Senate plans did the following, in sequence: (1) drew the VRA districts; (2) from the remaining counties after the first step, identified all counties whose population would support one or more districts wholly within the county lines; (3) from the remaining counties after the second step, identified all possible contiguous two-county combinations whose combined populations would support one or more districts wholly within the borders of the two-county groups; (4) from the remaining counties after the third step, identified all possible contiguous three-county combinations whose combined populations would support one or more districts wholly within the borders of the three-county groups; (5) and so on until all counties were included. By combining counties into groups by starting first with two-county groups, and combining all possible two-county groups, and then next considering three-county groups, and so on, the Enacted Plan drafters met the requirements of the WCP, as articulated in *Stephenson I* and *II*, "by combining or grouping the minimum number of whole, contiguous counties necessary to comply with the plus or minus five percent 'one-person, one-vote' standard." 355 N.C. at 383-84; 357 N.C. at 306.

The drafters of the House Fair & Legal Plan, rather than creating as many two-county groupings as possible, made only 9 two-county groupings (compared to 15 two county groupings in the Enacted House Plan), which resulted in more three-county groupings than the Enacted House Plan (6 compared to 4). Likewise, in the Senate Fair & Legal Plan, the drafters created an equal number of two-county groups as the Enacted Senate Plan, but failed to create as many three-county groups as possible (3 compared to

4 in the Enacted Senate Plan) which resulted in a greater number of four-county groups in the Senate Fair & Legal Plan (7 compared to 3 in the Enacted Senate Plan). The Plaintiffs, in advocating for the Fair & Legal Plans, and the grouping methodology contained therein, argue that their methodology resulted in fewer divided counties than the Enacted Plans. Under the House Fair & Legal Plan, 44 counties are divided compared to 49 in the Enacted House Plan; under the Senate Fair & Legal Plan, 14 counties are divided compared to 19 under the Enacted Senate Plan. Plaintiffs urge that the intent of the WCP is best met by comparing the number of counties kept whole in competing plans.

The intent and interpretation of Rule 5 of *Stephenson I* was addressed in *Stephenson II*, where the defendants in that case, in connection with the 2002 revised redistricting plans, urged, like the Plaintiffs in this case, that compliance with the WCP is measured by the number of counties kept whole. The N.C. Supreme Court rejected this argument in the 2003 opinion in *Stephenson II* and, after reiterating the *Stephenson I* methodology, affirmed the trial court's findings that, among other things:

> 8. The General Assembly's May 2002 Fewer Divided Counties Senate and Sutton 5 House Plans fail to comply with the requirement that in forming districts, only the smallest number of counties necessary to comply with the one-person, one-vote requirement should be combined in forming multi-county groupings.
>
> 9. The General Assembly's failure to create the maximum number of two-county groupings in the May 2002 House Plan violates *Stephenson I*.

Stephenson II, 357 N.C. at 308. In affirming the trial court, the N.C. Supreme Court, in *Stephenson II*, repeated the directive it gave in *Stephenson I* that "we direct that any new

redistricting plans . . . shall depart from strict compliance with the legal requirements set forth herein only to the extent necessary to comply with federal law." *Stephenson II*, 357 N.C. at 309 (citing *Stephenson I*, 355 N.C. at 384).

As seen in **Table 3** above, each of the alternative House plans proposed or endorsed by the Plaintiffs, like the House Fair & Legal Plan discussed above, suffers from the same defect described in *Stephenson II*, namely each alternative plan fails to create the maximum number of two-county groupings. Indeed, the LBC and SCSJ House alternative plans have fewer one-county groupings than the Enacted House Plan, which departs from strict compliance with another *Stephenson I* requirement that districts not traverse county boundaries of a county that has sufficient population to support one or more House districts solely within the county boundaries (*Stephenson II,* Rule 3, above). Likewise, as seen in **Table 3** above, each of the alternative Senate plans proposed or endorsed by the Plaintiffs does not comport with the strict requirements of *Stephenson I*. The LBS and SCSJ alternative Senate plans fail to create the maximum number of two-county groups when compared to the Enacted Senate Plan.

The divergence between the requirements of the *Stephenson I* and *II* methodology employed by the General Assembly in crafting the Enacted Plans and the approach Plaintiffs urge is further revealed by the affidavit and deposition testimony of Dr. David Peterson, a statistician employed as an expert witness by the Plaintiffs. Notably, Dr. Peterson did not opine or suggest that the General Assembly's county groupings in the Enacted Plans did not conform to the methodology set out in the prevailing law of *Stephenson I* and *II,* but rather, he opined that he disagreed with the N.C. Supreme Court on what the law ought to be. Dr. Peterson testified, by affidavit, that:

> [T]o make maximum use of county boundaries in constructing voting districts, and thereby minimizing the need to split counties, one should focus on dividing the state into many county groups each having small numbers of representatives rather than each having small numbers of counties. In particular, choosing county groups first by finding all possible single county groups, then all possible two-county groups, and so forth, is unlikely to lead to the most complete use of county boundaries, and the smallest number of divided counties.

Fifth Aff. of Pls.' Statistical Expert, David W. Peterson, PhD, ¶ 3.

Later, in deposition testimony, Dr. Peterson conceded that:

> Q. In the third paragraph, the first sentence [of a letter marked Deposition Exhibit 295], it says, "Second, it seems to me that to implement the 'Whole County Principle' of the North Carolina Constitution, one has to proceed in a manner different from that attributed to *Stephenson II*." What did you mean by that?
>
> A. I don't know how I could express it more clearly.
>
> Q. All right. That's what I assumed. I assume that it is your belief that the court's process in *Stephenson II* does not implement the Whole County Principle as well as you believe your process does?
>
> A. I think there's a better way of doing it, yes.
>
> Q. So to the extent that this court in *Stephenson II* was implementing the Whole County Principle, you disagree with the way they chose to go about doing it?
>
> A. I think they start off correctly. I think there's a better way of following on to step 2.
>
> Q. Which is where they go into maximizing twos and threes, et cetera?
>
> A. Yes.

Id.

Based upon the foregoing, and all matters of record, this trial court, being bound by the precedent established by the N.C. Supreme Court in *Stephenson I* and *Stephenson II*, concludes that as a matter of law the Enacted House Plan and the Enacted Senate Plan conform to the WCP set out in Article II, § 3 and §5, of the North Carolina Constitution, and that the Defendants are entitled to summary judgment in their favor on these claims. For the same reasons, the trial court further finds that the alternative plans proposed or endorsed by the Plaintiffs, namely the House and Senate Fair & Legal Plans, the House and Senate LBC Plans, and the SCSJ House and Senate Plans, each fail to comport with the WCP of the North Carolina Constitution as those provisions have been interpreted and applied by the N.C. Supreme Court. The Plaintiffs have not met their burden of persuasion that the General Assembly could have achieved greater compliance with the requirements of the WCP than it did in the Enacted Plans.

VI. DO THE ENACTED PLANS VIOLATE THE EQUAL PROTECTION GUARANTEES OF THE UNITED STATES OR NORTH CAROLINA CONSTITUTIONS BY DISREGARDING TRADITIONAL REDISTRICTING PRINCIPLES BY FAILING TO BE SUFFICIENTLY COMPACT OR BY EXCESSIVELY SPLITTING PRECINCTS? (*Dickson amended complaint, Claims 9-10; NAACP amended complaint Claims 9-11)*

A. Lack of Compactness and Irregular Shapes

The adherence to "traditional redistricting principles," such as compactness, regularity of shape, continuity, protecting communities of interest and political subdivisions, geographic barriers and protection of incumbents, is relevant in judicial

scrutiny of redistricting plans on several levels. First, as noted above, the lack of adherence to traditional redistricting principles and a high degree of irregularity may provide circumstantial evidence that racial considerations have predominated in the redistricting process. Second, "compactness," a traditional redistricting principle, takes on special significance when considering whether a compelling governmental interest exists because, under the *Gingles* factors discussed above, if an enacted VRA district is not significantly compact, one might conclude the absence of the first *Gingles* requirement that a "minority group exists within the area affected by the Enacted Plans, and that this group is sufficiently large and geographically compact to constitute a majority in a single-member district." *Id.* 478 U.S. at 50-51. Third, traditional redistricting principles may be relevant when comparing alternative plans under a narrow tailoring analysis to determine whether an enacted plan is the least restrictive alternative to accomplish legitimate governmental objectives. Fourth, the *Stephenson I* and *II* Courts each held in Rule 7 of their WCP hierarchy that "communities of interest should be considered in the formation of compact and contiguous electoral districts." 355 N.C. at 383-84; 357 N.C. at 306. Fifth, lack of adherence to traditional redistricting principles, if applied disproportionately, could be viewed as a violation of Equal Protection requirements of the state and federal constitutions.

In the trial court's consideration above of the level of scrutiny,[27] the compelling governmental interests,[28] and narrow tailoring,[29] some discussion can be found regarding the analysis of traditional redistricting principles relevant to each of those topics. In this section, the trial court considers in greater detail the overall concepts of "compactness,"

[27] See, *supra* at § IV(B).
[28] See, *supra* at § IV(C)(1)(a).
[29] See, *supra* at § IV(C)(2)(d).

"irregularity" and splitting of precincts and then considers the Plaintiffs' contentions that the Enacted Plans, by not adhering to traditional redistricting principles, fail to conform with the *Stephenson I* and *II* mandates or violate equal protection requirements.

With respect to traditional redistricting principles, the Supreme Court has said that:

> [w]e believe that reapportionment is one area in which appearances do matter. A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group -- regardless of their age, education, economic status, or the community in which they live -- think alike, share the same political interests, and will prefer the same candidates at the polls. We have rejected such perceptions elsewhere as impermissible racial stereotypes.

Shaw I, 509 U.S. at 647. But, the *Shaw I* Court hastened to explain, that although "appearances do matter":

> [w]e emphasize that these criteria are important not because they are constitutionally required – they are not – but because they are objective factors that may serve to defeat a claim that a district has been gerrymandered on racial lines.

Id. (citations omitted.). Indeed, the Supreme Court has said that "districts not drawn for impermissible reasons or according to impermissible criteria may take any shape, even a bizarre one." *Vera*, 517 U.S. at 999 (Kennedy, J., concurring). In other words, lack of adherence to traditional redistricting principles is relevant because (1) it is circumstantial evidence of an improper racial motive and (2) if a district is drawn for impermissible reasons, the disregard for traditional redistricting principles is part of the harm suffered

by the citizens within an improper district. *See, Johnson v. Miller*, 864 F. Supp. at 1370. However, the failure to adhere to traditional redistricting principles, standing alone, is not a sufficient basis for a federal constitutional challenge to legislative redistricting.

The N.C. Supreme Court, in its hierarchy of rules harmonizing the WCP with federal law, directs that "communities of interest should be considered in the formation of compact and contiguous electoral districts." *Stephenson I*, 355 N.C. at 384. But, read in context, this rule does not elevate compactness and contiguity to an independent constitutional requirement under the North Carolina Constitution. Rather, the Court explains:

> We observe that the State Constitution's limitations upon redistricting and apportionment uphold what the United States Supreme Court has termed "traditional districting principles." These principles include such factors as compactness, contiguity, and respect for political subdivisions. The United States Supreme Court has "emphasized that these criteria are important not because they are constitutionally required – they are not – but because they are objective factors that may serve to defeat a claim that a district has been gerrymandered on racial lines."

Id. at 371 (emphasis omitted).

The *Stephenson II* decision of the N.C. Supreme Court is also instructive on this issue. In that case, the Court found the 2002 legislative redistricting plans to be in violation of the WCP. Among the other findings of the trial court that were adopted by the N.C. Supreme Court was a finding that:

> The 2002 House and Senate plans enacted by the General Assembly contain districts that are not sufficiently compact to meet the requirements of the equal protection clause in that the requirements of keeping local governmental subdivisions or geographically based communities of interest were not consistently applied throughout the

> General Assembly's plan producing districts which were a crazy quilt of districts unrelated to a legitimate governmental purpose.

357 N.C. at 308. Reading this in accord with the *Stephenson I* Court's instruction that traditional redistricting principles are "not constitutionally required," this trial court concludes that under North Carolina law, legislative districts that comply with the WCP, and are not otherwise based upon impermissible criteria, cannot fail constitutional scrutiny merely because they are bizarrely shaped or not sufficiently compact. However, when the WCP is violated, because one of its purposes is to embody traditional redistricting principles, the harm suffered by the citizens of affected counties and districts include those ills associated with bizarre shapes and divided communities of interest. Because, in *Stephenson II*, the requirements of the WCP were not complied with and districts were not compact, some citizens of North Carolina were disproportionately burdened by a "crazy quilt of noncompact districts." 357 N.C. at 308. However, nothing in *Stephenson II* suggests that, standing alone, without a WCP violation, the failure to achieve compliance with traditional redistricting criteria would be sufficient to defeat a legislatively enacted redistricting plan. As succinctly stated in Justice Parker's dissent in *Stephenson II*:

> [D]ecisions as to communities of interest and compactness are best left to the collective wisdom of the General Assembly as the voice of the people and should not be overturned unless the decisions are "clearly erroneous, arbitrary, or wholly unwarranted."

Stephenson II, 357 N.C. at 315 (Parker, J., dissenting) (citations omitted) (Justice Parker urged, in her dissent, that the challenged legislative plans complied with the WCP and were therefore lawful).

B. *Absence of a Judicially Manageable Standard for Measuring Compliance, or Lack Thereof, with Traditional Redistricting Principles*

To the extent that lack of adherence to traditional redistricting principles could be viewed as an independent basis for a constitutional challenge to legislatively enacted redistricting plans, the trial court finds no uniformly adopted judicial standard by which to measure compliance. The absence of such standards invites arbitrary and inconsistent outcomes of the court that must be avoided, particularly when examining challenges to legislatively enacted redistricting plans where the trial court is instructed to respect the inherently political nature of the redistricting process.

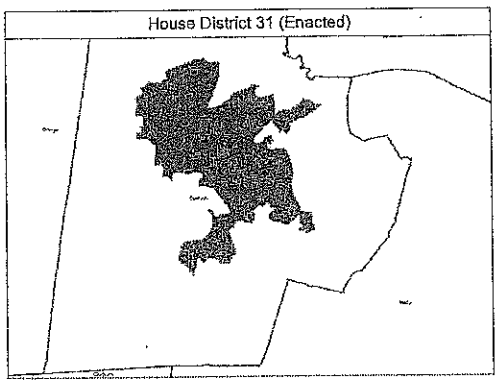
The absence of judicially manageable standards is the result of the amorphous and subjective nature of traditional redistricting principles. For example, the notion of "compactness," which generally refers to the shape of a district, both in terms of the breadth of a district's geographic "dispersion" and the irregularity of its "perimeter," *see,* Fairfax Dep. 23, has been described as "such a hazy and ill-defined concept that it seems impossible to apply it in any rigorous sense in matters of law." *Johnson v. Miller,* 864 F. Supp. at 1388. *See also Karcher v. Daggett,* 462 U.S. 725, 756 (1983) (stating that compactness requirements have been of limited use because of vague definitions and imprecise application). The trial court is unaware of any North Carolina or United States Supreme Court opinion that has defined these terms and established a standard by which a legislature could determine whether a district comports thereto.

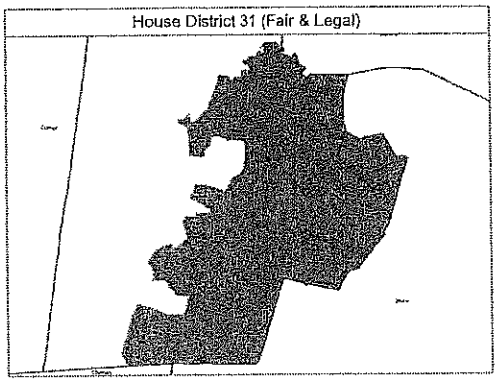
Plaintiffs' expert, Dr. Arrington, testified that when he consults with the United States Department of Justice on redistricting matters, he uses what he calls an "inter-ocular test" to determine if a district is compact, presumably meaning that if the district is

so irregular that it "hits him between the eyes" it must not survive strict scrutiny. Arrington Dep. 202. Such a subjective test of compactness or irregularity is particularly unsuitable for judicial review of redistricting plans in North Carolina because, among other reasons, were this trial court to declare that a certain district was unlawful for lack of compactness or regularity, the law obligates the trial court to further "find with specificity all facts supporting that declaration, [ ] state separately and with specificity the court's conclusions of law on that declaration, and [the trial court] shall, with specific reference to those findings of fact and conclusions of law, identify every defect found by the court." N.C. Gen. Stat. § 120-2.3. A trial court's finding of fact or conclusion of law that a district "appears to be excessively irregular" would, in this court's view, be insufficient to comply with the requirement of N.C. Gen. Stat. §120-2.3.

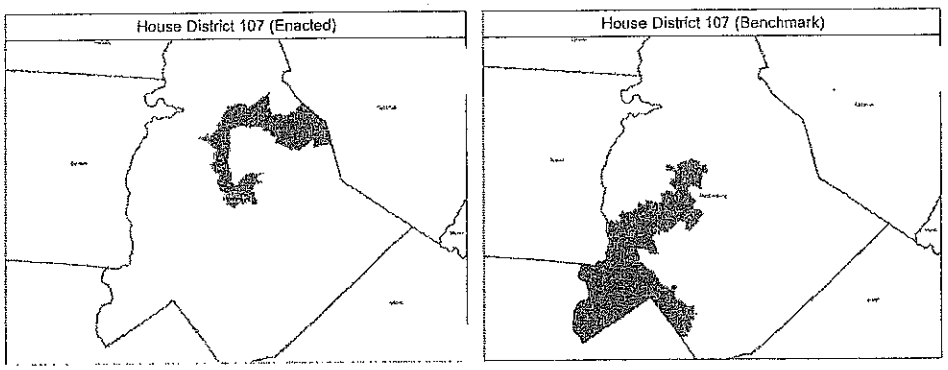
Still, Plaintiffs argue that the N.C. Supreme Court's holding in *Stephenson II* requires this trial court to compare alternative plans to see if more compact alternatives are available. The subjective nature of this task is illustrated by the following examples.

Example 1:





Example 2:

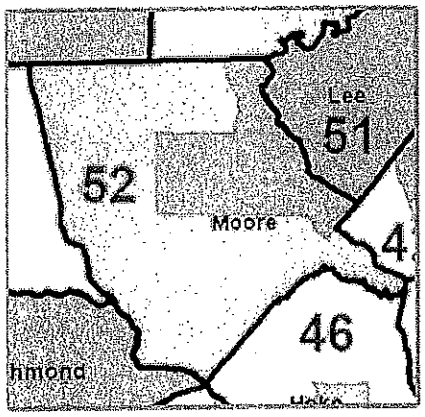


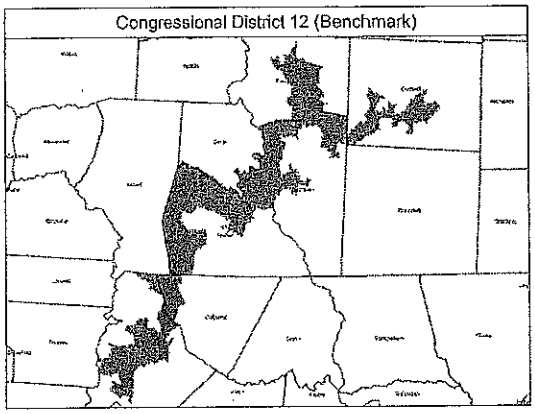
In each of these examples, the district on the left is a House District in the Enacted Plan (Districts 31 (Durham County) and 107 (Mecklenburg County), respectively). The districts on the right are corresponding alternative districts proposed by the Plaintiffs in the House Fair & Legal Plan. The Plaintiffs contend that House Districts 31 and 107 in the Enacted Plan are each "non-compact and irrationally shaped." Conversely, the Plaintiffs suggest that their alternative Districts 31 and 107 are sufficiently compact and rationally shaped.

In both of these examples, the trial court is unable to discern any meaningful difference in the compactness and regularity of the Enacted Plan's districts versus the Plaintiffs' proposed alternative districts. Were the trial court inclined to find either of these enacted districts invalid on the grounds that they were insufficiently compact or irrationally shaped, the trial court believes it would be unable to articulate any meaningful facts or conclusion of law in support of such a holding other than a subjective preference.

The subjective task of determining whether a district is not compact enough or too irregular is made more complicated by the wide variety of court precedent on this topic. Consider, for example the following two districts:

Example 3:





The district on the left is House District 52 as proposed a decade ago. In looking at this district, one might concluded, according to the "inter-ocular" test, that it appears "tidy" and compact. However, this district was rejected by the *Stephenson II* trial court, whose decision was affirmed by the N.C. Supreme Court, as having a "substantial failure in compactness." *See, Stephenson II,* 357 N.C. 301, 309-313 (because it "is shaped like a 'C' rather than being compact, and leaves out the county seat.").

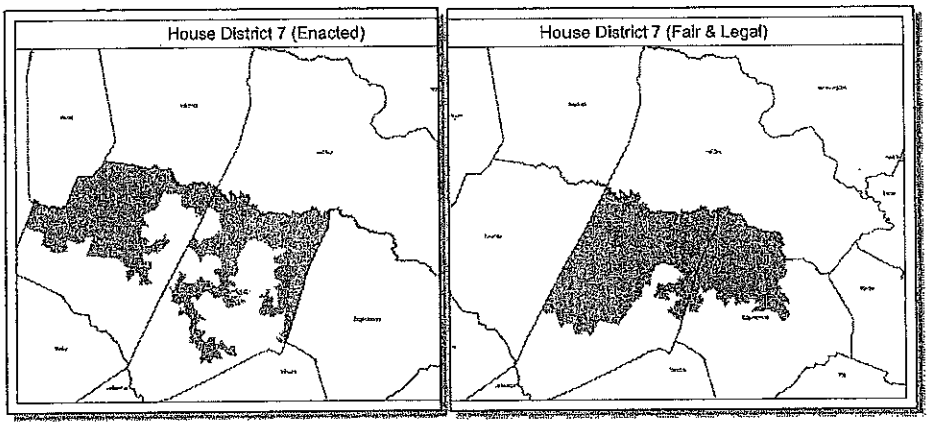
The district on the right is North Carolina's 12th Congressional District, a district perhaps most frequently associated with the lay person's understanding of "gerrymandering."[30] However, when the 12th Congressional District faced a legal challenge in the Supreme Court in *Cromartie II*, 532 U.S. 234, even though the Court had previously labeled it as a "bizarre configuration" with a "'snakelike' shape and continues to track Interstate-85," *Cromartie I*, 526 U.S. at 544, n.3, the district's irregular shape and lack of compactness did not, as a matter of law, render the district

[30] As a rough measure of District 12's universal notoriety as a non-compact district, the Wikipedia article on the term "gerrymandering" has an image of the 2007 version of the 12th Congressional District as its very first image under "examples of gerrymandered districts." *Gerrymandering*, Wikipedia.com, http://en.wikipedia.org/wiki/Gerrymandering (last modified June 30, 2013).

unconstitutional or unlawful. This same district has persisted as a template for all iterations of the 12th Congressional District that have followed in two subsequent decennial redistricting efforts and persists even in the Enacted Congressional Plans under consideration today.

To be sure, there are several districts in the Enacted Plan that are "ugly" and that would appear to most to be bizarrely shaped, irregular and non-compact. For example, House District 7 in the Enacted Plan is one that could be described as such. And, indeed, while the alternative House District 7 proposed in the House Fair & Legal plan is not itself a model of compactness or regularity, it nonetheless could be perhaps described as "prettier."

Example 4:



But, in the absence of a judicially consistent, articulable or manageable standard for viewing a district and declaring it sufficiently regular, compact or "pretty," the trial court cannot find that any district, simply on this ground alone, can be declared to be in violation of law or unconstitutional.

The Plaintiffs also urge that mathematical or quantitative measures of compactness or regularity can aid the trial court in determining whether districts in the Enacted Plan should be rejected for lack of adherence to traditional redistricting principles. But these quantitative measures are not, the trial court finds, particularly helpful in this task because even when a numerical value is assigned to "compactness," the trial court is still left with the subjective task of deciding whether, for example, the Roeck Test[31] compactness score of 0.45 for Enacted Plan House District 31 (see above at **Example 1**) versus a compactness score of 0.46 for the alternative Fair & Legal House District 31 renders the former unconstitutional, and the latter lawful. Or, similarly, whether a non-compactness score of 0.35 renders Enacted Plan District 107 unconstitutional, and the Fair & Legal alternative District 107, with a Roeck score of 0.40, lawful (See above at **Example 2**). This is in accord with Plaintiffs' own expert, Dr. Arrington, who says:

> Courts and reformers often cite compactness as a valuable technical criterion in redistricting, but scholars do not think it should be a priority. One problem is that there are many different and partially conflicting ways to measure the compactness of a district or a district plan. And there can be no mathematical standard of compactness that can be applied across varying geography in the way that equal population can have a mathematical standard. The most one can say is that with the use of a particular statistic, one redistricting plan for a particular jurisdiction has more or less compact districts than another plan for that same jurisdiction. But there is no standard that can tell us whether the districts in a plan are compact enough.

[31] The "Roeck Test" is one of several tests employed by experts considering the compactness of voting districts. It measures a district's "dispersion" by circumscribing the district with the smallest circle within which the district will fit, and comparing the area of the circle to the area of the district. A "perfectly compact" district would itself be a circle with a Roeck Score of 1, whereas a completely noncompact district would have a Roeck score of 0. (Fairfax Dep. 24). Whether any given score resulting from the Roeck test, or the other quantitative tests employed, is itself an indication of lack of compactness is "a judgment call." (Fairfax Dep. 76-77).

Arrington Dep. 142-43.

Moreover, even if the trial court could discern between an acceptable score versus a constitutionally defective score, the results of the quantitative tests, when applied to the Enacted Plan and the alternative plans, are decidedly non-conclusive. Consider, for example, a comparison of the Roeck Scores for the following districts, that are selected for comparison because they all are VRA districts located within a single county:[32]

Table 4: ***Roeck Scores for Enacted VRA House Districts within a Single County Compared to Alternatives***

House District	Enacted Plan (House)	SCSJ	F&L	LBC
29	0.47	0.38	0.24	0.30
31	0.45	0.49	0.46	0.41
33	0.47	0.51	0.24	0.32
38	0.31	0.45	0.30	0.44
42	0.44	0.37	0.37	0.48
43	0.32	0.41	0.41	0.32
57	0.39	0.52	0.51	0.51
58	0.38	0.61	0.61	0.65
60	0.22	0.32	0.33	0.38
99	0.48	0.58	0.61	0.45
101	0.47	0.40	0.28	0.49
102	0.32	0.47	0.47	0.27
106	0.49	0.49	0.40	0.35
107	0.35	0.31	0.40	0.52

The shaded blocks in **Table 4** represent the lowest Roeck, or the "least compact" district, among all plans. This comparison illustrates that even with a mathematical analysis of compactness, the results provide a no better judicially manageable standard by

[32] Districts contained wholly within a county are selected for this comparison because, as the trial court has concluded above, none of the alternative plans proposed or endorsed by the Plaintiffs complies with the hierarchy of rules established by the *Stephenson I* and *II* courts for compliance with the WCP, and none of the alternative plans are drawn to provide VRA districts in "rough proportionality to the Black population in North Carolina" or populate each VRA district with >50% TBVAP as is done in the Enacted Plans. Because of these differences, each of which could have a dramatic effect on the shape of any given district, comparison among the plans is akin to comparing "apples to oranges." By limiting the comparison to only those districts contained wholly within a county, the comparison becomes, perhaps, more instructive.

which the trial court can measure constitutionally permissible, or constitutionally defective, adherence to traditional redistricting principles. While the above-tabulated results of 4 of the 14 districts in the Enacted House Plan show the lowest compactness scores for those same districts across all alternative plans, each of the alternative plans, in turn, have their own set of districts that score lower than all others. In sum, in the "beauty contest" between the Enacted Plans and the "rival compact districts designed by plaintiffs' experts," this data suggests, at best, a tie. *Vera*, 517 U.S. at 977.

C. Excessive Split Precincts

As a subset of traditional redistricting principles, the trial court considers the claims of the Plaintiffs asserting excessive splitting of precincts.[33] Plaintiffs assert that the excessive splitting of precincts impermissibly infringes on voters' right to vote on equal terms in two ways. First, Plaintiffs contend that the division of an excessive number of precincts deprives North Carolinians of the fundamental right to vote on equal terms by creating two classes of voters: a class that is burdened by the problems of split precincts, and a class that is not. Second, the Plaintiffs contend, the way in which the precincts were divided to achieve a race-based goal disproportionately disenfranchises Black voters because Black voters are more likely to live in precincts split in the Enacted Plan. Split precincts, the Plaintiffs contend, inherently cause voter confusion and a possibility of receiving the wrong ballot at the polls. In both instances, the Plaintiffs contend that the trial court must consider these alleged equal protection violations under a

[33] For the purposes of this discussion, the term "VTD" (Voter Tabulation District), as defined by the U.S. Census Bureau and the term "precinct" are used interchangeably.

strict scrutiny standard because of the fundamental nature of one's right to vote and the impermissibility of raced-based classifications.

Plaintiffs' claims of equal protection violations must fail as a matter of law for several reasons. First, the trial court is aware of no authority, state or federal, providing constitutional relief on a claim of split precincts. While undoubtedly, the precinct system is of significant value in the administration of elections in North Carolina, *James v. Bartlett*, 359 N.C. 260, 267 (2005) (enumerating "significant and numerous" advantages of the precinct system), the respect for precincts boundaries is akin to other considerations of traditional redistricting principles that, as discussed above, do not generally provide an independent basis for a constitutional challenge to a redistricting plan that is not otherwise based upon impermissible criteria. Rather, the splitting of excessive precincts may be circumstantial evidence of an impermissible racial motive, or may be the harm resulting from a racial gerrymander, but is not, in and of itself, a constitutional defect. *Shaw I*, 509 U.S. at 647.

Precinct lines are established by each county board of elections. N.C. Gen. Stat. §163-33(4) and -128. There are no uniform, statewide criteria that must be followed by county boards of elections when they create a precinct. Many precinct lines have not been changed for 20 or more years. Bartlett Dep. 21-22; Colicutt Dep. 46-47; Doss Dep. 19-20; Poucher Dep. 39. There is no requirement that precincts be based upon equal population. N.C. Gen. Stat. §163-33(4), -128 and -132.1 *et seq.* There is no requirement that precincts be revised every ten years upon receipt of the Decennial Census like legislative and Congressional districts. N.C. Gen. Stat. § 163-33(4) (providing for revision of precincts as county boards "may deem expedient.") There is no requirement

that precincts be drawn compactly or that they respect communities of interest. N.C. Gen. Stat. §163-33(4), -128 and -132.1 *et seq.* Precinct lines divide neighborhoods. Arrington Dep. 105-106. When towns and municipalities annex property, precincts are split, and some voters then vote in municipal elections, while others in the same precincts vote in county elections. Ultimately, the establishment of precincts by the 100 different county boards of elections is an exercise of their discretion and based upon factors such as the amount of funding made available by their county's board of commissioners and the availability of suitable polling places. N.C. Gen. Stat. § 163-33(4); Poucher Dep. 43. Given the potential for disparate characteristics of precincts throughout the State, it is not surprising that there is no appellate authority affording any special constitutional status to precinct lines that would limit the General Assembly's exercise of its lawful discretion in the redistricting process.

Second, like other instances of traditional redistricting principles, there is no judicially manageable standard for determining when a redistricting plan splits an "excessive" number of precincts. Each alternative plan proposed or endorsed by the Plaintiffs contains split precincts, as did the 2003 Senate Plan and the 2009 House Plan. To be sure, the Enacted Plans split more precincts, and affect more citizens, than the predecessor or alternative plans. But again, the trial court concludes that the subjective nature of what constitutes an "excessive" number of split precincts invites arbitrary and inconsistent outcomes of the trial court that must be avoided, particularly when examining challenges to legislatively enacted redistricting plans, where the trial court is instructed to respect the inherently political nature of the redistricting process.

Third, accepting the Plaintiffs' contention that the splitting of precincts impairs the fundamental right of a split precinct's voters disproportionately to other voters, and that the splitting of precincts was done for a predominantly racial motive, the equal protection analysis that would then follow is identical to that set out above with respect to racial gerrymandering. (*See, supra,* § IV.) As the trial court concluded above, the Enacted Plans were drafted to achieve compelling governmental interests of avoiding § 2 liability and to ensure preclearance under § 5 of the VRA, and the plans were narrowly tailored to accomplish those goals. Where precincts must to be divided to achieve those goals, the General Assembly must be given the leeway to do so.

Of historic significance to the interplay between precinct lines and compliance with § 2 and § 5 of the VRA was the attempt, in 1995, of the General Assembly to enact legislation that would prohibit legislative and congressional districts from crossing precinct lines. N.C. Gen. Stat. §§ 120-2.2 and § 163-261.22 ("whole precinct statute"). When submitted for pre-clearance, the U.S. Department of Justice ("USDOJ") objected to preclearance of the whole precinct statute because it concluded the State had failed to prove the statute was free from discriminatory purpose and that the State had failed to prove that the statute would not have a discriminatory "effect" or "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Arrington Dep. Ex. 238, at 3 (Letter of USDOJ to Charles M. Hensey, Special Deputy Attorney General (2/13/96)) (quoting *Beer v. United States*, 425 U.S. 130, 131 (1976)). The State's responsibility to create "majority-black districts" formed the basis of the USDOJ's objection to the whole precinct statute. The USDOJ noted that "under existing law, county election officials may use their discretion with regard to the

population size and racial composition of precincts," and noted that prior to the whole precinct requirement, "the size and composition of the precincts were of little relevance because the legislature could draw district lines through precinct lines for any number of reasons (e.g. to protect interests, to voluntarily satisfy the VRA, etc.)." *Id.* at 2. The USDOJ was concerned that, under the whole precinct statute, precincts would take on "new importance" because they would then "be used as the building blocks for each district." *Id.* The USDOJ observed that "if precincts do not fairly reflect minority voting strength, it is virtually impossible for districts to do so." *Id.* Based upon this analysis, the USDOJ blocked the enforcement of the whole precinct statute because it "unnecessarily restrict[ed]" the redistricting process and made "it more difficult to maintain existing majority-black districts and to create new ones." *Id.* at 3. Just as the USDOJ did, the trial court concludes the tool of splitting of precincts to achieve a narrowly tailored redistricting plan designed to avoid § 2 liability and ensure § 5 preclearance must be left available to the General Assembly, and an arbitrary constraint would be ill-advised.

Finally, in connection with the equal protection analysis of the claims challenging excessive split precincts, because the Plaintiffs have not proffered any alternative plans that show that the General Assembly could have achieved its legitimate political and policy objectives in alternate ways with fewer split precincts, the Plaintiffs have failed to persuade the trial court that the Enacted Plans are not narrowly tailored.[34]

Thus, in considering all of the factors regarding traditional redistricting principles, including the claim of excessive split precincts, the trial court cannot conclude, as a

[34] See *supra* IV(C)(2)(d) and cases cited therein regarding the Plaintiffs' burden when asserting a lack of narrow tailoring under an Equal Protection analysis

matter of law, that (1) the failure to comport with "traditional redistricting principles," standing alone, renders the Enacted Plans unlawful under the North Carolina or United States constitutions, (2) that, even if such a cause of action exists, that the Enacted Plans deviate from traditional redistricting principles by any meaningful justiciable measure or (3) that a violation of any cognizable equal protection rights of any North Carolina citizens, or groups thereof, will result.

VII. CONCLUSIONS

Upon review of the entire record, consideration of all arguments of counsel, and being bound by the prevailing authority of the North Carolina Supreme Court and the United States Supreme Court, the trial court finds that the Plaintiffs' Motion for Partial Summary Judgment must be DENIED and, with respect to the claims asserted by the Plaintiffs challenging the 2011 Enacted Plans, the Defendants are entitled to JUDGMENT IN THEIR FAVOR on each claim.

So ordered, this the 8th day of July, 2013.

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

Certificate of Service

The undersigned certifies that the foregoing Judgment and Memorandum of Decision, as well as Appendices A and B, were served upon all parties by e-mail and first class mail addressed to the following:

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This the 8 day of July, 2013.

Carol McLeod

STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
MARGARET DICKSON, *et al.*, *Plaintiffs,* v. ROBERT RUCHO, *et al.*, *Defendants.*	11 CVS 16896
NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP, *et al.*, *Plaintiffs,* v. THE STATE OF NORTH CAROLINA, *et al.*, *Defendants.*	11 CVS 16940 *(Consolidated)*

APPENDIX A TO THE

JUDGMENT AND MEMORANDUM OF DECISION

FINDINGS OF FACT RELEVANT TO THE ISSUE OF RACIAL POLARIZATION IN SPECIFIC LOCATIONS WHERE VOTING RIGHTS ACT DISTRICTS WERE PLACED IN THE ENACTED PLANS

See § IV(C)(2)(c) of Judgment and Memorandum of Decision

Contents

I. General Findings of Fact

1. In *Thornburg*, North Carolina was ordered to create majority-black districts as a remedy to § 2 violations in the following counties: Bertie, Chowan, Edgecombe, Forsyth, Gates, Halifax, Martin, Mecklenburg, Nash, Northampton, Wake, Washington, and Wilson. *Gingles*, 590 F. Supp. at 365-66, *aff'd*, *Thornburg*, 478 U.S. at 80; Churchill Dep. Ex. 57, pp. 1, 2 (6/3/11 Memorandum from Michael Crowell and Bob Joyce, UNC School of Government); Churchill Dep. Ex. 60, p. 1 (6/14/11 Memorandum to Senator Bob Rucho from O. Walker Regan, Attorney, Research Division Director)

2. During the legislative process, the two redistricting chairs, Senator Robert Rucho and Representative David Lewis, sought advice from many parties on a variety of issues, including whether North Carolina remained bound by *Gingles*. On May 27, 2011, faculty of North Carolina's School of Government advised the redistricting chairs that North Carolina remained "obligated" to comply with *Gingles*. (Churchill Dep. Ex. 57, pp. 1, 2) ("[I]t appears to be commonly accepted that the legislature remains obligated to maintain districts with effective African American voting majorities in the same areas decided in *Gingles*, if possible.")

3. In 2010, eighteen African American candidates were elected to the State House and seven African American candidates were elected to the State Senate. (First Frey Aff. Exs. 10, 11; Churchill Aff. Ex. 6, 7) Two African American candidates were elected to Congress in 2010. (Churchill Dep. Ex. 81; Churchill Aff. Ex. 1; Second Frey Aff. Ex. 62) All African American incumbents elected to the General Assembly in 2010 or the Congress in 2010 were elected in districts that were either majority-African American or majority-minority coalition districts. (minority-white districts including Hispanics in the category of "white" and one minority non-Hispanic white district) (Second Frey Aff. Exs. 34, 39, 60)[35]

4. No African American candidate elected in 2010 was elected from a majority-white crossover district. (Churchill Dep. Ex. 81, 82, 83 [2010 elections]; Churchill Aff. Exs. 1-3, 6, 7; Map Notebook Stat Pack 2003 Senate Plan, 2009 House Plan, 2001 Congressional Plan) In fact, two African American incumbent senators were defeated in the 2010 General Election, running in majority-white districts. (Churchill Dep. Ex. 82 [2010 Election for SD 5, 2010 Election in Districts with less than 30% Minority Population, SD 24]; Churchill Aff. Ex. 7; Map Notebook, 2003 Senate Plan, Districts 5 and 24 statistics) From 2006 through 2010, no African American candidate was elected to more than two consecutive terms to the legislature in a majority-white district. (Churchill Dep. Ex. 81 [Congressional Races with Minority Candidates, 1992-2010]; Ex. 82 [Senate Races with Minority Candidates 2006-2010]; Ex. 83 [House Legislative Races with Minority Candidates 2006-2010]; Churchill Aff. Exs 6, 7) From

[35] The census categories of "white," "black," "Hispanic," "total black," and "non-Hispanic white" are included for each district with the "stat packs" attached to all of the various plans in the Map Notebook. The "white" category is without regard to ethnicity and includes people who are Hispanic or Latino. The category "Non-Hispanic white" excludes that portion of the population. (Second Frey Aff. Ex. 34, Notes)

1992 through 2010, no black candidate for Congress was elected in a majority-white district. (Churchill Dep. Ex. 81)

5. From 2004 through 2010, no African American candidate was elected to state office in North Carolina in a statewide partisan election. In 2000, an African American candidate, Ralph Campbell, was elected State Auditor in a partisan election. In 2004, Campbell was defeated by a white Republican, Les Merritt, in a partisan election for state auditor. Churchill Dep. Ex. 94, 2004 Partisan Elections; *see also Gingles*, 590 F. Supp. at 364-65 (lack of success by black candidates in statewide elections is relevant evidence of legally significant racially polarized voting).

6. In *Cromartie*, the 1997 version of the First Congressional District was challenged as a racial gerrymander. *Cromartie v. Hunt*, 133 F. Supp. 2d 407, 408 (E.D.N.C. 2000) *rev'd on other grounds*, *Easley v. Cromartie*, 532 U.S. 234 (2001) ("*Cromartie II*"). The First Congressional District encompassed the following counties: Beaufort, Bertie, Craven, Edgecombe, Gates, Granville, Greene, Halifax, Hertford, Jones, Lenoir, Martin, Northampton, Person, Pitt, Vance, Warren, Washington, Wayne, Wilson. (*See* http://www.ncga.state.nc.us/GIS/Download/District_Plans/DB_1991/Congress/97_House-Senate_Plan_A/Maps/DistSimple/distsimple1.pdf)

7. The First Congressional District had a total black population of 50.27% and a black voting age population of 46.54%. *Cromartie*, 133 F. Supp. 2d at 415 n.6. Thus, the 1997 First District was not a majority-TBVAP district. Nevertheless, the parties in *Cromartie* stipulated that legally significant racially polarized voting was present in the First District. *Cromartie*, 133 F. Supp. 2d at 422. The district court in

Cromartie ruled that the First District was reasonably necessary to protect the State from liability under the VRA. *Cromartie*, 133 F. Supp. 2d at 423. That part of the district court's opinion in *Cromartie* was not appealed and remains binding on the State of North Carolina. (Churchill Dep. Ex. 57; *see also* Opinion Letter from UNC School of Government Faculty stating that findings in *Gingles* remain binding on North Carolina)

8. The General Assembly conducted a number of public hearings prior to the legislative session at which redistricting plans were enacted, which provided additional evidence in the record supporting enactment of the VRA districts. There were 13 different public hearing dates running from 13 April 2011, through 18 July 2011. Hearings were often conducted simultaneously in multiple counties and included 24 of the 40 counties covered by § 5. Proposed legislative VRA districts were created before non-VRA districts and the General Assembly conducted a hearing on VRA districts on 23 June 2011. A public hearing on a proposed congressional plan was held on 7 July 2011, and a hearing on proposed legislative plans (including both VRA and non-VRA districts) was held on 18 July 2011. (Affidavit of Robert Rucho [January 19, 2012] ("First Rucho Aff.") Exs. 1 and 2)) Ample testimony was given during these hearings to provide a strong basis in evidence to support the enacted VRA districts.

9. Evidence was presented by counsel for the *NC NAACP* plaintiffs, Anita Earls, and her colleague, Jessica Holmes, on 9 May 2011, and 23 June 2011. On 9 May 2011, both Ms. Earls and Ms. Holmes stated that they were appearing on behalf of the Alliance for Fair Redistricting and Minority Voting Rights ("AFRAM"). (First Rucho Aff. Ex. 6, pp. 7, 8) Ms. Holmes explained that AFRAM was a "network of organizations" that included the Southern Coalition of Social Justice ("SCSJ"), and at

least three of the organizational plaintiffs: Democracy NC, the NC NAACP, and the League of Women Voters. (First Rucho Aff. Ex. 6, p. 6) Ms. Holmes stated that a proposed congressional map would be presented by the SCSJ following her statement. (First Rucho Aff. Ex. 6, p. 8) During her presentation on May 9, 2011, Ms. Earls stated that she was speaking on behalf of the SCSJ. (First Rucho Aff. Ex. 6, p. 9)

10. In addition to her testimony, on May 9, 2011, Ms. Earls provided the joint committee with other documents. One of these was her written statement. (Rucho Aff. Ex. 7) Another was a racial polarization study by AFRAM's expert, Dr. Ray Block. (Rucho Aff. Ex. 8) In his study, Dr. Block analyzed the presence of racial polarization in all of the black candidate versus white candidate elections for the General Assembly and Congress (a total of 54 elections) for the 2006, 2008, and 2010 general elections. (Rucho Aff. Ex. 6, p. 12; Rucho Aff. Ex. 7, p. 2; Rucho Aff. Ex. 8, p. 1)[36] Ms. Earls also submitted a law review article prepared by her. *See* Earls *et al.*, *Voting Rights in North Carolina 1982-2006*, 17 S. CAL. REV. L. & SOC. JUST. 577 (2008) (attached to Rucho Aff. as Ex. 9) Finally, Ms. Earls presented a proposed congressional map that is listed in the map notebook provided to the Court as "SCSJ Congress Plan."

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[36] The following relevant counties were included in the districts studied by Dr. Block: (a) First Congressional District: Beaufort, Bertie, Chowan, Craven, Edgecombe, Gates, Granville, Greene, Halifax, Hertford, Jones, Lenoir, Martin, Northampton, Pasquatank, Perquimins, Pitt, Vance, Warren, Washington, Wayne, Wilson; (b) Twelfth Congressional District: Guilford and Mecklenburg; (c) 2003 SD 4: Bertie, Chowan, Gates, Halifax, Hertford, Northampton, Perquimins; 2003 SD5: Greene, Lenoir, Pitt; 2003 SD 14: Wake; 2003 SD 20: Durham; 2003 SD 21: Cumberland; 2003 SD 28: Guilford; 2003 SD 38 and 40: Mecklenburg; (d) 2009 HD 5: Bertie, Gates, Hertford, Perquimins; 2009 HD 12: Craven, Lenoir; 2009 HD 21: Sampson, Wayne; 2009 HD 24: Edgecombe, Wilson; 2009 HD 25: Nash; 2009 HD 29 and 31: Durham; 2009 HD 33: Wake; 2009 HD 48: Hoke, Robeson, Scotland; 2009 HD 58 and 60: Guilford; and 2009 HD 101 and 107: Mecklenburg. (*See* First Rucho Aff. Ex. 8, pp. 5-7; Map Notebook provided to the Court ["Map Notebook"], Congress Zero Deviation, 2003 Senate Plan and 2009 House Plan). According to Dr. Block, from 2006-2010, there were no contested general elections between black and white candidates in SD 3, HD 7, 8, 27, 42, 43, 99 and 102. (First Rucho Aff. Ex. 8, pp. 5-7) However, it appears that a contested election between a black and white candidate occurred in 2010 in HD 99. (Churchill Aff. Ex. 3, p. 1)

11. Through her testimony and the documents she submitted, Ms. Earls gave her opinion that "we still have very high levels of racially polarized voting in the State." (Rucho Aff. Ex. 6, pp. 12-13) Referencing Dr. Block's report, Ms. Earls testified that racially polarized voting is present when 88 to 93 percent of black voters vote for "the black candidate" and "less than 50" percent of the white voters vote for the black candidate. *Id.* Ms. Earls confirmed her testimony in her written statement which provides:

> Existence of racially polarized voting in North Carolina elections. We asked a political scientist, Ray Block, Jr., to conduct an analysis of the extent to which voting in North Carolina's legislative and congressional elections continue to be characterized by racially polarized patterns. We asked him to examine every black vs. white contest in 2006, 2008, and 2010 for Congress and the State Legislature . . . . The report analyzes 54 elections *and finds significant levels of racially polarized voting. The report also finds that the number of elections won by black candidates in majority minority districts is much higher than in other districts. The data demonstrates the continued need for majority-minority districts.*

(First Rucho Aff. Ex. 7, p. 2) (emphasis added)

12. Dr. Block's report provides substantial evidence regarding the presence of racially polarized voting in almost all of the counties in which the General Assembly enacted the 2011 VRA districts. In his report, Dr. Block attempted to address the following questions:

> 1. Is there a relationship between the number of Blacks who vote in a particular district and the amount of votes that an African American candidate receives?
>
> 2. Is there evidence of racial polarization in the preferences of voters who participate in electoral contests involving African American candidates running against non-Black candidates?

> 3. Is the number of elections won by Black candidates higher in majority-minority districts than in other districts?

13. Dr. Block's analysis answers all three of these questions in the affirmative.

(Rucho Aff. Ex. 8, pp. 1-3) Dr. Block concluded his report with the following summary:

> I offer several different analytical approaches that each tell a similar story about the degree to which polarized voting exists in 2006, 2008 and 2010 North Carolina congressional district elections.[37] Recall that, paraphrasing Justice Brennan's opinion in *Gingles*, racially polarized voting can be identified as occurring when there is a consistent relationship between the race of the voter and the way in which s/he votes. In *all* elections examined here, such a consistent pattern emerges. Furthermore, the evidence in Figure 2 suggests that *majority-minority districts facilitate the election of African American candidates.*

(Rucho Aff. Ex. 8, pp. 3-11) (emphasis added)

14. Dr. Block's report is highly informative in demonstrating racially polarized voting in many areas of the State. To a limited extent, it leaves a few questions in some areas. First, Dr. Block assessed 54 elections in the State of North Carolina in 2006, 2008, and 2010 to determine the degree to which African American candidates for political office failed to win the support of "non-blacks" in the event they were the preferred candidate among black voters. In Dr. Block's analysis, the non-black vote for the black candidate includes whites and minorities other than blacks who voted for the black candidate. Thus, any assessment of the "non-black" vote for the black candidates in an election held in a majority-black or a majority-minority district does not represent

[37] Dr. Block's total report strongly indicates that his examination and conclusions apply to all of the districts he analyzed, not just congressional districts as stated in this sentence. Certainly, given her testimony, written statement, and maps proposed by SCSJ, it appears that Ms. Earls understood that Dr. Block's study applied to all the districts he studied.

the exact percentage of white voters who voted for the candidate of choice of black voters. (Rucho Aff. Ex. 8, p. 1 n. 1; Second Frey Aff. Exs. 34, 39, 60)

15. Second, Dr. Block's report likely overstates the percentage of non-black voters who would vote for a black candidate in an election with genuine opposition. This is because most of the black candidates were incumbents or faced token opposition in the general election. (Churchill Dep. Exs. 81, 82, 83; Churchill Aff. Exs. 1-7; Defendants' Resp. to Pls. "Undisputed Facts" [Jan. 4, 2013], ¶¶ 68-82); *see also Thornburg*, 478 U.S. at 57, 60, 61.

16. Third, Dr. Block could only analyze a legislative election where the black candidate had opposition. Many of the legislative elections from 2006-2010 involved races where the black candidate was unopposed. (First Rucho Aff. Ex. 8, pp. 1-7; Churchill Dep. Exs. 81, 82, 83; Churchill Aff. Exs. 1-7)

17. Finally, because Dr. Block only looked at contested legislative elections, his report provided no information regarding counties in eastern North Carolina that have never before been included in a majority-black or majority-minority district.

18. Because of these limitations, the General Assembly engaged Dr. Thomas Brunell to prepare a report that would supplement the report provided by Dr. Block. (First Rucho Aff. ¶ 15, Ex. 10)

19. Dr. Brunell was asked to assess the extent to which racially polarized voting was present in recent elections in 51 counties in North Carolina. (First Rucho Aff. Ex. 10, p. 3) These counties included the 40 North Carolina counties covered by Section 5 of the VRA and Columbus, Duplin, Durham, Forsyth, Jones, Mecklenburg, Richmond,

Sampson, Tyrell, Wake, and Warren counties. *Id.*[38] Elections analyzed by Dr. Brunell included the 2008 Democratic Presidential primary, the 2008 Presidential General Election, the 2004 General Election for State Auditor (the only statewide partisan election for a North Carolina office between black and white candidates), local elections in Durham County, local elections in Wake County, the 2010 General Election for Senate District 5, the 2006 General Election for House District 60, local elections in Mecklenburg County, local elections in Robeson County, and the 2010 Democratic primary for Senate District 3. (First Rucho Aff. Ex. 10, pp. 5-25)

20. Based upon his analysis, Dr. Brunell found "statistically significant racially polarized voting in 50 of the 51 counties." (First Rucho Aff. Ex. 10, p. 3) Dr. Brunell could not conclude whether statistically significant racially polarized voting had occurred in Camden County because of the small sample size. *Id.* All of the counties located in the 2011 First Congressional District, VRA districts in the 2011 Senate Plan, and VRA districts in the 2011 House Plan are included in Dr. Brunell's analysis.

21. At no time during the public hearing or legislative process did any legislator, witness, or expert question the findings by Dr. Block or Dr. Brunell. It was reasonable for the General Assembly to rely on these studies.

22. The law review article submitted by Ms. Earls also provided evidence of racially polarized voting as alleged or established in voting rights lawsuits filed in many of the counties in which 2011 VRA districts were enacted. (Rucho Aff Ex. 9, App. B) These cases included: *Ellis v. Vance County, Fayetteville; Cumberland County Black*

[38] The forty counties covered by Section 5 include: Anson, Beaufort, Bertie, Bladen, Camden, Caswell, Chowan, Cleveland, Craven, Cumberland, Edgecombe, Franklin, Gaston, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hoke, Jackson, Lee, Lenoir, Martin, Nash, Northampton, Onslow, Pasquotank, Perquimans,Person, Pitt, Robeson, Rockingham, Scotland, Union, Vance, Washington, Wayne, and Wilson. (Churchill Dep. Ex. 46, Legislator's Guide to Redistricting p. 6)

Democratic Caucus v. Cumberland County; Fussell v. Town of Mt. Olive (Wayne), *Hall v. Kennedy* (Clinton City Council and City Board of Education) (Sampson); *Harry v. Bladen County, Holmes v. Lenoir County; Johnson v. Halifax County; Lewis v. Wayne County; McClure v. Granville County; Montgomery County Branch of the NAACP v. Montgomery County Board of Election; Moore v. Beaufort County; NAACP v. Duplin County; NAACP v. Elizabeth City* (Pasquatank); *NAACP v. Forsyth County; NAACP v. Richmond County; NAACP v. Roanoke Rapids* (Halifax County); *Pitt County Concerned Citizens for Justice v. Pitt County; Rowson v. Tyrell County; Speller v. Laurinburg* (Scotland County); *United States v. Lenoir County; Webster v. Person County; White v. Franklin County;* and *Wilkers v. Washington County.* (First Rucho Aff Ex. 9, App. B, pp. 4-27)

23. During the public hearing process, many witnesses besides Ms. Earls testified about the continuing presence of racially polarized voting, the continuing need for majority-minority districts, and the continuing existence of the *Gingles* factors used to judge "the totality of the circumstances." Not a single witness testified that racial polarization had vanished either statewide or in areas in which the General Assembly had enacted past VRA districts.

24. On 13 April 2011, Lois Watkins, a member of the Rocky Mount City Council, asked the legislature to draw majority-minority districts and stated that there was a desire in the City of Rocky Mount to elect and keep representatives of choice. (NC11-S-28F-3(a), pp. 13-15)[39] Another member of the Rocky Mount City Council,

[39] Citations beginning "NC11-S-28F" refer to a portion of the preclearance submission to USDOJ of the enacted Senate Plan dealing with public input. Pages cited herein were attached to Defendants' Response to "Plaintiffs' Undisputed Material Facts" as "Attachment B." Moreover, an electronic copy of the State's

Reuben Blackwell, testified that there was inequality in housing, elections, transportation, and economic development. (NC11-S-28F-3(a), pp. 20-23) AFRAM representative Jessica Holmes testified that many historical factors, including racial appeals in campaigns, had conspired to exclude African American voters from the political process. (NC11-S-28F-3(a), pp. 24-27) Ms. Holmes further stated that social science would confirm that racially polarized voting continues to occur in many areas of North Carolina and that any redistricting plan should not have the purpose or effect of making African American voters worse off. (NC11-S-28F-3(a), p. 26) Finally, Andre Knight, another member of the Rocky Mount City Council and President of the local branch of the NAACP, testified about the historical exclusion of African Americans from the electoral process in Rocky Mount, that race and economic class continued to be divisive issues in regard to school systems, and that racially polarized voting still exists and is demonstrated by the negative attitude toward the African American majority on the Rocky Mount City Council. (NC11-S-28F-3(a), pp. 28-30)

25. On 20 April 2011, Bob Hall, Executive Director of plaintiff Democracy NC and a proffered expert for plaintiffs, testified that race must be taken into consideration in the redistricting process, that discrimination still exists in North Carolina, and that racially polarized voting continues in some parts of the State. (NC11-S-28F-3(b), pp. 29-31) Toye Shelton, an AFRAM representative, testified that African Americans and other protected groups must be afforded an equal opportunity to participate in the political process. (NC11-S-28F-3(b), pp. 33-37) Terry Garrison, a Vance County Commissioner, urged the legislature to be cognizant of race as they drew

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complete Section 5 submission was provided to the Court with Defendants' Motion for Summary Judgment.

districts. (NC11-S-28F-3(b), pp. 41-44) Lavonia Allison, Chair of the Durham Committee on the Affairs of Black People, testified that racial minorities have faced discrimination in voting, that race must be taken into account when drawing redistricting plans to serve the goal of political participation, and that the VRA requires the General Assembly to draw districts in which minorities are afforded the opportunity to elect a candidate of choice. (NC11-S-28F-3(b), pp. 71-74) Ms. Allison also drew attention to the fact that African Americans represent 22% of the total population of North Carolina and that fair representation would reflect that with proportional numbers of representatives in the General Assembly. *Id.*

26. On 28 April 2011, Bill Davis, Chair of the Guilford County Democratic Party, testified that redistricting plans should not undermine minority voting strength. (NC11-S-28F-3(d), pp. 17-20) James Burroughs, Executive Director of Democracy at Home, advised that the legislature was "obligated by law" to create districts that provide an opportunity for minorities to elect candidates of choice. He asked that current minority districts be maintained and that other districts be created to fairly reflect minority voting strength. (NC11-S-28F-3(d), pp. 26-28)

27. On 30 April 2011, June Kimmel, a member of the League of Women Voters, told the committee that race should be considered when drawing districts and that the legislature must not "weaken" the minority vote to avoid a court challenge. (NC11-S-28F-3(f), pp. 9-12) Mary Degree, the District 2 Director of the NAACP, stated that the legislature was legally obligated to consider race, asked that current majority-minority districts be preserved, and asked that new majority-minority districts be added based upon new census data. (NC11-S-28F-3(f), pp. 17-19) Maxine Eaves, a member of

the League of Women Voters, urged that any new plan fairly reflect minority voting strength. (NC11-S-28F-3(f), pp. 28-31)

2. On 7 May 2011, Mary Perkins-Williams, a resident of Pitt County, testified that the VRA was in place to give minorities a chance to participate in the political process. She stated that Pitt County African Americans had faced disenfranchisement and that it remained hard for African Americans to be elected in her county. (NC11-S-28F-3(j), pp. 23-26) Taro Knight, a member of the Tarboro Town Council, expressed his opinion that wards for the Town Council drawn with 55% to 65% African American population properly strengthened the ability of minorities to be elected. (NC11-S-28F-3(j), pp. 40-42)

29. On 7 May 2011, Keith Rivers, President of the Pasquotank County NAACP, stated that race must be considered, that current majority-minority districts should be preserved, and that additional majority-minority districts should be drawn where possible. (NC11-S-28F-3(k), pp. 9-11) Kathy Whitaker Knight, a resident of Halifax County, stated that race must be considered to enfranchise all voters. (NC11-S-28F-3(k), pp. 35-37) Nehemiah Smith, editor of the *Weekly Defender*, a publication in Rocky Mount, North Carolina, testified that minorities have faced many obstacles to being involved in the electoral process throughout history. (NC11-S-28F-3(k), pp. 39-41) David Harvey, President of the Halifax County NAACP, stated that communities in eastern North Carolina are linked by high poverty rates, disparities in employment, education, housing, health care, recreation and youth development, and that these communities have benefitted from majority-minority districts. (NC11-S-28F-3(k), pp. 47-48)

30. On 23 June 2011, Florence Bell, a resident of Halifax County, testified that northeastern North Carolina continued to lag behind in the "*Gingles* factors" including "high poverty rates, health disparities, high unemployment, community exclusion, lack of recreational and youth development and that these are contributing factor to juvenile delinquency, issues of racial injustice, inequality of education and economic development." (NC11-S-28F-3(m), pp. 97-100)

31. On June 23, 2011, Ms. Earls and AFRAM provided an additional submission to the Joint Redistricting Committee. (First Rucho Aff. ¶ 18 Ex. 12) This submission included a written statement by Ms. Earls and proposed North Carolina Senate and North Carolina House maps. (*Id.*; Map Notebook, SCSJ Senate Plan and SCSJ House Plan) In her statement, Ms. Earls stated that the two SCSJ plans should be considered because they "compl[ied] with the Voting Rights Act." (First Rucho Aff. Ex. 12, p. 1) More specifically, Ms. Earls stated that the SCSJ Senate and House Plans complied "with the non-retrogression criteria for districts in counties covered by Section 5 of the Voting Rights Act" and "Section 2 of the Voting Rights Act in Mecklenburg, Forsyth, and Wake Counties." *Id.*

32. On 18 July 2011, Professor Irving Joyner, representing the NAACP, affirmed that racially polarized voting continues to exist in North Carolina. (NC11-S-28F-3(o), pp. 68-76))

33. In summary, during the public hearing process, many witnesses presented testimony that majority-minority districts are still needed, that racially polarized voting still exists throughout North Carolina and in the areas where the General Assembly

created VRA districts, and that new majority-black districts should be created when possible.

34. The General Assembly convened in legislative session on Monday, 25 July 2011, for purposes of enacting Senate, House, and Congressional redistricting plans. (NC11-S-27H) On that same date, Democratic Leaders published their three redistricting plans: Congressional Fair and Legal; Senate Fair and Legal; and House Fair and Legal. (http://www.ncleg.net/representation/Content/Plans/PlanPage_DB_2011.asp?Plan=Congressional_Fair_and_Legal&Body=Congress), (http://www.ncleg.net/representation/Content/Plans/PlanPage_DB_2011.asp?Plan=Senate_Fair_and_Legal&Body=Senate), (http://www.ncleg.net/representation/Content/Plans/PlanPage_DB_2011.asp?Plan=House_Fair_and_Legal&Body=House) On that same date, the Legislative Black Caucus published, for the first time, their Possible Senate Plan and Possible House Plan. (http://www.ncleg.net/representation/Content/Plans/PlanPage_DB_2011.asp?Plan=Possible_Senate_Districts&Body=Senate), (http://www.ncleg.net/representation/Content/Plans/PlanPage_DB_2011.asp?Plan=Possible_House_Districts&Body=House)

35. On 27 July 2011, the General Assembly passed the 2011 Senate Redistricting Plan, 2011 S.L. 404 (Rucho Senate 2) and the 2011 Congressional Plan, 2011 S.L. 403 (Rucho-Lewis Congress 3). (*NAACP* Pl. Am Compl. ¶ 65) On 28 July 2011, the General Assembly enacted the 2011 House Redistricting Plan, 2011 S.L. 402 (Lewis-Dollar-Dockham 4). *Id.* As will be shown below, all of the enacted VRA districts are located in areas of the State where Democratic leaders and the Legislative

Black Caucus recommended the enactment of majority-black districts or majority-minority coalition districts.

II. District-by-District Evidence of Racial Polarization in the Areas Where the General Assembly Created 2011 VRA Districts.

36. 2011 First Congressional District

TBVAP: 52.65 (First Frey Aff. Ex. 12)

Counties: Beaufort, Bertie, Chowan, Craven, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Hertford, Lenoir, Martin, Nash, Northampton, Pasquatank, Perquimins, Pitt, Vance, Warren, Washington, Wayne, Wilson.

(Map Notebook, Rucho-Lewis Congress 3)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that this district is a racial gerrymander. (*Dickson* Pls. Am. Compl. ¶¶ 501-04, 515-19; *NAACP* Pls. Am. Compl. ¶¶ 435-42; 480-86)

b. Counties included in *Gingles* districts:

Bertie, Chowan, Edgecombe, Gates, Halifax, Martin, Nash, Northampton, Washington, Wilson

(*See* General Findings of Fact, No. 1)

c. Counties included in *Cromartie* First Congressional District:

Beaufort, Bertie, Craven, Edgecombe, Gates, Granville, Greene, Halifax, Hertford, Lenoir, Martin, Northampton, Pitt, Vance, Warren, Washington, Wayne, Wilson

(*See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 First Congressional District: Granville, Vance, Warren, Northampton, Hartford, Gates, Pasquatank, Perquimins, Chowan, Bertie, Halifax, Edgecombe, Martin, Washington, Wilson, Pitt, Beaufort, Wayne, Greene, Lenoir, Craven

2003 SD 3: Edgecombe, Martin, Pitt
2003 SD 4: Bertie, Chowan, Gates, Halifax, Northampton, Hertford, Perquimans
2009 HD 5: Bertie, Gates, Hertford, Perquimons
2009 HD 7: Halifax, Nash
2009 HD 8: Martin, Pitt
2009 HD 12: Craven, Lenoir
2009 HD 24: Edgecombe, Wilson
2009 HD 27: Northampton, Vance, Warren
2009 HD: 21; Wayne

(Map Notebook, Congress Zero Deviation, 2003 Senate, 2009 House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 Counties:

Bertie, Chowan, Craven, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Hertford, Lenoir, Martin, Nash, Northampton, Pasquatank, Perquimons, Pitt, Vance, Washington, Wayne, Wilson

(Churchill Dep. Ex. 45, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2006 HD 5: Bertie, Gates, Hertford, Perquimons
2006 HD 12: Craven, Lenoir
2008 SD 5: Greene, Lenoir, Pitt, Wayne
2008 HD 12: Craven, Lenoir
2010 CD 1: See above 1d
2010 SD 4: Bertie, Chowan, Halifax, Hertford, Northampton
2010 SD. 5: Greene, Lenoir, Pitt, Wayne
2010 HD 12: Craven, Lenoir
2010 HD. 21: Wayne
2010 HD 24: Edgecombe, Wilson

(First Rucho Aff. Ex. 8, pp. 5-7; Map Notebook, Congress Zero Deviation, 2003 Senate, 2003 House)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Counties: Beaufort, Bertie, Chowan, Craven, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Hertford, Lenoir, Martin,

Nash, Northington, Pasquatank, Perquimins, Pitt, Vance, Warren, Washington, Wayne, Wilson.

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority districts in plans proposed by SCSJ or Democratic Leaders:

SCSJ CD 1: Beaufort, Bertie, Chowan, Craven, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Hertford, Lenoir, Martin, Nash, Northampton, Pasquatank, Perquimons, Pitt, Vance, Warren, Washington, Wayne, Wilson.

Congressional F&L CD 1: Beaufort, Bertie, Chowan, Craven, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Hertford, Lenoir, Martin, Nash, Northampton, Pasquatank, Perquimons, Pitt, Vance, Warren, Washington, Wayne, Wilson.

SCSJ SD 3: Edgecombe, Martin, Pitt, Wilson, Washington

F&L SD 3: Bertie, Edgecombe, Martin, Wilson

PSD SD 3: Edgecombe, Nash, Pitt

SCSJ SD 4: Bertie, Gates, Halifax, Hertford, Northampton, Vance, Warren

F&L SD 4: Chowan, Gates, Halifax, Hertford, Northampton, Vance, Warren

PSD SD 4: Bertie, Chowan, Gates, Halifax, Hertford, Warren, Northampton, Perquimans, Washington

SCSJ HD 5: Bertie, Chowan, Gates, Hertford, Pasquatank, Perquimans, Washington

SCSJ HD 7: Edgecombe, Halifax, Nash

SCSJ HD 8: Bertie, Martin, Pitt

SCSJ HD 24: Edgecombe, Halifax, Wilson

SCSJ HD 27: Gates, Halifax, Hertford, Northampton, Vance, Warren

SCSJ HD 12: Craven, Greene, Lenoir

SCSJ HD 21: Wayne

F&L HD 5: Bertie, Gates, Hertford, Martin

F&L HD 7: Edgecombe, Nash

F&L HD 8: Pitt

F&L HD 24: Edgecombe, Wilson

F&L HD 27: Halifax, Northampton

F&L HD 12: Craven, Greene, Lenoir

F&L HD 21: Wayne

PHD HD 5: Bertie, Gates, Hertford, Martin

PHD HD 7: Halifax, Nash

PHD HD 8: Greene, Pitt

PHD HD 24: Edgecombe, Wilson

PHD HD 27: Northampton, Warren

PHD HD 12: Craven, Lenoir

PHD HD 21: Wayne

(Map Notebook; SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

37. 2011 Senate District 4

TBVAP 52.75 (First Frey Aff. Ex. 10)

Counties: Halifax, Vance, and Warren, and portions of Nash and Wilson

(Map Notebook, Rucho Senate 2)

a. Which group of plaintiffs have challenged this district?

Only the *Dickson* plaintiffs have alleged that the district is a racial gerrymander. (*Dickson* Pls. Am. Compl. ¶¶ 497-500, 510-14) The

NAACP plaintiffs did not challenge this district. (*NAACP* Pls. Am. Compl. ¶¶ 422-34, 472-79)

b. Counties included in *Gingles* districts: Halifax, Nash, Wilson

(*See* General Findings of Fact, No. 1)

c. Counties included in *Cromartie* First Congressional District:

Halifax, Nash, Vance, Warren

(*See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 First Congressional District: Halifax, Nash, Vance, Warren, Wilson
2003 Senate District 4: Halifax
2009 House District 7: Halifax, Nash
2009 House District 24: Nash, Wilson

(Map Notebook, Congress Zero Deviation, 2003 Senate, 2009 House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 Counties: Halifax, Nash, Vance, Wilson

(Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2001 Congressional District 1: Halifax, Nash, Vance, Warren, Wilson
2003 SD 4: Halifax
2003 HD 24: Wilson, Nash
2009 HD 25: Nash

(First Rucho Aff. Ex. 8, pp. 5-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Halifax, Nash, Vance, Warren, Wilson

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority districts in plans proposed by SCSJ or Democratic Leaders:

SCSJ Congress CD 1: Halifax, Nash, Vance, Warren, Wilson
Congressional Fair & Legal 1: Halifax, Nash, Vance, Warren, Wilson
SCSJ SD 3: Wilson
F&L SD 3: Wilson
SCSJ SD 4: Halifax, Vance, Warren
F&L SD 4: Halifax, Vance, Warren
PSD SD4: Halifax, Warren
PSD SD 3: Nash
SCSJ HD 27: Halifax, Vance, Warren
SCSJ HD 7: Halifax, Nash
SCSJ HD 24: Halifax, Wilson
F&L HD 27: Halifax
F&L HD 7: Nash
F&L HD 24: Wilson
PHD HD 27: Nash, Warren
PHD HD 7: Halifax, Nash
PHD HD 24: Wilson

(Map Notebook; SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff Exs. 10-12; Second Frey Aff. Exs. 36-38; 41, 43, 66, 67)

38. 2011 Senate District 5

TBVAP 51.97% (First Frey Aff Ex.10)
Counties: Greene, Lenoir, Pitt, Wayne

(Map Notebook, Rucho Senate 2)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that the district is a racial gerrymander. *Dickson* Pls. Am. Compl. ¶¶ 497-500, 510-14; *NAACP* Pls. Am. Compl. ¶¶ 422-34, 472-79.

b. Counties included in *Gingles* districts: None

c. Counties included in *Cromartie* First Congressional District:

Greene, Lenoir, Pitt, Wayne

(*See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 First Congressional District: Greene, Lenoir, Pitt, Wayne
2003 SD 3: Pitt
2003 HD 8: Pitt
2003 HD 12: Greene, Lenoir
2003 HD 21: Wayne

(Map Notebook, Congress Zero Deviation, 2003 Senate Plan, and 2009 House Plan; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 Counties: Greene, Lenoir, Pitt, Wayne

(Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010

2010 CD 1: Greene, Lenoir, Pitt, Wayne
2008 & 2010 SD 5: Greene, Pitt, Wayne
2008 & 2010 HD 12: Lenoir
2008 & 2010 HD 21: Wayne

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to have statistically significant racially polarized voting:

Greene, Lenoir, Pitt, Wayne

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority districts in plans proposed by SCSJ or Democratic leaders:

SCSJ CD 1: Greene, Lenoir, Pitt, Wayne
F&L CD 1: Greene, Lenoir, Pitt, Wayne
SCSJ SD 3: Pitt
PSD SD 3: Pitt
SCSJ HD 12: Greene, Lenoir
SCSJ HD 21: Wayne
F&L HD 8: Pitt

F&L HD 12: Greene, Lenoir
F&L HD 21: Wayne
PHD HD 8: Greene, Pitt
PHD HD 12: Lenoir
PHD HD 21: Wayne

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

39. 2011 Senate District 14

TBVAP: 51.28% (First Frey Aff. Ex. 10)
County: Wake (Map Notebook, Rucho Senate 2)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that the district is a racial gerrymander. (*Dickson* Pls. Am. Compl. ¶¶ 497-500, 510-14; *NAACP* Pls. Am. Compl. ¶¶ 422-34, 472-79)

b. County included in *Gingles* districts: Wake

(*See* General Findings of Fact, No. 1)

c. County included in *Cromartie* First CD: None

d. County that was part of 2001/2003/2009 majority-black or majority-minority district

2003 Senate District 14: Wake
2009 House District 33: Wake

(Map Notebook, 2003 Senate Plan; 2009 House Plan; First Frey Aff. Exs. 10, 11; Second Frey Aff. Exs. 34, 39; First Frey Aff. Exs. 10, 11)

e. Section 5 county: No

f. County included in Dr. Block's analysis of district elections from 2006-2010:

2008-2010 SD 14: Wake
2008 HD 33: Wake

(First Rucho Aff. Ex. 8, pp. 1-7)

g. County analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Wake

(First Rucho Aff. Ex. 10, pp. 10-14)

h. Counties included in majority-black or majority-minority districts in plans proposed by SCSJ or Democratic leaders:

SCSJ SD 14: Wake
F&L SD 14: Wake
PSD SD 14: Wake
SCSJ HD 33: Wake
F&L HD 33: Wake
PHD HD 33: Wake

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 10, 11; Second Frey Aff. Exs. 36-38; 41-43)

i. County included in majority-black Superior Court district in recently enacted Superior Court Plan: Wake

(*See* :
http://www.wakegov.com/gis/services/Documents/SuperiorCourt_24x24.pdf;
N.C. Gen. Stat. §§ 7A-41(b)(3)-(6b))

40. 2011 Senate District 20

TBVAP: 51.04% (First Frey Aff. Ex. 10)
County: Durham, Granville (Map Notebook, Rucho Senate 2)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that the district is a racial gerrymander. (*Dickson* Pls. Am. Compl. ¶¶ 497-500, 510-14; *NAACP* Pls. Am. Compl. ¶¶ 422-34, 472-79)

b. Counties included in a *Gingles* District:

In *Thornburg v. Gingles*, 478 U.S. 38, 77 (1986), because of the sustained success of black candidates, the United States Supreme Court reversed the district court's finding that racially polarized voting was present in the

1982 version of District 23 located in Durham County. In *Pender County v. Bartlett*, 361 N.C. 491, 494, 649 S.E.2d 364, 367 (2007), *aff'd sub. nom Bartlett v. Strickland*, 561 U.S. 1 (2009), the North Carolina Supreme Court relied upon an affidavit filed by Representative Martha Alexander to make the statement that "[p]ast elections in North Carolina demonstrate that a legislative voting district with a total African-American population of at least 41.54 percent, or an African-American voting age population of at least 38.37 percent, creates an opportunity to elect African American candidates." What was not mentioned is that the district cited from Representative Alexander's affidavit was the 1992 version of the same multi-member, Durham County, District 23 that had been reviewed in *Gingles*. (Record on Appeal at 45-63 (Aff. of Martha Alexander, ¶ 7, Att. A), *Pender County* (No. 103A06) (available at http://www.ncappellatecourts.org/show-file.php?document_id=65479)

As explained by the Supreme Court in *Thornburg* and the district court's opinion in *Gingles*, the dynamics of racially polarized voting is completely different in a multi-member district as compared to a single-member district. For example, in a multi-member district, a black candidate may be elected when he or she is the last choice of white voters, but where the number of candidates running is identical to the number of positions to be elected. *Gingles*, 590 F. Supp. at 368 n.1, 369. Further, "bullet" or "single-shot" voting (a practice that would allow black voters to cast one vote for their candidate of choice as opposed to voting for three candidates in a three-member, multi-member district) may result in the election of a black candidate even when voting in the district is racially polarized. *Thornburg*, 478 U.S. at 38 n. 5, 57. Thus, the finding in *Thornburg* that legally significant polarized voting was absent in a multi-member district does not preclude a strong basis in evidence of racially polarized voting in Durham County as related to single-member districts.

c. Counties included in *Cromartie* First Congressional District: Granville

(*See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district

2001 CD 1: Granville
2003 SD 20: Durham
2003 HD 29: Durham
2003 HD 31: Durham

(Map Notebook, Congress Zero Deviation, 2003 Senate, 2009 House; First Frey Aff. Exs. 10, 11, 12; Second Fry Aff. Exs. 34, 39, 60)

e. Section 5 Counties: Granville

(Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2008 2010 SD 20: Durham
2008 HD 29: Durham
2010 HD 31: Durham

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Durham, Granville

(First Rucho Aff. Ex. 10, pp. 1-16)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ Congress CD 1: Granville
Congressional F&L CD 1: Granville
SCSJ SD 20: Durham
F&L SD 20: Durham
PSD SD 20: Durham
SCSJ HD 29, 31: Durham
F&L HD 29, 31: Durham
PHD HD 29, 31: Durham

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

41. 2011 Senate District 21

TBVAP: 51.43% (First Frey Aff. Ex. 10)
Counties: Cumberland and Hoke (Map Notebook, Rucho Senate 2)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that the district is a racial gerrymander. (*Dickson* Pls. Am. Compl. ¶¶ 497-500, 510-14; *NAACP* Pls. Am. Compl. ¶¶ 422-34, 472-79)

b. Counties included in *Gingles* districts:

None

c. Counties included in *Cromartie* First Congressional District:

None

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2003 SD 21: Cumberland
2009 HD 42: Cumberland
1009 HD 43: Cumberland

(Map Notebook, 2003 Senate, 2003 House; First Frey Aff. Exs. 10, 11; Second Frey Aff. Exs. 34, 39)

e. Section 5 Counties:

Cumberland and Hoke

(Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2010 SD 21: Cumberland

(First Rucho Aff. ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Cumberland, Hoke

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ SD 21: Cumberland
F&L SD 21: Cumberland
PSD SD 21: Cumberland
SCSJ HD 42, 43: Cumberland
F&L HD 42, 43: Cumberland
PHD HD 42, 43: Cumberland

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; Second Frey Aff. Exs. 36-38, 41-43)

42. 2011 Senate District 28

TBVAP 56.49% (First Frey Aff. Ex. 10)
County: Guilford (Map Notebook, Rucho Senate 2)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that the district is a racial gerrymander. (*Dickson* Pls. Am. Compl. ¶¶ 497-500, 510-14; *NAACP* Pls. Am. Compl. ¶¶ 422-34, 472-79)

b. Counties included in *Gingles* districts: None

c. Counties included in *Cromartie* First Congressional District: None

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 12: Guilford
2009 SD 28: Guilford
2009 HD 58: Guilford
2009 HD 60: Guilford

(Map Notebook, Congress Zero Deviation, 2003 Senate, 2009 House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 County: Guilford

(Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2008 and 2010 CD 12: Guilford
2006 and 2010 CD 13: Guilford
2010 SD 28: Guilford
2010 HD 58: Guilford
2006 and 2010 HD 60: Guilford

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Guilford

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ CD 12: Guilford
F&L CD 12: Guilford
SCSJ SD 28: Guilford
F&L SD 28: Guilford
PSD SD 28: Guilford
SCSJ HD 58, 60: Guilford
F&L HD 58, 60: Guilford
PHD HD 58, 60: Guilford

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; Possible Senate and Possible House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

43. 2011 Senate Districts 38 and 40

TBVAP: 38 (52.51%) (First Frey Aff. Ex. 10)
40 (51.84%) (First Frey Aff. Ex. 10)
County: Mecklenburg (Map Notebook, Rucho Senate 2)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that these districts are racial gerrymanders. (*Dickson* Pls. Am. Compl. ¶¶ 497-500, 510-514; *NAACP* Pls. Am. Compl. ¶¶ 422-34, 472-79)

b. County included in *Gingles* districts: Mecklenburg

(*See* General Findings of Fact, No. 1)

c. County included in *Cromartie* First Congressional District: None

d. County that was part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 12: Mecklenburg
2003 SD 38: Mecklenburg
2003 SD 40: Mecklenburg
2003 HD 99, 100, 101, 102; 107, Mecklenburg

(Map Notebook, Congress Zero Deviation, 2003 Senate, 2009 House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 County: No

f. County included in Dr. Block's analysis of district elections from 2006-2010:

2008, 2010 CD 12: Mecklenburg
2006, 2008, 2010 SD 40: Mecklenburg
2008 SD 38: Mecklenburg
2008, 2010 HD 107: Mecklenburg
2010 HD 101: Mecklenburg

(First Rucho Aff. Ex. 8, pp. 1-7)

g. County analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Mecklenburg

(First Rucho Aff. Ex. 10, pp. 1-15, 22)

h. County included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders

SCSJ CD 12: Mecklenburg
F&L CD 12: Mecklenburg
SCSJ SD 38.40: Mecklenburg
F&L SD 38.40: Mecklenburg
PSD SD 38.40: Mecklenburg
SCSJ HD 99: Mecklenburg
SCSJ HD 100: Mecklenburg
SCSJ HD 101: Mecklenburg
SCSJ HD 102: Mecklenburg
SCSJ HD 107: Mecklenburg
F&L HD 99: Mecklenburg
F&L HD 101: Mecklenburg
F&L HD 102: Mecklenburg
F&L HD 107: Mecklenburg
PHD HD 25: Mecklenburg
PHD HD 99: Mecklenburg
PHD HD 100: Mecklenburg
PHD HD 101 Mecklenburg
PHD HD 102: Mecklenburg
PHD HD 107: Mecklenburg

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

44. 2011 House District 5

TBVAP 54.17% (First Frey Aff. Ex. 11)
Counties: Bertie, Gates, Hertford, Pasquatank (Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

The *NAACP* plaintiffs have alleged that 2011 District 5 is a racial gerrymander. *NAACP* Pl. Am. Compl. ¶¶ 410-21, 464-71; The *Dickson* Plaintiffs have not challenged this district. *Dickson* Pl. Am. Compl. ¶¶ 493-96, 505-509.

b. Counties included in *Gingles* districts: Bertie, Hertford, Gates

(*See* General Findings of Fact, No. 1)

c. Counties included in *Cromartie* First Congressional District: First District: Bertie, Hertford, Gates

(*See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 1: Bertie, Gates, Hertford, Pasquatank
2003 SD 4: Bertie, Gates, Hertford
2009 HD 5: Bertie, Gates, Hertford

(Map Notebook Congress Zero Deviation, 2003 Senate, 2003 House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 Counties: Bertie, Hertford, Gates, Pasquatank

(Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010

2010 CD 1: Bertie, Gates, Hertford, Pasquatank
2010 SD 4: Bertie, Gates, Hertford
2006 HD 5: Bertie, Gates, Hertford

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Bertie, Gates, Hertford, Pasquatank

(First Rucho Aff. Ex. 10, pp. 1-15)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ CD 1: Bertie, Gates, Hertford, Pasquatank
F&L CD 1: Bertie, Gates, Hertford, Pasquatank
SCSJ SD 4: Bertie, Gates, Hertford
F&L SD 3: Bertie
F&L SD 4: Gates, Hertford
PSD SD 4: Bertie, Gates, Hertford
SCSJ HD 5: Bertie, Hertford, Gates, Pasquatank
F&L HD 5: Bertie, Gates, Hertford
PHD HD 5: Bertie, Gates, Hertford

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-42, 66, 67)

45. 2011 House District 7

TBVAP: 50.67% (First Frey Aff. Ex. 11)
Counties: Franklin, Nash (Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

The *Dickson* plaintiffs have alleged that 2011 HD 7 is a racial gerrymander. *Dickson* Pls. Am. Compl. ¶¶ 493-96, 505-509; The *NAACP* Plaintiffs have not challenged this district. *NAACP* Pls. Am. Compl. ¶¶ 410-21, 464-71.

b. Counties included in *Gingles* districts: Nash

(*See* General Findings of Fact, No. 1)

c. Counties included in *Cromartie* First Congressional District: None

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 1: Nash
2009 HD 7: Nash

(Map Notebook, Congress Zero Deviation and 2009 House Plan; First Frey Aff. Exs. 11, 12; Second Frey Aff. Exs. 39, 60)

e. Section 5 County: Franklin, Nash

(Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2010 CD 1: Nash

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Franklin and Nash

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders

SCSJ CD 1: Franklin, Nash
F&L CD 1: Franklin, Nash
PSD SD 3: Nash
SCSJ HD 7: Nash
F&L HD 7: Nash
PHD HD 7: Nash

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 11, 12; Second Frey Aff. Exs. 38, 41-43, 66, 67

46. 2011 House District 12

TBVAP: 50.60% (First Frey Aff. Ex. 11)
Counties: Craven, Greene, Lenoir (Map Notebook, Lewis-Dollar-Dockham, 4)

a. Which group of plaintiffs have challenged this district?

The *Dickson* plaintiffs have alleged that this district is a racial gerrymander. *Dickson* Pls. Am. Compl. ¶¶ 493-96, 505-509; The *NAACP* Plaintiffs have not challenged this district. *NAACP* Pls. Am. Compl. ¶¶ 410-21, 464-71.

b. Counties included in *Gingles* districts: None

c. Counties included in *Cromartie* First Congressional District: Craven, Greene, Lenoir

(*See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 1: Craven, Greene, Lenoir
2009 HD 12: Craven, Lenoir

(Map Notebook, Congress Zero Deviation and 2009 House Plan; First Frey Aff. Exs. 11, 12; Second Frey Aff. Exs. 39, 60)

e. Section 5 Counties: Craven, Greene, Lenoir
(Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2010 CD 1: Craven, Greene, Lenoir
2006-2010 HD 12: Craven, Lenoir

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Craven, Greene, Lenoir

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders

SCSJ CD 1: Craven, Greene, Lenoir
F&L CD 1: Craven, Greene, Lenoir
SCSJ HD 12: Craven, Greene, Lenoir
F&L HD 12: Craven, Greene, Lenoir
PHD HD 12: Craven, Lenoir

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; Second Frey Aff. Exs. 41-43; 66, 67)

47. 2011 House District 21

TBVAP: 51.90% (First Frey Aff. Ex. 11)
Counties: Duplin, Sampson, Wayne (Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that the district is a racial gerrymander. *Dickson* Pls. Am. Compl. ¶¶ 493-96, 505-509; *NAACP* Pls. Am. Compl. ¶¶ 410-21, 464-71.

b. Counties included in *Gingles* districts: None

c. Counties included in *Cromartie* First Congressional District: Wayne

(*See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 1: Wayne
2009 HD 21: Sampson, Wayne

(Map Notebook, Congress Zero Deviation; 2009 House Map; First Frey Aff. Exs. 11, 12; Second Frey Aff. Exs. 39, 60)

e. Section 5 County: Wayne
(Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010

2010 CD 1: Wayne
2010 HD 21: Sampson, Wayne

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Duplin, Sampson, Wayne

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders

SCSJ CD 1: Wayne
F&L CD 1: Wayne
SCSJ HD 21: Duplin, Sampson, Wayne

F&L HD 21: Sampson, Wayne
PHD HD 21: Sampson, Wayne

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 41-43, 66, 67)

48. 2011 House District 24

TBVAP: 57.33% (First Frey Aff. Ex. 11)
Counties: Pitt, Wilson (Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

Both groups of plaintiffs have alleged that this district is a racial gerrymander. (*Dickson* Pls. Am. Compl. ¶¶ 493-95, 505-509; *NAACP* Pls. Am. Compl. ¶¶ 410-21, 464-71)

b. Counties included in *Gingles* districts: Wilson

(*See* General Findings of Fact, No. 1)

c. Counties included in *Cromartie* First Congressional District: Pitt, Wilson

(*See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 1: Pitt, Wilson
SD 3: Pitt
2009 HD 8: Pitt
2009 HD 24: Wilson

(Notebook, Congress Zero Deviation, 2003 Senate Plan, 2009 House Plan; First Frey Aff. Exs. 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 County: Pitt, Wilson

(Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2008 SD 5: Pitt

2010 SD 5: Pitt, Wilson

(First Rucho Aff. Ex. 6, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Pitt, Wilson

(First Rucho Aff. Ex. 10, pp. 1-15)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ CD 1: Pitt, Wilson
F&L CD 1: Pitt, Wilson
SCSJ SD 3: Pitt, Wilson
F&L SD 3: Wilson
PSD SD 3: Pitt
SCSJ HD 8: Pitt
SCSJ HD 24: Wilson
F&L HD 8: Pitt
F&L HD 24: Wilson
PHD HD 8: Pitt
PHD HD 24: Wilson

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; Possible Senate and House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

49. 2011 House Districts 29 and 31 (Durham County)

TBVAP: HD 29 (51.34%) (First Frey Aff. Ex. 11)
HD 31 (51.81%) (First Frey Aff. Ex. 11)
County: Durham

(Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged these districts?

Both groups of plaintiffs challenged this district. (*Dickson* Pls. Am. Compl. ¶¶ 493-96, 505-509; *NAACP* Pls. Am. Compl. ¶¶ 410-21, 464-71)

b. County included in *Gingles* districts: None, but see but see Finding of Fact 41.b, *supra.*

c. County included in *Cromartie* First Congressional District: None

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2003 SD 20: Durham
2009 HD 29: Durham
2009 HD 31: Durham

(Map Notebook, 2003 Senate Plan and 2009 House Plan; First Frey Aff. Exs. 10,11; Second Frey Aff. Exs. 34, 39)

e. Section 5 County: No

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2008 SD 20: Durham
2009 HD 29: Durham
2010 SD 20: Durham
2010 HD 31: Durham

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Durham

(First Rucho Aff. Ex. 10, pp. 1-16)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders

SCSJ SD 20: Durham
F&L SD 20: Durham
RSP SD 20: Durham
SCSJ HD 29: Durham
SCSJ HD 31: Durham

F&L HD 29: Durham
F&L HD 31 Durham
PHD HD 29: Durham
PHD HD 31 Durham

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 10, 11; Second Frey Aff. Exs. 36-38, 41-43)

50. 2011 House District 32

TBVAP: 50.45% (First Frey Aff. Ex. 11)
Counties: Granville, Vance, Warren
(Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

The *NAACP* plaintiffs allege that this district was a racial gerrymander. (*NAACP* Pls. Am. Comp. ¶¶ 410-12, 464-71) The *Dickson* plaintiffs did not challenge this district. (*Dickson* Pls. Am. Compl. ¶¶ 493-96, 510-14)

b. Counties included in *Gingles* districts: None

c. Counties included in *Cromartie* First Congressional District: Granville, Vance, Warren

(*See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 1: Granville, Vance, Warren
2003 HD 27: Vance, Warren

(Map Notebook, Congress Zero Deviation, 2009 House Plan; First Frey Aff. Exs 11, 12; Second Frey Aff. Exs. 39, 60)

e. Section 5 County: Granville, Vance

(Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2010 CD 1: Granville, Vance, Warren

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Granville, Vance, Warren

(First Rucho Aff. Ex. 8, pp. 1-7)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ CD 1: Granville, Vance, Warren
F&L CD 1: Granville, Vance, Warren
SCSJ SD 4: Vance, Warren
F&L SD 4: Vance, Warren
PSD SD 4: Warren
SCSJ HD 27: Vance, Warren
PHD HD 27: Warren

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

51. 2011 House Districts 33 and 38

TBVAP: HD 33 (51.42%) (First Frey Aff. Ex. 11)
HD 38 (51.37%) (First Frey Aff. Ex. 11)
Counties: Wake

(Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged these districts?

The *Dickson* plaintiffs have challenged HD 33 but not HD 38. (*Dickson* Pls. Am. Compl. ¶¶ 493-96, 505-509) The *NAACP* plaintiffs have challenged HD 38 but not HD 33. (*NAACP* Pls. Am. Compl. ¶¶ 410-21, 464-71)

b. County included in *Gingles* districts: Wake

(*See* General Findings of Fact, No. 1)

c. County included in *Cromartie* First Congressional District: None

d. County that was part of a 2001/2003/2009 majority-black or majority-minority district:

2003 SD 14: Wake
2003 HD 33: Wake

(Map Notebook, 2003 Senate Plan and 2009 House Plan; First Frey Aff. Exs. 10, 11; Second Frey Exs. 34, 39)

e. Section 5 County: No

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2008 SD 14: Wake
2008 HD 33: Wake
2010 SD 14: Wake
2010 HD 33: Wake

(First Rucho Aff. Ex. 8, pp. 1-7)

g. County analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Wake

(First Rucho Aff. Ex. 10, pp. 1-14, 16-18)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ SD 14: Wake
F&L SD 14: Wake
PSD SD 14: Wake
SCSJ HD 33: Wake
F&L HD 33: Wake
PHD HD 33: Wake

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; Second Frey Aff. Exs. 36-38, 41-43, 66-67)

i. County included in majority-black superior court district in recently enacted Superior Court plan: Wake

(*See*:
http://www.wakegov.com/gis/services/Documents/SuperiorCourt_24x24.pdf;
N.C. Gen. Stat. §§ 7A-41(b)(3)-(6b))

52. 2011 House District 42

TBVAP: 52.56% (First Frey Aff. Ex. 11)
Counties: Cumberland
(Map Notebook, Lewis-Dollar-Dockham 4

a. Which group of plaintiffs have challenged this district?

Both groups of plaintiffs challenged HD 4. (*Dickson* Pls. Am. Compl. ¶¶ 493-96, 505-509; *NAACP* Pls. Am. Compl. ¶¶ 410-21, 464-71) Neither group of plaintiffs challenged 2011 HD 43, a majority-black House district in Cumberland County that adjoins HD 42. (*Id.*)

b. Counties included in *Gingles* districts: None

c. Counties included in *Cromartie* First Congressional District: None

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2003 SD 21: Cumberland
2009 HD 42: Cumberland
2009 HD 43: Cumberland

(Map Notebook, 2003 Senate Plan and 2009 House Plan; First Frey Aff. Exs. 10, 11; Second Frey Aff. Exs. 34, 39)

e. Section 5 County: Cumberland

(Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2010 SD 21: Cumberland
2010 SD 21: Cumberland

(First Rucho Aff. Ex. 8, pp. 1-7)

g. County analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Cumberland

(First Rucho Aff. Ex. 10, pp. 1-14)

h. County included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ HD 42: Cumberland
SCSJ HD 43 Cumberland
F&L HD 42 Cumberland
F&L HD 43 Cumberland
PHD HD 42 Cumberland
PHD HD 43 Cumberland

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; Second Frey Aff. Exs, 36-38, 41-43)

53. 2011 House District 48

TBVAP: 51.27% (First Frey Aff. Ex. 11)
Counties: Hoke, Richmond, Robeson, Scotland

(Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

Both groups of plaintiffs have challenged this district. (*Dickson* Pls. Am. Compl. ¶¶ 493-96, 505-509; *NAACP* Pls. Am. Compl. ¶¶ 410-21, 464-71)

b. Counties included in *Gingles* districts: None

c. Counties included in *Cromartie* First Congressional District: None

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2009 HD 48: Hoke, Robeson, Scotland

(Map Notebook, 2009 House Map; First Frey Aff. Ex. 11; Second Frey Aff. Ex. 39)

e. Section 5 County: Hoke, Robeson, Scotland

(Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2010 HD 48: Hoke, Robeson, Scotland

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Hoke, Richmond, Robeson, Scotland

(First Rucho Aff. Ex. 10, pp. 1-14)

h. County included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ HD 48: Hoke, Robeson, Scotland
F&L HD 48: Hoke, Robeson, Scotland
PHD HD 48: Hoke, Richmond, Robeson, Scotland

(Map Notebook, SCSJ House; F&L House; Possible House; First Frey Aff. Ex. 11; Second Frey Aff. Exs. 41-43)

54. 2011 House District 57

TBVAP: 50.69% (First Frey Aff. Ex. 11)
Counties: Guilford
(Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

Both groups of plaintiffs challenged this district. (*Dickson* Pls. Am. Compl. ¶¶ 493-96, 505-509; *NAACP* Pls. Am. Compl. ¶¶ 410-21, 464-71) Neither group of plaintiffs challenged two other majority-black districts

located in Guilford County, 2011 HD 58 (TBVAP: 51.41%) and 2011 HD 60 (TBVAP: 54.36%). (*Id.*)

b. County included in *Gingles* districts: None

c. County included in *Cromartie* First Congressional District: None

d. County that was part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 12: Guilford
2003 SD 28: Guilford
2009 HD 58: Guilford
2009 HD 60: Guilford

(Map Notebook, Congress Zero Deviation, 2003 Senate; 2009 House; Frist Frey Aff. Exs. 10-12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 County: Guilford

(Churchill Dep. Ex. 46, p. 6)

f. County included in Dr. Block's analysis of district elections from 2006-2010:

2010 HD 60: Guilford
2008 CD 12: Guilford
2010 CD 12: Guilford
2010 SD 28: Guilford
2010 HD 58: Guilford
2010 HD 60: Guilford

(First Rucho Aff. Ex. 8, pp. 1-8)

g. County analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Guilford

(First Rucho Aff. Ex. 10, pp. 1-14, 19, 20)

h. County included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ CD 12: Guilford
F&L CD 12: Guilford
SCSJ SD 28: Guilford
F&L SD 28: Guilford
PSD SD 28: Guilford
SCSJ HD 58: Guilford
F&L HD 58: Guilford
PSD HD 58: Guilford
SCSJ HD 60: Guilford
F&L HD 60: Guilford
PHD HD 60: Guilford

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; Possible Senate and House; First Frey Aff. Ex. 11, 12, 13; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

55. House Districts 99, 102, 106, 107

TBVAP: HD 99 (54.65%) (First Frey Aff. Ex. 11)
HD 102 (53.53%) (First Frey Aff. Ex. 11)
HD 106 (51.12%) (First Frey Aff. Ex. 11)
HD 107 (52.52%) (First Frey Aff. Ex. 11)

Counties: Mecklenburg

(Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

The *NAACP* Plaintiffs challenged HD 99, 102, 106, and 107. (*NAACP* Pls. Am. Compl. ¶¶ 410-21, 464-71) The *Dickson* Plaintiffs challenged only HD 99 and 107. (*Dickson* Pls. Am. Compl. ¶¶ 493-96, 505-509) Neither group of plaintiffs challenged HD 101 (TBVAP: 51.31%).

b. Counties included in *Gingles* districts: Mecklenburg

(*See* General Findings of Fact, No. 1)

c. Counties included in *Cromartie* First Congressional District: None

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 12: Mecklenburg
2003 SD 38: Mecklenburg
2003 SD 40: Mecklenburg

2009 HD 99: Mecklenburg
2009 HD 100: Mecklenburg
2009 HD 101: Mecklenburg
2009 HD 102: Mecklenburg
2009 HD 106: Mecklenburg
2009 HD 107: Mecklenburg

(Map Notebook, Congress Zero Deviation, 2003 Senate Plan, 2009 House Plan; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 County: None

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2006 SD 40: Mecklenburg
2008 CD 12: Mecklenburg
2008 SD 38: Mecklenburg
2008 SD 40: Mecklenburg
2008 CD 12: Mecklenburg
2010 HD 107: Mecklenburg
2010 SD 40: Mecklenburg
2010 HD 101: Mecklenburg
2010 HD 107: Mecklenburg

(First Rucho Aff. Ex. 8, pp. 1-8)

g. County analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Mecklenburg
(First Rucho Aff. Ex. 10, pp. 1-14, 22)

h. County included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ CD 12: Mecklenburg
F&L CD 12: Mecklenburg
SCSJ SD 38: Mecklenburg
SCSJ SD 40: Mecklenburg
F&L SD 38: Mecklenburg
F&L SD 40: Mecklenburg
PSD SD 38: Mecklenburg
PSD SD 40: Mecklenburg

SCSJ HD 99: Mecklenburg
SCSJ HD 100: Mecklenburg
SCSJ HD 101: Mecklenburg
SCSJ HD 102: Mecklenburg
SCSJ HD 107: Mecklenburg
F&L HD 99: Mecklenburg
F&L HD 101: Mecklenburg
F&L HD 102: Mecklenburg
F&L HD 107: Mecklenburg
PHD HD 25: Mecklenburg
PHD HD 99: Mecklenburg
PHD HD 100: Mecklenburg
PHD HD 101: Mecklenburg
PHD HD 102: Mecklenburg
PHD HD 107: Mecklenburg

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

III. Election Results in 2003 Senate Districts, 2009 House Districts, and 2001 Congressional Districts that Were Majority-Minority Coalition Districts.

56. Plaintiffs' post-enactment evidence regarding the alleged absence of racially polarized voting consists of election results in 2001/2003/2009 districts with a TBVAP under 50%, and plaintiffs' post-enactment expert's opinions regarding these districts. (Plaintiffs' Memorandum in Support of Joint Motion for Summary Judgment ("Pl. Mem.") (5 October 2012), ¶¶ 68-82; Churchill Dep. Ex. 81, Congressional Races with Minority Candidates, 1992-2010; Churchill Dep. Ex. 82, Senate Legislative Races with Minority Candidates, 2006-2010; Churchill Dep. Ex. 83, House legislative Races with Minority Candidates, 2006-2010; Pl. Trial Notebook, Ex. 13, First Aff. of Allan Lichtman (28 January 2012). These 2001/2003/2009 under 50% TBVAP districts included Senate Districts 14, 20, 21, 28, 38, and 40; House Districts 12, 21, 29, 31, 48, 99 and 107; and Congressional Districts 1 and 2. (Pl. Mem. ¶¶ 68-82). Plaintiffs did not offer, post-enactment, election results as evidence showing the absence of racially

polarized voting in the following challenged districts: Senate Districts 4 and 5; House Districts 5, 7, 24, 32, 33, 38, 42, 57, 102, and 106.

57. The parties in *Strickland* stipulated that the area encompassed by 2003 House District 18 continued to experience racially polarized voting. *Strickland*, 556 U.S. at 39 n. 3. Thus, there was no evidence presented to the Court showing either the presence or absence of racially polarized voting in the area encompassed by 2003 House District 18. In dicta, the Court expressed skepticism about whether racially polarized voting could exist in a majority-white crossover district where a black candidate had enjoyed sustained success. *Id.* at 16, 24. However, this observation is no different from the Supreme Court's statement that racially polarized voting could not be present in a majority-white multi-member crossover district in which black candidates have been elected in six consecutive elections. *Thornburg v. Gingles*, 478 U.S. 30, 77 (1986). *Strickland* expressly did not address majority-minority coalition districts. *Strickland*, 556 U.S. at 13.

58. The fact that incumbent black candidates or strong black candidates have won elections in majority-minority coalition districts with TBVAP between 40% and 49.99% does not prove the absence of racially polarized voting. In *Gingles*, almost all of the challenged districts that were found to be unlawful were majority-white. (Def. Desg. P.21, n. 1) Further, in *Cromartie*, the 1997 version of the First Congressional District was found to be a valid § 2 remedy despite the fact that the district's black voting age population was under 50%. (Def. Desg. pp. 6, 7).

2003 Senate District 14; Wake County

59. The 2003 version of Senate District 14 was located in Wake County. There is no evidence in the legislative record disputing the conclusion of Dr. Block and Dr. Brunell that racially polarized voting is present in Wake County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14, 16-18; Def. Desg. p. 27, f. and g.) In all versions of District 14 in the previous or alternative plans, which plaintiffs describe as legal, the non-Hispanic white population for Senate District 14 is below 50%: 2003 Senate 14 (41.07%); 2011 SCSJ Senate 14 (34.84%); Senate F&L 14 (44.36%); and LBC Senate 14 (44.53%). The evidence shows that the 2003 version of Senate District 14 was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. ¶¶ 12-13, Exs. 34, 36-38) Nor was 2011 Senate District 14 a majority-white crossover district.

60. In North Carolina, whites make up 53.37% of the registered Democrats while African Americans constitute 41.38% of the registered Democrats. (Second Frey Aff. ¶¶ 16-17, Exs. 44, 46-48) If racially polarized voting no longer existed in Wake County, then the percentage of white and black registered Democrats should approximate the statewide average. Instead, in the 2003 version of Senate District 14, African Americans constituted a super majority (68.26%) of all registered Democrats. (Second Frey Aff. ¶ 16, Ex. 44) In the 2011 SCSJ Senate 14, African Americans constitute 72.31% of the registered Democrats; in the 2011 F&L Senate 14 Plan, African Americans constitute 68.11% of registered Democrats; and in the LBC Senate 14, African Americans constitute 68.02% of the registered Democrats. (Second Frey Aff. ¶¶ 16-17, Exs. 44, 46-48) In comparison, the statewide percentage of Democrats who are African

Americans is only 41.38%.[40] The strategy of cracking majority-TBVAP districts to create coalition and influence districts, so long as blacks constitute super-majorities among registered Democrats, and recommended by Justices Souter and Ginsburg in *LULAC*, was rejected by the Court in *Bartlett*.

61. In the 2011 SCSJ Senate 14 Plan, African Americans constituted 52.62% of registered party voters, not the 21.63% state average. (Second Frey Aff. ¶ 17, Ex. 46) In the 2003 version of Senate District 14, whites constituted a minority of the district's registered voters (46.41%). Similarly, white voters are a minority of the registered voters in the F&L version of District 14 (48.52%) and the LBC version (48.96%) (Second Frey Aff. ¶ 17, Exs. 47, 48)

62. Under the 2009 House Plan, House District 33, located in Wake County, had a TBVAP of 51.74%. (Second Frey Aff. ¶ 16, Ex. 44) All 2011 alternative plans recommended that House District 33 be created with a majority-TBVAP district: SCSJ House 33 (56.45%); F&L House 33 (52.42%) LBC House 33 (50.66%) (Second Frey Aff. ¶ 24, Ex. 11) Plaintiffs have offered no evidence explaining why a majority-TBVAP House district is necessary in Wake County but a majority-TBVAP Senate district is not.

63. In 2004, African American candidate Vernon Malone defeated his Republican opponent 45,727 to 25,595 (+20,132); in 2006, Malone defeated his Republican opponent 26,404 to 13,644 (+12,760); and in 2008, Malone defeated his Republican opponent 67,823 to 29,835 (+37,988). In 2010, African American candidate Dan Blue defeated his Republican opponent 40,746 to 21,067 (+19,679). In each of these four elections, the actual margin of victory for the African American Democrat was less

[40] Second Frey Affidavit, Exs. 34-43 (voting age percentages for VRA districts by race for all Senate and House Plans) and Exs. 44-53 (registration totals for VRA districts for all Senate and House plans).

than the population deviation for the district under the 2010 Census (+41,804). (Churchill Aff. ¶¶ 1-7, Ex. 2)

64. In the 2004 election cycle, African American candidate Vernon Malone raised $137,042 and spent $165,598.84. His Republican opponent raised and spent $4,875.00. In the 2006 cycle, Sen. Malone raised $281,835 and spent $276,380. His Republican opponent raised $1,061 and spent $1,031.85. In the 2008 cycle, Sen. Malone raised $108,084 and spent $74,721. His Republican opponent raised and spent $1,692.54. Finally, in the 2010 cycle, African American candidate Dan Blue raised $187,613 and spent $176,464. His Republican opponent raised $646.61 and spent $547.66. (Churchill Aff. ¶¶ 1-3, Ex. 2)

65. At the time of the 2011 Session of the North Carolina General Assembly, Sen. Blue had served one term as a state Senator and 14 terms as a state Representative. (Churchill Aff. ¶ 8, Ex. 4.) The Court can take judicial notice that Sen. Blue served as Speaker of the House from 1991 to 1995. (*See* http://projects.newsobserver.com /under_the_dome/profiles/ dan_blue)

2003 Senate Districts 20: Durham County

66. The 2011 version of District 20 includes all of Granville County, a covered jurisdiction under § 5 of the VRA, and a portion of Durham County. The 2003 Senate District 20 was located in Durham County. There is no evidence in the legislative record disputing Dr. Block's and Dr. Brunell's conclusions that racially polarized voting exists in Durham and Granville Counties. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14, 16-18; Def. Desg. p. 30, f. and g.) For the first time in history, the 2011 version of

District 20 provides African American voters in Granville County with an equal opportunity to elect their preferred candidate of choice.

67. In all versions of District 20 in the previous or alternative plans, which plaintiffs describe as legal, the non-Hispanic white population is below 50%: 2003 Senate (39.86%); 2011 SCSJ (40.21%); 2011 F&L Senate (43.32%); 2011 LBC (37.29%). The evidence shows that the 2003 version of Senate District 20 was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. ¶¶ 12-13, Exs. 34, 36-38) Moreover, this district was not a majority-white crossover district.

68. In the 2003 version of Senate District 20, 63.70% of registered Democrats were African American. African Americans constituted 61.37% of registered Democrats in the 2011 SCSJ version of District 20, 57.97% in the F&L version, and 63.27% in the LBC version. (Second Frey Aff. ¶¶ 16-17, Exs. 44, 46-48) In comparison, the statewide percentage of Democrats who are African Americans is only 41.38%.

69. Whites were a minority of the registered voters in the 2003 version of Senate District 20 (45.18%). In all three 2011 alternative versions of Senate District 20, whites are a minority of the total registered voters: SCSJ (46.34%); F&L (49.77%); LBC (43.24%). (Second Frey Aff. ¶ p. 17, Ex. 45-48)

70. The SCSJ Plan recommended that House District 31, located in Durham County, be established with a TBVAP of 51.69%. (First Frey Aff. ¶ 24, Ex. 11) Plaintiffs have offered no evidence explaining why a majority-TBVAP House district is necessary in Durham County, but a majority-TBVAP Senate district in Durham and Granville is not.

71. The 2003 version of District 20 was located exclusively in Durham County. There were no prior election results for a majority-TBVAP or a 40% plus TBVAP district located in a portion of Durham and all of Granville County.

72. There were contested general elections for Senate District 20 in 2004, 2008, and 2010. In each of these contests, the margin of victory for the African American Democrat was in excess of the size of the population deviation for the district under the 2010 Census (-9,086). In the 2004 election cycle, African American candidate Jeanne Lucas raised $29,006.50 and spent $31,861.89. Her Republican opponent did not file campaign disclosure reports because any funds raised by the Republican were below the amount that triggers a reporting obligation. There was no contested election in this district during the 2006 election cycle. In the 2008 election cycle, African American candidate Floyd B. McKissick, Jr. raised $36,619 and spent $21,165. He was opposed by Republican and Libertarian candidates neither of whom raised enough money to be required to file campaign disclosure reports. In the 2010 election cycle, Sen. McKissick raised $28,827 and spent $35,440. His Republican opponent did not file campaign disclosure reports. (Churchill Aff. ¶¶ 1-7, Ex. 2.)

2003 Senate Districts 21: Cumberland County

73. The 2003 version of District 21 was located in Cumberland County. The 2011 version of District 21 includes Hoke County as well. Both counties are covered by § 5 of the VRA. There is no evidence in the legislative record disputing Dr. Block's and Dr. Brunell's conclusions that racially polarized voting exists in Cumberland County, and Dr. Brunell's conclusion that racially polarized voting exists in Hoke County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14; Def. Desg. p. 32 f. and g.) For the first time

in history, the 2011 version of Senate District 21 provides African American voters in Hoke County with an equal opportunity to elect their preferred candidates of choice. There were no past election results for a majority-TBVAP district that included Hoke County.

74 In all versions of Senate District 21 in the previous or alternative plans, which plaintiffs describe as legal, the non-Hispanic white population is below 50%: 2003 Senate 21 (41.63%); SCSJ Senate 21 (40.43%); F&L Senate 21 (41.62%); LBC Senate 21 (42.09%). The evidence shows that the 2003 version of Senate District 20 was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. ¶¶ 12-13, Exs. 34, 36-38). Nor was 2003 Senate District 20 a majority-white crossover district.

75. In the 2003 version of Senate District 21, African Americans constituted 73.14% of the registered Democrats. All alternative plans created super-majorities of registered Democrats who are African American: SCSJ Senate 21 (73.41%); F&L Senate 21 (73.09%); LBC Senate 21 (72.29%). (Second Frey Aff. ¶¶ 16-17, Exs. 44, 46-48) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

76. Whites were a minority of the registered voters in the 2003 version of Senate District 21 (37.40%). Whites are also a minority of the registered voters in all three of the 2011 alternatives: SCSJ Senate 21 (37.17%); F&L Senate 21 (37.52%); and LBC Senate 21 (38.41%). (Second Frey Aff. ¶¶ 12-13, Exs. 34, 36-38)

77. African Americans are a majority of the registered voters in 2003 Senate 21 (51.15%); 2011 SCSJ District 21 (51.52%); F&L Senate 21 (51.13%); and LBC Senate 21 (50.31%). (Second Frey Aff. ¶¶ 16-17, Exs. 44, 46-48)

78. The 2003 version of House District 43, also located in Cumberland County, had a TBVAP of 54.69%. All 2011 alternative House Plans recommended that this district be recreated with a TBVAP in excess of 50%: SCSJ House 43 (54.70%) F&L House 43 (54.70%); LBC House 43 (51.51%). (First Frey Aff. ¶ 24, Ex. 11) Plaintiffs have offered no evidence explaining why a majority-TBVAP House district is necessary in Cumberland County, but a majority-TBVAP Senate District is not.

79. There are no past election results for a 40% plus TBVAP-district or a majority-TBVAP district that includes Hoke and Cumberland counties.

80. In the 2004 General Election, African American Democratic candidate Larry Shaw defeated his Republican opponent 27,866 to 16,434 (+11,432) with a Libertarian candidate receiving 1,225 votes. In 2006, Sen. Shaw defeated his Republican opponent 13,412 to 8,344 (+5,068). There was no contested general election in this district in 2008. In 2010, Democratic African American candidate Eric Mansfield defeated his Republican opponent 21,004 to 10,062 (+10,942). The deviation for this district under the 2010 Census was (-26,593). Thus, in each of these contested Senate races from 2004 to 2010, the margin of victory for the African American Democrat was less than the population deviation for this district. (Churchill Aff. ¶ 1-7, Ex. 2)

81. In the 2004 election cycle, the African American Democratic candidate, Larry Shaw, raised $19,800 and spent $15,437. His Republican opponent raised $1,311 and spent $422. The Libertarian candidate did not file campaign reports. In 2006, Shaw raised $39,258 and spent $42,123. His Republican opponent raised and spent $26,151 and spent $26,075. In 2010, African American candidate Eric Mansfield raised $178,878

and spent $176,548. His Republican opponent raised $40,559 and spent $49,777. (Churchill Aff. ¶¶ 1-7, Ex. 2)

2003 Senate District 28: Guilford County

82. Guilford County is a covered county under § 5 of the VRA. The 2003 Senate District 28 was located in Guilford County. There was no evidence in the legislative record disputing the conclusions by Dr. Block and Dr. Brunell that racially polarized voting is present in Guilford County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14, 21, 22; Def. Desg. p. 34, f. and g.)

83. In all versions of Senate District 28 in the previous or alternative plans, which plaintiffs describe as legal, the non-Hispanic white voting age population is less than 50%: 2003 Senate 28 (42.32%); SCSJ Senate 28 (36.94%); F&L Senate 28 (40.65%); LBC Senate 28 (41.91%). The evidence shows that the 2003 version of Senate District 28 was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. ¶¶ 12-13, Exs. 34, 36-38) Nor was this district a majority-white crossover district.

84. AFRAM recommended that Senate District 28 be established with a majority-TBVAP district (51.77%). (First Frey Aff. ¶ 24, Ex. 10) This version of Senate 28 was the only version presented by any of the plaintiffs or any other party during the public hearing process.

85. In the 2003 version of Senate District 28, African Americans constituted 73.55% of all registered Democrats. Super-majorities of African Americans in Democratic registration are also found in the SCSJ Senate 28 (75.49%); the F&L Senate 28 (73.62%), and the LBC Senate 28 (73.22%). (Second Frey Aff. ¶¶ 16-17, Exs. 44, 46-

48) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

86. In the 2003 version of Senate 28, African Americans were a majority of the registered voters (50.16%). This is also true for the SCSJ Senate 18 (54.11%), the F&L Senate 28 (50.25%), and the LBC Senate 28 (50.26%). (Second Frey Aff. ¶¶ 16-17, Exs. 44, 46-48)

87. All versions of the 2011 alternative House plans recommended that two majority-TBVAP districts be created in Guilford County: SCSJ House 58 (53.47%) and House 60 (54.41%); F&L House 58 (53.47%) and House 60 (54.47%); LBC House 58 (54.00%) and House 60 (50.43%). (First Frey Aff. ¶ 24, Ex. 11) Plaintiffs do not explain why a majority-TBVAP Senate District is unacceptable but two majority-TBVAP House Districts are acceptable.

88. There were no contested general elections for this district from 2004 through 2008. In the 2010 General Election, African American candidate Gladys Robinson defeated her Republican opponent 21,496 to 17,383 (+4,113). An unaffiliated candidate also received 6,054 votes in the 2010 General Election. The total number of votes received in 2010 by Sen. Robinson's Republican and unaffiliated opponents (23,427) exceeded the total votes received by Sen. Robinson. Under the 2010 Census, this district was underpopulated by (-13,673). Thus, the margin of victory for Sen. Robinson, when compared only to her Republican opponent, was less than the total deviation for this district. (Churchill Aff. ¶¶ 1-7, Ex. 2)

89. In the 2010 cycle, Sen. Robinson raised $69,748 and spent $60,889. Her Republican opponent raised $59,487 and spent $57,679. Her unaffiliated opponent raised $26,417 and spent $24,408. (Churchill Aff. ¶¶ 1-7, Ex. 2)

2003 Senate District 38: Mecklenburg County

90. The 2003 Senate District 38 is located in Mecklenburg County. There was no evidence in the legislative record disputing the conclusions by Dr. Block and Dr. Brunell that racially polarized voting is present in Mecklenburg County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14, 21; Def. Desg. p. 36, f. and g.) In all versions of Senate District 38 in the previous or alternative plans, which plaintiffs describe as legal, the non-Hispanic white population is less than 50%: 2003 Senate 38 (36.64%); SCSJ Senate 38 (30.22%); F&L Senate 38 (34.55%); LBC Senate 38 (34.55%). The evidence shows that the 2003 version of Senate District 38 was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. ¶¶ 12-13, Exs. 34, 36-38) Nor was this district a majority-white crossover district.

91. The AFRAM version of Senate 38 recommended that this district be created with a majority-TBVAP (51.68%). AFRAM also recommended a second majority-TBVAP Senate district for Mecklenburg County: District 40 (52.06%). (First Frey Aff. ¶ 24, Ex. 11) Plaintiffs have not explained why the two SCSJ-AFRAM majority-TBVAP districts are legal while enacted Senate District 38 is illegal.

92. In the 2003 version of Senate District 38, African Americans constituted a super-majority of registered Democrats (63.25%). The same is true for SCSJ Senate 38 (76.63%), the F&L Senate 38 (73.89%) and the LBC Senate 38 (73.89%). (Second Frey

Aff. ¶¶ 16-17, Exs. 44, 46-48) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

93. African Americans are a majority of the registered voters in the 2003 Senate 38 (50.33%), the SCSJ Senate 38 (56.22%), the F&L Senate (51.44%), and the LBC Senate 38 (51.44%). (Second Frey Aff. ¶¶ 16-17, Exs. 44, 46-48)

94. All alternative 2011 House plans recommended that majority-TBVAP House districts be created in Mecklenburg County: SCSJ House 101 (57.28%) and House 107 (56.43%); F&L House 101 (52.41%); LBC House 101 (50.25%). (First Frey Aff. ¶ 24, Ex. 11)

95. There were no contested general elections in this district in 2004 or 2006. In 2008, the Democratic African American candidate Charles Dannelly defeated his Republican opponent 67,755 to 22,056 (+45,699). A Libertarian candidate also received 2,588 votes. In 2010, Sen. Dannelly defeated his Republican opponent 33,692 to 15,369 (+18,323). The population deviation for this district under the 2010 Census was +47,572 (+24.9%). The amount of population deviation for this district exceeded the margin of victory for the African American Democrat in both 2008 and 2010. (Churchill Aff. ¶¶ 1-7, Ex. 2)

96. In 2008, Sen. Dannelly raised $24,399 and spent $30,564. Neither of his opponents filed campaign disclosure reports. In 2010, Sen. Dannelly raised $24,179 and spent $28,791. His Republican opponent raised $260 and spent $253. (Churchill Aff. ¶¶ 1-7, Ex. 2)

97. At the beginning of the 2011 session, Sen. Dannelly had served nine terms in the State Senate. (Churchill Aff. ¶ 8, Ex. 4)

2003 Senate District 40: Mecklenburg County

98. The 2003 Senate District 40 was located in Mecklenburg County. There was no evidence in the legislative record disputing the conclusions by Dr. Block and Dr. Brunell that racially polarized voting is present in Mecklenburg County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14, 21; Def. Desg. p. 36, f. and g.) In all previous or alternative versions of Senate District 40, which plaintiffs describe as legal, the non-Hispanic white population is less than 50%: 2003 Senate 40 (48.87%); SCSJ Senate 40 (26.09%); F&L Senate 40 (36.45%); and LBC Senate 40 (36.45%). The evidence shows that the 2003 version of Senate District 40 was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. ¶¶ 12-13, Exs. 34, 36-38) Nor was this district a majority-white crossover district.

99. AFRAM recommended that Senate District 40 be created with a TBVAP of 52.06%, as compared to enacted 2011 Senate District 40, which establishes this district with a slightly lower TBVAP (51.84%). Thus, AFRAM recommended that this district be established with a TBVAP in excess of that found in the enacted 2011 District 40. (First Frey Aff. ¶ 24, Ex. 10) Plaintiffs have produced no evidence explaining why the enacted 2011 Senate District 40 is "packed" or how the General Assembly allegedly "maximized" the TBVAP for their district, given that SCSJ District 40 contains a higher TBVAP than the enacted versions.

100. In all previous or alternative versions of Senate District 40 in the alternative plans, African Americans constitute a super-majority of registered Democrats: 2003 Senate 40 (63.32%); SCSJ Senate 40 (75.11%); F&L Senate 40 (70.62%); and LBC

Senate 40 (70.62%). (Second Frey Aff. p. 6, Exs. 44, 46-48) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

101. In the 2003 version of Senate District 40, African Americans represented only 37.08% of the registered voters. However, in all 2011 alternative versions of Senate District 40, African Americans represent a majority of registered voters: (SCSJ Senate 40 – 57.85%), or a near majority of registered voters (F&L District 40 – 49.10%; LBC District 40 – 49.10%). (Second Frey Aff. ¶¶ 16-17, Exs. 44, 46-48)

102. In each of the 2011 alternatives, whites represent a minority of registered voters: SCSJ District 40 (32.23%); F&L Senate 40: (40.58%); LBC District 40: (40.58%). (Second Frey Aff. ¶¶ 16-17, Exs. 44, 46-48)

103. All alternative 2011 House plans recommended that majority-TBVAP House districts be created in Mecklenburg County: SCSJ House 101 (57.28%) and House 107 (56.43%); F&L House 101 (52.41%); LBC House 101 (50.25%). (First Frey Aff. ¶ 24, Ex. 11)

104. In 2004, African American Democratic candidate Malcolm Graham defeated his Republican opponent 42,096 to 30,633 (+11,463). In 2006, Sen. Graham defeated his Republican opponent 21,247 to 13,314 (+7,933). In 2008, Sen. Graham defeated his Republican opponent 66,307 to 32,711 (+33,596). In 2010, Sen. Graham defeated his Republican opponent 32,168 to 23,145 (+9,023). The population deviation for this district under the 2010 Census is 54,523 (+28.6%). Thus, Sen. Graham's margin of victory for the 2004, 2006, 2008 and 2010 general elections was less than the total deviation for this district. (Churchill Aff. ¶¶ 1-7, Ex. 2)

105. In the 2004 cycle, Sen. Graham raised $145,170 and spent $123,330. His Republican opponent raised $15,382 and spent $15,382. In 2006, Sen. Graham raised $52,825 and spent $35,536. His Republican opponent did not file campaign disclosure reports. In 2008, Sen. Graham raised $40,075 and spent $46,841. His Republican opponent raised nothing. In 2010, Sen. Graham raised $55,750 and spent $38,583. His Republican opponent outraised Sen. Graham ($70,744), and spent more funds ($69,199). Of the four elections won by Sen. Graham, his Republican opponent in the 2010 general election received the highest percentage of the vote (41.84%) as compared to all Republican challengers from 2004 to 2010. (Churchill Aff. ¶¶ 1-7, Ex. 2)

106. At the time of the 2011 session, Sen. Graham had been elected to four terms in the state Senate. (Churchill Aff. ¶ 8, Ex. 4)

2009 House District 12: Craven and Lenoir Counties

107. The 2009 House District 12 was located in Craven and Lenoir Counties. There is no evidence in the legislative record disputing the conclusions by Dr. Block and Dr. Brunell that racially polarized voting is present in these counties. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14; Def. Desg. p. 42, f. and g.) In the previous and alternative versions of House District 12, which plaintiffs describe as legal, the non-Hispanic white population is less than 50%: 2009 House 12 (46.23%); SCSJ House 12 (47.12%); F&L House 12 (46.14%); and LBC House 12 (45.58). The evidence shows that the 2009 version of House District 12 was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. ¶¶ 14-15, Exs. 39, 41) Nor was the 2009 version a majority-white crossover district.

108. In the 2009 version of House District 12, African Americans constituted a super-majority of registered Democrats (68.36%). The same is true for SCSJ House District 12 (66.82%), F&L House District 12 (65.26%), and LBC House District 12 (66.59%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53) In comparison, the statewide percentage of Democrats who are African American is 41.38%.

109. Whites are a slight majority of the registered voters in 2009 House District 12 (51.01%), enacted 2011 House District 12 (51.47%), SCSJ House District 12 (51.37%), F&L House District 12 (51.64%), and LBC House District 12 (52.14%). The percentage of "registered whites" includes Hispanics. (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

110. The 2009 version of House District 12 contained portions of Craven and Lenoir Counties. It was similar in construction to 2003 House District 18, which was found to violate the *Stephenson* criteria. Because the 2003 version of House District 18 did not have a TBVAP in excess of 50%, it could not be justified under § 2 of the VRA and therefore could not support any departure from the WCP. *Strickland*, 556 U.S. at 17-20. By raising the TBVAP of 2011 District 12 to 50.60%, the General Assembly precluded any lawsuits challenging the 2011 version as being in violation of the *Stephenson* or *Strickland* criteria. In contrast, all three alternative 2011 versions of House District 12 are subject to the same legal challenge that led to the ruling that the 2003 version of House District 18 violated *Stephenson* because their TBVAP is under 50%. (First Frey Aff. ¶ 24, Ex. 11)

111. The 2009 version of House District 12 included portions of Carteret and Lenoir Counties. The enacted 2011 version of House District 12 includes portions of

Craven, Lenoir, and Greene Counties. All three counties are covered by § 5 of the VRA. The enacted 2011 version of District 12 gives African American voters in Greene County their first equal opportunity to vote for a preferred candidate of choice. There are no past elections results for a VRA House district that includes Greene County.

112. In 2004, African American Democrat William Wainwright defeated his Republican opponent 13,573 to 7,473 (+6,100). In 2006, Rep. Wainwright defeated his Republican opponent 7,941 to 4,040 (+3,901). In 2008, Rep. Wainwright defeated his Republican opponent 17,659 to 7,882 (+9,777). In 2010, Rep. Wainwright defeated his Republican opponent 9,390 to 6,206 (+3,184). The population deviation in this district under the 2010 Census was (-15,862). Thus, in all general elections for 2004, 2006, 2008 and 2010, Rep. Wainwright's margin of victory was less than the population deviation for this district. (Churchill Aff. ¶¶ 1-7, Ex. 3)

113. In 2004, Rep. Wainwright raised $76,225 and spent $70,171. His Republican opponent raised $5,859 and spent $10,629. In 2006, Rep. Wainwright raised $134,917 and spent $119,798. His Republican opponent raised $19,460 and spent $19,144. In 2008, Rep. Wainwright raised $155,271 and spent $97,125. His Republican opponent raised $4,884 and spent $4,755. In 2010, Rep. Wainwright raised $223,051 and spent $153,528. His Republican opponent raised $11,252 and spent $8,525. (Churchill Aff. ¶¶ 1-7, Ex. 3)

114. At the beginning of the 2011 session, Rep. Wainwright had served eleven terms in the state House. (Churchill Aff. ¶ 8, Ex. 5)

2009 House District 21: Sampson and Wayne Counties

115. The 2009 House District 21 was located in Sampson and Wayne Counties. There is no evidence in the legislative record disputing Dr. Block's and Dr. Brunell's conclusions that racially polarized voting exists in these counties. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14; Def. Desg. p. 44, f. and g.) In the previous and alternative versions of House District 21, the non-Hispanic white population is less than 50%: 2009 House 21 (40.31%); SCSJ House 21 (40.62%); F&L House 21 (42.31%); and LBC House 21 (40.25%). The evidence shows that the 2009 version of House District 12 was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. ¶¶ 14-15, Exs. 39, 41-43) Nor was this district a majority-white crossover district.

116. In the 2009 version of House District 21, African Americans constituted a super-majority of registered Democrats (70.55%). The same is true for SCSJ House District 21 (69.08%), F&L House District 21 (70.58%), and LBC House District 21 (69.81%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

117. In the 2009 version of House District 21, African Americans were a majority of the registered voters (50.39%). The same is true for the F&L version of House District 21 (50.91%). African Americans are nearly a majority of registered voters in SCSJ House District 21 (49.44%) as well as LBC House District 21 (49.45%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

118. In all versions of House District 21, including the previous and alternatives plans, which plaintiffs describe as legal, whites constitute a minority of the registered voters: 2009 House 21 (43.97%): SCSJ House 21 (45.18%); F&L House 21 (44.03%) and LBC 21 (45.13%). (Second Frey Aff. ¶ 14, Exs. 39, 41-43)

119. The 2003 version of District 21 included portions of Wayne and Sampson Counties. It was comparable to the 2003 version of House District 18, which was found to violate the *Stephenson* criteria because it did not have a TBVAP in excess of 50%. Thus, the 2009 version of House District 21 could not be justified under § 2 of the VRA and could not support a departure from the WCP. By raising the TBVAP for District 21 to 51.90%, the General Assembly precluded any potential challenges to the 2011 version as being in violation of the *Stephenson* or *Strickland* criteria. In contrast, all three 2011 alternative versions of House District 21 are subject to the same legal challenges that led to the ruling that the 2003 version of House District 18 violated *Stephenson* because their TBVAP is under 50%. (First Frey Aff. ¶ 24, Ex. 11)

120. The 2009 version of House District 21 included portions of Wayne and Sampson Counties. The enacted 2011 version of District 21 includes portions of Wayne, Sampson and Bladen Counties. All three counties are covered under § 5 of the VRA. The enacted 2011 version of House District 21 gives African American voters in Bladen County their first equal opportunity to vote for a preferred candidate of choice. There are no past election results for a 50% or a 40% plus TBVAP House District that includes Bladen County.

121. From 2004 through 2008, there were no contested general elections in House District 21. In 2010, African American Democrat Larry Bell defeated his Republican opponent 11,678 to 6,126 (+5,552). The population deviation for this district under the 2010 Census was (-9,837). Rep. Bell's margin of victory in the 2010 election was less than the population deviation for this district. (Churchill Aff. ¶¶ 1-7, Ex. 3)

122. In this 2010 election cycle, Rep. Bell raised $23,671 and spent $27,906. His Republican opponent raised and spent $1,732. (Churchill Aff. ¶¶ 1-7, Ex. 3)

123. At the beginning of the 2011 session, Rep. Bell had been elected to six terms in the State House. (Churchill Aff. ¶ 8, Ex. 5)

2009 House District 29: Durham County

124. The 2009 District 29 was located in Durham County. There is no evidence in the legislative record disputing the conclusions of Dr. Block and Dr. Brunell that racially polarized voting is present in Durham County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-16; Def. Desg. p. 48, f. and g.) In all versions of House District 29 in the previous and alternative plans, which plaintiffs describe as legal, the non-Hispanic white population is less than 50%: 2009 House 29 (46.05%); SCSJ House 21 (45.55%); F&L House 21 (41.70%); and LBC House 21 (37.83%). The evidence shows the 2003 version of House District 12 was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. ¶¶ 14-15, Exs. 39, 41-43) Nor was this district a majority-white crossover district.

125. In the 2009 version of House District 29, African Americans constituted 68.20% of all registered Democrats. In the AFRAM House District 29, African Americans constituted 55.76% of the registered Democrats. In the F&L House District 29, African Americans constituted 60.06% of the registered Democrats. In the LBC House District 29, African Americans constituted 61.97% of the registered Democrats. (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-55) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

126. White voters are a minority among registered voters in F&L House 29 (47.90%) and LBC House 29 (44.20%). African Americans are a plurality of registered voters under the LBC District 29 (45.93%). (Second Frey Aff. ¶ 19, Exs. 52-53)

127. The SCSJ House Plan recommended the creation of a majority-TBVAP district located in Durham County: District 31 (51.69%). (First Frey Aff. ¶ 24, Ex. 11)

128. In 2008, the African American candidate, Larry Hall, defeated a Libertarian in the general election 31,524 to 3,219 (+28,305). Rep. Hall had no Republican opponent in 2008. There were no contested general elections in this district in 2004, 2006, or 2010. (Churchill Aff. ¶¶ 1-7, Ex. 3)

129. In the 2008 general election, Rep. Hall raised $29,595 and spent $22,931. The Libertarian candidate did not file any campaign disclosure reports. (Churchill Aff. ¶¶ 1-7, Ex. 3)

130. At the beginning of the 2011 session, Rep. Hall had been elected to three terms in the state House. (Churchill Aff. ¶ 8, Ex. 5)

2009 House District 31: Durham County

131. The 2009 House District 31 was located in Durham County. There is no evidence in the legislative record disputing the conclusions of Dr. Block and Dr. Brunell that racially polarized voting is present in Durham County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-16; Def. Desg. p. 48, f. and g.) In all versions of House District 31 in the previous and alternative plans, which plaintiffs describe as legal, the non-Hispanic white population is less than a majority: 2009 House 31 (35.47%); SCSJ House 31 (30.13%); F&L House 31 (35.73%); and LBC House 31 (34.97%). The evidence shows the 2003 version of House District 31 was not "less than majority-minority." (Pl. Mem.

¶65; Second Frey Aff. ¶¶ 14-15, Exs. 39, 41-43). Nor was this district a majority-white crossover district.

132. AFRAM recommended that the 2011 version of House District 31 be created with a majority of TBVAP (51.69%), only slightly lower than the TBVAP included in the enacted 2011 House District 31 (51.81%). (First Frey Aff. ¶ 24, Ex. 11)

133. In all previous and alternative versions of House District 31, African Americans constituted a super-majority of registered Democrats: 2009 House 31 (69.65%); SCSJ House 31 (74.28%); F&L House 31 (70.49%); and LBC House 31 (70.26%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

134. In all previous and alternative versions of House District 31, African Americans constituted a majority of the registered voters: 2009 House 31 (52.13%); SCSJ House 31 (58.13%); F&L House 31 (52.86%); and LBC House (52.70%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

135. Plaintiffs have offered no evidence explaining why a majority-TBVAP District 31 was needed in Durham (SCSJ Plan) or why a majority-black registered voter district was needed in Durham (District 31 in the 2009 Plan, SCSJ Plan, F&L Plan and LBC Plan) while a second majority-TBVAP district (District 29) was unnecessary and evidence of alleged racial gerrymandering. Nor have plaintiffs produced any evidence showing why the SCSJ majority-TBVAP District 31 is legal, or why the other two proposals (F&L 31 and PHD 31) with majority black registration totals are legal, but the enacted 2011 version of House District 31 is illegal.

136. The Democratic African American candidate from this district faced opposition in the general election only in 2004 and 2010. In 2004, the African American candidate, H.M. ("Mickey") Michaux defeated a Libertarian candidate 23,313 to 3,802 (+19,511). In 2010, Rep. Michaux defeated a Republican candidate 18,801 to 6,102 (+12,699). The population deviation for this district under the 2010 Census was +11,812, or only 887 persons fewer than Rep. Michaux's margin of victory in 2010. (Churchill Aff. ¶¶ 1-7, Ex. 3)

137. In the 2004 election cycle, Rep. Michaux raised $5,500 and spent $5,940. His Libertarian opponent did not file campaign finance reports. In 2010, Rep. Michaux raised $34,600 and spent $10,564. His Republican opponent raised $1,828 and spent $1,798. (Churchill Aff. ¶¶ 1-7, Ex. 3)

138. At the beginning of the 2011 session, Rep. Michaux had served 16.5 terms in the state House. (Churchill ¶ 8, Ex. 5)

2009 House District 48: Hoke, Robeson and Scotland Counties

139. The 2009 House District 48 was located in Hoke, Robeson, and Scotland Counties. There is no evidence in the legislative record disputing the conclusions of Dr. Block and Dr. Brunell that racially polarized voting is present in these counties. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 1-14; Def. Desg. p. 56, f. and g.) In all versions of House District 48 included in the alternative plans, which plaintiffs describe as legal, the non-Hispanic white population is less than 50%: 2009 House 48 (29.63%), SCSJ (29.90%), F&L House 48 (33.68%), and LBC House 48 (34.12%). The evidence shows the 2009 version of House District 48 was not "less than majority-minority." (Pl. Mem. ¶

65; Second Frey Aff. p. 5, Exs. 39, 41-43) Nor was this district a majority-white crossover district.

140. In all previous and alternative versions of District 48, African Americans constitute a super-majority of registered Democrats: 2009 House 48 (59.81%); SCSJ House 48 (58.82%); F&L House 48 (57.31%): LBC House 48 (58.72%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

141. In the 2009 version of House District 48, 50.80% of all registered voters were African American. In the 2011 alternative plans, African Americans constitute a significant plurality of all registered voters: SCSJ House 48 (49.23%); F&L House 48 (47.14%); and LBC House 48 (48.39%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

142. In all previous and alternative versions of House District 48, whites constitute a minority of the registered voters: 2009 House 48 (31.80%); SCSJ House 48 (33.93%); F&L House 48 (36.56%); and LBC House 48 (38.78%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

143. The construction of 2003 House District 48, which includes portions of Hoke, Robeson, Scotland, and Richmond Counties, is similar to 2003 House District 18, which was found to violate the *Stephenson* criteria. Because the 2009 version did not have a TBVAP in excess of 50%, it could not be justified under § 2 of the VRA and therefore could not support departure from the WCP. By raising the TBVAP of House District 48 to 51.27%, the General Assembly precluded any potential challenges to the 2011 version as being in violation of the *Stephenson* or *Strickland* criteria. All of the alternative 2011 versions of District 48 are subject to the same legal challenge that led to

the ruling that the 2003 House District 18 violated *Stephenson*, because their TBVAP is below 50%. (First Frey Aff. ¶ 24, Ex. 11)

144. The 2009 version of District 48 was located only in Hoke, Robinson, and Scotland Counties. Both the enacted 2011 version of District 48 and the LBC version include these three counties and a portion of Richmond County. There is no evidence in the legislative record disputing Dr. Brunell's conclusion that racially polarized voting is present in Richmond County. (First Rucho Aff. Ex. 10, pp. 3-7) For the first time, African American voters in Richmond County have an equal opportunity to elect a representative of their choice. There are no past election results involving a 50% plus or a 40% TBVAP House District that included Richmond County.

145. There were no contested general elections in this district in 2004, 2006, and 2008. In 2010, African American Democrat Garland Pierce defeated his Republican opponent 9,698 to 3,267 (+6,431). The population deviation for this district was (-13,018), which exceeds Rep. Pierce's margin of victory for the 2010 general election. (Churchill Aff. ¶¶ 1-7, Ex. 3)

146. In the 2010 general election, Rep. Pierce raised $46,557 and spent $44,607. His Republican opponent raised $2,982 and spent $2,978. (Churchill Aff. ¶¶ 1-7, Ex. 3)

147. At the beginning of the 2011 session, Rep. Pierce had served four terms in the state House. (Churchill ¶ 8, Ex. 5)

2009 House District 99: Mecklenburg County

148. The 2009 House District 99 was located in Mecklenburg County. There is no evidence in the legislative record disputing the conclusions by Dr. Block and Dr.

Brunell that racially polarized voting is present in Mecklenburg County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14, 21; Def. Desg. pp. 60, 61, f. and g.) In all previous and alternative versions of House District 99, including the alternative plans which plaintiffs describe as legal, the non-Hispanic white VAP is less than 50%: 2009 House 99 (39.41%); SCSJ House 99 (37.60%); F&L House 99 (35.68%); and LBC House 99 (30.89%). The evidence shows the 2003 version of House District 99 was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. ¶¶ 14-15, Exs. 39, 41-43) Nor was this district a majority-white crossover district.

149. In all previous and alternative versions of House District 99, African Americans constitute a super-majority of registered Democrats: 2009 House 99 (67.85%); SCSJ House 99 (68.17%); F&L House 99 (70.38%); and LBC House 99 (75.37%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

150. In LBC House District 99, African Americans are a majority of registered voters (56.73%). In the other versions of House District 99, African Americans are a plurality of the registered voters: 2009 House 99 (45.20%); SCSJ House 99 (46.27%); and F&L House 99 (48.79%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

151. In all previous and alternative versions of House District 99, whites are a minority of the registered voters: 2009 House 99 (43.27%); SCSJ House 99 (41.06%); F&L House 99 (38.52%); and LBC House 99 (32.47%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

152. The AFRAM Plan recommended two majority-TBVAP Senate Districts for Mecklenburg County and two majority-TBVAP House Districts. (First Frey Aff. ¶

24, Ex. 10) Both the F&L House Plan and the LBC House Plan recommended one majority-TBVAP House district for Mecklenburg County. (First Frey Aff. ¶ 24, Ex. 11) Plaintiffs have offered no evidence explaining why these alternative majority-TBVAP House districts are appropriate for Mecklenburg County, while those drawn by the General Assembly are alleged racial gerrymanders.

153. All four of the House Plans plaintiffs have alleged to be legal have six House districts in Mecklenburg County that are majority-minority and in which the non-Hispanic white population is less than 50%:

a. 2009 House Plan: House District 99 (39.41%); House District 100 (36.63%); House District 101 (31.58%); House District 102 (39.88%); House District 106 (48.54%); and House District 107 (37.30%). (Second Frey Aff. ¶ 14, Ex. 39) Only three African Americans were elected from these six districts in 2010: Moore (District 99); Earle (District 101); and Alexander (District 107). (Churchill Aff. ¶ 1-7, Ex. 3)

b. SCSJ House Plan: House District 99 (37.60%); House District 100 (31.59%); House District 101 (31.88%); House District 102 (37.00%); House District 106 (44.65%); and House District 107 (28.69%). (Second Frey Aff. ¶ 15, Ex. 41)

c. F&L House Plan: House District 96 (47.88%); 99 (35.68%); House District 100 (49.04%); House District 101 (34.67%); House District 102 (41.15%); and House District 107 (45.29%). (Second Frey Aff. ¶ 15, Ex. 42)

d. LBC House Plan: House District 25 (42.44%); House District 99 (30.89%); House District 100 (37.98%); House District 101 (32.58%); House

District 102 (37.29%); and House District 107 (40.30%). (Second Frey Aff. ¶ 15, Ex. 43) Plaintiffs have failed to explain why six majority-minority districts for Mecklenburg County are legal, but five majority-TBVAP counties are illegal.

154. In 2008, the African American Democrat Nick Mackey defeated his Republican opponent 28,106 to 14,925 (+13,181). In 2010, African American candidate Rodney Moore defeated his Republican opponent 15,591 to 6,059 (+9,532). The deviation for this district under the 2010 Census was +32,850, which far exceeds the margin of victory for African American candidates in 2008 and 2010. (Churchill Aff. ¶¶ 1-7, Ex. 3)

155. In 2008, Rep. Mackey raised and spent $19,469. His Republican opponent raised $10,281.99 and spent $9,974. In 2010, Rep. Moore raised $9,155 and spent $3,213. His Republican opponent raised and spent $207. (Churchill ¶ 8, Ex. 5)

2009 House District 107: Mecklenburg County

156. The 2009 House District 107 was located in Mecklenburg County. There is no evidence in the legislative record disputing the conclusions by Dr. Block and Dr. Brunell that racially polarized voting is present in Mecklenburg County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14, 21; Def. Desg. pp. 60, 61, f. and g.) In all versions of House District 107, which plaintiffs describe as legal, the non-Hispanic white VAP is less than 50%: 2009 House 107 (37.30%); SCSJ House 107 (28.62%); F&L House 107 (45.29%); and LBC House 107 (40.30%). The evidence shows the 2003 version of House District 107 was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. p. 5, Exs. 39, 41-43) Nor was this district a majority-white crossover district.

157. The SCSJ Plan recommended that House District 107 be created with a TBVAP of 56.43%, as compared to the enacted 2011 House District 107, which has a TBVAP of 52.52%. (First Frey Aff. ¶ 24, Ex. 11) Thus, the SCSJ Plan recommended a higher TBVAP for this district than the enacted version.

158. In all previous and alternative versions of House District 107, African Americans constitute a super-majority of registered Democrats: 2009 House 107 (72.18%); SCSJ House 107 (78.78%); F&L House 107 (72.24%); and LBC House 107 (73.41%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

159. African Americans constitute a majority of the registered voters in the SCSJ House 107 (60.38%) and the LBC House 107 (50.19%). African Americans are a plurality of registered voters in the 2009 House 107 (48.72%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

160. Whites are a minority of the registered voters in all previous and alternative versions of House 107: 2009 House 107 (42.20%); SCSJ House 107 (31.13%); F&L House 107 (47.00%); and LBC 107 (42.99%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

161. Majority-TBVAP house districts for Mecklenburg County are found in all five plans. The two highest TBVAP districts are found in the AFRAM House Plan: SCSJ House District 101 (57.28%), and SCSJ House District 107 (56.43%). (First Frey Aff. ¶ 24, Ex. 11) Both of these proposed "legal" SCSJ House Districts have a higher percentage of TBVAP than any of the enacted 2011 House Districts located in Mecklenburg County.

162. There were no contested general elections for this district in 2004 or 2006. In 2008, African American Democratic candidate Kelly Alexander defeated his Republican opponent 27,502 to 9,043 (+18,459). In 2010, Rep. Alexander defeated his Republican opponent 13,132 to 6,392 (+6,740). The population deviation for this district under the 2010 Census is (+13,998), which exceeds Rep. Alexander's margin of victory for the 2010 General Election. (Churchill Aff. ¶¶ 1-7, Ex. 3)

163. In 2008, Rep. Alexander raised $28,437 and spent $21,664. His Republican opponent did not file campaign disclosure reports. In 2010, Rep. Alexander raised $12,953 and spent $9,974. His Republican opponent raised and spent $330. (Churchill Aff. ¶¶ 1-7, Ex. 3)

164. At the beginning of the 2011 session, Rep. Alexander had served 2.5 terms in the state House. (Churchill Aff. ¶ 8, Ex. 5)

2001 First Congressional District

165. The 2001 First Congressional District includes the following counties: Bertie, Beauford, Chowan, Craven, Edgecombe, Hertford, Gates, Granville, Greene, Halifax, Jones, Lenoir, Martin, Northampton, Pasquatank, Perquimins, Pitt, Vance, Warren, Washington, Wayne, and Wilson. There is no evidence in the legislative record disputing the conclusions of Dr. Block and Dr. Brunell that racially polarized voting continues to be present in these counties. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14; Def. Desg. p. 20, f. and g.) In all versions of the First Congressional District in the previous or alternative plans, which plaintiffs describe as legal, the non-Hispanic white population is less than 50%: 2001 First Congressional (45.59%); SCSJ First Congressional (46.47%); F&L First Congressional (46.46%). The evidence shows that

the 2001 version of the First Congressional District was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. ¶ 26, Exs. 60, 62-63, 66-67) Nor was this district a majority-white crossover district.

166. In the previous and alternative versions of the First Congressional District, African Americans represent a super-majority of registered Democrats: 2001 First Congressional (66.55%); SCSJ First Congressional (65.73%); F&L First Congressional (65.66%). (Second Frey Aff. ¶ 27, Exs. 64, 66-67) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

167. In the 2001 First Congressional District, African Americans were a majority of all registered voters (50.55%). African Americans constituted a very strong plurality of all registered voters in the SCSJ First Congressional (49.32%) and in the F&L First Congressional (49.12%). (Second Frey Aff. ¶ 27, Exs. 64, 66-67)

168. In the previous and alternative versions of the First Congressional District, white voters constituted a minority of all registered voters: 2001 First Congressional (46.03%); SCSJ First Congressional (47.40%); F&L First Congressional (47.71%). (Second Frey Aff. ¶ 27, Exs. 64, 66-67)

169. In the 2004 General Election, African American Democrat G. K. Butterfield defeated his Republican opponent 137,667 to 77,508 (+60,159). Congressman Butterfield had no opposition in the 2006 General Election. In 2008, Congressman Butterfield defeated his Republican opponent 192,765 to 81,506 (+111,259). In 2010, Congressman Butterfield defeated his Republican opponent 103,294 to 70,867 (+32,427). The population deviation for this district under the 2010

Census (-97,563) exceeds Congressman Butterfield's margin of victory for 2004 and 2010. (Churchill Aff. ¶¶ 1-7, Ex. 1)

170. In the 2004 cycle, Congressman Butterfield raised $429,441 and spent $404,055. His Republican opponent raised $41,955 and spent $46,030. In 2008, Congressman Butterfield raised $792,331 and spent $703,696. His Republican opponent did not report any contributions or expenditures. In 2010, Congressman Butterfield raised $828,116 and spent $794,383. His Republican opponent raised $134,393 and spent $134,386. (Churchill Aff. ¶¶ 1-7, Ex. 1)

171. Congressman Butterfield was first elected on July 20, 2004, and has served through the present. *See* http://butterfield.house.gov/biography/.

2001 Twelfth Congressional District

172. The 2001 Twelfth Congressional District includes Guilford and Mecklenburg Counties. There is no evidence in the legislative record disputing the conclusions of Dr. Block and Dr. Brunell that racially polarized voting is present in these counties. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14) In all versions of the Twelfth Congressional District, which plaintiffs describe as legal, the non-Hispanic white VAP was less than 50%: 2001 Twelfth Congressional (42.40%); SCSJ Twelfth Congressional (42.38%) and F&L Twelfth Congressional (41.48%). The evidence shows the 2001 version of the Twelfth Congressional District was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. ¶ 26, Exs. 60, 62-63) Nor was this district a majority-white crossover district.

173. In the previous and alternative versions of the Twelfth Congressional District, African Americans constitute a super-majority of registered Democrats: 2001

Twelfth Congressional (71.44%); SCSJ Twelfth Congressional (71.53%); and F&L Twelfth Congressional (69.14%). (Second Frey Aff. ¶ 27, Exs. 64, 66-67) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

174. African Americans constitute a plurality of registered voters in the previous and alternative versions of the Twelfth Congressional District: 2001 Twelfth Congressional (48.56%); SCSJ Twelfth Congressional 48.70%); and F&L Twelfth Congressional (46.54%). (Second Frey Aff. ¶ 27, Exs. 64, 66-67)

175. Whites are a minority of all registered voters in the previous and alternative versions of the Twelfth Congressional District: 2001 Twelfth Congressional (45.26%); SCSJ Twelfth Congressional (45.17%); and F&L Twelfth Congressional (46.09%). (Second Frey Aff. ¶ 27, Exs. 64, 66-67)

176. The African American incumbent, Mel Watt, was challenged by a Republican opponent in 2004, 2006, 2008, and 2012. In all of these elections, Congressman Watt's margin of victory exceeded the deviation for this district under the 2010 Census (+2,847). (First Frey Aff. ¶ 24, Ex. 12)

177. In 2004, Congressman Watt raised $579,199 and spent $519,885. His Republican opponent raised $108,189 and spent $104,668. In 2006, Congressman Watt raised $503,515 and spent $535,747. His Republican opponent raised $444,044 and spent $446,782. In 2008, Congressman Watt raised $680,473 and spent $646,079. His Republican opponent raised $25,306 and spent $25,584. In 2010, Congressman Watt raised $604,718 and spent $591,203. His Republican opponent raised $13,041 and spent $12,995. (Churchill Aff. ¶¶ 1-7, Ex. 1)

178. Congressman Watt was first elected in 1992 and has served continuously in this office through the present. *See* http://watt.house.gov/index.php?option=com_content&view=article&id=2578&Itemid=75.

STATE OF NORTH CAROLINA COUNTY OF WAKE		IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
MARGARET DICKSON, *et al.*, *Plaintiffs,* v. ROBERT RUCHO, *et al.*, *Defendants.*	)	11 CVS 16896
NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP, *et al.*, *Plaintiffs,* v. THE STATE OF NORTH CAROLINA, *et al.*, *Defendants.*	)	11 CVS 16940 *(Consolidated)*

APPENDIX B TO THE

JUDGMENT AND MEMORANDUM OF DECISION

FINDINGS OF FACT RELEVANT TO THE ISSUE OF WHETHER RACE WAS THE PREDOMINANT MOTIVE FOR THE SHAPES AND LOCATIONS OF DISTRICT LINES FOR 2011 CONGRESSIONAL DISTRICTS 12 AND 4, SENATE DISTRICTS 31 AND 32, OR HOUSE DISTRICTS 51 AND 54.

See § IV(D) of Judgment and Memorandum of Decision

District as compared to the number of Democratic voters included in the 2001 version. By increasing the number of Democratic voters in the 2011 version of the Twelfth Congressional District, the two Chairmen intended to achieve two goals: (1) creating the 2011 Twelfth District as an even stronger Democratic district as compared to the 2001 version; and (2) by doing so, making districts that adjoin the Twelfth Congressional District more competitive for Republicans in their 2011 versions as compared to these districts as they were created in the 2001 Congressional Plan. (*Id.* at pp. 15-17)

185. The 2011 Twelfth Congressional District is located in the same six counties as the 2001 version. (TT Vol. II, p. 13; Defs. Trial Ex. 8)

186. The 1997, 2001, and 2011 versions of the Twelfth Congressional districts are based upon urban population centers located in Mecklenburg, Guilford, and Forsyth Counties. These urban areas are connected by more narrow corridors located in Cabarrus, Rowan, and Davidson Counties. (*Id.*; Rough Draft Transcript, June 4, 2013, pp. 210-211) ("TT Vol. I")

187. The principal differences between the 2001 version of the Twelfth Congressional District and the 2011 version is that the 2011 version adds more strong Democratic voters located in Mecklenburg and Guilford Counties and removes Republican voters who had formerly been assigned to the 2001 Twelfth Congressional District from the corridor counties of Cabarrus, Rowan, Davidson and other locations. (TT Vol. II, pp. 15-17; TT Vol. I, pp. 208-209).

188. Dr. Hofeller constructed the 2011 Twelfth Congressional District based upon whole Vote Tabulation Districts ("VTDs") in which President Obama received the highest voter totals during the 2008 Presidential Election (TT Vol. II, pp. 15-17). The

District as compared to the number of Democratic voters included in the 2001 version. By increasing the number of Democratic voters in the 2011 version of the Twelfth Congressional District, the two Chairmen intended to achieve two goals: (1) creating the 2011 Twelfth District as an even stronger Democratic district as compared to the 2001 version; and (2) by doing so, making districts that adjoin the Twelfth Congressional District more competitive for Republicans in their 2011 versions as compared to these districts as they were created in the 2001 Congressional Plan. (*Id.* at pp. 15-17)

185. The 2011 Twelfth Congressional District is located in the same six counties as the 2001 version. (TT Vol. II, p. 13; Defs. Trial Ex. 8)

186. The 1997, 2001, and 2011 versions of the Twelfth Congressional districts are based upon urban population centers located in Mecklenburg, Guilford, and Forsyth Counties. These urban areas are connected by more narrow corridors located in Cabarrus, Rowan, and Davidson Counties. (*Id.*; Rough Draft Transcript, June 4, 2013, pp. 210-211) ("TT Vol. I")

187. The principal differences between the 2001 version of the Twelfth Congressional District and the 2011 version is that the 2011 version adds more strong Democratic voters located in Mecklenburg and Guilford Counties and removes Republican voters who had formerly been assigned to the 2001 Twelfth Congressional District from the corridor counties of Cabarrus, Rowan, Davidson and other locations. (TT Vol. II, pp. 15-17; TT Vol. I, pp. 208-209).

188. Dr. Hofeller constructed the 2011 Twelfth Congressional District based upon whole Vote Tabulation Districts ("VTDs") in which President Obama received the highest voter totals during the 2008 Presidential Election (TT Vol. II, pp. 15-17). The

only information on the computer screen used by Dr. Hofeller in selecting VTDs for inclusion in the Twelfth District was the percentage by which President Obama won or lost a particular VTD. (*Id.* at pp. 18-19) There was no racial data on the screen used by Dr. Hofeller to construct this district. (*Id.* at p. 24)

189. The 2011 Twelfth Congressional District includes 179 VTDs. (Second Frey Aff. Ex. 28). Only six VTDs were divided by Dr. Hofeller in forming the 2011 Twelfth Congressional District (TT Vol. II, pp. 20-24; Def. Trial Ex. 14). All of these divisions were done to equalize population among the Twelfth Congressional District and other districts or for political reasons, such as dividing a VTD in Guilford County so that incumbent Congressman Howard Coble could be assigned to the 2011 Sixth Congressional District as opposed to being placed in the 2011 Twelfth Congressional District. None of the VTDs were divided based upon racial criteria. (*Id.*)

190. Dr. Hofeller's division of VTDs in his construction of the Twelfth Congressional District did not have any impact on the political performance of the 2011 Twelfth Congressional District or its racial composition. (TT Vol. II, pp. 29-30)

191. By increasing the number of Democratic voters in the 2011 Twelfth Congressional District located in Mecklenburg and Guilford Counties, the 2011 Congressional Plan created other districts that were more competitive for Republican candidates as compared to the 2001 versions of these districts, including the 6th Congressional District, the 8th Congressional District, the 9th Congressional District, and the 13th Congressional District. (*Id.* at pp.16-17) (Map Notebook, Rucho Lewis Congress 3 and Congress Zero Deviation)

2011 Fourth Congressional District

192. Dr. Hofeller was instructed by the redistricting chairs, Senator Rucho and Representative Lewis, to construct the 2011 Fourth Congressional District based upon the same principles stated in *Cromartie II* and used to create the 1997, 2001, and 2011 versions of the Twelfth Congressional District. (TT Vol. II, p. 32)

193. Like the 2011 Twelfth Congressional District, Dr. Hofeller was instructed to create the 2011 Fourth Congressional District as a very strong Democratic district so that 2011 Congressional districts that adjoin the 2011 Fourth Congressional District would be more competitive for Republicans as compared to the 2001 versions of these districts. (*Id.*)

194. The 2011 Fourth Congressional District is similar in construction to the 2001 Thirteenth Congressional District and the version of the Thirteenth Congressional District found in the 2011 Fair and Legal Congressional Plans. If the distance between the two most distant points of each of these three versions of the Thirteenth District are compared, the 2001 Thirteenth District has a span of 111 miles, the Fair & Legal Districts has a span of 97 miles, and the enacted 2011 Thirteenth Congressional District has a span of 88 miles. (*Id.* at p. 33; Defs. Trial Exs. 7, 9, 10) While the 2011 Fourth Congressional District is partially located in a different region than the 2001 Thirteenth or the Fair and Legal Thirteenth, all three districts contain significant portions of Wake County. All three districts also use rural corridors to connect urban centers of population. (Map Notebook, Rucho-Lewis Congress 3, District 4; Congress Zero Deviation, District 13; Congressional Fair & Legal, District 13)

195. Like the 2011 Twelfth Congressional District, Dr. Hofeller constructed the 2011 Fourth Congressional District based upon whole VTDs in which President Obama received the highest vote totals during the 2008 Presidential Election. The only information on the computer screen used by Dr. Hofeller in selecting VTDs for inclusion in the Fourth Congressional District was the percentage by which President Obama won or lost in a particular VTD. There was no racial data on the screen used by Dr. Hofeller to construct this district. (TT Vol. II, pp. 34-35)

196. The 2011 Fourth Congressional District includes 160 VTDs. (http://www.ncleg.net/representation/Content/Plans/PlanPage_DB_2011.asp?Plan=Rucho-Lewis_Congress_3&Body=Congress). Only 14 VTDs were divided by Dr. Hofeller in forming the 2011 Fourth Congressional District. All of the divisions were done to equalize population among the Fourth Congressional District and the adjoining Congressional districts, to make the district contiguous, or for political reasons. None of the VTDs were divided based upon racial data. (TT Vol. II, pp. 34-37; Def. Trial Ex. 14)

197. Dr. Hofeller's division of VTDs in his construction of the Fourth District did not have any impact on the political performance of the 2011 Fourth Congressional District or its racial composition. (TT Vol. II, p. 37)

198. By drawing the 2011 Fourth Congressional District as a very strong Democratic district, the 2011 Congressional Plan created other districts that were more competitive for Republican candidates as compared to the 2001 versions of these districts, including the Second, Seventh, Eighth, and Thirteenth Congressional Districts. (TT Vol. II, at p. 32)

2011 Senate Districts 31 and 32

199. Forsyth County is a county in which the State was held liable for a § 2 violation in *Thornburg v. Gingles*, 478 U.S. 30 (1986) (Def. Pr. Fds. No. 1)

200. A majority-minority coalition district is a district in which black voters are a plurality and are then combined with other minority voters, such as Hispanics, to form a majority coalition of two or more minority groups. *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009). The United States Supreme Court has declined to address whether a majority-minority coalition district may be legally ordered as a remedy for a § 2 violation. *Id.* One circuit court has held that such districts are not proper remedies under § 2. *Nixon v. Kent County*, 76 F.3d 1381 (6th Cir. 1996). At least two circuit courts have endorsed majority-minority coalition districts as an appropriate § 2 remedy where there is insufficient black population to draw a majority-TBVAP district and the other minority group is politically cohesive with black voters. *Bridgeport Coalition for Fair Representation v. City of Bridgeport*, 26 F.3d 271, 283 (2nd Cir. 1994); *Campos v. City of Baytown, Texas,* 840 F.2d 1240, 1244 (5th Cir. 1988).

201. Forsyth County is not covered by § 5. Regardless, when reviewing a redistricting plan for predominance, § 5 requires that any inquiry by the reviewing authority, either the United States Attorney General or the United States District Court for the District of Columbia, must encompass the statewide plan as a whole. *Georgia v. Ashcroft*, 539 U.S. 461, 479 (2003).

202. Under the 2003 Senate Plan, there was enough population in Forsyth County to draw two Senate districts wholly within that county, 2003 Senate District 31 and 2003 Senate District 32. (Map Notebook, 2003 Senate Plan)

203. Under the 2000 Census, there was not enough black population in Forsyth County to draw a majority-TBVAP district. Instead, 2003 Senate District 21 was drawn as a majority-minority coalition district. The TBVAP for the District under the 2010 Census was 42.52%. (First Frey Aff. Ex. 10) The total white VAP was 45.75%. (Second Frey Aff. Ex. 34) The total Hispanic VAP was 13.72%. (*Id.*) The total non-Hispanic white population was 42.11%. (*Id.*)

204. As was true under the 2000 Census, under the 2010 Census there is insufficient TBVAP in Forsyth County to draw a majority-TBVAP Senate district in Forsyth County. However, because of concerns regarding the State's potential liability under § 2 and § 5, Dr. Hofeller was instructed by the redistricting chairs to base the 2011 Senate District 32 on the 2003 versions of Senate District 32. (TT Vol. II, p. 46)

205. Under the criteria established in *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) ("*Stephenson I*"), the population deviation for the Senate District must be plus or minus 5% from the ideal number. The ideal population for a Senate District under the 2010 Census is 190,710. (First Frey Aff. Ex. 10). Under the 2010 Census, the General Assembly could not re-enact the 2003 version of Senate District 32 because it was under populated by more than 5% (-15,440 people or -8.10%). (First Frey Aff. Ex. 10)

206. Under the 2010 Census, Forsyth County no longer had enough population to draw two Senate districts within the county, as had been done under the 2003 Senate Plan. Instead, Forsyth was grouped with Yadkin County to form a population pool sufficient to draw two Senate districts within that county group. (Map Notebook, Rucho Senate 2)

207. The first version of Senate District 32 that was released by the General Assembly had a TBVAP of 39.32%. (http://www.ncleg.net/representation/Content/Plans/PlanPage_DB_2011.asp?Plan=Rucho_Senate_VRA_Districts&Body=Senate). Subsequently, the SCSJ plan was released. Its version of District 32 was located in a three-county and three-district group (Forsyth, Davie, Davidson). (Map Notebook, SCSJ Senate) The SCSJ District 32 had a TBVAP of 41.95%. (First Frey Aff., Ex. 10) The SCSJ District 32 was a majority-minority coalition district with a non-Hispanic white population of 43.18%. (First Frey Aff. Ex. 37)

208. The redistricting chairs were concerned that any failure to match the TBVAP % found in the SCSJ District 32 could potentially subject the state to liability under § 2 or § 5 of the VRA. Therefore, Dr. Hofeller was instructed by the Redistricting Chairs to re-draw the State's version of Senate District 32 so that it would at least equal the SCSJ version in terms of TBVAP. (TT Vol. II, pp. 46-48)

209. The average district population for three Senate districts located in the SCSJ county group allowed for the creation of districts with deviations below the ideal number. In contrast, the average district population for two districts located in the state's two-county group required the creation of districts with deviations above the ideal number. (*Id.*)

210. The SCSJ Senate District 32 was created with the total population of 181,685 or 4.73% below the ideal number for a Senate district (190,710). The State could not enact the SCSJ version of Senate District 32 in the two-county combination of Forsyth and Yadkin because to do so would have pushed the total population in Senate District 31 to a level that was above the plus 5% restriction established in *Stephenson.*

Thus, for the State to enact a Senate District 32 that would match the TBVAP in the SCSJ version, it would have to create a district with more total population than the SCSJ version and would need to do so by expanding the boundaries of the enacted Senate District 32. (*Id.*)

211. After Dr. Hofeller revised the State's version of Senate District 32 to match the TBVAP found in the SCSJ version, the enacted 2011 version of Senate District 32 had a TBVAP of 42.53%, which was almost identical to the TBVAP found in the 2003 version. (First Frey Aff. Ex. 10). The population deviation for the enacted 2011 Senate District 32 was -0.79%. The population deviation for the enacted 2011 Senate District 31, the second district drawn within the Forsyth-Yadkin combination, was 4.81%. (Map Notebook, Rucho Senate 2, Actual Population Table with Deviation Listed, Senate District 31). As already explained, if the General Assembly had adopted the SCSJ version of Senate District 32 (and its deviation of -4.73%), the population that would have been forced into the enacted Senate District 31 would have caused that district to substantially exceed in population the plus 5% restriction established in *Stephenson*. (TT Vol. II, p. 47)

212. A review of the 2003 Senate Plan, the 2011 Senate Plan, the SCSJ Senate Plan, and the Possible Senate Plan offered by the Legislative Black Caucus, shows that the geographic locations of Senate District 32 largely overlap in all versions of the district. (Map Notebook, Rucho Senate 2, 2003 Senate, SCSJ Senate, Fair and Legal Senate, Possible Senate). Further, the percentage of TBVAP found in each version of this district runs from 38.28% (Fair and Legal and Possible Senate) to 42.53% (2011 Senate). The differences between all variations of this district are factually insignificant.

2011 House Districts 51 and 54

213. The 2011 House Districts 51 and 54 are in a three-county, three-district group consisting of Chatham, Lee, and Harnett Counties. (TT Vol. II, p. 51; Def. Trial Ex. 20)

214. The 2011 House District 54 consists of all of Chatham County and a portion of Lee County mainly located in the City of Sanford. House District 51 consists of the remaining portions of Lee County and a portion of Harnett County. Chatham is the only whole county in this group. There are two traversals of county lines to form the three districts (all of Chatham traversing into a portion of Lee to form House District 54 and the remaining portion of Lee traversing into a part of Harnett to form House District 51). (TT Vol. II, 2013, pp. 51-52)

215. Under the Martin House Fair and Legal Plan, Chatham, Lee, and Harnett form a three-county group with enough population for three districts (F&L House District 56, F&L House District 52, and F&L House District 65). (*Id.*; Defs. Trial Ex. 19)

216. Under the Fair and Legal configuration for this three-county group, Chatham is wholly within House District 56 which traverses into a portion of Harnett County. Lee County is wholly within House District 53 which also traverses into Harnett. Thus, while the Fair and Legal configuration has more whole counties (two) as compared to the 2011 House Plan (one), both plans form three districts by two traversals of a county line.

217. Dr. Hofeller was instructed to draw the 2011 House District 54 as a strong Democratic district. In part, this was because the former Democratic Speaker of the House had a potential residence in Chatham County. Dr. Hofeller therefore based this

district on all of Chatham County and the location of the highest concentration of Democratic voters in Lee County. (TT Vol. II, 2013, p. 54)

218. There are only five VTDs in Lee County. The City of Sanford is located in at least four of these five VTDs. The City of Sanford is the largest population center in Lee County and it is impossible to divide Lee County into different House Districts without dividing VTDs. (*Id.* at p. 56; Defs. Trial Ex. 4, Pl. Trial Notebook, Ex. 7)

219. Dr. Hofeller was instructed by Republicans who live in this county group regarding the location of Democratic voters in the City of Sanford. Dr. Hofeller drew House District 54 into Sanford based upon these instructions. He largely followed roads or streets in dividing the City of Sanford and placing into District 54 those areas of the City in which Democratic voters reside, as instructed by local Republicans. (TT Vol. II, pp. 57-58)

220. Dr. Hofeller did not reference any racial data when he constructed House District 54. (*Id.* at p. 58)

221. The TBVAP for the 2011 House District 54 is 17.98%. (Map Notebook, Lewis-Dollar-Dockham 4, Table Showing Voting Age Population by Race).

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

MARGARET DICKSON, *et al.*, *Plaintiffs,* v. ROBERT RUCHO, *et al.*, *Defendants.*	11 CVS 16896
NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP, *et al.*, *Plaintiffs,* v. THE STATE OF NORTH CAROLINA, *et al.*, *Defendants.*	11 CVS 16940 *(Consolidated)*

Amended Certificate of Service

Amended Certificate of Service

The undersigned certifies that the foregoing Judgment and Memorandum of Decision, as well as Appendices A and B, were served upon all parties by e-mail on July 8, 2013 and by first class mail on the date set out below, addressed to the following:

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This the 17 day of July, 2013.

Jeri Stewart

No. 201PA12-4 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

* * * * * * * * * * * * * * * * *

MARGARET DICKSON, et al.	)	Wake County
	)	(11 CVS 16896, 11 CVS 16940)
v.	)	
	)	
ROBERT RUCHO, et al.	)	
	)	
NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP, et al.	)	
	)	
v.	)	
	)	
THE STATE OF NORTH CAROLINA, et al.	)	

* * * * * * * * * * * * * * * * *

AMENDED ORDER

On 30 May 2017, the Supreme Court of the United States granted certiorari and vacated and remanded this Court's judgment in *Dickson v. Rucho*, 368 N.C. 481, 781 S.E.2d 404 (2015), *modified*, 368 N.C. 673, 789 S.E.2d 436 (2016) (order). *Dickson v. Rucho*, 137 S. Ct. 2186, 198 L. Ed. 2d 252 (2017) (mem.). The Supreme Court's instruction to this Court is to review *Dickson* "for further consideration in light of *Cooper v. Harris*, 581 U.S. ___ (2017)." *Id.* at 2186, 198 L. Ed. 2d at 252. Pursuant to the Supreme Court's remand and instruction, and after careful

consideration, this Court remands this case to the trial court to determine whether (1) in light of *Cooper v. Harris* and *North Carolina v. Covington*, a controversy exists or if this matter is moot in whole or in part; (2) there are other remaining collateral state and/or federal issues that require resolution; and (3) other relief may be proper. *See Cooper v. Harris*, 581 U.S. ___, 137 S. Ct. 1455, 197 L. Ed. 2d 837 (2017); *North Carolina v. Covington*, 581 U.S. ___, 137 S. Ct. 1624, 198 L. Ed. 2d 110 (2017) (per curiam); *North Carolina v. Covington*, 137 S. Ct. 2211, 198 L. Ed. 2d 655 (2017) (mem.).

By order of the Court in Conference, this the 9th day of October, 2017.

Michael R. Morgan
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 9th day of October, 2017.

J. Bryan Boyd
J. Bryan Boyd
Clerk of the Supreme Court

STATE OF NORTH CAROLINA COUNTY OF WAKE		IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
MARGARET DICKSON, *et al.*, *Plaintiffs,* v. ROBERT RUCHO, *et al.*, *Defendants.*	)	11 CVS 16896
NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP *et al.*, *Plaintiffs,* v. THE STATE OF NORTH CAROLINA, *et al.*, *Defendants.*	)	11 CVS 16940 (*Consolidated*)

ORDER AND JUDGMENT ON REMAND FROM THE NORTH CAROLINA SUPREME COURT

THIS MATTER comes before the undersigned three-judge panel upon remand from the North Carolina Supreme Court.

Procedural History

The above-captioned matters were filed in November 2011. Plaintiffs alleged, among other claims, that numerous congressional and state legislative districts drawn by the North Carolina General Assembly in 2011 were unconstitutional because they were drawn predominantly on the basis of race and

were not justified by the Voting Rights Act or any other compelling governmental interest. In July 2013, the undersigned three-judge panel concluded, with respect to these claims, that for almost all of the districts challenged by the Plaintiffs, those districts were racial classifications, subject to strict scrutiny, but nonetheless upheld them as narrowly tailored to advance a compelling governmental interest. In December 2014, the North Carolina Supreme Court affirmed judgment for the Defendants. *Dickson v. Rucho,* 367 N.C. 542, 575 (2014)(*Dickson I*). Four months later, the United States Supreme Court vacated the 2014 decision of the North Carolina Supreme Court and remanded it for consideration in light of *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (March 25, 2015).

Concurrently, separate groups of plaintiffs filed lawsuits in federal court challenging many of the same congressional and state legislative districts. *See Harris v. McCrory,* 159 F. Supp. 3d 600, 609 (M.D.N.C. 2016); *Covington v. North Carolina*, 316 F.R.D. 177, 129 (M.D.N.C. 2016). A federal court three-judge panel invalidated Congressional Districts 1 and 12, also challenged here, on February 5, 2016, holding that North Carolina had no compelling governmental interest for the predominant manner in which it used race to construct those districts. *See Harris,* 159 F. Supp. 3d at 627. Likewise, a different federal court three-judge panel invalidated twenty-eight state legislative districts, the same ones challenged here, on August 11, 2016, again finding that the districts were unconstitutional racial gerrymanders. *See Covington,* 316 F.R.D. at 176. The United States Supreme Court noted probable jurisdiction and affirmed the decision in *Harris.* *See,*

McCrory v. Harris, 136 S.Ct. 2512 (2016)(probable jurisdiction noted); *Cooper v. Harris*, 137 S. Ct. 1455, 1482 (2017)(affirming judgment of District Court). The Supreme Court affirmed the ruling in *Covington*. *North Carolina v. Covington*, 137 S.Ct. 2211 (2017).

On February 19, 2016, the North Carolina General Assembly enacted a new 2016 Congressional Plan. *See* N.C. Sess. Law, 2016-1. Congressional elections were conducted under the 2016 Congressional Plan during the 2016 General Election.

On August 31, 2017, the North Carolina General Assembly, pursuant to the *Covington* district court's order, enacted new legislative plans. *See* N.C. Sess. Laws 2017-207, 2017-208. These 2017 plans were challenged by the *Covington* plaintiffs as not curing all of the racial gerrymandering identified by the federal court. The federal court three-judge panel appointed a Special Master, and on January 19, 2018, ordered that the 2017 enacted legislative plans, as modified by the Special Master's Recommended Plan, be used in future North Carolina legislative elections. *See Covington v. North Carolina,* No. 1:15-cv-00399 (M.D.N.C. January 19, 2018).[1] The Legislative Defendants sought an emergency stay from United States Supreme Court, which denied the stay as to all districts other than House districts located in Wake and Mecklenburg Counties. *Order in Pending Case, North Carolina v. Covington,* 17A790 (February 6, 2018).

[1] This order was amended on January 21, 2018.

On January 9, 2018, a federal court three-judge panel concluded the 2016 Congressional Plan was unconstitutional, enjoined further elections under that Plan, and ordered new maps drawn by the General Assembly. *See Common Cause v. Rucho*, No. 1:16-CV-1026 and *League of Women Voters v. Rucho*, No. 1:16-CV-1164 (M.D.N.C. 2017). On January 18, 2018, the United States Supreme Court granted a stay of that order pending appeal. (*See generally, Rucho v. Common Cause*, 17A 745 (docket entry for January 18, 2018).

Meanwhile, in this case, the North Carolina Supreme Court reaffirmed its 2014 decision on December 18, 2015. *Dickson v. Rucho*, 368 N.C. 481, 486 (2015)(*Dickson II*). Plaintiffs once again appealed to the United States Supreme Court and, on May 30, 2017, that Court again vacated the decision of the North Carolina Supreme Court, remanding it this time for reconsideration in light of *Harris*. 137 S. Ct. 2186 (2017). On the second remand, the North Carolina Supreme Court issued an order to this three-judge panel, directing the trial court to determine whether:

1. In light of *Cooper v. Harris* and *North Carolina v. Covington*, a controversy exists or if this matter is moot in whole or in part;
2. There are other remaining collateral state and/or federal issues that require resolution; and
3. Any other relief that may be proper.

Dickson v. Rucho, No. 201PA12-4, Orders of September 28, 2017 and *October 9, 2017.*

Conclusions of the Trial Court

The three-judge panel has considered the memoranda and arguments of counsel and concludes as follows:

In light of *Cooper v. Harris* and *North Carolina v. Covington*, there is no doubt, and indeed State and Legislative Defendants concede, that the United States Supreme Court has vacated the North Carolina Supreme Court's decisions in *Dickson I* and *II*, and that the 2011 First and Twelfth Congressional Districts and the 2011 majority black legislative districts have been found unconstitutional under the federal constitution by the United States Supreme Court. As such, this Court concludes that the Plaintiffs are entitled to declaratory judgment in their favor on the United States Constitutional claims asserted in Claims for Relief 22, 23 and 24 of the *Dickson v. Rucho* Amended Complaint (11 CVS 16896) and Claims for Relief 9, 10 and 11 of the *NAACP v. State of North Carolina* Amended Complaint (11 CVS 16940). Likewise, Plaintiffs are entitled to judgment in their favor on their Equal Protection claims brought under Article 1, § 19 of the North Carolina Constitution, as asserted in Claims for Relief 19, 20 and 21 of the *Dickson* Amended Complaint and Claims for Relief 1, 2 and 3 of the *NAACP* Amended Complaint. *See generally, S.S. Kresge Co. v. Davis,* 277 N.C. 654, 660 (1971)(The principle of equal protection of the law, made explicit in the 14th amendment of the U.S. Constitution, has been expressly incorporated in Art. I, § 19 of the North Carolina Constitution).

The Plaintiffs urge, in addition to judgment in their favor consistent with the decisions of the United States Supreme Court, that this trial court hold the matters

in abeyance so as to be available to aid in the fashioning and enforcement of an appropriate remedy should federal court remedies prove incomplete. Notably, Plaintiffs contend that despite their success before federal court forums, there may still be state constitutional issues that require resolution in the remedial legislative and congressional plans because the federal courts are only considering federal constitutional challenges. Plaintiffs urge this court to remain "poised to resume proceedings."

Indeed, one such matter has arisen in the interim, and has been brought to this three-judge panel by way of a Joint Plaintiffs' Emergency Motion for Relief filed February 7, 2018. Without addressing the issue of mootness, this three-judge panel endeavored to respond to that motion in the short window of time available. However, as may be surmised from our ruling on that Motion, significant practical difficulties, if not jurisdictional impediments, exist when one court is called upon to construe and enforce another court's order that was made upon a distinct and separate record by distinct and separate plaintiffs.

Therefore, as to the Plaintiffs' request to continue to hold this matter in abeyance, this three-judge panel concludes that the doctrine of mootness and judicial economy dictate that this litigation be declared to be concluded. The legislative and congressional maps now under consideration in federal courts are not the product of the 2011 redistricting legislation considered by this trial court, but rather the product of later acts of the General Assembly (*see, See* N.C. Sess. Law, 2016-1 (Congressional Plan) and N.C. Sess. Laws 2017-207, 2017-208

(Legislative Plan)) and the scrutiny of the federal courts. The 2011 Redistricting Plans no longer exist. There is no further remedy that the Court can offer with respect to the 2011 Plans. While Plaintiffs are certainly not foreclosed from seeking redress in the General Court of Justice of North Carolina for state constitutional claims that may become apparent in the 2016 and 2017 redistricting plans, those claims ought best be asserted in new litigation.

THEREFORE, this Court ORDERS the following:

1. With respect to Claims for Relief 22, 23 and 24 of the *Dickson v. Rucho* Amended Complaint (11 CVS 16896) and Claims for Relief 9, 10 and 11 of the *NAACP v. State of North Carolina* Amended Complaint (11 CVS 16940), judgment is entered in favor of the Plaintiffs, and against the Defendants, and the 2011 First and Twelfth Congressional Districts and the 2011 majority black legislative districts are declared to be unconstitutional in violation of the Equal Protection Clause of the United States Constitution.

2. With respect to Claims for Relief 19, 20 and 21 of the *Dickson* Amended Complaint and Claims for Relief 1, 2 and 3 of the *NAACP* Amended Complaint, judgment is entered in favor of the Plaintiffs, and against the Defendants, and the 2011 First and Twelfth Congressional Districts and the 2011 majority black legislative districts are declared to be unconstitutional in violation of Article 1, § 19 of the North Carolina Constitution.

3. For the reasons stated above, all remaining claims of the Plaintiffs asserted in their Amended Complaints are declared to be moot or, in the

alternative, this Court abstains from further consideration of those claims in deference to the parallel litigation in the federal courts.

4. Notwithstanding Paragraph 3 above, this this Court shall retain jurisdiction of any motions for costs and attorneys' fees and other such post-judgment matters appropriately brought by the parties.

This the 11th day of February, 2018.

/s/ Paul C. Ridgeway

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

Certificate of Service

The undersigned certifies that the foregoing was served upon all parties by depositing the same in the custody of the United States Postal Service, first class postage prepaid, addressed as follow:

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This the 12TH day of February, 2018.

Kellie Z. Myers, Trial Court Administrator
P.O. Box 1916, Raleigh, NC 27602

STATE OF NORTH CAROLINA COUNTY OF WAKE		IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
MARGARET DICKSON, *et al.*, *Plaintiffs,* v. ROBERT RUCHO, *et al.*, *Defendants.*	)	11 CVS 16896
NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP *et al.*, *Plaintiffs,* v. THE STATE OF NORTH CAROLINA, *et al.*, *Defendants.*	)	11 CVS 16940 (*Consolidated*)

ORDER ON JOINT PLAINTIFFS' EMERGENCY MOTION FOR RELIEF

THIS MATTER comes before the undersigned three-judge panel upon the Joint Plaintiffs' Emergency Motion for Relief filed February 7, 2018. In their motion, Plaintiffs request that the Court declare 2017 Enacted House Districts 36, 37, 40, 41 (all in Wake County) and 105 (Mecklenburg County) to be in violation of the state constitutional prohibition of mid-decade redistricting,[1] enjoin Defendants from conducting elections under the 2017 Enacted House Plan's configurations of

[1] The North Carolina Constitution provides that "[w]hen established the [House and] [S]enate districts and the apportionment of [Representatives and] Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress." *Id.* art. II, §§ 3(4), 5(4).

the Wake and Mecklenburg districts, and order that the configurations of the Wake and Mecklenburg County House districts designed by the Special Master in *Covington v. North Carolina*, 1:15-CV-399 (M.D.N.C.) be put into effect for the 2018 election cycle. For three reasons, the relief sought by the Plaintiffs must be denied.

I. The issue raised by the Plaintiffs is pending in the late stages of litigation in federal court and, because the United States Supreme Court has issued a stay, commencing parallel litigation in state court raises an unjustifiable risk of inconsistent and irreconcilable outcomes.

The precise issue that Plaintiffs seek to litigate before this state court three-judge panel is pending in the federal courts. On August 11, 2016, a federal court three-judge panel ordered the General Assembly draw remedial districts in its next legislative session to correct the constitutional deficiencies in the 2011 Enacted Plans. *See Covington,* 316 F.R.D. at 176. On August 31, 2017, the General Assembly, pursuant to the *Covington* district court's order, enacted new legislative plans. *See* N.C. Sess. Laws 2017-207, 2017-208 [hereinafter the "2017 Enacted Plans"].

The 2017 Enacted Plans were then challenged by the *Covington* plaintiffs as not curing all of the racial gerrymandering identified by the federal court. *See generally, Covington,* Memoranda Opinion and Order (Amended), January 21, 2018. With respect to House Districts 36, 37, 40, 41 and 105 (i.e. the same Districts at issue in Plaintiffs' current Motion for Emergency Relief before this court), the objection to the 2017 Enacted Plans raised by Plaintiffs to the federal court three-judge panel was that those five districts, as drawn by the General Assembly in the

2017 Enacted Plans, violated the North Carolina Constitution's prohibition on mid-decade redistricting. *Id.* at 12. Plaintiffs contended revising the boundaries of these five districts was not necessary to comply with the federal court three-judge panel's order of August 11, 2016. On October 26, 2017, the federal court three-judge panel appointed a Special Master, Dr. Nathaniel Persily, to assist the court in redrawing nine district configurations in the 2017 Enacted Plans. *Id.* at 5. With respect to Wake and Mecklenburg Counties, Dr. Persily was instructed that "no 2011 Enacted House Districts which do not adjoin those districts shall be redrawn unless it is necessary to do so to meet the mandatory requirements [of the court's order]." *Id.* at 14. The Special Master's recommended remedial plan was provided to the Court on December 1, 2017, and in that plan, the boundaries of House Districts 36, 37, 40, 41 and 105 were not redrawn and hence restored to their original state as in the 2011 Enacted House Plan. *Id.* at 2.

Following a hearing on January 5, 2018, the federal court three-judge panel concluded, among other things, that the redrawing of the district lines of House Districts 36, 37, 40, 41 and 105 by the General Assembly in its 2017 Enacted Plans was in violation of the North Carolina Constitution's prohibition of mid-decade redistricting, and that the Special Master's recommended remedial plan demonstrated that the "one can remedy the racial gerrymander" in Wake and Mecklenburg Counties "without redrawing districts untainted by constitutional violations." *Id.* at 64. On January 19, 2018, the federal court three-judge panel ordered that the 2017 Enacted Plans, as modified by the Special Master's

Recommended Plan, be used in future North Carolina legislative elections.[2] *Id.* at 92.

On January 24, 2018, the Legislative Defendants filed an emergency stay application with the United States Supreme Court, asking the Supreme Court to halt the implementation of the Special Master's Recommended Plan as ordered by the federal court three-judge panel. On February 6, 2018, the United States Supreme Court issued the following order:

> The application for a stay presented to the Chief Justice and by him referred to the Court is granted in part and denied in part. The District Court's order of January 21, 2018, insofar as it directs the revision of House districts in Wake County and Mecklenburg County, is stayed pending the timely filing and disposition of an appeal in this Court.

Order in Pending Case, North Carolina et al. v. Covington, 17A790 (February 6, 2018).

The Plaintiffs' Emergency Motion for Relief now seeks to raise the same issue before this state court three-judge panel: whether House Districts 36, 37, 40, 41 and 105, as drawn by the General Assembly in its 2017 Enacted Plans, violate the North Carolina Constitution's prohibition of mid-decade redistricting. However, given the posture of this issue in the federal courts – that it has been fully litigated and is now ordered stayed by the United States Supreme Court pending further filing and disposition of the appeal before that Court -- this state court three-judge panel is

[2] The federal court three-judge panel vacated its January 19, 2018 Order and Opinion and replaced it with an amended version on January 21, 2018. All cites in this Order refer to the January 21, 2018 Amended Order and Opinion.

reluctant to commence parallel proceedings on an expedited basis out of deference to the highest court and because of significant concerns about the risk of inconsistent and irreconcilable outcomes.

The Plaintiffs suggest that the Supreme Court, in issuing its partial stay, was concerned only whether the federal court three-judge panel had authority under its pendent jurisdiction to consider this state constitutional claim, or perhaps was concerned that the *Covington* plaintiffs did not have standing to assert complaints with respect to remedies in Wake and Mecklenburg House districts. This may be so, and had the United States Supreme Court stated either of these grounds as the rationale for its partial stay, then the state court would have greater confidence in the utility and propriety of addressing the issue. But the Supreme Court did not state its reasons. As such, the North Carolina state courts cannot, while speculating on the Supreme Court's rationale, and in the final hours before filing for office commences, place the State and its voting public in the untenable situation of having to reconcile diametrically inconsistent outcomes – namely a state court decree, as urged by the Plaintiffs, ordering the use of the Special Master's Recommended Plan for Wake and Mecklenburg Counties in the 2018 elections, against an order of the United States Supreme Court staying the use of the Special Master's Recommended Plan for those very same counties.

II. The federal court is in the best position to determine whether the 2017 Enacted Plans unconstitutionally exceeded the authority of that court's own 2016 order, and the issue of mid-decade redistricting is inextricably intertwined with the subject matter of that order.

Mid-decade redistricting is prohibited by the North Carolina Constitution – except when redistricting is ordered mid-decade by a court to cure constitutional defects. *See generally, Covington*, Memoranda Opinion and Order (Amended), January 21, 2018 at 32 and cases cited therein. Hence, the real issue raised by the Plaintiffs' Emergency Motion is whether the General Assembly, in its 2017 Enacted Plan House Districts 36, 37, 40, 41 and 105, "exceeded its authority under [the federal court three-judge panel's August 11, 2016] order by redrawing districts allegedly untainted by the identified constitutional violation." *Id.* at 30-31.

The federal court three-judge panel is in the best position to determine whether the General Assembly complied with its own order of August 11, 2016. Indeed, the panel said the issue of mid-decade restricting was "inextricably intertwined" with the other claims before it, and that:

> [H]aving considered the factors of judicial economy, convenience, fairness to the litigants, and comity, the Court finds that the exercise of pendent jurisdiction over Plaintiffs' objections premised on Legislative Defendants' alleged failure to comply the North Carolina Constitution's prohibition on mid-decade redistricting is particularly appropriate here. Indeed, declining to exercise such jurisdiction would cause significant problems. As further explained below, this Court's order invalidating the lines surrounding the twenty-eight districts provided the sole authority for the General Assembly to ignore the North Carolina Constitution's prohibition on mid-decade redistricting. Because this Court's order governed the scope of the General Assembly's redistricting authority, this Court is in the

> best position to determine whether the General Assembly exceeded its authority under that order by redrawing districts allegedly untainted by the identified constitutional violation.

Id. at 30-31 (citations omitted).

Hence, what the Plaintiffs request of this state court three-judge panel is not simply whether, in a vacuum, a constitutional provision has been violated. Rather, plaintiffs ask this state court to step into the robes of the federal court three-judge panel and, without the benefit of the extensive record, briefing and arguments that the federal court three-judge panel relied upon in crafting and construing its order, determine on an expedited basis whether the General Assembly exceeded the scope of the federal court's August 11, 2016 order and whether, in so doing, the resulting Wake and Mecklenburg districts violate the North Carolina Constitution. And, even though the federal court three-judge panel, in interpreting its own order has concluded that the General Assembly did unconstitutionally exceed the scope of the court order, this state court three-judge panel could not simply adopt the federal court's conclusion because the United States Supreme Court has stayed that portion of the federal court's order. The mid-decade redistricting issue was "inextricably intertwined" with the federal court matter in 2016, and it remains so today.

III. The determination of whether the constitutional prohibition against mid-decade redistricting was violated is an inherently fact-intensive inquiry inappropriate for summary disposition by emergency motion.

This state court three-judge panel cannot grant the relief Plaintiffs seek on an expedited basis – namely in the five days between the date this motion was filed

and the opening of the filing period for the 2018 General election – because the determination of whether the General Assembly, in drawing the 2017 Enacted Plan House Districts 36, 37, 40, 41 and 105, unconstitutionally exceeded the federal court three-judge panel's August 11, 2016 order is an inherently fact-intensive determination. If this issue is one that must be determined by the state court, as the Plaintiffs contend that the United States Supreme Court has insinuated in its Partial Stay Order, then it must be determined in a thoughtful and deliberate fashion, with each party being afforded the opportunity to make a factual record upon which the state court may base its decision.

With respect to House Districts 36, 37, 40, 41 and 105, the Legislative Defendants argued to the federal court three-judge panel that disallowing the General Assembly to redraw districts not directly impacted by the racial gerrymander – namely limiting redrawing only to those districts that "violate the Constitution, abut a district violating the Constitution, or otherwise need to be altered in order to ensure compliance with federal law or state constitutional provisions" – was too limiting because such a standard would "perpetuate a racial gerrymander by 'forcing a legislature to use the core of [a] racially gerrymandered district to draw the new district and those immediately surrounding it'" and would "reduce or eliminate the legislature's ability to eliminate the hallmarks of gerrymanders by, for instance, eliminating split precincts, or changing surrounding districts to more closely follow municipal boundaries." *Id* at 63, citing *Legislative Defendants' Objections Resp. 52.* While the Plaintiffs have developed substantial

evidence rebutting this in their largely successful federal court action, the Defendants cannot be denied, merely for the sake of expediency, the opportunity to make their own record before the state court. That, the court concludes, would be impossible to complete within the remaining hours before the filing period opens.

Conclusion

For each of these reasons, this state court three-judge panel concludes that it is unable to declare, on an expedited basis, that the 2017 Enacted Plan House Districts 36, 37, 40, 41 and 105 violate the state constitutional prohibition on mid-decade redistricting, or to enjoin the State from conducting elections under the 2017 Enacted House Plan's configurations of the Wake and Mecklenburg County Districts, or order that the configurations of Wake and Mecklenburg County House districts designed by the Special Master in *Covington* be ordered into effect for the 2018 election cycle.

It is therefore ORDERED that the Joint Plaintiffs' Emergency Motion for Relief be DENIED.

This the 11th day of February, 2018.

/s/ Paul C. Ridgeway

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

Certificate of Service

The undersigned certifies that the foregoing was served upon all parties by depositing the same in the custody of the United States Postal Service, first class postage prepaid, addressed as follows:

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This the 12th day of February, 2018.

Kellie Z. Myers, Trial Court Administrator
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STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
MARGARET DICKSON, *et al.* *Plaintiffs*, v. ROBERT RUCHO, *et al.* *Defendants*.	11 CVS 16896
NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE *NAACP*; *et al.* *Plaintiffs*, v. THE STATE OF NORTH CAROLINA, *et al.* *Defendants*.	11 CVS 16940 (*Consolidated*)

NOTICE OF APPEAL

TO THE HONORABLE JUSTICES OF THE NORTH CAROLINA SUPREME COURT:

Defendants Thom Tillis, Philip E. Berger, Bob Rucho, and David Lewis ("legislative defendants"), hereby give notice of appeal in the above captioned actions to the Supreme Court of North Carolina from the Order and Judgment on Remand from the North Carolina Supreme Court entered by the three-judge panel of the Honorable Paul C. Ridgeway, the Honorable Joseph N. Crosswhite, and the Honorable Alma L. Hinton on February 12, 2018. Legislative defendants appeal as of right directly to the Supreme Court pursuant to N.C. Gen. Stat. §120-2.5.

Respectfully submitted this 14th day of March, 2018.

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: _____

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing in the above titled action upon all other parties to this cause by:

[ ] Hand delivering a copy hereof to each said party or to the attorney thereof;

[ ] Transmitting a copy hereof to each said party via facsimile transmittal;

[ ] By email transmittal;

[X] Depositing a copy here of, first class postage pre-paid in the United States mail, properly addressed to:

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By: _____
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33306598.1

STATEMENT OF TRANSCRIPT OPTION

Per Appellate Rules 7(b) and 9(c), the transcript of the hearing on remand and the joint plaintiffs' motion for emergency relief in this case, taken by Tammy G. Bates, Court Reporter, on December 15, 2017, consisting of 53 pages, numbered 1-53, bound in one volume, will be electronically filed by Ms. Bates promptly following the filing of this record on appeal with the Supreme Court.

STIPULATION SETTLING RECORD ON APPEAL

Counsel for the Appellants and Appellees stipulate as follows:

1. The proposed record on appeal was timely served on 18 April 2018. The certificate showing service of the proposed record may be omitted from the settled record.

2. Plaintiffs-Appellees' response to the proposed record on appeal was served via electronic mail on 20 April 2018. Defendants-Appellees State of North Carolina and the Bipartisan State Board of Elections and Ethics Enforcement's response to the proposed record on appeal was served via electronic mail on 24 April 2018. The parties came to an agreement as to which documents would be included in the printed record. Because no party moved for judicial settlement, the record on appeal was deemed settled on 1 May 2018.

3. All captions, signatures, headings of papers, certificates of service, and documents filed with the trial court that are not necessary for an understanding of the appeal may be omitted from the record, except as required by Rule 9 of the Rules of Appellate Procedure.

4. The parties have undergone a reasonable search for duplicative or substantially similar documents and have eliminated any duplicates. To the extent documents that appear in the record in earlier appeals in these consolidated matters appear in the record here, such documents have been included for the convenience of the Court.

5. The parties stipulate that the following documents constitute the agreed-upon record on appeal to be filed with the Clerk of the Supreme Court:

5. The parties stipulate that the following documents constitute the agreed-upon record on appeal to be filed with the Clerk of the Supreme Court:

a. The printed record on appeal, consisting of pages 1 to 426.

b. The transcript of the December 15, 2017 hearing on remand and the joint plaintiffs' motion for emergency relief, consisting of pages 1-53.

This 1st day of May, 2018.

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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[2] Pursuant to N.C. R. Civ. P. 25, the Bipartisan State Board of Elections and Ethics Enforcement should automatically be substituted for the defendant identified as the State Board of Elections in these matters.

PROPOSED ISSUES ON APPEAL

Pursuant to Rule 10, Legislative Defendants-Appellants intend to present the following proposed issues on appeal:

1. Did the three-judge panel err in entering judgment in favor of Plaintiffs and against the Defendants on Claims for Relief 22, 23, and 24 of the *Dickson v. Rucho* Amended Complaint (11 CVS 16896) and Claims for Relief 9, 10, and 11 of the *NAACP v. State of North Carolina* Amended Complaint (11 CVS 16940)?

2. Did the three-judge panel err in entering judgment in favor of Plaintiffs and against the Defendants on Claims for Relief 19, 20, and 21 of the *Dickson v. Rucho* Amended Complaint (11 CVA 16896) and Claims for Relief 1, 2, and 3 of the *NAACP v. State of North Carolina* Amended Complaint (11 CVS 16940)?

3. Did the three-judge panel err in declaring the 2011 First and Twelfth Congressional Districts and the 2011 majority black legislative districts unconstitutional under the Equal Protection Clause of the United States Constitution?

4. Did the three-judge panel err in declaring the 2011 First and Twelfth Congressional Districts and the 2011 majority black legislative districts unconstitutional under Article 1, § 19 of the North Carolina Constitution?

5. Did the three-judge panel err is failing to conclude that all claims were moot and should be dismissed?

6. Did the three-judge panel err in retaining jurisdiction over this case for purposes of entertaining motions for costs and attorneys' fees?

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this day a copy of the foregoing **Final Record on Appeal** has been duly served by depositing a copy therefore in an envelope bearing sufficient postage in the United States Mail, addressed to the following persons at the following addresses, which are the last addresses know to me:

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This the 1st day of May, 2018

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