

NORTH CAROLINA SUPREME COURT

PENDER COUNTY, DWIGHT STRICKLAND,)
Individually and as a Pender County Commissioner,))
DAVID WILLIAMS, Individually and as a Pender)
County Commissioner, F.D. RIVENBARK,)
Individually and as a Pender County Commissioner,))
STEPHEN HOLLAND, Individually and as a)
Pender County Commissioner, and EUGENE)
MEADOWS, Individually and as a Pender County)
Commissioner)

PLAINTIFFS,)

V.)

GARY BARTLETT, as Executive Director of the)
State Board of Elections; LARRY LEAKE,)
ROBERT CORDLE, GENEVIEVE C. SIMS,)
LORRAINE G. SHINN, and CHARLES)
WINFREE in Their Official Capacities as Members)
Of the North Carolina Board of Elections; JAMES)
B. BLACK in His Official Capacity as Co-Speaker)
of the North Carolina House of Representatives;)
RICHARD T. MORGAN, in His Official Capacity)
as Co-Speaker of the North Carolina House of)
Representatives; MARC BASNIGHT, in His)
Official Capacity as President Pro Tempore of the)
North Carolina Senate; MICHAEL EASLEY, in)
His Official Capacity as Governor of the State of)
North Carolina; ROY COOPER, in His Official)
Capacity as Attorney General of the State of North)
Carolina;)

DEFENDANTS)

From Wake County

04-CVS-0696

(Three Judge Panel on Redistricting)

(Direct Appeal pursuant to

N.C.G.S 120-2.5)

CLERK OF THE
NORTH CAROLINA
SUPREME COURT

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STATEMENT OF ORGANIZATION OF THE TRIAL TRIBUNAL

This matter was heard by a three judge panel of the Superior Court of Wake County, designated by the Chief Justice of North Carolina pursuant to N.C. GEN. STAT. § 1-267.1, and consisting of the Honorable Howard E. Manning, Jr., the Honorable W. Erwin Spainhour, and the Honorable Quentin T. Sumner. On December 2, 2005, the three-judge panel entered its Order granting partial summary judgment to Defendants; on January 9, 2006, the three-judge panel entered its Order incorporating the December 2, 2005, Order, granting final judgment to Defendants and upholding House District 18 as a valid exercise of the redistricting authority of the General Assembly. Plaintiffs appealed in a timely manner from these Orders. Pursuant to N.C. GEN. STAT. § 120-2.5, appeal lies directly to the Supreme Court of North Carolina.

The record on appeal was filed in the North Carolina Supreme Court on _____, 2006, and was docketed on _____, 2006.

STATEMENT OF JURISDICTION

The action was commenced by the filing of a complaint on May 14, 2004. The parties acknowledge that the three-judge panel of the Superior Court of Wake County had jurisdiction over the persons and the subject matter of the action.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

04-CVS-

6966

JUL 14 2016

C.S.C.

BY

PENDER COUNTY, DWIGHT STRICKLAND,)
 Individually and as a Pender County Commissioner,)
 DAVID WILLIAMS, Individually and as a Pender)
 County Commissioner, F.D. RIVENBARK,)
 Individually and as a Pender County Commissioner,)
 STEPHEN HOLLAND, Individually and as a)
 Pender County Commissioner, and EUGENE)
 MEADOWS, Individually and as a Pender County)
 Commissioner)

PLAINTIFFS,)

V.)

GARY BARTLETT, as Executive Director of the)
 State Board of Elections; LARRY LEAKE,)
 ROBERT CORDLE, GENEVIEVE C. SIMS,)
 LORRAINE G. SHINN, and CHARLES)
 WINFREE in Their Official Capacities as Members)
 Of the North Carolina Board of Elections; JAMES)
 B. BLACK in His Official Capacity as Co-Speaker)
 of the North Carolina House of Representatives;)
 RICHARD T. MORGAN, in His Official Capacity)
 as Co-Speaker of the North Carolina House of)
 Representatives; MARC BASNIGHT, in His)
 Official Capacity as President Pro Tempore of the)
 North Carolina Senate; MICHAEL EASLEY, in)
 His Official Capacity as Governor of the State of)
 North Carolina; ROY COOPER, in His Official)
 Capacity as Attorney General of the State of North)
 Carolina;)

DEFENDANTS)

COMPLAINT
(REDISTRICTING)
(GS §§ 1-81.1, 1-267-1)
(THREE JUDGE PANEL)

COME NOW PLAINTIFFS, Complaining of Defendants, and say and allege as follows:

1. Pender County is a political subdivision of the State of North Carolina governed by a Board of Commissioners.
2. Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland and Eugene Meadows are duly elected members of the Pender County Board of Commissioners and are residents and registered voters of Pender County.
3. Pender County brings this action on behalf of its citizens who are being disenfranchised by the unconstitutional splitting of Pender County citizens among two North Carolina House Districts.
4. Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland and Eugene Meadows bring this action in their official capacities as Pender County Commissioners and in their individual capacities as citizens and registered voters in Pender County on their own behalf and on behalf of all other so situated.
5. Defendant Defendant Gary Bartlett is being sued in his official capacity as the Executive Director of the State Board of Elections, in which he is charged with administering the election laws of the State of North Carolina. The State Board of Elections is an agency of the State of North Carolina with its headquarters in Wake County.
6. Defendants Larry Leake, Robert Cordle, Genevieve C. Sims, Lorraine G. Shinn, and Charles Winfree are current members of the State Board of Elections and are being sued in their official capacity as members of the State Board of Elections. The State Board of Elections is charged with administering the election laws of the State of North Carolina and canvassing and determining the results of elections to the General Assembly for legislative districts, including NC House Districts 16 and 18.

7. Defendant James B. Black is being sued in his official capacity as Representative for the 100th District of the North Carolina House of Representatives under the redistricting plan implemented by Judge Jenkins in 2002 and Co-Speaker of the North Carolina House of Representatives.
8. Defendant Richard T. Morgan is being sued in his official capacity as Representative for the 52nd District of the North Carolina House of Representatives under the redistricting plan implemented by Judge Jenkins in 2002 and Co-Speaker of the North Carolina House of Representatives.
9. Defendant Marc Basnight is being sued in his official capacity as Senator for the 1st District of the North Carolina Senate under the redistricting plan implemented by Judge Jenkins in 2002 and as President Pro Tempore of North Carolina Senate.
10. Defendants Roy Cooper and Michael Easley are being sued in their official capacity as the Attorney General and Governor for the State of North Carolina.
11. Prior to the 2002 session of the General Assembly, Pender County last had a representative in the General Assembly in the 1960's.
12. In the redistricting plan adopted by the North Carolina General Assembly in 1992, Pender County was split among 5 North Carolina House districts, and 2 North Carolina Senate Districts.
13. In the redistricting plan adopted by the North Carolina General Assembly in 2001, Pender County was split among 5 North Carolina House districts, and 3 North Carolina Senate Districts.
14. As a result of the opinion in Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377 (2002)(Stephenson I), another redistricting plan was drawn by the North Carolina

General Assembly in 2002 ("2002 Plan") which placed Pender County in a single NC House and single NC Senate district.

15. The second plan drawn by the North Carolina General Assembly was ruled improper and an alternative plan imposed by Superior Court Judge Knox Jenkins on 2003. The plan drawn by Judge Jenkins also placed Pender County in a single NC House and single NC Senate district.
16. In Stephenson v. Bartlett, 357 N.C. 301, 582 S.E.2d 247 (2003) (Stephenson II), the North Carolina Supreme Court ruled the 2002 Plan invalid and directed that the North Carolina General Assembly draw new legislative districts.
17. On November 25, 2003 the North Carolina General Assembly adopted new legislative districts ("2003 Plan").
18. The 2003 Plan received approval under Section 5 of the Voting Rights Act of 1965 from the United States Attorney General on March 30, 2004.
19. On April 22, 2004, the North Carolina Supreme Court ruled that the Stephenson case was concluded and that any redistricting lawsuit challenging the 2003 Plan must be filed under a separate caption and heard before a three judge panel.
20. The 2003 Plan places Pender County in a single Senate district, and no challenge is being made to the North Carolina Senate redistricting plan.
21. The 2003 Plan divides Pender County among two NC House districts, the 16th and 18th.
22. The division of Pender County into two North Carolina House Districts violates Article II, Section 5(3) of the North Carolina Constitution.
23. For purposes of the current redistricting, population figures from the 2000 census must be used.

24. Pender County's population in the 2000 census is 41,082.
25. Under the holdings in Stephenson I and II, a NC House District may not deviate from the ideal population total by more than 5% in either direction.
26. Pender County's population equates to 61% of the ideal population for a NC House district.
27. In providing guidance to the North Carolina General Assembly in drawing legislative districts, the North Carolina Supreme Court in Stephenson I & II provided that County's which were not within 5%, plus or minus, should be clustered together to form multi county clusters from which legislative districts were to be drawn.
28. The 2003 Plan combines Pender County and New Hanover County into a two county cluster for creating NC House Districts.
29. The combined population of the two counties represents 300% of an ideal House district.
30. Accordingly, the two County cluster must be divided into 3 House districts.
31. Two entire House districts could be drawn within the borders of New Hanover County.
32. By drawing two House districts entirely within New Hanover County, the third district would keep Pender County whole within a single House district.
33. The 2003 Plan needlessly splits Pender County between two House districts in violation of Article II, Section 5(3) of the North Carolina Constitution and the holdings in Stephenson I & II.
34. Defendants, Black, Morgan and Basnight, as the leaders of the North Carolina General Assembly, had a duty to draw NC House districts which complied with the North Carolina Constitution and the holdings in Stephenson I & II.

35. Despite the clear failure of the 2003 Plan to with the North Carolina Constitution and the holdings in Stephenson I & II, Defendants Bartlett, Leake, Cordle, Sims, Shinn, and Winfree have established primary, runoff and general election dates which purport to use the 2003 Plan for the 16th and 18th NC House Districts.
36. Despite their obligation to protect and defend the North Carolina Constitution, Defendants Easley and Cooper have taken no action to stop the implementation of the unconstitutional 2003 Plan, and specifically to prevent the citizens of Pender County from having their votes diluted and their Constitutional rights denied.
37. The rights of the citizens of Pender County under the North Carolina Constitution have been violated by the division of Pender County among two House districts in the 2003 Plan.
38. The citizens of Pender County will be irreparably harmed if the unconstitutional 2003 Plan denying to them their rights under the North Carolina Constitution is permitted to go forward.
39. There is no adequate remedy other than injunctive relief to protect the rights of the citizens of Pender County.
40. The violation of the North Carolina Constitution, so long as the two County cluster with New Hanover County is maintained, may only be corrected by redrawing the NC House districts such that Pender County is kept within a single district.
41. The citizens of Pender County are too numerous to make joinder of all effected citizens practical.
42. The denial of the protection of Article II, Section 5(3) of the North Carolina Constitution is common to all the citizens of Pender County.

43. The named Plaintiffs will fairly and adequately represent the interests of Pender County.

WHEREFORE, Plaintiffs respectfully pray unto the Court:

1. That the Court enter an Order finding that the 16th and 18th NC House districts as drawn in the 2003 Plan violate Article II, Section 5(3) of the North Carolina Constitution;
2. That the Court enter a mandatory and prohibitory injunction prohibiting the implementation of the current 16th and 18th NC House districts for the 2004 elections;
3. That, pursuant to N.C.G.S. §120-2.4, the Court allow the North Carolina General Assembly two weeks from the date of the entry of its Injunctive Order to draw House Districts which comply with the North Carolina Constitution;
4. That should the General Assembly fail to adopt such districts within the time allowed, that the Court enter an Order setting interim districts for use in the 2004 elections;
5. That the Court certify this matter as a class action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure;
6. That all costs of this action be taxed to the Defendants, in their official capacities; and
7. That the Court grant to Plaintiffs such other and further relief as it deems just and proper.

This the 14th day of May, 2004



CARL W. THURMAN III

Pender County Attorney
3169 Wrightsville Ave.
Wilmington, North Carolina 28403
910-763-7487
Attorney for Plaintiffs

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

04 CVS

PENDER COUNTY, DWIGHT)
 STRICKLAND, Individually and as a Pender)
 County Commissioner, DAVID WILLIAMS,)
 Individually and as a Pender County)
 Commissioner, F.D. RIVENBARK,)
 Individually and as a Pender County)
 Commissioner, STEPHEN HOLLAND,)
 Individually and as a Pender County)
 Commissioner, and EUGENE MEADOWS,)
 Individually and as a Pender County)
 Commissioner,)

PLAINTIFFS,)

v.)

GARY O. BARTLETT, as Executive Director)
 of the State Board of Elections; LARRY)
 LEAKE, ROBERT CORDLE, GENEVIEVE)
 C. SIMS, LORRAINE G. SHINN, and)
 CHARLES WINFREE, In Their Official)
 Capacities as Members Of the North Carolina)
 Board of Elections; JAMES B. BLACK, In His)
 Official Capacity as Co-Speaker of the North)
 Carolina House of Representatives; MARC)
 BASNIGHT, In His Official Capacity as)
 President Pro Tempore of the North Carolina)
 Senate; MICHAEL EASLEY, in His Official)
 Capacity as Governor of the State of North)
 Carolina; and ROY COOPER, in His Official)
 Capacity as Attorney General of the State of)
 North Carolina,)

DEFENDANTS.)

ANSWER

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WAKE COUNTY, N.C.

NOW COME defendants, by and through their undersigned counsel, and hereby answer the

Complaint as follows:

1. Pender County is a political subdivision of the State of North Carolina governed by a Board of Commissioners.

ANSWER: Admitted.

2. Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland and Eugene Meadows are duly elected members of the Pender County Board of Commissioners and are residents and registered voters of Pender County.

ANSWER: Admitted.

3. Pender County brings this action on behalf of its citizens who are being disenfranchised by the unconstitutional splitting of Pender County citizens among two North Carolina House Districts.

ANSWER: Admitted that Pender County purports to bring this action on behalf of its citizens. The remaining allegations of ¶ 3 are denied, and it is specifically denied that Pender County or its Board of County Commissioners may properly prosecute this action, that plaintiffs may maintain this action as a class action, that any citizen of Pender County has been or is being disenfranchised, and that the placement of Pender County in two House Districts violates the North Carolina Constitution.

4. Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland and Eugene Meadows bring this action in their official capacities as Pender County Commissioners and in their individual capacities as citizens and registered voters in Pender County on their own behalf and on behalf of all other so situated.

ANSWER: Admitted that plaintiffs Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland and Eugene Meadows purport to bring this action in the capacities that they allege. Any

remaining allegations of ¶ 4 are denied, and it is specifically denied that these plaintiffs may properly prosecute this action in their official capacities and that they may maintain this action as a class action.

5. Defendant Gary Bartlett is being sued in his official capacity as the Executive Director of the State Board of Elections, in which he is charged with administering the election laws of the State of North Carolina. The State Board of Elections is an agency of the State of North Carolina with its headquarters in Wake County.

ANSWER: Admitted that Gary Bartlett is being sued in his official capacity as the Executive Director of the State Board of Elections, in which capacity he has those duties and responsibilities set forth by statute and those delegated to him by the State Board of Elections. It is further admitted that the State Board of Elections is an agency of the State of North Carolina with its headquarters in Wake County. Any remaining allegations of ¶ 5, including any inferences to be drawn therefrom, are denied.

6. Defendants Larry Leake, Robert Cordle, Genevieve C. Sims, Lorraine G. Shinn, and Charles Winfree are current members of the State Board of Elections and are being sued in their official capacity as members of the State Board of Elections. The State Board of Elections is charged with administering the election laws of the State of North Carolina and canvassing and determining the results of elections to the General Assembly for legislative districts, including NC House Districts 16 and 18.

ANSWER: Admitted that Defendants Larry Leake, Robert Cordle, Genevieve C. Sims, Lorraine G. Shinn, and Charles Winfree are current members of the State Board of Elections and are being sued as alleged. Further admitted that the State Board of Elections is charged with general

supervision over primaries and elections in the State of North Carolina and canvassing and determining the results of elections to the General Assembly for legislative districts in which the district lies in more than one county, including North Carolina House Districts 16 and 18. Any remaining allegations of ¶ 6, including any inference to be drawn therefrom, are denied, and it is specifically denied that the State Board of Elections has primary authority for actually conducting primaries and elections, which primary authority is vested in the various county boards of elections.

7. Defendant James B. Black is being sued in his official capacity as Representative for the 100th District of the North Carolina House of Representatives under the redistricting plan implemented by Judge Jenkins in 2002 and Co-Speaker of the North Carolina House of Representatives.

ANSWER: Admitted that Defendant James B. Black is being sued as alleged. Any remaining allegations of ¶ 7 are denied, and it is specifically denied that Defendant James B. Black is a proper party to this action in either his official or his individual capacity.

8. Defendant Richard T. Morgan is being sued in his official capacity as Representative for the 52nd District of the North Carolina House of Representatives under the redistricting plan implemented by Judge Jenkins in 2002 and Co-Speaker of the North Carolina House of Representatives.

ANSWER: Admitted that Defendant Richard T. Morgan is being sued as alleged. Any remaining allegations of ¶ 8 are denied, and it is specifically denied that Defendant Richard T. Morgan is a proper party to this action in either his official or his individual capacity.

9. Defendant Marc Basnight is being sued in his official capacity as Senator for the 1st District of the North Carolina Senate under the redistricting plan implemented by Judge Jenkins in 2002 and as President Pro Tempore of North Carolina Senate.

ANSWER: Admitted that Defendant Marc Basnight is being sued as alleged. Any remaining allegations of ¶ 9 are denied, and it is specifically denied that Defendant Marc Basnight is a proper party to this action in either his official or his individual capacity.

10. Defendants Roy Cooper and Michael Easley are being sued in their official capacity as the Attorney General and Governor for the State of North Carolina.

ANSWER: Admitted that Defendants Roy Cooper and Michael Easley are being sued as alleged. Any remaining allegations of ¶ 10 are denied, and it is specifically denied that Defendants Roy Cooper and Michael Easley are proper parties to this action in either their official or their individual capacities.

11. Prior to the 2002 session of the General Assembly, Pender County last had a representative in the General Assembly in the 1960's.

ANSWER: Denied. The citizens of Pender County have been represented in the General Assembly in every session of the General Assembly since the county's formation. Upon information and belief, it is admitted that prior to the 2002 Session of the General Assembly, a resident of Pender County last served in the General Assembly in the 1960's, but it is specifically denied that either Pender County or its citizens have a right to be represented in the North Carolina General Assembly solely by a resident of Pender County.

12. In the redistricting plan adopted by the North Carolina General Assembly in 1992, Pender County was split among 5 North Carolina House districts, and 2 North Carolina Senate Districts.

ANSWER: Denied.

13. In the redistricting plan adopted by the North Carolina General Assembly in 2001, Pender County was split among 5 North Carolina House districts, and 3 North Carolina Senate Districts.

ANSWER: Admitted.

14. As a result of the opinion in *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) (*Stephenson I*), another redistricting plan was drawn by the North Carolina General Assembly in 2002 ("2002 Plan") which placed Pender County in a single NC House and single NC Senate district.

ANSWER: Admitted.

15. The second plan drawn by the North Carolina General Assembly was ruled improper and an alternative plan imposed by Superior Court Judge Knox Jenkins on 2003. The plan drawn by Judge Jenkins also placed Pender County in a single NC House and single NC Senate district.

ANSWER: Admitted that the House and Senate districting plans drawn by the General Assembly in 2002 in response to the Supreme Court's decision in *Stephenson I* were found to be unconstitutional. It is further admitted that the Interim Plans imposed by Senior Resident Superior Court Judge Knox V. Jenkins, Jr., for the 2002 legislative elections placed Pender County in one House district and one Senate district. Any remaining allegations of ¶ 15 are denied.

16. In *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*), the North Carolina Supreme Court ruled the 2002 Plan invalid and directed that the North Carolina General Assembly draw new legislative districts.

ANSWER: Admitted that the decision in *Stephenson II* speaks for itself regarding the plan enacted by the General Assembly in 2002. Any remaining allegations of ¶ 16 are denied.

17. On November 25, 2003 the North Carolina General Assembly adopted new legislative districts ("2003 Plan").

ANSWER: Admitted.

18. The 2003 Plan received approval under Section 5 of the Voting Rights Act of 1965 from the United States Attorney General on March 30, 2004.

ANSWER: Admitted that the United States Attorney General, pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c (hereinafter "the Voting Rights Act"), gave administrative preclearance to the 2003 Plan on March 30, 2004. Any remaining allegations of ¶ 18 are denied.

19. On April 22, 2004, the North Carolina Supreme Court ruled that the *Stephenson* case was concluded and that any redistricting lawsuit challenging the 2003 Plan must be filed under a separate caption and heard before a three judge panel.

ANSWER: Admitted that the decision in *Stephenson v. Bartlett and Morgan v. Stephenson*, 358 N.C. 219, 595 S.E.2d 112 (2004), speaks for itself. Any remaining allegations of ¶ 19 are denied.

20. The 2003 Plan places Pender County in a single Senate district, and no challenge is being made to the North Carolina Senate redistricting plan.

ANSWER: Admitted.

21. The 2003 Plan divides Pender County among two NC House districts, the 16th and 18th.

ANSWER: Admitted.

22. The division of Pender County into two North Carolina House Districts violates Article II, Section 5(3) of the North Carolina Constitution.

ANSWER: Denied.

23. For purposes of the current redistricting, population figures from the 2000 census must be used.

ANSWER: Admitted that the Public Law 97-171 2000 Decennial Census data, which is included in the General Assembly's DistrictBuilder redistricting system, is the correct population data base for drafting redistricting plans until the next decennial census.

24. Pender County's population in the 2000 census is 41,082.

ANSWER: Admitted that according to the 2000 Decennial Census and the data used in the General Assembly's DistrictBuilder system, the total population of Pender County is 41,082.

25. Under the holdings in *Stephenson I* and *II*, a NC House District may not deviate from the ideal population total by more than 5% in either direction.

ANSWER: Admitted that under the federal and North Carolina constitutions, as interpreted by the North Carolina Supreme Court in *Stephenson I* and *II*, any deviation from the ideal population for a legislative district shall be at or within plus or minus five percent for purposes of compliance with federal one person, one vote requirements. Any remaining allegations of ¶ 25 are denied.

26. Pender County's population equates to 61% of the ideal population for a NC House district.

ANSWER: Admitted that Pender County's total population deviates from the ideal population for a single-member House district (67,078) by 38.75%. Any remaining allegations of ¶ 26 are denied.

27. In providing guidance to the North Carolina General Assembly in drawing legislative districts, the North Carolina Supreme Court in *Stephenson I & II* provided that Counties which were not within 5%, plus or minus, should be clustered together to form multi county clusters from which legislative districts were to be drawn.

ANSWER: Admitted that the decisions in *Stephenson I* and *II* speak for themselves. Any remaining allegations of ¶ 27 are denied.

28. The 2003 Plan combines Pender County and New Hanover County into a two county cluster for creating NC House Districts.

ANSWER: Admitted that the 2003 Plan combines Pender County and New Hanover County into a two-county grouping for the purpose of creating House districts.

29. The combined population of the two counties represents 300% of an ideal House district.

ANSWER: Admitted that the combined total population of Pender and New Hanover Counties is 201,389, which is sufficient to encompass three single-member House districts that are at or within plus or minus five percent of the ideal population for a single-member House district. Any remaining allegations of ¶ 29 are denied.

30. Accordingly, the two County cluster must be divided into 3 House districts.

ANSWER: Admitted that the total population of this two-county grouping is sufficient to create three single-member House districts. Any remaining allegations of ¶ 30 are denied.

31. Two entire House districts could be drawn within the borders of New Hanover County.

ANSWER: Admitted that if the requirements of Section 2 of the Voting Rights Act and the supremacy clauses of the federal and North Carolina constitutions are ignored, the total population of New Hanover County is sufficient to create two single-member House districts wholly within the borders of the county. Any remaining allegations of ¶ 31, including any inferences to be drawn therefrom, are denied.

32. By drawing two House districts entirely within New Hanover County, the third district would keep Pender County whole within a single House district.

ANSWER: Admitted that if the requirements of Section 2 of the Voting Rights Act and the supremacy clauses of the federal and North Carolina constitutions are ignored such that two entire single-member House districts were drawn entirely within the borders of New Hanover County, a third single-member district could be drawn that includes all of Pender County and a portion of New Hanover County. Any remaining allegations of ¶ 32, including any inferences to be drawn therefrom, are denied.

33. The 2003 Plan needlessly splits Pender County between two House districts in violation of Article II, Section 5(3) of the North Carolina Constitution and the holdings in *Stephenson I & II*.

ANSWER: Denied.

34. Defendants, Black, Morgan and Basnight, as the leaders of the North Carolina General Assembly, had a duty to draw NC House districts which complied with the North Carolina Constitution and the holdings in *Stephenson I & II*.

ANSWER: Admitted that any legislative redistricting plan enacted by the North Carolina General Assembly must comply with the North Carolina Constitution and with the decisions in *Stephenson I and II*. Any remaining allegations of ¶ 34, including any inferences to be drawn therefrom, are denied, and it is specifically denied that defendants Black, Morgan and Basnight are proper defendants in this action in either their official or their individual capacities or that they did not comply with any duty they owed as legislators.

35. Despite the clear failure of the 2003 Plan to with the North Carolina Constitution and the holdings in *Stephenson I & II*, Defendants Bartlett, Leake, Cordle, Sims, Shinn, and Winfree have established primary, runoff and general election dates which purport to use the 2003 Plan for the 16th and 18th NC House Districts.

ANSWER: Admitted that the State Board of Elections has established dates for primary, second primary and general legislative elections, all of which are to be conducted using the 2003 House Plan and are to be conducted by the various county boards of elections, including the Pender County Board of Elections and the New Hanover County Board of Elections. Any remaining allegations of ¶ 35, including any inferences to be drawn therefrom, are denied, and it is specifically denied that the 2003 House Plan is unconstitutional or fails to comply with *Stephenson I or II* or that the State Board of Elections or any of its employees or members has any authority to refuse to execute State election laws duly enacted by the General Assembly, which are presumed to be constitutional.

36. Despite their obligation to protect and defend the North Carolina Constitution, Defendants Easley and Cooper have taken no action to stop the implementation of the unconstitutional 2003 Plan, and specifically to prevent the citizens of Pender County from having their votes diluted and their Constitutional rights denied.

ANSWER: Denied, and it is specifically denied that the constitutional and statutory duties of the Governor or the Attorney General, including the duty to support, maintain and defend the Constitution of North Carolina, not inconsistent with the Constitution of the United States, confers upon them any authority to stop the implementation of the duly enacted 2003 House Plan, which enactment is presumed by law to be constitutional. It is further specifically denied that defendants Easley and Cooper are proper parties to this action in either their official or their individual capacities, that the vote of any citizen of Pender County has been or will be diluted, and that the 2003 House Plan denies any citizen of Pender County his or her constitutional rights.

37. The rights of the citizens of Pender County under the North Carolina Constitution have been violated by the division of Pender County among two House districts in the 2003 Plan.

ANSWER: Denied.

38. The citizens of Pender County will be irreparably harmed if the unconstitutional 2003 Plan denying to them their rights under the North Carolina Constitution is permitted to go forward.

ANSWER: Denied.

39. There is no adequate remedy other than injunctive relief to protect the rights of the citizens of Pender County.

ANSWER: Denied, and it is specifically denied that plaintiffs have stated any claim for relief that would entitle to them to a remedy of any sort.

40. The violation of the North Carolina Constitution, so long as the two County cluster with New Hanover County is maintained, may only be corrected by redrawing the NC House districts such that Pender County is kept within a single district.

ANSWER: Denied, and it is specifically denied that the division of Pender County between two House districts in the 2003 House Plan violates the North Carolina Constitution.

41. The citizens of Pender County are too numerous to make joinder of all effected citizens practical.

ANSWER: Admitted that, if this were a proper class action, the citizens of Pender County would be too numerous to make joinder of all citizens practical. Any remaining allegations of ¶ 41, including any inferences to be drawn therefrom, are denied, and it is specifically denied that all of the citizens of Pender County have a common or aligned interest in this litigation or that this action can properly be maintained as a class action.

42. The denial of the protection of Article II, Section 5(3) of the North Carolina Constitution is common to all the citizens of Pender County.

ANSWER: Denied, and it is specifically denied that Article II, Section 5(3), of the North Carolina Constitution creates any protections or rights for individual citizens, that any citizen of Pender County has been denied any alleged protection under Article II, Section 5(3), of the North Carolina Constitution, and that all of the citizens of Pender County have a common or aligned interest in this litigation.

43. The named Plaintiffs will fairly and adequately represent the interests of Pender County.

ANSWER: Denied.

FURTHER DEFENSES

1. Neither Pender County, as a part of State government created by and subject to the full control of the General Assembly, nor its commissioners acting in their official capacity have the authority to maintain this action challenging the constitutionality of an act of the General Assembly.

2. Defendants Black, Morgan, Basnight, Easley and Cooper are not proper parties to this action, either in their official or their individual capacities.

3. To the extent that plaintiffs may seek injunctive relief in this action, then New Hanover County, in which portions of House Districts 16 and 18 are located, and which would be required to bear the costs associated with the delay of the 2004 elections sought by plaintiffs, or its board of commissioners may be necessary parties to this action, and plaintiffs have failed to join these potentially necessary parties.

4. To the extent that plaintiffs seek injunctive relief with regard to the 2004 primaries and election, plaintiffs' claims are barred by laches.

5. To the extent that plaintiffs seek injunctive relief with regard to the 2004 primaries and election, plaintiffs' are estopped from seeking such relief.

6. Plaintiffs have failed to state a claim for which relief can be granted because the division of Pender County between two House districts was required by federal law – *i.e.*, Section 2 of the Voting Rights Act – the supremacy of which under the federal and State constitutions was specifically recognized by the North Carolina Supreme Court in *Stephenson I* and *II*.

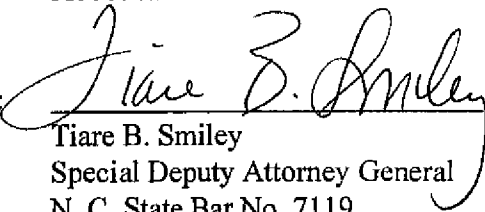
WHEREFORE, defendants respectfully pray that the Court:

1. Deny plaintiffs all relief sought by them;
2. Enter judgment for defendants; and
3. Award such other relief to defendants as the Court may deem just and proper.

Respectfully submitted, this the 4th day of June, 2004.

ROY COOPER
ATTORNEY GENERAL

By:


Tiare B. Smiley
Special Deputy Attorney General
N. C. State Bar No. 7119

Alexander McC. Peters
Special Deputy Attorney General
N.C. State Bar No. 13654

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Counsel for the Defendants

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966

PENDER COUNTY, *et al.*

Plaintiffs,

v.

GARY O. BARTLETT, as Executive Director
of the State Board of Elections, *et al.*

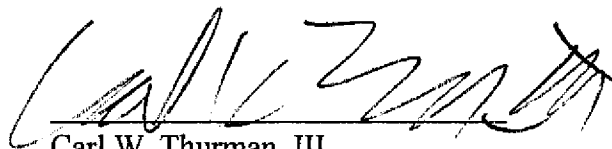
Defendants.

STIPULATION

The parties to this action here by stipulate to the accuracy and authenticity of the following maps and statistical data packs, each of which has been taken from the North Carolina General Assembly's DistrictBuilder System:

1. 1992 North Carolina House Plan;
2. 2002 House Plan – Sutton 5;
3. Interim House Redistricting Plan for 2002 Elections; and
4. 2003 House Redistricting Plan.

This the 17th day of June, 2004.

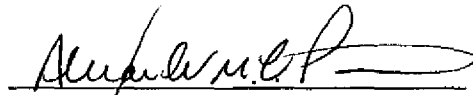


Carl W. Thurman, III
Pender County Attorney
3169 Wrightsville Ave.
Wilmington, North Carolina 28403
Telephone: (910) 763-7487
Facsimile: (910) 763-7476

Counsel for the Plaintiffs

* Plaintiffs specifically do not stipulate as to the designation by the Legislature in the 2002 House Plan- Sutton 5 of "Minority-Concentration Districts" or to the designation in Senior Resident Superior Court Judge Knox V. Jenkins' map for Interim House Redistricting Plan for N.C. 2002 Elections of "VRA Districts."

ROY COOPER
Attorney General

A handwritten signature in dark ink, appearing to read 'Tiare B. Smiley', is written over a horizontal line.

Tiare B. Smiley
Special Deputy Attorney General
N. C. State Bar No. 7119

Alexander McC. Peters
Special Deputy Attorney General
N.C. State Bar No. 13654

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Counsel for the Defendants

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

SUPERIOR COURT DIVISION

04-CVS-0696

PENDER COUNTY, DWIGHT STRICKLAND,)
 Individually and as a Pender County Commissioner,)
 DAVID WILLIAMS, Individually and as a Pender)
 County Commissioner, F.D. RIVENBARK,)
 Individually and as a Pender County Commissioner,)
 STEPHEN HOLLAND, Individually and as a)
 Pender County Commissioner, and EUGENE)
 MEADOWS, Individually and as a Pender County)
 Commissioner)

PLAINTIFFS,)

V.)

GARY BARTLETT, as Executive Director of the)
 State Board of Elections; LARRY LEAKE,)
 ROBERT CORDLE, GENEVIEVE C. SIMS,)
 LORRAINE G. SHINN, and CHARLES)
 WINFREE in Their Official Capacities as Members)
 Of the North Carolina Board of Elections; JAMES)
 B. BLACK in His Official Capacity as Co-Speaker)
 of the North Carolina House of Representatives;)
 RICHARD T. MORGAN, in His Official Capacity)
 as Co-Speaker of the North Carolina House of)
 Representatives; MARC BASNIGHT, in His)
 Official Capacity as President Pro Tempore of the)
 North Carolina Senate; MICHAEL EASLEY, in)
 His Official Capacity as Governor of the State of)
 North Carolina; ROY COOPER, in His Official)
 Capacity as Attorney General of the State of North)
 Carolina;)

DEFENDANTS)

**AFFIDAVIT OF
 CARL THURMAN III**

CARL W. THURMAN III, being first duly sworn, deposes and says as follows:

1. I am above the age of 18 years, and am competent to testify as to the matters set forth herein, which are based upon my personal knowledge and belief.

2. I am the County Attorney for Pender County and have served in that capacity for over six years.

3. In March 2002, I filed an amicus brief in the Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377(2002) (Stephenson I) case. The North Carolina Supreme Court recognized Pender County's plight in the opinion in Stephenson I and even quoted from the amicus brief in its opinion.

4. In both the 2002 House plan adopted by the North Carolina General Assembly and the Interim plan adopted by Judge Knox Jenkins, Pender County was placed into a single House district.

5. In the 2002 election, a Pender County resident was elected to the North Carolina House for the first time since the 1960's.

6. On July 16, 2003, the North Carolina Supreme Court ruled in Stephenson v. Bartlett, 357 N.C. 301, 582 S.E.2d 247(2003) (Stephenson II) that the 2002 redistricting plan adopted by the General Assembly was invalid.

7. In November of 2003, the Pender County Board of Commissioners learned that legislative leaders were considering enacting a plan which would split Pender County among two House districts. Accordingly, they directed that I appear to speak before the chairmen of the respective House and Senate committees on redistricting.

8. On November 20, 2003, I spoke before the chairmen of the committees. Because the proposed new plans had not been released to the public, my comments necessarily had to be somewhat general in nature. The committees on redistricting never held public hearings on the proposed plans, nor for that matter did the full committees meet on the plan prior to presentation of the plans to the General Assembly.

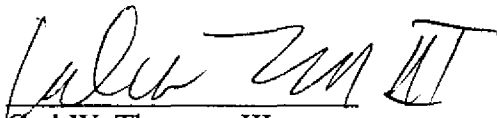
9. Attached hereto are possible legislative districts which have been drawn using the "DistrictBuilder" software system. The data used was, according to Rachel Suelflow of the Legislative Staff, the same as that available for use by the General Assembly.

10. The "DistrictBuilder" contains partial election results for the 2000 and 2002 elections. Included in those partial results are the election results for Justice Henry Frye's race for the North Carolina Supreme Court in 2000, Auditor Ralph Campbell's race for auditor in 2000, and Justice G.K. Butterfield's race for the Supreme Court in 2002. Justice Frye, Mr. Campbell and Justice Butterfield are African-American, or in the terms of the census racial classification, Black.

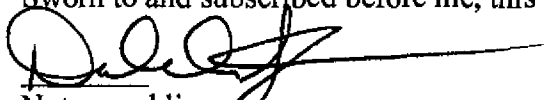
11. Attached hereto are true and correct copies of pages from the North Carolina General Assembly's "Legislator's Guide to North Carolina Legislative and Congressional Redistricting" (Fourth Edition) which show data on the population changes between the 1990 and 2000 census.

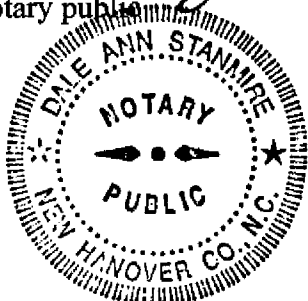
FURTHER AFFIANT SAYETH NOT

This the 11th day of June, 2004.


Carl W. Thurman III

Sworn to and subscribed before me, this the 11 day of June, 2004.

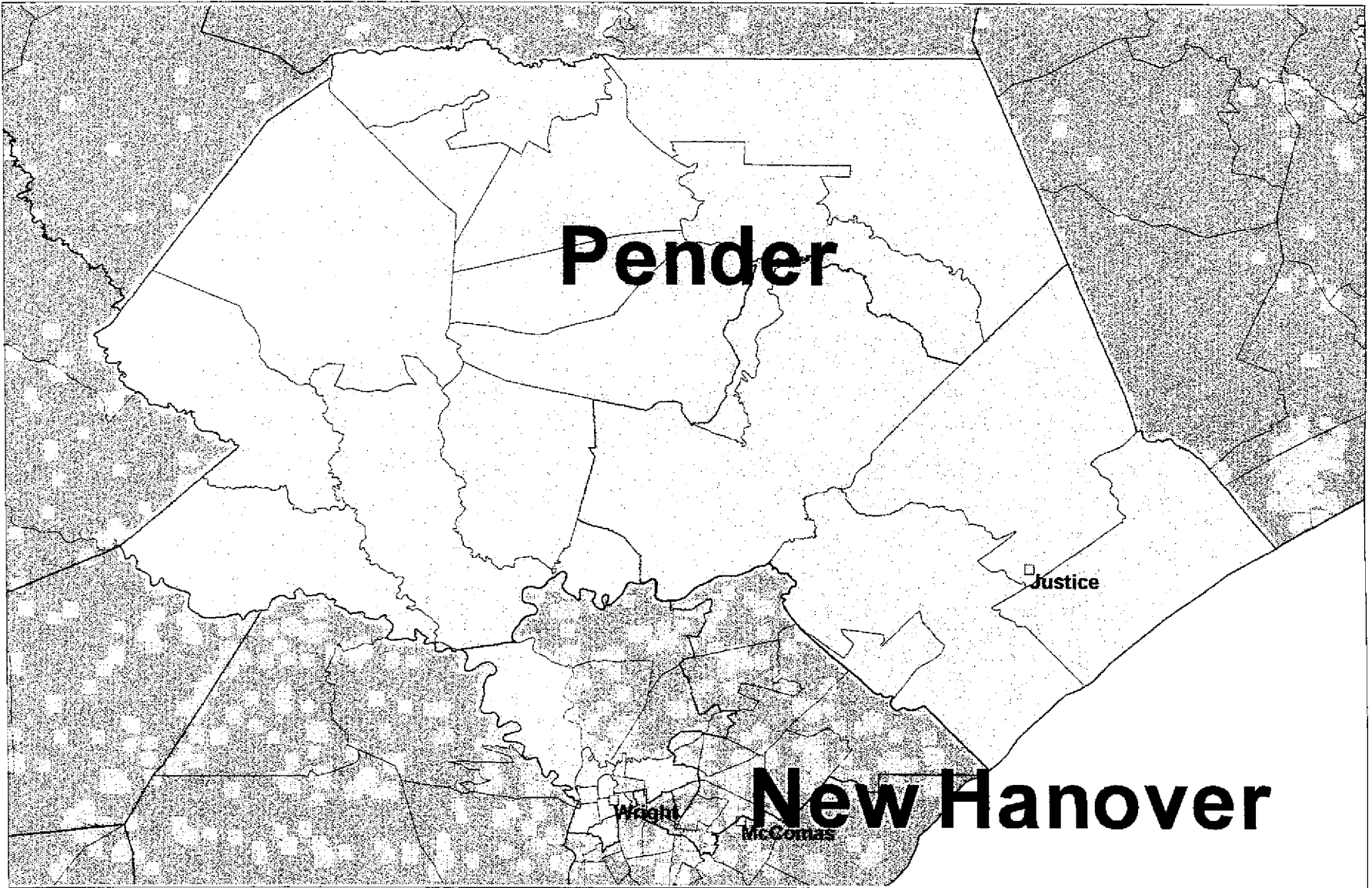

Notary public



District Statistics
Plan: JLL07A - District 1

Ideal Population :	67,078	
Actual Population :	63,963	
Difference :	-3,115	
% Difference	-4.64%	
Total Population	63,963	100.00%
TP:White (SR)	37,250	58.24%
TP:Black (SR)	24,523	38.34%
TP:Nat. Am. (SR)	270	0.42%
TP:A/PI (SR)	170	0.27%
TP:Other (SR)	1,104	1.73%
TP:Multi Race	646	1.01%
TP:Hispanic	2,073	3.24%
TP:Non-Hispanic	61,890	96.76%
Voting Age Total Population	48,834	100.00%
Voter Registration Total	38,439	100.00%
VR:White	24,606	64.01%
VR:Black	13,247	34.46%
VR:Native American	66	0.17%
VR:Other Race	299	0.78%
VR:Undesignated Race	221	0.57%
VR:All Democrats	22,119	57.54%
VR:All Republicans	9,981	25.97%
VR:All Libertarians	124	0.32%
VR:All Unaffiliated	6,215	16.17%
00 Governor Dem - Easley	12,615	65.48%
00 Governor Rep - Vinroot	6,302	32.71%
00 Governor Libertarian & Reform	347	1.80%
00 Chief Justice Dem - Frye	11,018	59.33%
00 Chief Justice Rep - Lake	7,553	40.67%
00 State Auditor Dem - Campbell	11,322	62.55%
00 State Auditor Rep - Merritt	6,780	37.45%
02 NC House Dem	9,012	57.52%
02 NC House Rep	6,300	40.21%
02 NC House Lib	355	2.27%
02 NC Senate Dem	8,689	56.65%
02 NC Senate Rep	6,180	40.29%
02 NC Senate Lib	470	3.06%
02 NC Supreme Court Dem - Butterfield	8,745	59.25%
02 NC Supreme Court Rep - Brady	6,014	40.75%
02 US House Dem	11,627	74.28%
02 US House Rep	3,765	24.05%
02 US House Lib	261	1.67%
02 US Senate Dem - Bowles	8,966	56.82%
02 US Senate Rep - Dole	6,570	41.64%
02 US Senate Lib - Haugh	241	1.53%
02 US Senate Ind - DeLaney	2	0.01%

0 030



Plan Title: JLL07A

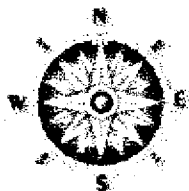
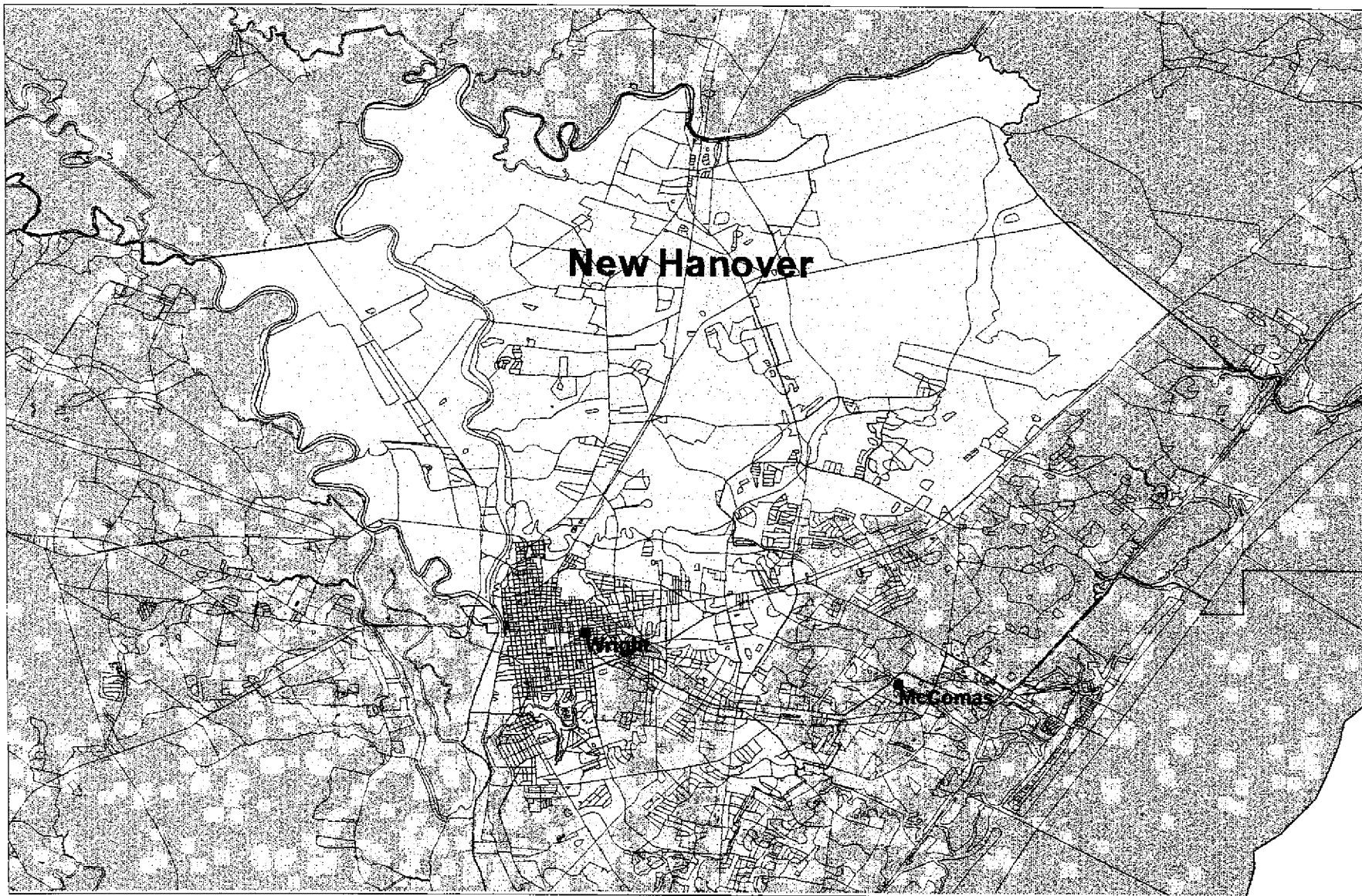
Plan Author: Joshua Lafoon

Map Date: Jun 09, 2004



District Statistics		
Plan: JLL08A - District 1		
Ideal Population :	67,078	
Actual Population :	64,006	
Difference :	-3,072	
% Difference	-4.58%	
Total Population	64,006	100.00%
TP:White (SR)	39,256	61.33%
TP:Black (SR)	22,444	35.07%
TP:Nat. Am. (SR)	289	0.45%
TP:A/PI (SR)	473	0.74%
TP:Other (SR)	729	1.14%
TP:Multi Race	815	1.27%
TP:Hispanic	1,657	2.59%
TP:Non-Hispanic	62,349	97.41%
Voting Age Total Population	49,625	100.00%
Voter Registration Total	41,464	100.00%
VR:White	28,669	69.14%
VR:Black	12,045	29.05%
VR:Native American	84	0.20%
VR:Other Race	471	1.14%
VR:Undesignated Race	195	0.47%
VR:All Democrats	21,014	50.68%
VR:All Republicans	12,127	29.25%
VR:All Libertarians	209	0.50%
VR:All Unaffiliated	8,114	19.57%
00 Governor Dem - Easley	12,956	66.52%
00 Governor Rep - Vinroot	6,012	30.87%
00 Governor Libertarian & Reform	508	2.61%
00 Chief Justice Dem - Frye	11,029	59.05%
00 Chief Justice Rep - Lake	7,649	40.95%
00 State Auditor Dem - Campbell	11,181	61.33%
00 State Auditor Rep - Merritt	7,049	38.67%
02 NC House Dem	7,563	52.88%
02 NC House Rep	6,005	41.99%
02 NC House Lib	734	5.13%
02 NC Senate Dem	6,912	46.10%
02 NC Senate Rep	7,752	51.70%
02 NC Senate Lib	329	2.19%
02 NC Supreme Court Dem - Butterfield	8,205	58.82%
02 NC Supreme Court Rep - Brady	5,744	41.18%
02 US House Dem	11,221	75.06%
02 US House Rep	3,412	22.82%
02 US House Lib	316	2.11%
02 US Senate Dem - Bowles	8,525	56.55%
02 US Senate Rep - Dole	6,292	41.74%
02 US Senate Lib - Haugh	257	1.70%
02 US Senate Ind - DeLaney	1	0.01%

0 032



Plan Title: JLL08A

Plan Author: Joshua Lafoon

Map Date: Jun 09, 2004



2000 CENSUS POPULATIONS FOR COUNTIES

The following table shows the 1990 and 2000 Census populations for each county in North Carolina and the percentage growth or decline in population. The 2000 population data was released by the Census Bureau on March 21, 2001. 1990 Census population for municipalities may be obtained from the Research Division. When political data (i.e., voter registration and selected election returns) is processed for DistrictBuilder system, that data will be included in a later edition of this guide.

County	1990 Population	2000 Population	Percent Change
Alamance	108,213	130,800	20.9
Alexander	27,544	33,603	22.0
Alleghany	9,590	10,677	11.3
Anson	23,474	25,275	7.7
Ashe	22,209	24,384	9.8
Avery	14,867	17,167	15.5
Beaufort	42,283	44,958	6.3
Bertie	20,388	19,773	-3.0
Bladen	28,663	32,278	12.6
Brunswick	50,985	73,143	43.5
Buncombe	174,821	206,330	18.0
Burke	75,744	89,148	17.7
Cabarrus	98,935	131,063	32.5
Caldwell	70,709	77,415	9.5
Camden	5,904	6,885	16.6
Carteret	52,556	59,383	13.0
Caswell	20,693	23,501	13.6
Catawba	118,412	141,685	19.7
Chatham	38,759	49,329	27.3
Cherokee	20,170	24,298	20.5
Chowan	13,506	14,526	7.6
Clay	7,155	8,775	22.6
Cleveland	84,714	96,287	13.7
Columbus	49,587	54,749	10.4
Craven	81,613	91,436	12.0
Cumberland	274,566	302,963	10.3
Currituck	13,736	18,190	32.4
Dare	22,746	29,967	31.7
Davidson	126,677	147,246	16.2
Davie	27,859	34,835	25.0
Duplin	39,995	49,063	22.7
Durham	181,835	223,314	22.8

2000 Census Populations

County	1990 Population	2000 Population	Percent Change
Edgecombe	56,558	55,606	-1.7
Forsyth	265,878	306,067	15.1
Franklin	36,414	47,260	29.8
Gaston	175,093	190,365	8.7
Gates	9,305	10,516	13.0
Graham	7,196	7,993	11.1
Granville	38,345	48,498	26.5
Greene	15,384	18,974	23.3
Guilford	347,420	421,048	21.2
Halifax	55,516	57,370	3.3
Harnett	67,822	91,025	34.2
Haywood	46,942	54,033	15.1
Henderson	69,285	89,173	28.7
Hertford	22,523	22,601	0.3
Hoke	22,856	33,646	47.2
Hyde	5,411	5,826	7.7
Iredell	92,931	122,660	32.0
Jackson	26,846	33,121	23.4
Johnston	81,306	121,965	50.0
Jones	9,414	10,381	10.3
Lee	41,374	49,040	18.5
Lenoir	57,274	59,648	4.1
Lincoln	50,319	63,780	26.8
McDowell	35,681	42,151	18.1
Macon	23,499	29,811	26.9
Madison	16,953	19,635	15.8
Martin	25,078	25,593	2.1
Mecklenburg	511,433	695,454	36.0
Mitchell	14,433	15,687	8.7
Montgomery	23,346	26,822	14.9
Moore	59,013	74,769	26.7
Nash	76,677	87,420	14.0
New Hanover	120,284	160,307	33.3
Northampton	20,798	22,086	6.2
Onslow	149,838	150,355	0.3
Orange	93,851	118,227	26.0
Pamlico	11,372	12,934	13.7
Pasquotank	31,298	34,897	11.5
Pender	28,855	41,082	42.4
Perquimans	10,447	11,368	8.8
Person	30,180	35,623	18.0
Pitt	107,924	133,798	24.0
Polk	14,416	18,324	27.1
Randolph	106,546	130,454	22.4
Richmond	44,518	46,564	4.6

2000 Census Populations

County	1990 Population	2000 Population	Percent Change
Robeson	105,179	123,339	17.3
Rockingham	86,064	91,928	6.8
Rowan	110,605	130,340	17.8
Rutherford	56,918	62,899	10.5
Sampson	47,297	60,161	27.2
Scotland	33,754	35,998	6.6
Stanly	51,765	58,100	12.2
Stokes	37,223	44,711	20.1
Surry	61,704	71,219	15.4
Swain	11,268	12,968	15.1
Transylvania	25,520	29,334	14.9
Tyrrell	3,856	4,149	7.6
Union	84,211	123,677	46.9
Vance	38,892	42,954	10.4
Wake	423,380	627,846	48.3
Warren	17,265	19,972	15.7
Washington	13,977	13,723	-2.0
Watauga	36,952	42,695	15.5
Wayne	104,666	113,329	8.3
Wilkes	59,393	65,632	10.5
Wilson	66,061	73,814	11.7
Yadkin	30,488	36,348	19.2
Yancey	15,419	17,774	15.3
North Carolina	6,628,637	8,049,313	21.4

Changes in Legislative Seats per County - 1990 to 2000

County	P1990	P2000	HSE 1990	HSE 2000	H + or -	SEN 1990	SEN 2000	S + or -
Alamance	108,213	130,800	1.96	1.95	-.01	.82	.81	.00
Alexander	27,544	33,603	.50	.50	0.0	.21	.21	.00
Alleghany	9,590	10,677	.17	.16	-.01	.07	.07	-.01
Anson	23,474	25,275	.42	.38	-.05	.18	.16	-.02
Ashe	22,209	24,384	.40	.36	-.04	.17	.15	-.02
Avery	14,867	17,167	.27	.26	-.01	.11	.11	-.01
Beaufort	42,283	44,958	.77	.67	-.09	.32	.28	-.04
Bertie	20,388	19,773	.37	.29	-.07	.15	.12	-.03
Bladen	28,663	32,278	.52	.48	-.04	.22	.20	-.02
Brunswick	50,985	73,143	.92	1.09	.17	.38	.45	.07
Buncombe	174,821	206,330	3.16	3.08	-.09	1.32	1.28	-.04
Burke	75,744	89,148	1.37	1.33	-.04	.57	.55	-.02
Cabarrus	98,935	131,063	1.79	1.95	.16	.75	.81	.07
Caldwell	70,709	77,415	1.28	1.15	-.13	.53	.48	-.05
Camden	5,904	6,885	.11	.10	.00	.04	.04	.00
Carteret	52,556	59,383	.95	.89	-.07	.40	.37	-.03
Caswell	20,693	23,501	.37	.35	-.02	.16	.15	-.01
Catawba	118,412	141,685	2.14	2.11	-.03	.89	.88	-.01
Chatham	38,759	49,329	.70	.74	.03	.29	.31	.01
Cherokee	20,170	24,298	.36	.36	.00	.15	.15	.00
Chowan	13,506	14,526	.24	.22	-.03	.10	.09	-.01
Clay	7,155	8,775	.13	.13	.00	.05	.05	.00
Cleveland	84,714	96,287	1.53	1.44	-.10	.64	.60	-.04
Columbus	49,587	54,749	.90	.82	-.08	.37	.34	-.03
Craven	81,613	91,436	1.48	1.36	-.11	.62	.57	-.05
Cumberland	274,566	302,963	4.97	4.52	-.45	2.07	1.88	-.19
Currituck	13,736	18,190	.25	.27	.02	.10	.11	.01
Dare	22,746	29,967	.41	.45	.04	.17	.19	.01
Davidson	126,677	147,246	2.29	2.20	-.10	.95	.91	-.04
Davie	27,859	34,835	.50	.52	.02	.21	.22	.01
Duplin	39,995	49,063	.72	.73	.01	.30	.30	.00
Durham	181,835	223,314	3.29	3.33	.04	1.37	1.39	.02
Edgecombe	56,558	55,606	1.03	.83	-.20	.43	.35	-.08
Forsyth	265,878	306,067	4.81	4.56	-.25	2.00	1.90	-.10
Franklin	36,414	47,260	.66	.70	.05	.27	.29	.02
Gaston	175,093	190,365	3.17	2.84	-.33	1.32	1.18	-.14
Gates	9,305	10,516	.17	.16	-.01	.07	.07	.00
Graham	7,196	7,993	.13	.12	-.01	.05	.05	.00
Granville	38,345	48,498	.69	.72	.03	.29	.30	.01
Greene	15,384	18,974	.28	.28	.00	.12	.12	.00

2000 Census Populations

County	P1990	P2000	HSE 1990	HSE 2000	H + or -	SEN 1990	SEN 2000	S + or -
Guilford	347,420	421,048	6.29	6.28	-.01	2.62	2.62	.00
Halifax	55,516	57,370	1.00	.86	-.15	.42	.36	-.06
Harnett	67,822	91,025	1.23	1.36	.13	.51	.57	.05
Haywood	46,942	54,033	.85	.81	-.04	.35	.34	-.02
Henderson	69,285	89,173	1.25	1.33	.08	.52	.55	.03
Hertford	22,523	22,601	.41	.34	-.07	.17	.14	-.03
Hoke	22,856	33,646	.41	.50	.09	.17	.21	.04
Hyde	5,411	5,826	.10	.09	-.01	.04	.04	.00
Iredell	92,931	122,660	1.68	1.83	.15	.70	.76	.06
Jackson	26,846	33,121	.49	.49	.01	.20	.21	.00
Johnston	81,306	121,965	1.47	1.82	.35	.61	.76	.14
Jones	9,414	10,381	.17	.15	-.02	.07	.06	-.01
Lee	41,374	49,040	.75	.73	-.02	.31	.30	-.01
Lenoir	57,274	59,648	1.04	.89	-.15	.43	.37	-.06
Lincoln	50,319	63,780	.91	.95	.04	.38	.40	.02
McDowell	35,681	42,151	.65	.63	-.02	.27	.26	-.01
Macon	23,499	29,811	.43	.44	.02	.18	.19	.01
Madison	16,953	19,635	.31	.29	-.01	.13	.12	-.01
Martin	25,078	25,593	.45	.38	-.07	.19	.16	-.03
Mecklenburg	511,433	695,454	9.25	10.37	1.11	3.86	4.32	.46
Mitchell	14,433	15,687	.26	.23	-.03	.11	.10	-.01
Montgomery	23,346	26,822	.42	.40	-.02	.18	.17	-.01
Moore	59,013	74,769	1.07	1.11	.05	.44	.46	.02
Nash	76,677	87,420	1.39	1.30	-.08	.58	.54	-.04
New Hanover	120,284	160,307	2.18	(2.39)	.21	.91	1.00	.09
Northampton	20,798	22,086	.38	.33	-.05	.16	.14	-.02
Onslow	149,838	150,355	2.71	2.24	-.47	1.13	.93	-.20
Orange	93,851	118,227	1.70	1.76	.06	.71	.73	.03
Pamlico	11,372	12,934	.21	.19	-.01	.09	.08	-.01
Pasquotank	31,298	34,897	.57	.52	-.05	.24	.22	-.02
Pender	28,855	41,082	.52	(.61)	.09	.22	(.26)	.04
Perquimans	10,447	11,368	.19	.17	-.02	.08	.07	-.01
Person	30,180	35,623	.55	.53	-.01	.23	.22	-.01
Pitt	107,924	133,798	1.96	1.99	.03	.82	.83	.01
Polk	14,416	18,324	.26	.27	.01	.11	.11	.01
Randolph	106,546	130,454	1.93	1.94	.02	.80	.81	.01
Richmond	44,518	46,564	.81	.69	-.11	.34	.29	-.05
Robeson	105,179	123,339	1.90	1.84	-.06	.79	.77	-.03
Rockingham	86,064	91,928	1.56	1.37	-.19	.65	.57	-.08
Rowan	110,605	130,340	2.00	1.94	-.06	.83	.81	-.02
Rutherford	56,918	62,899	1.03	.94	-.09	.43	.39	-.04
Sampson	47,297	60,161	.86	.90	.04	.36	.37	.02
Scotland	33,754	35,998	.61	.54	-.07	.25	.22	-.03
Stanly	51,765	58,100	.94	.87	-.07	.39	.36	-.03

2000 Census Populations

County	P1990	P2000	HSE 1990	HSE 2000	H + or -	SEN 1990	SEN 2000	S + or -
Stokes	37,223	44,711	.67	.67	-.01	.28	.28	.00
Surry	61,704	71,219	1.12	1.06	-.05	.47	.44	-.02
Swain	11,268	12,968	.20	.19	-.01	.08	.08	.00
Transylvania	25,520	29,334	.46	.44	-.02	.19	.18	-.01
Tyrrell	3,856	4,149	.07	.06	-.01	.03	.03	.00
Union	84,211	123,677	1.52	1.84	.32	.63	.77	.13
Vance	38,892	42,954	.70	.64	-.06	.29	.27	-.03
Wake	423,380	627,846	7.71	9.36	1.65	3.21	3.90	.69
Warren	17,265	19,972	.31	.30	-.01	.13	.12	-.01
Washington	13,977	13,723	.25	.20	-.05	.11	.09	-.02
Watauga	36,952	42,695	.67	.64	-.03	.28	.27	-.01
Wayne	104,666	113,329	1.89	1.69	-.20	.79	.70	-.09
Wilkes	59,393	65,632	1.07	.98	-.10	.45	.41	-.04
Wilson	66,061	73,814	1.20	1.10	-.09	.50	.46	-.04
Yadkin	30,488	36,348	.55	.54	-.01	.23	.23	.00
Yancey	15,419	17,774	.28	.26	-.01	.12	.11	-.01

This table shows in the second and third columns the 1990 and 2000 census populations, respectively. The fourth and fifth columns show the number of State House seats that each county was "entitled" to under the 1990 census and the 2000 census. The next column shows the net increase or decrease from 1990 to 2000. The final three columns convey the same information for the State Senate.

1990s State Senate Districts
Ideal versus Actual Populations based on 2000 Census Results

Senate District	Members	2000 Pop	Ideal Pop	Ideal +/-	% +/-
1 Basnight	1	150,216	160,986	-10,770	-6.69%
2 Ballance	1	131,945	160,986	-29,041	-18.04%
3 Thomas	1	151,747	160,986	-9,239	-5.74%
4 Ballantine	1	191,272	160,986	30,286	18.81%
5 Albertson	1	162,944	160,986	1,958	1.22%
6 Martin, R.L.	1	132,357	160,986	-28,629	-17.78%
7 Jordan	1	115,556	160,986	-45,430	-28.22%
8 Kerr	1	145,150	160,986	-15,836	-9.84%
9 Warren	1	164,503	160,986	3,517	2.18%
10 Swindell	1	151,189	160,986	-9,797	-6.09%
11 Wellons	1	181,605	160,986	20,619	12.81%
12 Foxx / Berger	2	296,212	321,973	-25,761	-8.00%
13 Lucas / Gulley	2	354,059	321,973	32,086	9.97%
14 Miller / Reeves	2	359,836	321,973	37,863	11.76%
15 Harris	1	170,357	160,986	9,371	5.82%
16 Lee / Kinnaid	2	337,364	321,973	15,391	4.78%
17 Plyler / Purcell	2	328,804	321,973	6,831	2.12%
18 Soles	1	167,939	160,986	6,953	4.32%
19 Shaw, Bob	1	178,971	160,986	17,985	11.17%
20 Garrou / Horton	2	296,602	321,973	-25,371	-7.88%
21 Webster	1	163,870	160,986	2,884	1.79%
22 Hartsell	1	174,563	160,986	13,577	8.43%
23 Cunningham	1	156,866	160,986	-4,120	-2.56%
24 Rand	1	157,052	160,986	-3,934	-2.44%
25 Hoyle	1	141,447	160,986	-19,539	-12.14%
26 Allran	1	163,662	160,986	2,676	1.66%
27 Garwood / Moore	2	295,864	321,973	-26,109	-8.11%
28 Carter / Metcalf	2	303,977	321,973	-17,996	-5.59%
29 Robinson	1	157,833	160,986	-3,153	-1.96%
30 Weinstein	1	163,553	160,986	2,567	1.59%
31 Martin, Bill	1	137,416	160,986	-23,570	-14.64%
32 Hagan	1	152,942	160,986	-8,044	-5.00%
33 Dannelly	1	126,748	160,986	-34,238	-21.27%
34 Odom	1	237,330	160,986	76,344	47.42%
35 Rucho	1	194,254	160,986	33,268	20.66%
36 Carrington	1	225,783	160,986	64,797	40.25%
37 Dalton	1	145,792	160,986	-15,194	-9.44%
38 Bingham	1	164,951	160,986	3,965	2.46%
39 Forrester	1	165,829	160,986	4,843	3.01%
40 Clodfelter	1	145,629	160,986	-15,357	-9.54%
41 Shaw, Larry	1	134,278	160,986	-26,708	-16.59%
42 Carpenter	1	171,046	160,986	10,060	6.25%

1990s State House Districts
Ideal versus Actual Populations based on 2000 Census Results

House District	Members	2000 Pop	Ideal Pop	Ideal +/-	+/- %
1 Owens	1	62,488	67,078	-4,590	-6.84%
2 Edwards	1	64,593	67,078	-2,485	-3.70%
3 Underhill	1	64,181	67,078	-2,897	-4.32%
4 Preston / Smith	2	122,169	134,155	-11,986	-8.93%
5 Hunter	1	56,918	67,078	-10,160	-15.15%
6 Rogers	1	62,315	67,078	-4,763	-7.10%
7 Hall	1	55,809	67,078	-11,269	-16.80%
8 Warren	1	55,339	67,078	-11,739	-17.50%
9 McLawhorn	1	75,564	67,078	8,486	12.65%
10 Tucker	1	60,382	67,078	-6,696	-9.98%
11 Baddour	1	60,803	67,078	-6,275	-9.35%
12 Warwick	1	70,890	67,078	3,812	5.68%
13 McComas	1	72,031	67,078	4,953	7.38%
14 Redwine / Hill	2	137,946	134,155	3,791	2.83%
15 Ellis	1	87,711	67,078	20,633	30.76%
16 Yongue	1	72,801	67,078	5,723	8.53%
17 Lucas / McAllister	2	97,770	134,155	-36,385	-27.12%
18 Hurley / Morris	2	128,449	134,155	-5,706	-4.25%
19 Cox / Davis	2	148,391	134,155	14,236	10.61%
20 Creech	1	84,560	67,078	17,482	26.06%
21 Blue	1	70,323	67,078	3,245	4.84%
22 Allen / Crawford	2	130,784	134,155	-3,371	-2.51%
23 Luebke / Michaux / Miller	3	199,230	201,233	-2,003	-1.00%
24 Hackney / Insko	2	145,023	134,155	10,868	8.10%
25 Allred / Cole / Teague	3	196,956	201,233	-4,277	-2.13%
26 Adams	1	58,092	67,078	-8,986	-13.40%
27 Blust	1	77,993	67,078	10,915	16.27%
28 Boyd-McIntyre	1	59,159	67,078	-7,919	-11.81%
29 Bowie	1	70,844	67,078	3,766	5.61%
30 Culp	1	71,903	67,078	4,825	7.19%
31 Morgan	1	71,684	67,078	4,606	6.87%
32 Goodwin	1	55,874	67,078	-11,204	-16.70%
33 Gibson	1	58,183	67,078	-8,895	-13.26%
34 Shubert	1	72,754	67,078	5,676	8.46%
35 Coates	1	61,784	67,078	-5,294	-7.89%
36 Black	1	71,247	67,078	4,169	6.22%
37 Holliman	1	58,475	67,078	-8,603	-12.82%
38 Brubaker	1	69,309	67,078	2,231	3.33%
39 Gray	1	58,642	67,078	-8,436	-12.58%
40 Baker / Hiatt / Wilson	3	193,686	201,233	-7,547	-3.75%
41 Holmes / Walker	2	131,841	134,155	-2,314	-1.73%
42 Mitchell	1	63,286	67,078	-3,792	-5.65%
43 Setzer	1	82,625	67,078	15,547	23.18%

2000 Census Populations

House District	Members	2000 Pop	Ideal Pop	Ideal +/-	+/- %
44 Barefoot	1	59,666	67,078	-7,412	-11.05%
45 Hilton / Kiser	2	141,063	134,155	6,908	5.15%
46 Buchanan / Thompson	2	126,598	134,155	-7,557	-5.63%
47 Church	1	62,821	67,078	-4,257	-6.35%
48 Clary / Dedmon / Weatherly	3	187,093	201,233	-14,140	-7.03%
49 Gillespie	1	61,978	67,078	-5,100	-7.60%
50 Justus	1	75,947	67,078	8,869	13.22%
51 Cansler / Nesbitt / Sherrill	3	184,557	201,233	-16,676	-8.29%
52 Carpenter / Haire	2	124,477	134,155	-9,678	-7.21%
53 West	1	66,157	67,078	-921	-1.37%
54 Saunders	1	108,899	67,078	41,821	62.35%
55 McMahan	1	64,039	67,078	-3,039	-4.53%
56 Alexander	1	57,282	67,078	-9,796	-14.60%
57 Wilson	1	71,006	67,078	3,928	5.86%
58 Easterling	1	60,906	67,078	-6,172	-9.20%
59 Cunningham	1	56,702	67,078	-10,376	-15.47%
60 Earle	1	82,564	67,078	15,486	23.09%
61 Pope	1	60,118	67,078	-6,960	-10.38%
62 Miner	1	115,364	67,078	48,286	71.99%
63 Weiss	1	85,457	67,078	18,379	27.40%
64 Hensley	1	60,871	67,078	-6,207	-9.25%
65 Eddins	1	87,140	67,078	20,062	29.91%
66 Womble	1	57,707	67,078	-9,371	-13.97%
67 Oldham	1	56,667	67,078	-10,411	-15.52%
68 Walend	1	68,084	67,078	1,006	1.50%
69 Gulley	1	91,452	67,078	24,374	36.34%
70 Fitch	1	55,760	67,078	-11,318	-16.87%
71 Tolson	1	64,032	67,078	-3,046	-4.54%
72 Arnold	1	64,015	67,078	-3,063	-4.57%
73 Sexton	1	60,783	67,078	-6,295	-9.38%
74 Howard	1	69,536	67,078	2,458	3.66%
75 Warner	1	67,060	67,078	-18	-0.03%
76 Harrington	1	79,381	67,078	12,303	18.34%
77 Russell	1	69,801	67,078	2,723	4.06%
78 Fox	1	59,329	67,078	-7,749	-11.55%
79 Wainwright	1	56,426	67,078	-10,652	-15.88%
80 Grady	1	58,769	67,078	-8,309	-12.39%
81 Barnhart	1	92,137	67,078	25,059	37.36%
82 Barbee	1	66,062	67,078	-1,016	-1.51%
83 McCombs	1	68,556	67,078	1,478	2.20%
84 Decker	1	75,745	67,078	8,667	12.92%
85 Sutton	1	64,622	67,078	-2,456	-3.66%
86 Culpepper	1	63,762	67,078	-3,316	-4.94%
87 Bonner	1	56,612	67,078	-10,466	-15.60%
88 Esposito	1	72,367	67,078	5,289	7.89%
89 Jarrell / Jeffus	2	127,708	134,155	-6,447	-4.81%
90 Johnson	1	73,544	67,078	6,466	9.64%
91 Starnes	1	61,116	67,078	-5,962	-8.89%

2000 Census Populations

House District	Members	2000 Pop	Ideal Pop	Ideal +/-	+/- %
92 Capps	1	84,946	67,078	17,868	26.64%
93 Rayfield	1	61,063	67,078	-6,015	-8.97%
94 Dockham	1	66,526	67,078	-552	-0.82%
95 Daughtry	1	75,918	67,078	8,840	13.18%
96 Nye	1	73,509	67,078	6,431	9.59%
97 Bell	1	52,471	67,078	-14,607	-21.78%
98 Wright	1	62,335	67,078	-4,743	-7.07%

1990s Congressional Districts
Ideal versus Actual Populations based on 2000
Census Results

Congress	Members	2000 Pop	Ideal Pop	Ideal +/-	% +/-
1 Clayton	1	587,830	619,178	-31,348	-5.06%
2 Etheridge	1	730,266	619,178	111,088	17.94%
3 Jones	1	615,614	619,178	-3,564	-0.58%
4 Price	1	765,876	619,178	146,698	23.69%
5 Burr	1	637,158	619,178	17,980	2.90%
6 Coble	1	689,529	619,178	70,351	11.36%
7 McIntyre	1	690,054	619,178	70,876	11.45%
8 Hayes	1	661,112	619,178	41,934	6.77%
9 Myrick	1	693,042	619,178	73,864	11.93%
10 Ballenger	1	655,413	619,178	36,235	5.85%
11 Taylor	1	656,619	619,178	37,441	6.05%
12 Watt	1	666,800	619,178	47,622	7.69%
13 ??	1	0	619,178	-619,178	-100.00%

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF WAKE

04 CVS 0696

PENDER COUNTY, *et al.*

Plaintiffs,

v.

GARY O. BARTLETT, as Executive Director
of the State Board of Elections, *et al.*

Defendants.

NOTICE OF FILING

Defendants' respectfully file the following affidavits, attached hereto, in support of
 DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND
 FOR SUMMARY JUDGMENT:

- A. Affidavit of Representative Martha B. Alexander
- B. Affidavit of Representative Thomas E. Wright
- C. Affidavit of William R. Gilkeson, Jr.
- D. Affidavit of Gary O. Bartlett
- E. Affidavit of Frances Pinion
- F. Affidavit of Renee Lane Chesnut
- G. Affidavit of Milford Farrior
- H. Affidavit of Cindy Moore

Respectfully submitted, this the 21st day of June, 2004.

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966

PENDER COUNTY, *et al.*

Plaintiffs,)

v.)

GARY O. BARTLETT, as Executive Director
of the State Board of Elections, *et al.*

Defendants.)

**AFFIDAVIT OF REPRESENTATIVE
MARTHA B. ALEXANDER**

Representative Martha B. Alexander, being first sworn, deposes and says:

1. I am the duly elected Representative from House District 106 in Mecklenburg County and am serving my sixth term in the North Carolina House of Representatives. I was first elected in November, 1992 and began serving in 1993. I am a registered Democrat.
2. I was appointed by the Co-Speakers of the North Carolina House to serve as Co-Chair of the House Legislative Redistricting Committee on February 25, 2003. The Republican Co-Chair appointed at that same time was Representative Rick L. Eddins from Wake County.
3. Prior to the Special Session in November, 2003, when the 2003 House Plan was enacted, all black Representatives were consulted about the effect of the *Stephenson I* and *II* opinions and the redrawing of their legislative districts. This consultation was part of my effort to assure that the plan complied with the Voting Rights Act ("VRA"). Because all of the House minority members are Democrats, they each met separately with Speaker James B. Black and/or me to discuss their districts. Although the boundaries of some minority districts were established with a single redistricting meeting in which we looked at a proposed map of each district and the proposed district's demographics and election history, typically several meetings were held as the boundaries of the districts were discussed and modified in a back-and-forth process. This process continued

until most Representatives were reasonably satisfied and it was felt the individual districts and map as a whole met the requirements of state and federal law. I worked closely with the Legislative Black Caucus leadership and members to draw districts that reasonably maintain the opportunity of racial minorities to effectively exercise their right to vote and to elect representatives of their choice.

4. In drawing minority districts, compromises had to be struck in order to comply with §§ 2 and 5 of the Voting Rights Act and also the Whole County Provisions (“WCP”) of the North Carolina Constitution as interpreted by the Supreme Court of North Carolina in the *Stephenson* opinions. The Court’s opinions require a redistricting plan to comply with the VRA and that the VRA districts comply with the whole county provisions “to the maximum extent practicable.”

5. The 2003 House Plan includes ten majority - black total population (“BPOP”) districts and one majority-Native American total population (“NAPOP”) districts in counties covered by § 5 of the VRA. There are also two House districts with over 40% BPOP in § 5 counties. This plan received § 5 preclearance by the United States Department of Justice on March 30, 2004.

6. The 2003 House Plan also includes four majority-black (BPOP) and four over 40% BPOP House districts in areas of the state not covered by § 5, but subject to § 2 of the VRA. Among these districts is House District 18, which was drawn in Pender and New Hanover Counties in order to maintain the district as an effective black VRA district.

7. Past election results in North Carolina demonstrate that House districts with a BPOP of 41.54% and above or a black voting age population (“BVAP”) of 38.37% and above can provide an effective opportunity for the election of black candidates. See Attachment A. An important indicator of effective black voting strength we considered when drawing districts was the percentage of registered Democrats who are black. In past elections, districts with black Democratic registration

as low as 52.58% in District 18 and as high as 78.87% in District 60 have elected black Representatives. See Attachment B.

8. The ability of black voters to elect black candidates has also been shown to exist in congressional districts with less than a 50% BVAP. In 1998, under a plan drawn to satisfy the ruling of the three-judge federal court in *Cromartie* - - a judgment subsequently reversed by the United States Supreme Court - - the black population in District 1 was reduced to 50.27% BPOP and 43.54% BVAP, and in District 12 was reduced to 35.58% BPOP and 32.56% BVAP. Both black incumbents were re-elected. In the 2000 election, held under the legislature's 1997 Congressional Plan, black incumbents were again re-elected in District 1 (50.27% BPOP, 46.54% BVAP) and District 12 (46.67% BPOP, and 43.36% BVAP). In the new districts drawn after the 2000 Census, black incumbents continued to run successfully in the 2002 elections in District 1 (50.71% BPOP, 47.82% BVAP) and District 12 (45.02% BPOP, 45.56% BVAP).

9. In the trial court's 2002 Interim Plan, House District 18 was maintained as an effective black district with a BPOP of 47.52%, BVAP of 43.52% and 52.58% black Democratic registration. Representative Thomas E. Wright was re-elected under the Interim Plan. He has served six terms in the House of Representatives and was first elected to the House in the 1992 election, the same year I won my first election. However, the district as drawn by the court divided the three counties of New Hanover, Brunswick and Columbus and required a four-county group consisting of Pender, New Hanover, Brunswick and Columbus Counties. The state courts considered a similar configuration in the legislatively drawn 2002 Plan to be non-compact.

10. In drawing the 2003 House Plan, it was possible to maintain an effective black district by keeping District 18 in a two-county group consisting of New Hanover and Pender Counties. This

also allowed grouping Columbus and Brunswick Counties, thereby creating two additional two-county groups in place of a four-county group. The number of county splits and county line traverses was also reduced in the 2003 Plan as the district now divides only two counties and has one traverse. The black population, though somewhat reduced, remains at 42.89% BPOP, 39.36% BVAP, and 53.72% black registered Democrats, which past experience has shown is sufficient in North Carolina to provide an effective black voting district.

11. We found it was not possible to draw District 18 wholly within New Hanover County and to maintain an effective black voting district. If the district is drawn wholly within New Hanover, the BPOP drops below 36%, the BVAP below 32%, and black Democratic registration below 49%. To illustrate, see the two attached maps created drawing District 18 wholly within New Hanover County. One plan (Attachment C) splits no precincts, while the other plan (Attachment D) splits precincts to raise the black population percentages as high as possible. These percentages are below the levels that have in the past successfully provided black citizens in North Carolina an opportunity to elect their candidates of choice.


12. All of the statistics mentioned in this affidavit are available on the General Assembly's DistrictBuilder computer redistricting system.

13. In my discussions with the Legislative Black Caucus leadership and Representative Wright, it was clear that there were very strong feelings about the importance of maintaining District 18 as an effective black voting district. There was a serious concern about the possibility of a § 2 VRA challenge to the plan. Representative Wright, like every other legislator, would have preferred to keep the configuration of his district at that time unchanged. He was concerned about the black voters in Brunswick and Columbus Counties who had supported him in all of his elections since

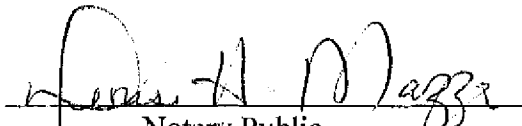
1992. Although no portion of Pender County was included in the court-drawn Interim Plan under which the 2002 elections were held, Representative Wright had represented a portion of Pender County (former District 98) from his first election in 1992 until the 2002 election. Representative Wright did vote for the 2003 Plan.

14. Based on the information available to me and other legislators, it was felt that we had an obligation to find a way to maintain an effective black voting district in the area in order to comply with the Voting Rights Act, but we also needed to adjust the district as much as possible to comply with the WCP requirements set out by the Court. As Co-Chair of the House Legislative Redistricting Committee, I think the 2003 Plan constitutes the best possible compromise between the requirements of the Voting Rights Act and the Court's instructions regarding the WCP in its *Stephenson* opinions.

This the 9 day of June, 2004.


Representative Martha B. Alexander

Sworn to and subscribed before me this
9th day of June, 2004.


Notary Public

My commission expires: 1-31-06

Black Population Percentages

1992 HOUSE PLAN

[illegible]

INTERIM HOUSE PLAN

[illegible]

* Shading indicates Districts with a history of electing Black Representatives
** Population percentages based on 2000 Decennial Census

0 051

Black Population Percentages

1992 HOUSE PLAN

TOTAL BLACK POP		BLACK VOTING AGE POP	
Dist.	%Black	Dist.	%Black
42	19.91%	10	17.76%
80	19.06%	80	17.66%
10	18.90%	42	17.04%
34	18.68%	34	16.69%
20	17.89%	20	16.42%
15	17.63%	15	16.28%
90	17.62%	90	16.02%
3	17.49%	3	15.94%
37	17.23%	37	15.71%
48	16.37%	85	14.64%
31	15.97%	48	14.64%
95	15.33%	95	14.32%
73	15.32%	73	14.29%
85	15.25%	31	14.12%
4	15.14%	63	13.91%
63	14.78%	24	13.67%
24	14.47%	4	13.64%
76	14.00%	76	12.61%
14	13.89%	14	12.14%
61	11.92%	61	10.87%
92	11.42%	92	10.64%
30	11.36%	30	10.58%
39	11.20%	29	10.41%
93	11.06%	62	10.22%
29	11.02%	93	10.06%
62	10.45%	39	9.66%
55	10.11%	47	9.04%
27	9.83%	69	8.95%
69	9.80%	55	8.81%
82	9.56%	82	8.78%
47	9.40%	84	8.69%
84	9.34%	27	8.69%
57	8.87%	88	8.17%
88	8.80%	57	8.09%
43	8.12%	43	7.53%
51	8.11%	51	7.18%
13	7.76%	13	6.60%
45	6.80%	45	6.11%
46	6.33%	46	5.53%
68	6.28%	83	5.47%
83	5.88%	38	5.35%
38	5.80%	68	5.31%
81	5.56%	74	5.23%
74	5.45%	81	5.16%
91	5.38%	91	4.85%
94	4.41%	41	4.09%

INTERIM HOUSE PLAN

TOTAL BLACK POP		BLACK VOTING AGE POP	
Dist.	% Black	Dist.	% Black
14	23.48%	10	21.21%
9	22.61%	111	21.19%
10	22.59%	9	20.43%
109	22.30%	109	19.54%
2	20.58%	2	19.08%
70	19.87%	51	17.74%
20	19.61%	59	17.66%
53	19.21%	70	17.61%
51	18.86%	16	17.46%
59	18.83%	20	17.43%
96	18.83%	40	17.38%
39	18.81%	53	17.34%
16	18.59%	96	17.22%
40	18.47%	39	17.17%
62	17.24%	62	16.39%
81	16.54%	81	15.32%
52	15.95%	54	14.92%
3	15.60%	15	14.58%
15	15.59%	3	14.29%
54	15.35%	28	14.22%
28	15.01%	52	14.11%
26	14.72%	47	14.05%
47	14.55%	26	13.38%
61	13.69%	37	13.34%
66	13.69%	66	12.89%
37	13.68%	61	12.50%
112	13.04%	112	11.91%
75	12.32%	34	11.41%
34	12.17%	75	11.40%
74	12.04%	74	11.24%
114	11.92%	56	10.86%
110	11.66%	110	10.71%
56	11.57%	114	10.43%
93	10.63%	93	9.33%
88	10.38%	88	9.23%
98	9.66%	98	9.02%
64	8.63%	86	8.38%
17	8.58%	64	8.20%
35	8.57%	35	8.06%
86	8.54%	57	8.02%
94	8.52%	94	7.84%
67	8.43%	115	7.78%
57	8.38%	67	7.77%
115	8.34%	103	7.72%
103	8.29%	17	7.54%
95	7.72%	95	7.18%

* Shading indicates Districts with a history of electing Black Representatives

** Population percentages based on 2000 Decennial Census

0 052

Black Population Percentages

1992 HOUSE PLAN

TOTAL BLACK POP	
Dist.	%Black
41	4.33%
49	3.32%
40	3.27%
50	1.74%
52	1.42%
53	1.38%

BLACK VOTING AGE POP	
Dist.	%Black
94	4.04%
49	3.30%
40	3.05%
50	1.44%
52	1.41%
53	1.14%

INTERIM HOUSE PLAN

TOTAL BLACK POP	
Dist.	% Black
89	7.36%
50	7.07%
13	6.63%
97	6.44%
108	6.23%
73	5.73%
105	5.66%
104	5.66%
76	5.51%
19	5.49%
79	5.09%
84	4.88%
91	4.85%
36	4.81%
92	4.61%
87	4.20%
83	4.16%
117	3.85%
80	3.78%
113	3.50%
90	3.33%
85	2.99%
78	2.90%
116	1.97%
82	1.26%
119	1.25%
118	1.23%
120	1.19%

BLACK VOTING AGE POP	
Dist.	% Black
50	7.04%
89	6.83%
13	6.03%
97	5.91%
108	5.89%
73	5.43%
76	5.21%
105	5.17%
104	5.09%
19	5.07%
79	5.00%
36	4.80%
91	4.74%
84	4.70%
92	4.50%
83	4.02%
87	3.91%
80	3.55%
117	3.44%
90	3.15%
85	3.11%
113	3.07%
78	2.91%
116	1.77%
119	1.32%
82	1.28%
118	1.23%
120	1.05%

* Shading indicates Districts with a history of electing Black Representatives

** Population percentages based on 2000 Decennial Census

BLACK DEMOCRATIC VOTER REGISTRATION

1992 HOUSE PLAN

BLACK VOTER REGISTRATION (DEMOCRAT)	
Dist.	% Black
8	66.22%
78	61.28%
58	57.20%
54	53.25%
56	49.89%
36	49.89%
6	47.90%
18	47.17%
12	45.06%
35	43.75%
89	43.75%
11	41.59%
71	40.79%
33	40.44%
2	38.15%
22	38.05%
1	37.55%
65	37.47%
32	37.32%
25	35.78%
72	35.25%
64	35.18%
9	35.12%
75	34.53%
90	33.63%
96	33.41%
15	32.95%
31	32.43%
34	32.24%
10	31.51%

INTERIM HOUSE PLAN

BLACK VOTER REGISTRATION (DEMOCRAT)	
Dist.	% Black
102	67.77%
38	63.97%
8	61.20%
27	60.03%
99	58.48%
100	50.59%
44	47.69%
14	45.11%
106	44.83%
11	44.54%
63	43.56%
77	42.97%
6	42.61%
23	42.33%
65	41.90%
22	41.34%
69	38.57%
1	38.26%
4	37.60%
49	37.47%
41	36.87%
45	36.29%
32	36.11%
25	36.07%
9	35.05%
62	34.87%
16	34.30%
39	33.89%

* Shading indicates Districts with a history of electing Black Representatives

**** Registration percentages based on 2003 registration data**

1992 HOUSE PLAN

BLACK VOTER REGISTRATION (DEMOCRAT)	
77	31.34%
44	31.01%
19	30.87%
42	30.59%
16	30.49%
37	28.50%
80	28.45%
3	28.00%
20	27.43%
86	27.27%
76	26.42%
63	26.03%
95	25.27%
30	25.14%
73	24.02%
69	23.51%
14	23.46%
48	23.36%
92	23.20%
4	22.93%
29	20.90%
62	20.63%
84	19.93%
24	19.41%
27	19.38%
88	19.38%
93	19.36%
55	18.24%
38	17.93%
57	17.46%
43	16.33%
82	16.22%
39	16.02%
61	15.22%
74	14.34%
47	13.99%
85	13.49%
45	13.40%
46	13.36%
81	12.93%
13	12.76%
83	11.54%
91	11.45%
51	10.84%
94	10.77%
41	9.49%
68	9.29%

INTERIM HOUSE PLAN

BLACK VOTER REGISTRATION (DEMOCRAT)	
10	33.32%
30	33.25%
52	33.18%
111	32.73%
70	32.64%
68	32.37%
55	32.08%
109	32.06%
40	31.88%
96	30.87%
53	29.88%
46	29.83%
81	28.87%
59	28.34%
3	28.22%
51	28.13%
37	27.07%
20	27.02%
2	26.49%
74	26.31%
28	25.83%
61	25.38%
98	25.26%
26	25.26%
75	24.31%
15	23.77%
66	22.77%
54	22.63%
103	21.93%
110	21.63%
88	21.18%
67	20.21%
93	19.08%
94	18.76%
112	18.74%
34	18.18%
57	17.53%
56	16.11%
50	15.89%
95	15.82%
64	15.55%
114	15.23%
89	15.21%
17	14.70%
73	14.55%
105	13.80%
79	13.72%

* Shading indicates Districts with a history of electing Black Representatives

** Registration percentages based on 2003 registration data

BLACK DEMOCRATIC VOTER REGISTRATION

1992 HOUSE PLAN

BLACK VOTER REGISTRATION (DEMOCRAT)	
40	5.43%
49	4.41%
50	3.66%
52	1.55%
53	1.48%

INTERIM HOUSE PLAN

BLACK VOTER REGISTRATION (DEMOCRAT)	
47	13.49%
35	13.41%
86	13.34%
92	12.11%
115	12.08%
108	12.06%
84	11.74%
97	11.59%
104	11.41%
76	10.85%
36	10.65%
91	10.48%
13	10.47%
19	9.63%
83	9.58%
80	9.31%
87	8.84%
113	7.69%
117	7.64%
78	7.31%
85	5.04%
90	4.94%
116	2.47%
82	2.16%
118	1.54%
119	1.49%
120	1.40%

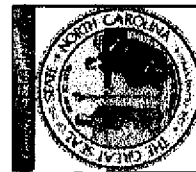
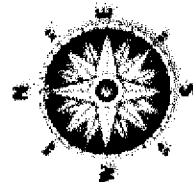
* Shading indicates Districts with a history of electing Black Representatives

** Registration percentages based on 2003 registration data

District Statistics		
Plan: Whole Precincts - District 18		
Ideal Population :	67,078	
Actual Population :	64,379	
Difference :	-2,699	
% Difference	-4.02%	
Total Population	64,379	100.00%
White (single race)	39,647	61.58%
Black (single race)	22,393	34.78%
Black (total)	22,763	35.36%
Native American (single race)	301	0.47%
Asian/Pacific Islander (single race)	459	0.71%
Other (single race)	750	1.16%
Multi Race	829	1.29%
Hispanic	1,769	2.75%
Non-Hispanic	62,610	97.25%
Voting Age Total Population	49,860	100.00%
White (single race)	32,782	65.75%
Black (single race)	15,478	31.04%
Black (total)	15,612	31.31%
Native American (single race)	239	0.48%
Voter Registration Total	41,831	100.00%
White	29,134	69.65%
Black	11,946	28.56%
Native American	92	0.22%
Other Race/Undesignated Race	659	1.58%
All Democrats	21,222	50.73%
All Republicans	12,102	28.93%
All Libertarians	223	0.53%
All Unaffiliated	8,284	19.80%
Black Democrats	10,214	48.13%
00 Governor Dem - Easley	13,025	66.88%
00 Governor Rep - Vinroot	5,925	30.43%
00 Chief Justice Dem - Frye	11,089	59.40%
00 Chief Justice Rep - Lake	7,578	40.60%
00 State Auditor Dem - Campbell	11,237	61.69%
00 State Auditor Rep - Merritt	6,978	38.31%
02 NC Supreme Court Dem - Butterfield	8,268	59.32%
02 NC Supreme Court Rep - Brady	5,671	40.68%
02 US Senate Dem - Bowles	8,600	57.06%
02 US Senate Rep - Dole	6,199	41.13%

District Statistics		
Plan: Whole Precincts - District 16		
Ideal Population :	67,078	
Actual Population :	67,443	
Difference :	365	
% Difference	0.54%	
Total Population	67,443	100.00%
White (single race)	54,550	80.88%
Black (single race)	10,798	16.01%
Black (total)	10,985	16.29%
Native American (single race)	287	0.43%
Asian/Pacific Islander (single race)	288	0.43%
Other (single race)	929	1.38%
Multi Race	591	0.88%
Hispanic	1,837	2.72%
Non-Hispanic	65,606	97.28%
Voting Age Total Population	52,909	100.00%
White (single race)	43,595	82.40%
Black (single race)	7,930	14.99%
Black (total)	7,905	14.94%
Native American (single race)	205	0.39%
Voter Registration Total	46,131	100.00%
White	39,307	85.21%
Black	6,235	13.52%
Native American	58	0.13%
Other Race/Undesignated Race	531	1.15%
All Democrats	20,106	43.58%
All Republicans	17,930	38.87%
All Libertarians	143	0.31%
All Unaffiliated	7,952	17.24%
Black Democrats	5,621	27.96%
00 Governor Dem - Easley	13,095	53.04%
00 Governor Rep - Vinroot	11,162	45.21%
00 Chief Justice Dem - Frye	10,201	43.47%
00 Chief Justice Rep - Lake	13,264	56.53%
00 State Auditor Dem - Campbell	10,733	47.01%
00 State Auditor Rep - Merritt	12,096	52.99%
02 NC Supreme Court Dem - Butterfield	8,310	43.70%
02 NC Supreme Court Rep - Brady	10,706	56.30%
02 US Senate Dem - Bowles	8,632	41.58%
02 US Senate Rep - Dole	11,815	56.92%

District Statistics		
Plan: Whole Precincts - District 19		
Ideal Population :	67,078	
Actual Population :	69,567	
Difference :	2,489	
% Difference	3.71%	
Total Population	69,567	100.00%
White (single race)	63,783	91.69%
Black (single race)	3,701	5.32%
Black (total)	3,882	5.58%
Native American (single race)	240	0.34%
Asian/Pacific Islander (single race)	770	1.11%
Other (single race)	421	0.61%
Multi Race	652	0.94%
Hispanic	1,166	1.68%
Non-Hispanic	68,401	98.32%
Voting Age Total Population	55,501	100.00%
White (single race)	51,394	92.60%
Black (single race)	2,659	4.79%
Black (total)	2,731	4.92%
Native American (single race)	194	0.35%
Voter Registration Total	51,819	100.00%
White	48,912	94.39%
Black	2,016	3.89%
Native American	99	0.19%
Other Race/Undesignated Race	792	1.53%
All Democrats	18,165	35.05%
All Republicans	22,308	43.05%
All Libertarians	204	0.39%
All Unaffiliated	11,142	21.50%
Black Democrats	1,655	9.11%
00 Governor Dem - Easley	14,057	52.49%
00 Governor Rep - Vinroot	12,118	45.25%
00 Chief Justice Dem - Frye	10,042	39.77%
00 Chief Justice Rep - Lake	15,207	60.23%
00 State Auditor Dem - Campbell	10,643	43.43%
00 State Auditor Rep - Merritt	13,862	56.57%
02 NC Supreme Court Dem - Butterfield	8,041	39.96%
02 NC Supreme Court Rep - Brady	12,080	60.04%
02 US Senate Dem - Bowles	8,607	38.43%
02 US Senate Rep - Dole	13,428	59.96%



Plan Title: WHOLE PRECINCTS

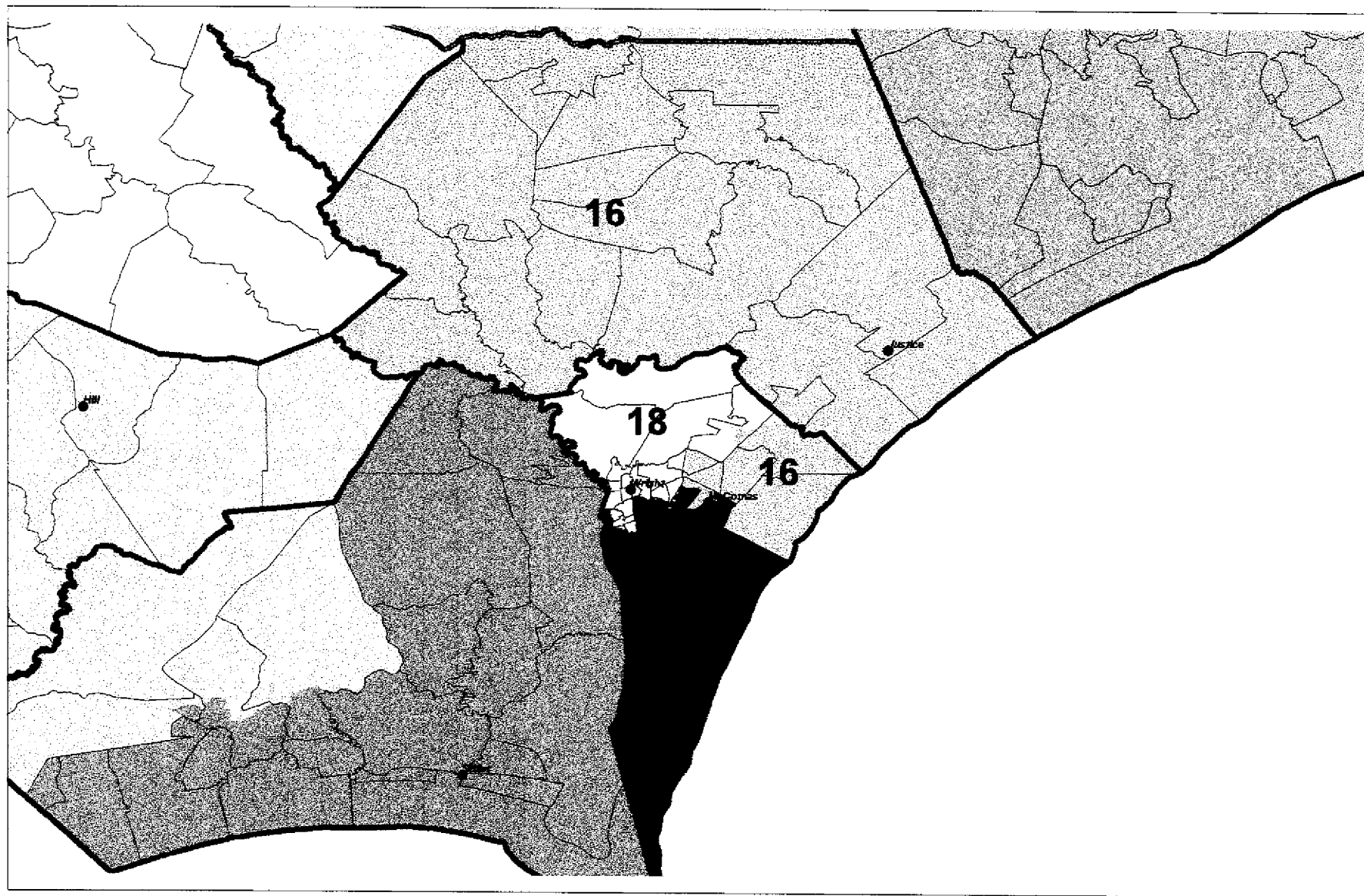
Whole Precincts | 2003 Database | 06/08/04 | 05:04 PM

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District Statistics		
Plan: Split Precincts - District 18		
Ideal Population :	67,078	
Actual Population :	63,744	
Difference :	-3,334	
% Difference	-4.97%	
Total Population	63,744	100.00%
White (single race)	38,799	60.87%
Black (single race)	22,597	35.45%
Black (total)	22,968	36.03%
Native American (single race)	295	0.46%
Asian/Pacific Islander (single race)	451	0.71%
Other (single race)	759	1.19%
Multi Race	843	1.32%
Hispanic	1,795	2.82%
Non-Hispanic	61,949	97.18%
Voting Age Total Population	49,345	100.00%
White (single race)	32,108	65.07%
Black (single race)	15,624	31.66%
Black (total)	15,762	31.94%
Native American (single race)	239	0.48%
Voter Registration Total	41,440	100.00%
White	28,871	69.67%
Black	11,845	28.58%
Native American	86	0.21%
Other Race/Undesignated Race	638	1.54%
All Democrats	21,036	50.76%
All Republicans	11,993	28.94%
All Libertarians	215	0.52%
All Unaffiliated	8,196	19.78%
Black Democrats	10,133	48.17%
00 Governor Dem - Easley	12,903	66.79%
00 Governor Rep - Vinroot	5,899	30.54%
00 Chief Justice Dem - Frye	10,992	59.36%
00 Chief Justice Rep - Lake	7,525	40.64%
00 State Auditor Dem - Campbell	11,138	61.62%
00 State Auditor Rep - Merritt	6,936	38.38%
02 NC Supreme Court Dem - Butterfield	8,199	59.27%
02 NC Supreme Court Rep - Brady	5,634	40.73%
02 US Senate Dem - Bowles	8,527	57.01%
02 US Senate Rep - Dole	6,162	41.20%

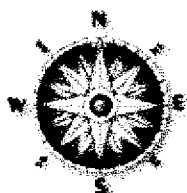
District Statistics		
Plan: Split Precincts - District 16		
Ideal Population :	67,078	
Actual Population :	67,886	
Difference :	808	
% Difference	1.20%	
Total Population	67,886	100.00%
White (single race)	55,066	81.12%
Black (single race)	10,708	15.77%
Black (total)	10,896	16.05%
Native American (single race)	291	0.43%
Asian/Pacific Islander (single race)	294	0.43%
Other (single race)	934	1.38%
Multi Race	593	0.87%
Hispanic	1,842	2.71%
Non-Hispanic	66,044	97.29%
Voting Age Total Population	53,224	100.00%
White (single race)	43,964	82.60%
Black (single race)	7,867	14.78%
Black (total)	7,942	14.92%
Native American (single race)	206	0.39%
Voter Registration Total	46,392	100.00%
White	39,493	85.13%
Black	6,302	13.58%
Native American	58	0.13%
Other Race/Undesignated Race	539	1.16%
All Democrats	20,211	43.57%
All Republicans	18,028	38.86%
All Libertarians	144	0.31%
All Unaffiliated	8,009	17.26%
Black Democrats	5,677	28.09%
00 Governor Dem - Easley	13,162	53.10%
00 Governor Rep - Vinroot	11,188	45.14%
00 Chief Justice Dem - Frye	10,255	43.53%
00 Chief Justice Rep - Lake	13,303	56.47%
00 State Auditor Dem - Campbell	10,787	47.07%
00 State Auditor Rep - Merritt	12,130	52.93%
02 NC Supreme Court Dem - Butterfield	8,352	43.74%
02 NC Supreme Court Rep - Brady	10,741	56.26%
02 US Senate Dem - Bowles	8,678	41.64%
02 US Senate Rep - Dole	11,849	56.86%

District Statistics		
Plan: Split Precincts - District 19		
Ideal Population :	67,078	
Actual Population :	69,759	
Difference :	2,681	
% Difference	4.00%	
Total Population	69,759	100.00%
White (single race)	64,115	91.91%
Black (single race)	3,587	5.14%
Black (total)	3,766	5.40%
Native American (single race)	242	0.35%
Asian/Pacific Islander (single race)	772	1.11%
Other (single race)	407	0.58%
Multi Race	636	0.91%
Hispanic	1,135	1.63%
Non-Hispanic	68,624	98.37%
Voting Age Total Population	55,701	100.00%
White (single race)	51,699	92.82%
Black (single race)	2,576	4.62%
Black (total)	2,644	4.75%
Native American (single race)	193	0.35%
Voter Registration Total	51,949	100.00%
White	48,989	94.30%
Black	2,050	3.95%
Native American	105	0.20%
Other Race/Undesignated Race	805	1.54%
All Democrats	18,246	35.12%
All Republicans	22,319	42.96%
All Libertarians	211	0.41%
All Unaffiliated	11,173	21.51%
Black Democrats	1,680	9.21%
00 Governor Dem - Easley	14,112	52.58%
00 Governor Rep - Vinroot	12,118	45.15%
00 Chief Justice Dem - Frye	10,085	39.85%
00 Chief Justice Rep - Lake	15,221	60.15%
00 State Auditor Dem - Campbell	10,688	43.52%
00 State Auditor Rep - Merritt	13,870	56.48%
02 NC Supreme Court Dem - Butterfield	8,068	40.04%
02 NC Supreme Court Rep - Brady	12,082	59.96%
02 US Senate Dem - Bowles	8,634	38.49%
02 US Senate Rep - Dole	13,431	59.88%



0 063

ATTACHMENT
D



Plan Title: SPLIT PRECINCTS



STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966

PENDER COUNTY, *et al.*

Plaintiffs,)

v.)

GARY O. BARTLETT, as Executive Director
of the State Board of Elections, *et al.*

Defendants.)

**AFFIDAVIT OF REPRESENTATIVE
THOMAS E. WRIGHT**

Representative Thomas E. Wright, being first sworn, deposes and says:

1. I am the duly elected Representative from House District 18 in New Hanover and Pender Counties. I am a registered Democrat. I was born, raised and educated in Wilmington and am serving my sixth term in the North Carolina House of Representatives. At the current time I am a Chairman of the House Appropriations Committee and a member of the House Health, Insurance, Public Utilities and Transportation Committees.

2. As I have gained seniority in my years in the legislature, I have served in leadership roles of increasing significance in the House. In 1999, I was Chairman of the House Appropriations Subcommittee on Capital and several other House Committees. I was also Chairman of the Legislative Black Caucus for the 1999-2000 term. A list of my committee assignments from 1993 to the present is attached as Attachment A. I have also served on numerous boards, committees and commissions, including the Joint Legislative Commission on Governmental Operations on which I have served continuously since 1999. Other committees of particular note on which I serve are the Cancer Coordination and Control Advisory Committee (since 1994); the Committee on Employee Hospital and Medical Benefits (since 1999); and the Minority Health Advisory Council (since 1993). A list of my appointments from 1993 to the present is attached as Attachment B.

3. I was first elected to the North Carolina House in 1992 from House District 98, which was drawn by the legislature in the 1992 Plan to create a majority-minority district in the southeastern corner of the State. District 98 was created after the United States Department of Justice raised objections during their § 5 Voting Rights Act review of the 1991 House Plan based on the legislature's failure to draw single-member districts with minority populations sufficient to enable minority voters in the southeastern counties to elect candidates of their choice despite requests made at hearings and committees meetings for additional minority districts in this area. District 98 in the 1992 Plan included portions of Columbus, Brunswick, New Hanover and Pender Counties.

4. I am now serving my sixth term in the North Carolina House, having won elections in District 98 in 1992, 1994, 1996, 1998 and 2000. I was also re-elected in 2002 after the district was redrawn by the trial court as District 18 in the Interim Plan. The Interim Plan drew District 18 along the northern portions of Columbus, Brunswick and New Hanover Counties, but did not extend the district into Pender County. My personal experience with politics in the southeastern counties and New Hanover area has convinced me that it is necessary to maintain an effective minority district if black voters are to have the opportunity to elect their candidate of choice. I would never have had the opportunity in the first place to serve as a member of the North Carolina General Assembly and to demonstrate to the voters my ability to serve all the citizens in the area if the United States Department of Justice had not required that District 98 be created after the 1990 Decennial Census.

5. In the 1992 Plan based on the 1990 Decennial Census, District 98 was majority-black with a total black population ("BPOP") of 59.26% and a black voting age population ("BVAP") of 55.72%. Based on the 2000 Decennial Census, the district's BPOP was 50.70%, the BVAP was

47.07%, and the black Democratic voter registration ("BDR") was 53.37%. That district was drawn so that it stretched across four counties. I am aware that with recent federal and state court decisions the General Assembly has been required to draw districts to include fewer counties and to make the boundaries more regular in shape. The 2002 Sutton 5 House Plan drew the new District 18 so it included portions of Columbus, Brunswick and New Hanover counties. It had a BPOP of 44.59%, BVAP of 40.73% and BDR of 51.35%. The Interim Plan drawn by the court was similar in shape and geography, although it raised the black population percentages slightly to a BPOP of 47.52%, BVAP of 43.72%, and BDR of 52.58%. I understand the courts considered the configuration of District 18 in the 2002 Plan, which crossed three counties, to be non-compact. In the 2003 Plan, District 18 has a BPOP of 42.89%, BVAP of 39.36% and BDR of 53.72%.

6. When the General Assembly was required to redraw its legislative districts in 2003, I had several discussions with Speaker James Black and Representative Martha Alexander, the Democratic Co-Chair of the House Legislative Redistricting Committee, about preserving an effective minority district for the black voters in and around the New Hanover County area. I was concerned that the percentage of minorities in the district would drop to a point where the black voters in the area would no longer be able to elect their candidate of choice. I am especially concerned that minorities in Columbus and Brunswick Counties feel disenfranchised by the 2003 Plan in which the effectiveness of their vote and their influence has been diminished. As an incumbent, I have always worked hard to cultivate multi-racial and bi-partisan relationships and to serve all the citizens in the area regardless of their race, so my concern is not so much for my own election chances but for whoever will come after me. It is important for the black citizens in the southeastern corner of the State around my home county of New Hanover to have a fair opportunity to elect a candidate of their choice to serve them in the General Assembly.

7. Because I was re-elected by the voters of Columbus and Brunswick Counties to serve six terms in the House, it is difficult for me to see District 18 drawn so it no longer includes portions of these counties in the 2003 Plan. I am of course delighted to have the opportunity to again represent voters from Pender County which is included in District 18 in the 2003 Plan. The reasons expressed to me for drawing District 18 solely within Pender and New Hanover Counties were to achieve greater compliance with the requirements of the *Stephenson* opinion, while at the same time attempting to maintain an effective minority district for black voters.

8. The demographic trends I see in the southeastern area of the State where I have run all my campaigns include a decreasing minority population and an increasing Republican and unaffiliated voter registration. For this reason Democratic and Republican races are very competitive. These trends make it increasingly important for me to continue my efforts to seek multi-racial and bi-partisan support from the voters.

9. I have never considered statewide election data in analyzing my district. Re-aggregations of statewide general election data - - such as the 2000 Justice Henry Frye and State Auditor Ralph Campbell elections, and the 2002 Justice G. K. Butterfield election - - are not good predictors of elections at the local level, such as a House district. That data comes from low profile races and tends to reflect partisan trends based on straight ticket voting. The total black population, black voting age population and black democratic voter registration of a legislative district must all be at levels that allow minorities to have an equal opportunity to elect minority candidates of choice.

10. Because of demographic trends and voting patterns, there is currently no minority serving on the current New Hanover Board of County Commissioners (which is elected at large) or the Pender Board of County Commissioners (in which members reside in districts but are elected at large). In the past, one minority, Jonathan Barfield, Sr., a black Democrat, won election to the

New Hanover Board. He served three terms and left office in 1992. In Pender County several black Democrats served on the Board at different times until 2000, when Cleveland Simpson resigned to take a job in the Department of Commerce and his appointed successor, James Faison, Jr., lost in the 2000 election.

11. Based on my knowledge of New Hanover County and various maps I have seen, it is not possible to draw a House district that keeps Pender County whole or that is wholly within New Hanover County which will have a minority population sufficient to allow minority voters to elect their candidate of choice. The best map for minorities offered by Carl Thurman, III, which keeps Pender County whole and reaches into New Hanover County and Wilmington, joins the heart of my district with Representative Carolyn Justice's district and is significantly lower than the 2003 Plan in BPOP (38.77 vs. 42.89) and BVAP (35.33 vs. 39.36). It is slightly lower in BDR (52.76 vs. 53.72). That plan also would pit the incumbent white Republican against the incumbent black Democrat. The black population numbers in District 18 as now drawn show that the black democratic registration numbers for the district in the 2003 Plan can be meaningfully improved before the election with voter registration efforts. For this reason District 18 in the 2003 Plan provides an equal opportunity for black voters to elect their candidate of choice in the primary and general election, while Thurman's proposal would appear to significantly reduce my chances for re-election even as an incumbent and clearly creates a barrier for any other black candidate to compete successfully. Because an effective minority district can be drawn by dividing one or more counties in the area, I believe that the legislature is required by the Voting Rights Act to continue to draw a district which contains a black population sufficient to provide an equal opportunity for black voters to elect a Representative of their choice.

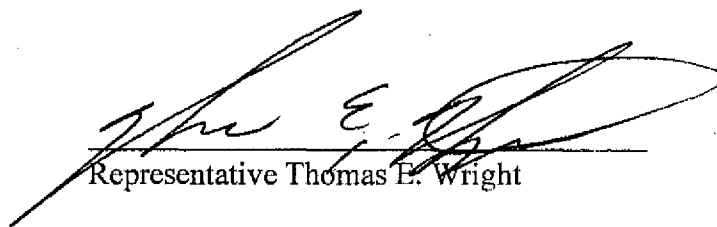
12. During the 2003 redistricting process, the Legislative Black Caucus consulted independently with experienced voting rights attorneys regarding the proposed 2003 plan. The Caucus wanted to assure that the plan fully complied with §§ 2 and 5 of the Voting Rights Act in order to provide an equal opportunity to black voters to effectively exercise their right to vote. Although there were concerns about several of the minority districts in the plan, including District 18, the Caucus did decide to support the 2003 Plan, primarily because it appeared to satisfy all technical legal requirements and overall appeared to be in the best interests of minority voters statewide. With two or three exceptions, all of the black Representatives voted for the 2003 Plan when it came up for vote on the House floor. I also voted for the plan.

13. Based on my political experience, I do not think that Pender County and its citizens will be harmed by being included in Districts 16 and 18 under the 2003 Plan. The county will have the advantage of two Representatives working on their behalf in the General Assembly. Assuming the current incumbents are re-elected, Pender County also would have bi-partisan representation. Although I have resided in New Hanover County throughout my years as an elected Representative, I have always represented the interests of all the voters in my district, regardless of their county of residence. This is true of all legislators who are elected from districts which include all or portions of counties where they do not personally reside. I particularly remember the aftermath of Hurricane Floyd in September, 1999, when Pender County suffered terrible flooding. I received numerous calls from Pender County seeking assistance, even from areas not in my district. Because of my 20- year background in Emergency Medical Services, I was reviewing the situation reports which were being faxed daily by the Office of Emergency Management and which did not list Pender County or corroborate all the telephone calls I was receiving expressing a need for assistance. When I went to Pender County, I found the water still rising and many areas impassible. People in northeastern

Pender County along the Cape Fear River were packing their possessions in john-boats and small row boats to escape the flooding. Highways 53 and 210 were impassable. I talked with the County Commissioners and worked to get this information to the Governor and his administration so that Pender County was added to the list of declared disaster areas and the Office of Emergency Management added the County to its situation reports so that much needed aid could reach the County.

14. The delay of the primary from May to July has already adversely affected the 2004 elections. As an incumbent, the primary is usually over before the General Assembly convenes for the short session. I cannot raise money and campaign effectively in my district while the legislature is working on the budget. The threatened disruption of the 2004 election process which began in earnest in April with candidate filing, makes it difficult to cultivate relationships with voters in my new district. It also negatively impacts voter registration efforts and candidates' ability to educate the voters on issues, especially when there is a threat that election districts could change again at this late date. It is difficult to make decisions about spending campaign funds to get my message out to the voters when it is uncertain when the election will be held and in what district. There is a lot of time, hard work and organizational effort that goes into running an effective campaign, none of which can be accomplished overnight. Candidates and voters alike lose out when the election process is disrupted. Voter turnout is reduced when there is confusion about election dates. If the Court should require new districts to be drawn in the Pender, New Hanover, Columbus and Brunswick areas so that legislative primary elections are held separate from the other primaries, voter turnout would be drastically reduced and voter confusion would be dramatically increased. These are not good conditions for something as important as the election of Representatives to the North Carolina General Assembly.

This the 17th day of June, 2004.


Representative Thomas E. Wright

Sworn to and subscribed before me this

17th day of June, 2004.

Donna C. Shelley
Notary Public

My commission expires: 01-27-2008

COMMITTEE ASSIGNMENTS-(FROM 1993)

1993

HOUSE OF REPRESENTATIVES COMMITTEE ASSIGNMENTS BY MEMBER

WRIGHT, THOMAS E.

Business and Labor - Subcommittee on Labor Relations and Employment;
Children, Youth and Families; Education - Subcommittee on Preschool,
Elementary and Secondary Education; Finance; Health and Human Services
- Subcommittee on Human Services.

COMMITTEE ASSIGNMENTS BY MEMBER 1995 HOUSE OF REPRESENTATIVES

WRIGHT, THOMAS E.

Education - Subcommittee on Preschool, Elementary and Secondary
Education; Finance; Health and Environment; State Government -
Subcommittee on State Parks, Facilities and Property, Ranking Minority
Member.

COMMITTEE ASSIGNMENTS BY MEMBER 1997 HOUSE OF REPRESENTATIVES

WRIGHT, THOMAS E.

Commerce; Commerce - Subcommittee on Travel and Tourism, Ranking Minority
Member; Ethics; Finance; Insurance; Insurance - Subcommittee on Health; State
Government, Ranking Minority Member; State Government - Subcommittee on State
Parks, Facilities and Property.

COMMITTEE ASSIGNMENTS BY MEMBER 1999 HOUSE OF REPRESENTATIVES

WRIGHT, THOMAS E.

Appropriations; Appropriations Subcommittee on Capital, **Chair**; Economic Growth
and Community Development; Ethics; Finance; Health, **Chair**; Insurance; Rules,
Calendar, and Operations of the House; Select Committee on Health Care Delivery;
State Parks and Properties; Travel and Tourism, **Vice Chair**.

COMMITTEE ASSIGNMENTS BY MEMBER 2001 HOUSE OF REPRESENTATIVES

WRIGHT, THOMAS E.

Appropriations; Appropriations Subcommittee on Capital, **Chair**; Appropriations Subcommittee on Health and Human Services; Congressional Redistricting, **Senior Chair**; Health, **Chair**.

**COMMITTEE ASSIGNMENTS BY MEMBER
2003 HOUSE OF REPRESENTATIVES**

WRIGHT, THOMAS E.

Appropriations, **Chair**; Health; Insurance; Public Utilities; Transportation.

North Carolina Legislative Black Caucus-(Chair)--(1999-2000)

North Carolina General Assembly

Boards, Committees and Commissions Information System

Search Criteria = (Name Like *rep*wright*thomas*) AND (dEndingTerm >= 02-01-1993)

Appointee Report

May 06 , 2004

Rep. Wright, Thomas E. 'Tom'

Contact/Business Address:

NC House of Representatives

300 N. Salisbury Street, Room 528

Raleigh NC 27603-5925

Tel/FAX/Email: 9197335754 910-343-3339

Residence Address:

P.O. Box 1654

322 South 17th Street

Wilmington NC 28401

9103505921

1898 Wilmington Race Riot Commission

Authority: SL2000-138 sec. 17.1(a)

Expiration Date: 12/31/2004

Subject to GS 120-121:

N

Appointment Date: 02/13/2002

Term Start Date: 02/13/2002

Term End Date: 12/31/2004

Cancer Coordination and Control Advisory Committee

Authority: G.S. 130A-33.50; SL93-321

Expiration Date: 12/31/9999

Subject to GS 120-121:

N

Appointment Date: 01/05/1994

Term Start Date: 01/05/1994

Term End Date: 06/30/1999

Expire Date: 6/30/1999

Expire Reason: Term expired

Cancer Coordination and Control Advisory Committee

Authority: G.S. 130A-33.50; SL93-321

Expiration Date: 12/31/9999

Subject to GS 120-121:

N

Appointment Date: 07/07/1999

Term Start Date: 07/01/1999

Term End Date: 06/30/2003

Commission for a Competitive North Carolina

Authority: EO 52(1994)

Expiration Date: 12/31/9999

Subject to GS 120-121:

N

Appointment Date: 09/07/1994

Term Start Date: 09/07/1994

Term End Date: 12/31/1995

Expire Date: 12/31/1995

Expire Reason:

Committee on Employee Hospital and Medical Benefits

Authority: G.S. 135-38

Expiration Date: 12/31/9999

Subject to GS 120-121:

N

Appointment Date: 06/03/2003

Term Start Date: 06/03/2003

Term End Date: 01/14/2005

Committee on Employee Hospital and Medical Benefits

Authority: G.S. 135-38

Expiration Date: 12/31/9999

Subject to GS 120-121:

N

Appointment Date: 04/15/1999

Term Start Date: 01/15/1999

Term End Date: 01/15/2001

Expire Date: 1/15/2001

Expire Reason: Reappointed

Committee on Employee Hospital and Medical Benefits

Authority: G.S. 135-38

Expiration Date: 12/31/9999

Subject to GS 120-121:

N

Appointment Date: 03/13/2001

Term Start Date: 03/13/2001

Term End Date: 01/14/2003

Expire Date: 1/14/2003

Expire Reason: Reappointed

Cultural Resources Committee (LRC)(1993)

Authority:	G.S. 120-30.17(1); LRC-1993			
Expiration Date:	01/15/1995	Subject to GS 120-121:	N	
Appointment Date:	12/08/1993	Term Start Date:	12/08/1993	Term End Date: 01/31/1995
Expire Date:	1/15/1995	Expire Reason:	Board expired	

Defibrillators--Use and Liability Committee (LRC) (1999)

Authority:	SL1999-395; LRC-1999			
Expiration Date:	01/15/2001	Subject to GS 120-121:	N	
Appointment Date:	10/05/1999	Term Start Date:	10/05/1999	Term End Date: 01/15/2001
Expire Date:	1/15/2001	Expire Reason:	Board expired	

Emergency Management Committee (LRC)(1993)

Authority:	G.S. 120-30.17(1); LRC-1993			
Expiration Date:	01/15/1995	Subject to GS 120-121:	N	
Appointment Date:	12/01/1993	Term Start Date:	12/01/1993	Term End Date: 01/31/1995
Expire Date:	1/15/1995	Expire Reason:	Board expired	

Environmental Review Commission

Authority:	G.S. 120-70.41; SL1997-31			
Expiration Date:	12/31/9999	Subject to GS 120-121:	N	
Appointment Date:	09/27/1999	Term Start Date:	09/27/1999	Term End Date: 01/31/2001
Expire Date:	1/31/2001	Expire Reason:	Reappointed	

Environmental Review Commission

Authority:	G.S. 120-70.41; SL1997-31			
Expiration Date:	12/31/9999	Subject to GS 120-121:	N	
Appointment Date:	02/05/2002	Term Start Date:	02/05/2002	Term End Date: 01/15/2003
Expire Date:	1/15/2003	Expire Reason:	Term ended	

House Interim Study Committee on Insurance Availability in Beach and Coastal Areas (2001)

Authority:	G.S. 120-19.6; Letter of 4/17/2002			
Expiration Date:	01/31/2003	Subject to GS 120-121:	N	
Appointment Date:	04/17/2002	Term Start Date:	04/17/2002	Term End Date: 01/15/2003
Expire Date:	01/15/2003	Expire Reason:		

House Select Committee on Health Care Delivery (1999)

Authority:	House Rule 26(a)			
Expiration Date:	01/15/2001	Subject to GS 120-121:	N	
Appointment Date:	02/11/1999	Term Start Date:	02/11/1999	Term End Date: 01/15/2001
Expire Date:	1/15/2001	Expire Reason:	Board expired	

House Select Committee on the Rising Cost of Health Care (2003)

Authority:	G.S. 120-19.6(a); Letter of 09-12-03-House Rule 26(a)			
Expiration Date:	04/15/2004	Subject to GS 120-121:	N	
Appointment Date:	09/12/2003	Term Start Date:	09/12/2003	Term End Date: 04/15/2004
Expire Date:	04/15/2004	Expire Reason:		

Joint Legislative Commission on Governmental Operations

Authority:	G.S. 120-73			
Expiration Date:	12/31/9999	Subject to GS 120-121:	N	
Appointment Date:	02/19/1999	Term Start Date:	01/15/1999	Term End Date: 01/15/2001
Expire Date:	1/15/2001	Expire Reason:	Reappointed	

Joint Legislative Commission on Governmental Operations

Authority:	G.S. 120-73			
Expiration Date:	12/31/9999	Subject to GS 120-121:	N	
Appointment Date:	03/01/2001	Term Start Date:	03/01/2001	Term End Date: 01/15/2003
Expire Date:	1/15/2003	Expire Reason:	Reappointed	

Joint Legislative Commission on Governmental Operations

Authority:	G.S. 120-73			
Expiration Date:	12/31/9999	Subject to GS 120-121:	N	
Appointment Date:	10/03/2003	Term Start Date:	01/16/2003	Term End Date: 01/15/2005

Joint Legislative Health Care Oversight Committee

Authority:	G.S. 120-70.110			
Expiration Date:	12/31/9999	Subject to GS 120-121:	N	
Appointment Date:	10/31/1997	Term Start Date:	10/31/1997	Term End Date: 01/14/1999
Expire Date:	1/14/1999	Expire Reason:	Term expired	

Joint Legislative Health Care Oversight Committee

Authority:	G.S. 120-70.110			
Expiration Date:	12/31/9999	Subject to GS 120-121:	N	
Appointment Date:	09/27/1999	Term Start Date:	01/15/1999	Term End Date: 01/15/2001
Expire Date:	1/15/2001	Expire Reason:	Term expired	

Joint Legislative Health Care Oversight Committee

Authority:	G.S. 120-70.110			
Expiration Date:	12/31/9999	Subject to GS 120-121:	N	
Appointment Date:	10/14/2002	Term Start Date:	10/14/2002	Term End Date: 01/15/2003
Expire Date:	1/15/2003	Expire Reason:	Reappointed	

Joint Legislative Health Care Oversight Committee

Authority:	G.S. 120-70.110			
Expiration Date:	12/31/9999	Subject to GS 120-121:	N	
Appointment Date:	12/02/2003	Term Start Date:	12/02/2003	Term End Date: 01/29/2005

Joint Legislative Utility Review Committee

Authority:	G.S. 120-70.1			
Expiration Date:	12/31/9999	Subject to GS 120-121:	N	
Appointment Date:	03/13/2001	Term Start Date:	01/15/1999	Term End Date: 06/30/2002
Expire Date:	06/30/2002	Expire Reason:		

Joint Legislative Utility Review Committee

Authority:	G.S. 120-70.1			
Expiration Date:	12/31/9999	Subject to GS 120-121:	N	
Appointment Date:	04/28/2004	Term Start Date:	04/28/2004	Term End Date: 01/19/2005

Joint Select Committee on Higher Education Facilities Needs (1999)

Authority:	SL1999-395 sec. 21.1			
Expiration Date:	01/15/2001	Subject to GS 120-121:	N	
Appointment Date:	10/05/1999	Term Start Date:	10/05/1999	Term End Date: 01/15/2001
Expire Date:	1/15/2001	Expire Reason:	Board expired	

Legislative Commission to Address Hurricane Floyd Disaster Relief (1999) (aka: Legislative Study Commission on Disaster Response and Recovery)

Authority:	SL1999-463 sec. 5			
Expiration Date:	05/01/2002	Subject to GS 120-121:	N	
Appointment Date:	02/29/2000	Term Start Date:	02/29/2000	Term End Date: 05/01/2002
Expire Date:	5/1/2002	Expire Reason:	Board expired	

Legislative Ethics Committee

Authority:	G.S. 120-99			
Expiration Date:	12/31/9999	Subject to GS 120-121:	N	
Appointment Date:	03/08/1995	Term Start Date:	02/25/1997	Term End Date: 01/31/1999
Expire Date:	1/31/1999	Expire Reason:	Term expired	

Minority Health Advisory Council

Authority: G.S. 130A-33.43; SL91-900
 Expiration Date: 12/31/9999 Subject to GS 120-121: N
 Appointment Date: 08/20/1998 Term Start Date: 08/20/1998 Term End Date: 06/30/2000
 Expire Date: 6/30/2000 Expire Reason: Reappointed by new Speaker

Minority Health Advisory Council

Authority: G.S. 130A-33.43; SL91-900
 Expiration Date: 12/31/9999 Subject to GS 120-121: N
 Appointment Date: 11/01/2000 Term Start Date: 11/01/2000 Term End Date: 06/30/2002
 Expire Date: 6/30/2002 Expire Reason: Term expired

Minority Health Advisory Council

Authority: G.S. 130A-33.43; SL91-900
 Expiration Date: 12/31/9999 Subject to GS 120-121: N
 Appointment Date: 12/15/2002 Term Start Date: 12/15/2002 Term End Date: 06/30/2004

Minority Males Committee (LRC)(1993)

Authority: G.S. 120-30.17(1); LRC-1993
 Expiration Date: 01/15/1995 Subject to GS 120-121: N
 Appointment Date: 01/01/1993 Term Start Date: 12/08/1993 Term End Date: 01/31/1995
 Expire Date: 1/15/1995 Expire Reason: Board expired

North Carolina Emergency Medical Services Advisory Council

Authority: G.S. 143-510; SL91-739
 Expiration Date: 12/31/9999 Subject to GS 120-121: Y
 Appointment Date: 11/01/1999 Term Start Date: 11/01/1999 Term End Date: 01/15/2001
 Expire Date: 1/15/2001 Expire Reason: Term expired

North Carolina Emergency Medical Services Advisory Council

Authority: G.S. 143-510; SL91-739
 Expiration Date: 12/31/9999 Subject to GS 120-121: Y
 Appointment Date: 03/10/2002 Term Start Date: 03/10/2002 Term End Date: 02/01/2006

North Carolina Local Government Advocacy Council

Authority: G.S. 143-506.14; SL91-739
 Expiration Date: 12/31/9999 Subject to GS 120-121: N
 Appointment Date: 03/05/1993 Term Start Date: 03/05/1993 Term End Date: 06/30/1994
 Expire Date: 06/30/1994 Expire Reason:

North Carolina Progress Board

Authority: G.S. 143B-372.1; SL95-117
 Expiration Date: 12/31/9999 Subject to GS 120-121: N
 Appointment Date: 09/05/2003 Term Start Date: 09/05/2003 Term End Date: 06/30/2004

North Carolina Travel and Tourism Board

Authority: G.S. 143B-434.1; SL91-959
 Expiration Date: 12/31/9999 Subject to GS 120-121: Y
 Appointment Date: 08/05/1999 Term Start Date: 08/05/1999 Term End Date: 12/31/2000
 Expire Date: 12/31/9999 Expire Reason: Term expired

North Carolina Travel and Tourism Board

Authority: G.S. 143B-434.1; SL91-959
 Expiration Date: 12/31/9999 Subject to GS 120-121: Y
 Appointment Date: 03/08/2001 Term Start Date: 03/08/2001 Term End Date: 12/31/2002
 Expire Date: 12/31/2002 Expire Reason: Reappointed

North Carolina Travel and Tourism Board

Authority:	G.S. 143B-434.1; SL91-959			
Expiration Date:	12/31/9999	Subject to GS 120-121:	Y	
Appointment Date:	12/30/2001	Term Start Date:	12/31/2002	Term End Date: 12/31/2004

Public Health Study Commission

Authority:	G.S. 120-195			
Expiration Date:	12/31/9999	Subject to GS 120-121:	N	
Appointment Date:	11/16/2000	Term Start Date:	07/01/2000	Term End Date: 06/30/2002
Expire Date:	6/30/2002	Expire Reason:	Term expired	

Public Health Study Commission

Authority:	G.S. 120-195			
Expiration Date:	12/31/9999	Subject to GS 120-121:	N	
Appointment Date:	12/15/2002	Term Start Date:	12/15/2002	Term End Date: 06/30/2004

Statewide Emergency Preparedness Study Commission (2001)

Authority:	SL2002-180 sec. 15.1			
Expiration Date:	01/15/2005	Subject to GS 120-121:	N	
Appointment Date:	12/31/2002	Term Start Date:	12/31/2002	Term End Date: 01/15/2005

Study Commission on Establishment of a Statewide Benefit Committee to Provide a Menu of Portable Supplemental Benefits for All State Employees (2003)

Authority:	SL2003-284 sec. 30.21(a)			
Expiration Date:	12/31/2004	Subject to GS 120-121:	N	
Appointment Date:	12/02/2003	Term Start Date:	12/02/2003	Term End Date: 01/01/2005

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966

PENDER COUNTY, *et al.*)
)
Plaintiffs,)
)
v.)
)
GARY O. BARTLETT, as Executive Director)
of the State Board of Elections, *et al.*)
)
Defendants.)

**AFFIDAVIT OF
WILLIAM R. GILKESON, JR.**

William R. Gilkeson, Jr., being first sworn, deposes and says:

1. I reside at 2714 Wayland Drive in Raleigh, North Carolina. I received a B.A. in political science in 1969 from Southwestern at Memphis, now renamed Rhodes College, in Memphis Tennessee. I moved to North Carolina in 1970. I received a J.D. degree from the University of North Carolina School of Law in 1985. I was admitted to the State Bar that same year and immediately began work as a Staff Attorney in the Research Division of the North Carolina General Assembly, where I have worked ever since.

2. My chief specialty at the General Assembly has been election law. As a result of that specialty, I have been involved in redistricting since 1989 or 1990. I participated in the 1991-92 redistricting and in all the redistricting activities since that time. I received training and have developed expertise working on DistrictBuilder, the General Assembly's redistricting computer system.

3. Plaintiffs' proposed maps JLL07A and JLL08A were created using DistrictBuilder on the public access computer at the General Assembly. At the request of the Attorney General's Office, I used DistrictBuilder to prepare statistical profiles for plaintiffs' proposed maps JLL07A and

JLL08A in the same format as the statistical profiles for the two illustrative maps included as attachments to the affidavit of Representative Martha B. Alexander. The statistical profile that I prepared for JLL07A is included as "Attachment A," and the statistical profile that I prepared for JLL08A is included as "Attachment B."

4. The legislative record shows that during the 1997 congressional redistricting process, an updated report on racially polarized voting was provided to the Senate Committee on Redistricting by counsel for minority defendant-intervenors in the *Shaw v. Hunt* litigation. A copy of the cover letter to the chair of the Senate Redistricting Committee, together with the memorandum report itself, is included as "Attachment C."

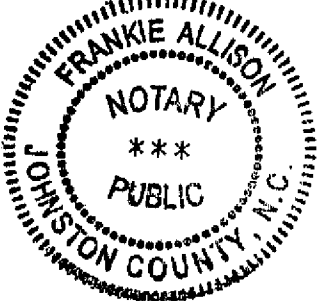
This the 21st day of June, 2004.

William R. Gilkeson, Jr.
William R. Gilkeson, Jr.

Sworn to and subscribed before me this
21st day of June, 2004.

Frankie Allison
Notary Public

My commission expires: June 21, 2004



District Statistics		
Plan: JLL07A - District 1		
Ideal Population :	67,078	
Actual Population :	63,963	
Difference :	-3,115	
% Difference	-4.64%	
Total Population	63,963	100.00%
White (single-race)	37,250	58.24%
Black (single-race)	24,523	38.34%
Black (total)	24,801	38.77%
Native American (single-race)	270	0.42%
Asian/Pacific Islander (single-race)	170	0.27%
Other (single-race)	1,104	1.73%
Multi Race	646	1.01%
Hispanic	2,073	3.24%
Non-Hispanic	61,890	96.76%
Voting Age Total Population	48,834	100.00%
White (single-race)	30,119	61.68%
Black (single-race)	17,240	35.30%
Black (total)	17,360	35.55%
Native American (single-race)	203	0.42%
Voter Registration Total	38,439	100.00%
White	24,606	64.01%
Black	13,247	34.46%
Native American	66	0.17%
Other Race/Undesignated Race	299	0.78%
All Democrats	22,119	57.54%
All Republicans	9,981	25.97%
All Libertarians	124	0.32%
All Unaffiliated	6,215	16.17%
Black Democrats	11,671	52.76%
00 Governor Dem - Easley	12,615	65.48%
00 Governor Rep - Vinroot	6,302	32.71%
00 Chief Justice Dem - Frye	11,018	59.33%
00 Chief Justice Rep - Lake	7,553	40.67%
00 State Auditor Dem - Campbell	11,322	62.55%
00 State Auditor Rep - Merritt	6,780	37.45%
02 NC Supreme Court Dem - Butterfield	8,745	59.25%
02 NC Supreme Court Rep - Brady	6,014	40.75%
02 US Senate Dem - Bowles	8,966	56.82%
02 US Senate Rep - Dole	6,570	41.64%

District Statistics		
Plan: JLL08A - District 1		
Ideal Population :	67,078	
Actual Population :	64,006	
Difference :	-3,072	
% Difference	-4.58%	
Total Population	64,006	100.00%
White (single-race)	39,256	61.33%
Black (single-race)	22,444	35.07%
Black (total)	22,815	35.65%
Native American (single-race)	289	0.45%
Asian/Pacific Islander (single-race)	473	0.74%
Other (single-race)	729	1.14%
Multi Race	815	1.27%
Hispanic	1,657	2.59%
Non-Hispanic	62,349	97.41%
Voting Age Total Population	49,625	100.00%
White (single-race)	32,554	65.60%
Black (single-race)	15,516	31.27%
Black (total)	15,650	31.54%
Native American (single-race)	230	0.46%
Voter Registration Total	41,464	100.00%
White	28,669	69.14%
Black	12,045	29.05%
Native American	84	0.20%
Other Race/Undesignated Race	666	1.61%
All Democrats	21,014	50.68%
All Republicans	12,127	29.25%
All Libertarians	209	0.50%
All Unaffiliated	8,114	19.57%
Black Democrats	10,327	49.14%
00 Governor Dem - Easley	12,956	66.52%
00 Governor Rep - Vinroot	6,012	30.87%
00 Chief Justice Dem - Frye	11,029	59.05%
00 Chief Justice Rep - Lake	7,649	40.95%
00 State Auditor Dem - Campbell	11,181	61.33%
00 State Auditor Rep - Merritt	7,049	38.67%
02 NC Supreme Court Dem - Butterfield	8,205	58.82%
02 NC Supreme Court Rep - Brady	5,744	41.18%
02 US Senate Dem - Bowles	8,525	56.55%
02 US Senate Rep - Dole	6,292	41.74%

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Attachment #

FERGUSON, S. IN, WALLAS, ADKINS, GRESHAM & SUMTER, P. A.

ATTORNEYS AT LAW
SUITE 300

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TELECOPIER (704) 334-6884

SUITE 3 FRANKLIN SUITES
312 WEST FRANKLIN STREET
CHAPEL HILL NORTH CAROLINA 27515
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TELECOPIER (919) 967-4953

IN CHAPEL HILL
ADAM STEIN
THOMAS M. STERN

JAMES E. FERGUSON II
ADAM STEIN
JONATHAN WALLAS
W. ADKINS
N. W. GRESHAM
RALDINE SUMTER
THOMAS M. STERN
C. MARGARET ERRINGTON
ANITA S. HODGKINS
B. LUKE LARGESS
NOELL A. TUN
JAMES E. JAVI FERGUSON III
REBECCA A. THORNE

OF COUNSEL

CHARLES D. HAYS JR.
HENDERSON HILL

March 11, 1997

Senator Roy Cooper
Chair, Senate Congressional Redistricting Committee
North Carolina General Assembly
16 West Jones Street
Raleigh, North Carolina 27601

RE: Congressional Redistricting

Dear Senator Cooper:

As you may recall, this firm represents defendant-intervenors in the Shaw v. Hunt litigation. Included in the materials we submitted at the Joint Congressional Redistricting public hearing on February 26, 1997, was an analysis of racially polarized voting by Professor Richard Engstrom. Professor Engstrom's report was based on various elections he analyzed prior to the trial in the Shaw v. Hunt case in 1994. We asked Professor Engstrom to update his study by looking at the most recent Gantt versus Helms election. In particular, we asked him to look at the level of racially polarized voting statewide as well as the level of racially polarized voting in the northeastern region of the state, which we defined as the eighteen counties that are included in the proposed First Congressional District in the Senate plan, 1997 Congressional Plan A.

There are two important findings in Professor Engstrom's updated analysis. First, he found that there is greater polarized voting in the northeast than in the state generally. Second, he found that turnout for African-American voters is significantly lower than turnout among non-African-American voters. Both of these findings support the proposition that there is a strong basis in fact for concluding that the legislature's failure to create a majority black district in the northeastern region of the state would violate Section 2 of the Voting Rights Act.

MAILING ADDRESS: POST OFFICE BOX 36486, CHARLOTTE, NORTH CAROLINA 28236-6486

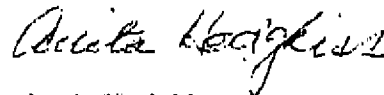
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Senator Roy Cooper
March 11, 1997
Page 2

I am enclosing for your consideration a copy of Professor Engstrom's report of his findings. Please feel free to give me a call if you have any questions. Thank you very much for your work on this very important issue.

Sincerely yours,



Anita S. Hodgkiss

ASH:rer

cc: Members, Senate Redistricting Committee

0 085

University of
New Orleans*Attachment # 4*

Department of Political Science

New Orleans, LA 70148

February 7, 1997

Ms. Anita S. Hodgkiss
Ferguson, Stein, Wallace, Adkins, Gresham, and Sumter
Suite 300
741 Kenilworth Ave.
Charlotte, NC 28204

Dear Ms. Hodgkiss:

I have performed, at your request, an analysis of the vote for Mr. Harvey B. Gantt in the November 1996 general election for a United States Senate seat in North Carolina. This work supplements the analyses of North Carolina elections that I performed previously for the State of North Carolina in the Shaw v. Hunt litigation. The methodologies employed in the analysis of this election, regression and homogeneous precinct analyses, are identical to those employed in my previous reports for the state. The voter registration data utilized to analyze this election are for October 11, 1996, and therefore reflect the registered electorate at the time of this election.

The homogeneous precinct analysis concerns the votes cast in precincts in which over 90% of the registered voters was African American and in which less than 10% was African American. Mr. Gantt received 97.9% of the votes cast in the homogeneous African American precincts across the state, but only 38.1% in the homogeneous non-African American precincts. The voter participation rate in this election in the homogeneous African American precincts, expressed as a percent of the registered voters, was 49.6%, while the participation rate within the non-African American precincts was 59.0%.

The estimated support for Mr. Gantt among the African American voters in this election produced by the regression analysis, which is based on the votes cast in all of the precincts in the state, is 100%. His support among the non-African American voters is estimated by regression to have been 35.7%. The correlation coefficient for the relationship between the racial composition of the precincts and the vote for Gantt is a statistically significant .777. The regression estimate of the participation rate in this election among state's African American registered voters is 46.8%, while that for non-African Americans is 58.9%.

You also requested the results of these analyses for the northeast region of the state, an area that you informed me is comprised of the following 18 counties; Beaufort, Bertie, Craven, Edgecomb, Gates, Granville, Greene, Halifax, Hartford, Lenoir,

0 086

Martin, Northampton, Pitt, Vance, Warren, Washington, Wayne, and Wilson. The vote in this area is more racially divided than in the state as a whole. Mr. Gantt received 96.6% of the votes cast in homogeneous African American precincts in this region, but only 29.0% of those cast in the homogeneous non-African American precincts. Voter participation in these African American precincts, again expressed as a percentage of registered voters, was 50.2%, compared to 61.9% in the non-African American precincts.

The regression analysis of the votes cast in all of the precincts in these 18 counties places Mr. Gantt's support among the African American voters at 100% and his support among the non-African American voters at 24.9%. The correlation coefficient for the relationship between the racial composition of the precincts and the vote for Gantt is .930, higher than that for the state as a whole. This is also a statistically significant correlation. The regression estimates of the voter participation rates in the northeast region are 47.0% for African Americans and 61.6% for non-African Americans.

I hope you find this information useful. If you require any additional analysis, please let me know.

Sincerely,



Richard L. Engstrom
Research Professor of
Political Science

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966

PENDER COUNTY, *et al.*)
)
) Plaintiffs,)
)
)
) v.)
)
)
) GARY O. BARTLETT, as Executive Director)
 of the State Board of Elections, *et al.*)
)
)
) Defendants.)

**AFFIDAVIT OF
MILFORD FARRIOR**

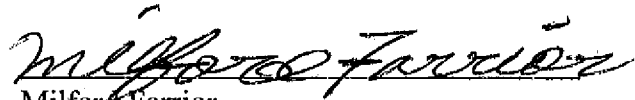
Milford Farrior, being first sworn, deposes and says:

1. I am above the age of 18 years, and I am competent to testify as to the matters set forth herein, which are based upon my personal knowledge and belief.
2. I am a life-long resident of Pender County and am active in community affairs. I am an African-American and I reside in Maple Hill.
3. Based on my experience, it is important for the African-American community in Pender and New Hanover counties to keep a North Carolina House district that can continue to elect a minority candidate.
4. It is important to the minority community to have people like Representative Thomas Wright serving in the General Assembly. Wright represents not only the African-American interests but also looks out for the interests of everyone in his district and for all of Pender County.
5. There is no problem having Pender County divided or combined with New Hanover County to create a district. I do not think that a minority candidate from this area can be elected to the North Carolina House of Representatives if Pender County is kept whole in the formation of a House district.

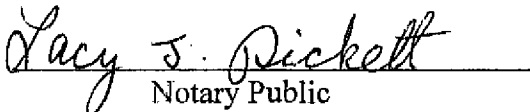
6. I do not believe that the Board of County Commissioners of Pender County represents my interests or the interests of the minority community in Pender County with respect to their challenge to the House Plan enacted by the General Assembly in 2003.

7. I would like the opportunity to intervene in this lawsuit because I want to see that there continues to be a district in this area that gives minority candidates a chance to be elected. I need more time to talk with others in the community and to find legal representation. The North Carolina Attorney General's Office has agreed to file this affidavit on my behalf so that the Court will be aware of my concern that the interests of the minority community in Pender County be represented and heard in this lawsuit.

This the 17 day of June, 2004.


Milford Farrior

Sworn to and subscribed before me this
17 day of June, 2004.


Notary Public

My commission expires: Feb 25-2009

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966

PENDER COUNTY, *et al.*

Plaintiffs,)

v.)

GARY O. BARTLETT, as Executive Director
of the State Board of Elections, *et al.*

Defendants.)

**AFFIDAVIT OF
CINDY MOORE**

Cindy Moore, being first sworn, deposes and says:

1. I am above the age of 18 years, and I am competent to testify as to the matters set forth herein, which are based upon my personal knowledge and belief.

2. I was born in Pender County and have been a resident of Pender County for the last 10 years. I am currently the chairperson of Pender County Fair Share, which is the local chapter of North Carolina Fair Share, a statewide non-partisan, non-profit membership, advocacy and leadership development organization comprised almost entirely of non-wealthy citizens. I am an activist in the community on local issues, particularly issues affecting the African-American community.

3. I am familiar with House District 18 as enacted by the North Carolina General Assembly in 2003, and I feel very strongly that this district should remain as it is. It is important when working on local issues to have a representative in the General Assembly who is familiar with the needs of the African-American community and is responsive to African-American voters.

4. It is my view that if the district does not remain an effective African-American district, then I and other minority citizens in the area would not have someone in the General

Assembly who would listen to us and there would not be a voice for our community in State government.

5. I do not believe that the Board of County Commissioners of Pender County represents my interests or the interests of the minority community in Pender County with respect to their challenge to the House Plan enacted by the General Assembly in 2003.

6. I am very interested in intervening in this lawsuit because I want to see that there continues to be a district in this area that gives minority candidates a chance to be elected. I need more time to talk with others in the community and to find legal representation. North Carolina Fair Share has previously been a plaintiff in an at least one election-related lawsuit. The North Carolina Attorney General's Office has agreed to file this affidavit on my behalf so that the Court will be aware of my concern that the interests of the minority community in Pender County be represented and heard in this lawsuit.

This the 18th day of June, 2004.

Cindy Moore
Cindy Moore

Sworn to and subscribed before me this
18 day of June, 2004.

Nancy J. Pickett
Notary Public

My commission expires: Feb 25, 2009

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

04 CVS 6966

PENDER COUNTY, *et al.*

Plaintiffs,

v.

GARY O. BARTLETT, as Executive Director
of the State Board of Elections, *et al.*

Defendants.

SECOND NOTICE OF FILING

Defendants' respectfully file the following documents, attached hereto, in support of Defendant's Motion for Summary Judgment:

1. Second Affidavit of Representative Thomas E. Wright
2. Report and Deposition Transcript of Kerry L. Haynie, Ph.D.¹
3. Report and Deposition Transcript of Richard L. Engstrom, Ph.D.
4. USDOJ Preclearance Letter of Stephenson Opinion
5. Deposition Transcript of Rep. Donald Bonner in *N.C. v. Ashcroft*, No. 1:03CV2477 (D. D.C.)
6. Deposition Transcript of Rep. Marvin Lucas in *N.C. v. Ashcroft*, No. 1:03CV2477 (D. D.C.)
7. Stipulations of the Parties:²
 - Ex. A. 1992 House Plan – map & statistics
 - Ex. B. 2001 House Plan (Sutton House 3) – map & statistics
 - Ex. C. 2002 House Plan (Sutton House 5) – map & statistics
 - Ex. D. Jenkins House Plan (Interim House) – map & statistics
 - Ex. E. 2003 House Plan – map & statistics

¹ Original deposition transcripts for Dr. Haynie and Dr. Engstrom will be filed by the plaintiffs.

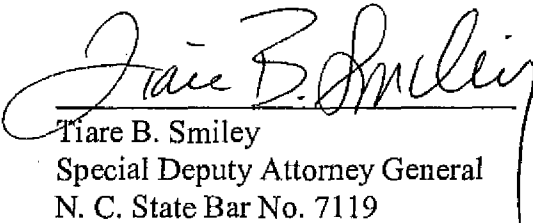
² These stipulations have been verbally agreed to by the parties. A signed version of the stipulations will be filed with the court immediately upon receipt of all parties' signatures.

- Ex. F. List of 1980s Black House Representatives
- Ex. G. 1991-1992 House of Representatives Demographics List
- Ex. H. 1993-1994 House of Representatives Demographics List
- Ex. I. 1995-1996 House of Representatives Demographics List
- Ex. J. 1997-1998 House of Representatives Demographics List
- Ex. K. 1999-2000 House of Representatives Demographics List
- Ex. L. 2001-2002 House of Representatives Demographics List
- Ex. M. 2003-2004 House of Representatives Demographics List
- Ex. N. 2005-2006 House of Representatives Demographics List
- Ex. O. Relevant portions of 2001 House Plan § 5 Submission materials
- Ex. P. Relevant portions of 2002 House Plan § 5 Submission materials
- Ex. Q. Relevant portions of 2003 House Plan Initial Disclosure of § 5 Submission materials
- Ex. R. 1898 Headlines (WILMINGTON MORNING STAR, NEW YORK HERALD, RALEIGH NEWS & OBSERVER)
- Ex. S. New Hanover and Pender County Representatives since 1981
- Ex. T. Pender Census Reports: DP-1 – DP-4
- Ex. U. New Hanover Census Reports: DP-1 – DP-4
- Ex. V. Pender Census Profiles
- Ex. W. New Hanover Census Profiles
- Ex. X. North Carolina DHHS Health Statistics, statewide and Pender and New Hanover Counties
- Ex. Y. ABC Report Cards of Pender and New Hanover Counties
- Ex. Z. New Hanover Education LINC
- Ex. AA. Pender Education LINC
- Ex. BB. AYP – New Hanover
- Ex. CC. AYP – Pender
- Ex. DD. Public Record Compendium
- Richard L. Engstrom, *Racial Differences in Candidate Preferences in North Carolina Elections*

- Declaration of State Senator Frank W. Ballance, Jr. in *Shaw v. Hunt*, No. 92-202-CTV-5-BR (E.D.N.C.)
- Statement of Alice Ballance, in *Shaw v. Hunt*
- U.S. Department of Justice Post Card Mailing Investigation
- Compendium of North Carolina segregation laws
- Racial Attitudes of North Carolina: Summary of Focus Group and Survey Research Results (Dec. 1993)
- J. Morgan Kousser, *After 120 Years: Redistricting and Racial Discrimination in North Carolina* (March 1994)
- Statement of Harry L. Watson, Ph.D., in *Shaw v. Hunt*
- Statement of Alex W. Willingham, Ph.D., in *Shaw v. Hunt*

Respectfully submitted, this the 25th day of February, 2005.

ROY COOPER
Attorney General


Tiare B. Smiley
Special Deputy Attorney General
N. C. State Bar No. 7119

Alexander McC. Peters
Special Deputy Attorney General
N.C. State Bar No. 13654

N.C. Department of Justice
P.O. Box 629
Raleigh, N.C. 27602
Telephone: (919) 716-6900
Facsimile: (919) 716-6763

Counsel for the Defendants

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966

PENDER COUNTY, *et al.*

Plaintiffs,

v.

GARY O. BARTLETT, as Executive Director
of the State Board of Elections, *et al.*

Defendants.

**SECOND
AFFIDAVIT OF REPRESENTATIVE
THOMAS E. WRIGHT**

Representative Thomas E. Wright, being first sworn, deposes and says:

1. I am the duly elected Representative from House District 18. Elections in 2004 were held under the 2003 House Plan, in which District 18 includes portions of Pender and New Hanover Counties. In the 2004 election, I did not face a white opponent in the primary or general election.

2. As the Representative for District 18, I was involved in making decisions about redrawing legislative districts in 2003. In my earlier affidavit (signed 17 June 2004), I described that process and this affidavit supplements my earlier testimony. For purposes of maintaining a district which would provide black voters in the Pender/New Hanover area an equal opportunity to elect their candidate of choice in a legislative district, we first looked at data relating to primary elections and then for general elections. It has been demonstrated in North Carolina that black voters can elect their candidate of choice, which in most cases means an African-American, in districts which are less than 50% in black total population or black voting age population. Because of the still overwhelming registration of blacks as Democrats, the first consideration in drawing an effective black district is the black Democratic registration - - *i.e.*, do the black voters have some likelihood of controlling the primary. If the black Democratic registration is over 50%, the black voters should control the Democratic primary. Winning the primary, however, is not the only consideration, the minority candidate must also have an opportunity to win in the general election. In North Carolina, for a black

Democratic candidate to win the general election it is necessary to look at the overall Democratic strength of the district. In drawing the 2003 House Plan, this was accomplished by looking at other partisan election results, such as the relative success of Democratic candidates Bowles, Easley, Butterfield, Frye and Campbell. A Democratic performance index, which provided a weighted average of election data from several elections, was used as a predictor of the likely Democratic vote in various configurations of legislative districts under consideration. As a rule of thumb, if a black candidate wins the primary election, then a strongly Democratic district, even if not over 50% black in total population, will produce enough white votes to elect the black candidate of choice in a general election. It is this political reality which allowed the House 2003 Plan to obtain § 5 pre-clearance as non-retrogressive, even though the black percentages in most districts drawn to maintain existing Voting Rights Act districts under § 2 and § 5, were reduced from earlier redistricting plans. Although the United States Department of Justice only pre-clears districts in § 5 counties, in its review the Department also looks at other districts in the State where there are significant minority populations and considers the totality of a plan's statewide effect on black voters in its retrogression analysis.

3. In the 2004 elections, District 18 performed as expected. Even though the District is less than 50% in total black population and black voting age population, no white candidates filed in the primary; in addition, the Democratic nature of the District also resulted in no white Republicans filing to run in the District. Of course, my incumbency, and I hope my past performance in representing the area (despite the different permutations of the district from the 1992 and 2002 plans) would have played a part in my success in 2004 in this newly configured District. The election results certainly demonstrate that black voters in the area can continue to elect a black candidate of choice as District 18 is now drawn. I know of no other plan that can be drawn within the two

counties of Pender and New Hanover that would maintain this opportunity for the black voters in the counties. The pattern of success by African-Americans in the 2004 House elections under the 2003 House Plan, comparing total black population, black voting age population and black Democratic registration, is remarkably similar to the success achieved under the 1992 House Plan and the Interim House Plan drawn by the court. *See* Attachment A, which is comparable to similar arrays of data attached to the Affidavit of Representative Martha Alexander (signed 9 June 2004) as Attachments A & B.

4. In creating District 18 and other Voting Rights Act districts, black legislators bring their own personal histories to the drawing board. As legislators, we have available to us the economic and social data collected by the Census Bureau and various State agencies. I am fully aware, just as are other black legislators, of the continuing disparities that exist for African-Americans and other minority citizens, as compared to white citizens, in income, health, housing and education. I take a particular interest in health and education issues because, among other committee assignments with leadership positions, I am serving as Chair of the House Committee on Health, as a Vice-Chair on the Appropriations Committee and as a member of the Subcommittee on Health and Human Services for the 2005-07 session of the General Assembly. In addition, I will continue in the current session to be the Chair of the Appropriations Subcommittee on Capital, a member of both the Public Utilities Committee and the Insurance Committee and Vice-Chair of the Transportation Committee. Of particular interest to me currently is the scarcity of business and contracts going to minority businesses from all of the millions of dollars of bonds being spent on construction projects at the State's universities and community colleges. Because of the importance of education to all citizens, and especially black children, I also take a particular interest in the available information which continues to show a significant gap in the achievements of black

students compared to white and other students statewide and in Pender and New Hanover Counties. As a legislator, I am concerned that people keep talking about the existing gap but are taking no action. As a legislator from a district with a diverse population, I represent all of my constituents regardless of race. However, as an African-American I also have a responsibility to see that issues of special concern to the minority community are raised and heard in the legislative chambers. I am the only African -American in the State House or Senate in the southeastern area of the state encompassing Bladen, Columbus, Brunswick, Duplin, Jones, Onslow, Carteret, Pender and New Hanover Counties.

5. As a citizen of North Carolina, who was born and raised in the City of Wilmington, I also bring to the redistricting table my personal history and knowledge of racial division and discrimination in the State, which at one time was enforced as a matter of State policy and law. This is a history shared by other members of the Legislative Black Caucus. Public schools, restaurants and movies were all segregated when I was growing up. I personally did not attend a segregated public elementary school because my parents sent me to a Catholic school which was itself segregated until I reached fourth or fifth grade. However, I can remember the discussions around the dinner table when my sister was supposed to attend high school in 1969 in the first integrated class in New Hanover County. Because of my parents concerns about the volatility of the situation, she was sent to Philadelphia, although she returned to graduate with her class at New Hanover High School in 1969. I began attending public school in the ninth grade in 1970, at Williston Junior High. Williston had formerly been the black high school; Williston High School had played a central role in the black community of New Hanover and had its own traditions and history. My parents were graduates of Williston High School and often talked fondly about their whole high school experience. I started high school at Hoggard High School in 1971. I can still recall the volatile situation that existed in

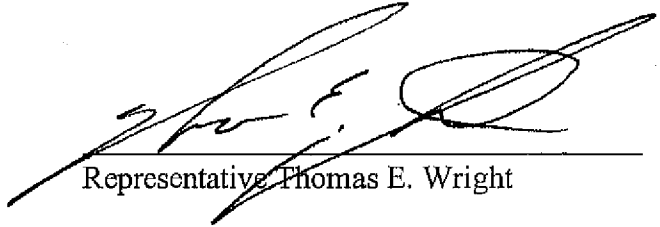
attending integrated schools in the early years. I vividly remember the atmosphere of tension, anxiety and stress that existed; you could sense it, feel it and even smell it. Much of the stress for black and white students was having to adjust to so many other students they had never been to school with before; during breaks and at lunch there frequently were fights between black and white students.

6. My older brother attended Hoggard High School one year before I did, beginning in 1970. The experience in high school was much worse than in the junior high school. Black students did not feel included: there were no black cheerleaders; the best athletes or band members were able to participate, but for the average kids, they were left out of sports, band, and other extra curricular activities. Black students were having to assimilate into a new world and environment where they felt they were not included and many feared losing their identity. The black students were not having the social experiences in high school that their parents had talked about from their high school days. The feelings of exclusion escalated in 1971, when the black students of both Hoggard and New Hanover High Schools began to boycott classes. My brother, William Joe Wright, was outspoken and was a leader in the boycotts. Black students were requesting inclusion and ownership, to feel as if they were a part of the study body. About twelve weeks into the school year when there was no response to the concerns of the black students, tensions escalated and the black students walked out. At first the students assembled at a park near the Williston Junior High School, but were removed by the county sheriff. Students boycotting were then provided sanctuary at the Gregory Congregational United Church of Christ where they assembled. The school's response was to expel students from school; this included my brother who was labeled as a troublemaker because he was willing to speak out. When the Wilmington Ten indictments for firebombing came down in 1971, my family felt it was no coincidence that my brother, and seven or eight other students involved in the school boycotts, were among the targets of that prosecution. The injustice of these indictments

and convictions were not overturned until ten long years later when the Fourth Circuit Court of Appeals overturned the convictions. These are the kinds of personal life experiences that black legislators share with other black citizens of the State. The continuing effects of North Carolina's racial history can be seen in the economic, health and education disparities that exist today.

7. Senator Luther Henry Jordan, Jr., was the first black senator from the New Hanover area in modern times. His district, which was created in the 1990's, no longer exists because it is not possible to draw a Senate district in this area that is sufficiently compact to meet legal standards and in which the black population is large enough to allow minorities to elect a candidate of their choice. Senator Jordan was the moving force behind the 1898 Wilmington Race Riot Commission established by the General Assembly in 2000. Since his passing, I have served in his place supporting the Commission's work. Although the violent race riots which overthrew the City's duly elected black government officials occurred long ago in Wilmington's history, it has been interesting to see people come forward today to talk about the riots and their aftermath. An oral history is being preserved as well as a report being written. In 1998, the University of North Carolina at Wilmington put on a program commemorating the 1898 Race Riot. People born and raised in the area, white and black, have family histories and stories that the community seems almost relieved to talk about as the Commission does its work. It is this history beginning as early as 1898 and continuing to today that provides the basis for North Carolina to continue to at least maintain a viable representative district in this area in which black voters have an equal opportunity to elect their candidate of choice.

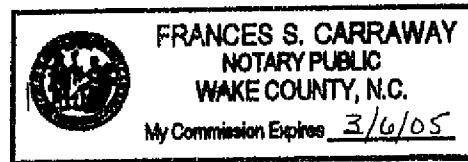
This the 24 day of February, 2005.


Representative Thomas E. Wright

Sworn to and subscribed before me this

24th day of Feb., 2005.


Notary Public



My commission expires: 03/06/2005

Total Black Pop

Dist.	% Black Pop
7	69.77%
24	68.47%
27	55.98%
74	64.79%
60	64.54%
58	64.48%
107	64.07%
8	53.97%
101	53.40%
33	52.88%
9	51.87%
43	51.52%
102	51.04%
12	50.95%
21	50.64%
31	49.77%
73	48.14%
28	47.67%
12	46.39%
72	47.33%
19	47.89%
32	37.36%
23	36.54%
38	35.11%
55	34.77%
100	34.11%
69	33.41%
99	31.01%
20	30.87%
44	30.71%
49	29.90%
63	29.73%
33	29.68%
66	28.84%
106	28.75%
1	28.69%
22	28.31%
10	27.73%
25	27.26%
6	27.03%
45	26.69%
77	26.50%
4	26.02%
46	25.74%
59	25.73%
50	24.98%
111	24.16%
14	24.06%

Black Voting Age Pop

Dist.	% Black VAP
7	66.03%
24	64.76%
56	63.35%
27	52.93%
71	51.57%
104	50.60%
60	50.59%
107	50.48%
8	50.36%
10	49.97%
5	49.12%
13	48.69%
21	48.33%
12	47.51%
102	46.11%
18	45.43%
22	45.13%
31	43.71%
23	43.71%
72	43.40%
11	40.36%
32	36.22%
23	34.12%
55	31.99%
38	31.63%
100	30.97%
69	30.73%
49	28.49%
99	28.29%
20	28.29%
63	27.86%
1	27.49%
44	27.45%
31	27.07%
22	26.78%
66	26.61%
10	26.01%
25	25.87%
106	25.50%
4	24.86%
50	24.69%
77	24.38%
6	24.27%
45	24.19%
46	23.94%
59	23.52%
65	22.18%
53	21.75%

Black Dem. Registration

Dist.	% Black Dems
58	75.74%
73	74.89%
42	72.72%
107	72.29%
101	71.82%
60	70.77%
33	70.07%
24	69.80%
74	69.65%
72	67.37%
21	65.97%
102	65.14%
7	64.58%
31	63.60%
32	62.49%
27	60.40%
6	58.86%
8	58.61%
99	57.65%
28	57.14%
71	56.99%
104	56.72%
100	50.34%
38	47.46%
49	46.61%
106	46.21%
23	46.21%
32	45.35%
69	45.02%
63	44.14%
77	42.74%
44	42.06%
55	41.82%
4	40.76%
49	40.09%
22	39.02%
45	38.91%
14	38.55%
1	37.77%
25	37.72%
6	36.89%
9	36.63%
10	36.61%
66	36.44%
59	36.39%
57	36.34%
20	36.01%
109	35.98%

Dist.	% Black Pop
53	23.92%
2	23.74%
65	23.58%
30	23.35%
9	23.12%
57	22.84%
109	22.29%
11	21.93%
51	20.71%
26	20.26%
81	17.15%
47	16.46%
15	16.42%
54	16.02%
52	15.91%
3	15.81%
37	15.45%
95	14.87%
103	14.47%
34	14.30%
82	14.09%
61	13.40%
79	12.94%
17	12.85%
56	12.70%
112	12.08%
13	11.62%
35	11.49%
115	11.14%
110	11.12%
83	10.91%
28	10.82%
98	10.31%
67	10.15%
88	10.00%
75	9.33%
114	9.22%
108	8.88%
40	8.86%
62	8.81%
64	8.77%
74	8.74%
41	8.70%
16	8.63%
86	8.29%
70	7.83%
89	6.88%
96	6.77%
91	6.74%
97	6.69%

Dist.	% Black VAP
14	21.75%
111	21.71%
30	21.70%
2	21.46%
57	21.38%
9	21.18%
11	20.58%
109	19.62%
51	19.18%
26	18.83%
47	15.66%
81	15.64%
54	15.49%
37	14.96%
15	14.91%
3	14.77%
52	13.98%
95	13.39%
34	13.19%
103	13.03%
82	13.00%
79	11.96%
61	11.76%
56	11.72%
17	11.18%
112	10.78%
13	10.47%
35	10.39%
110	10.05%
115	9.96%
83	9.91%
28	9.80%
98	9.64%
67	9.24%
88	8.89%
62	8.63%
41	8.54%
40	8.49%
75	8.35%
64	8.24%
108	8.18%
114	8.07%
74	7.99%
86	7.64%
16	7.59%
70	7.06%
91	6.52%
89	6.39%
97	5.98%
96	5.93%

Dist.	% Black Dems
50	34.65%
65	34.20%
111	34.10%
11	33.20%
53	32.70%
52	32.69%
103	30.40%
26	30.04%
46	29.98%
3	29.57%
51	29.45%
37	29.34%
2	29.04%
82	28.88%
81	28.86%
30	27.73%
61	27.15%
79	26.17%
95	26.07%
98	26.01%
54	23.77%
15	22.18%
83	21.75%
28	21.21%
34	19.67%
17	19.36%
75	19.22%
41	18.89%
13	18.86%
62	18.73%
40	18.19%
16	18.14%
70	18.01%
88	17.90%
110	17.61%
35	17.12%
112	16.95%
67	16.65%
74	16.62%
56	16.60%
73	16.16%
47	15.76%
68	15.68%
64	15.29%
108	15.29%
115	15.11%
96	14.45%
89	14.35%
105	13.61%
86	13.57%

Dist.	% Black Pop
68	6.43%
19	6.33%
73	6.14%
76	5.98%
36	5.80%
87	4.93%
104	4.84%
105	4.77%
94	4.40%
90	4.27%
113	4.17%
85	4.12%
78	4.01%
117	3.83%
80	3.63%
92	3.45%
116	3.24%
84	3.20%
119	1.44%
93	1.39%
118	1.38%
120	1.38%

Dist.	% Black VAP
68	5.92%
73	5.70%
36	5.60%
19	5.51%
76	5.38%
105	4.48%
85	4.35%
87	4.32%
104	4.22%
94	4.12%
90	3.89%
78	3.84%
113	3.50%
80	3.37%
92	3.31%
117	3.26%
84	3.14%
116	2.65%
119	1.45%
118	1.34%
93	1.34%
120	1.15%

Dist.	% Black Dems
91	12.91%
76	12.64%
97	11.59%
114	11.56%
36	11.55%
19	10.39%
87	10.05%
104	9.92%
94	9.58%
78	9.33%
80	9.15%
113	8.13%
92	7.61%
117	7.13%
90	6.15%
84	5.43%
85	5.39%
116	3.81%
93	2.16%
119	1.72%
118	1.43%
120	1.42%

 = Shading indicates an African-American was elected to district in 2004 Election

Pender County v. Bartlett

by
Richard L. Engstrom, Ph.D.

1. My name is Richard L. Engstrom and I am a resident of New Orleans, Louisiana. I am a Research Professor of Political Science and Coordinator of Graduate Studies in the Department of Political Science at the University of New Orleans (UNO), and the Endowed Professor of Africana Studies at UNO. I have served two terms as the Chairperson of the Representation and Electoral Systems Section of the American Political Science Association (1993-1995, 1995-1997) and continue to serve as a member of the Executive Council for that section. A copy of my curriculum vitae is attached as an Appendix to this report.

2. I have done extensive research into the relationship between election systems and the ability of minority voters to participate fully in the political process and to elect representatives of their choice. The results of my research have been published in the *American Political Science Review*, *Journal of Politics*, *Western Political Quarterly*, *Legislative Studies Quarterly*, *Social Science Quarterly*, *Journal of Law and Politics*, *Electoral Studies*, *Representation*, *Publius*, and other journals and books. Three articles authored or co-authored by me were cited with approval in Thornburg v. Gingles, 478 U.S. 30, at 46 n.11, 49 n.15, 53 n.20, 55, and 71 (1986), the Supreme Court decision interpreting amended section 2 of the Voting Rights Act. I am a co-author, with Mark A. Rush, of *Fair and Effective Representation? Debating Electoral Reform and Minority Rights* (Lanham, MD: Rowman and Littlefield Publishers, Inc. 2001).

3. I have also testified as an expert witness in a number of voting rights

cases in federal and state courts across the United States. Since 2001 I have testified at trial and/or been deposed in the following cases: Johnson v. Hamrick (N.D. Ga. 2001), Del Rio v. Perry (200th Dist. Ct. Tx. 2001), Balderas v. State of Texas (E.D. Tx 2001), Johnson v. Bush (S.D. Flida 2001), Jepsen v. Vigil-Giron (1st Judicial District Court, County of Santa Fe, NM 2001, 2002), Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Commission (Superior Court, County of Maricopa, AZ, 2002), Curry v. Glendening, Court of Appeals of Maryland (2002), Levy v. Miami-Dade Co (S.D. Flida. 2002), Dillard v. Baldwin Co. (M.D. Ala. 2002), Prejean v. Foster (M.D. La. 2002), Georgia v. Ashcroft (D.C. DC, 2002), Louisiana House of Representatives v. Ashcroft (D.C. DC 2002), United States v. Alamosa County (D. Co. 2003), Comacho v. Galvin and Black Political Task Force v. Galvin, (D.C. Mass. 2003), Stewart v. Blackwell (N.D. Oh. 2004), and Cottier v. City of Martin, S.D., (D.C. SD 2004).

4. Attorneys with the North Carolina Justice Department have asked me to examine recent elections (from 1998 through 2002) presenting voters with a choice between or among African American and non-African American candidates in Pender and New Hanover Counties in North Carolina. The purpose of this examination is to determine the extent to which voting has been racially polarized in these elections. I did a previous analysis of this type for the state in the case of Shaw v. Hunt, 861 F. Supp. 408, 465 (E.D. NC 1994) that served as the basis for a finding of racially polarized voting in that case, a finding that was not disturbed on appeal. I also provided a supplemental analysis of the vote for Mr. Harvey B. Gantt in the November 1996 general election for

the United States Senate using the same methodologies employed in my racially polarized voting analysis in Shaw.

5. I am being compensated at a rate of \$225 an hour for my work in this case.

METHODOLOGY

6. The data utilized in the analyses of these elections consist of information on the race of the registered voters in each of the voting precincts in these counties at the time of the elections, and election returns by precinct for these elections. These data were provided to me by legislative and Board of Elections staff who maintain such data for the State of North Carolina.

7. In assessing the extent to which the candidate preferences of the African American voters differed from those of the non-African American voters in these elections, I have derived estimates of group support for candidates through three analytic procedures. These include the two methods approved for this purpose by the United States Supreme Court in Thornburg v. Gingles [478 U.S. 30, at 52-53 (1986)], which are ecological regression analysis and homogeneous precinct (or extreme case) analysis. Homogeneous precinct analyses simply report the relative levels of support a candidate or set of candidates received within the precincts in which less than 10 percent of the registered voters was African American and within those in which over 90 percent was African American.¹ Regression analyses provide estimates of the support for the various candidates among both African American and non-African American voters based on the votes cast in all of the precincts in an election.² The third methodology I employ is called

¹ There are no homogeneous African American precincts in the Pender County elections analyzed for this report.

Ecological Inference (or EI). This is an estimation procedure that also takes into account the votes cast in all of the precincts that was developed for this purpose subsequent to Thornburg v. Gingles by Gary King.³ It is now common for expert witnesses to rely upon EI estimates of racial divisions in candidate preferences in providing evidence in cases involving the federal Voting Right Act.

RESULTS

8. The results of my analyses of these recent elections reveal, in both counties, pronounced and persistent patterns of racially polarized voting. Reported in Tables 1 and 2 are the results of elections in which voters had a single vote to cast. These include elections in which all of the voters in a county, or in the City of Wilmington in New Hanover County, could participate, and Democratic primaries in which only the voters registered as Democrats or as unaffiliated with a political party may participate.⁴ Reported in Table 3 are the results for elections in which voters had more than one vote

² Correlation coefficients reflecting how consistently the vote for a candidate varies with the relative presence of African Americans in the precincts are reported along with the results of the regression analyses. The correlation coefficient can achieve values ranging from 1.0 to -1.0. A value of 1.0 indicates that as the African American percentage increases across precincts, there is a perfectly consistent increase in the support received by a designated candidate. A value of -1.0 indicates a perfectly consistent decrease in the support received. When the statistical probability of a coefficient is less than .05, that coefficient is identified as statistically significant. The correlation coefficients in the tables below that are statistically significant are identified with an "*" following the value of the coefficient.

³ This procedure is the subject of Gary King, A Solution to the Ecological Inference Problem: Reconstructing Individual Behavior from Aggregate Data (Princeton University Press, 1997)].

⁴ The analyses of the Democratic primary elections employed the data for Democratic and unaffiliated registered voters, rather than the data for all voters. The racial breakdowns of voters in these elections are not provided by party. These analyses treat all registered African Americans as eligible to vote in the Democratic primary, given that relatively few of them are likely to be registered as Republicans. When a primary election is between more than two candidates, the number of opponents an African American candidate has is identified in the table.

to cast. These are the 2000 general election for the Hanover County Board of Education and the nonpartisan election for the Wilmington City Council in October 1999.⁵

9. The results for six single vote elections in Pender County are contained in Table 1. The analyses for five of these elections are consistent across the estimation procedures – the African American candidate was the choice, usually overwhelmingly, of the African American voters, but not the choice of non-African American voters. The exception was the May 5, 1998 election for the District 1 seat on the Board of Education, in which the EI analysis indicates that Ms. Wallace was clearly the choice of the African American voters, while the regression analysis indicates that she was not their choice. In neither analysis was she the choice of the non-African American voters.

10. The results of the six single vote elections in New Hanover County are reported in Table 2. All of the estimation procedures show the African American candidates to be the choice of non-African American voters, again usually overwhelmingly, in every election. Non-African Americans did not share this preference in five of the six cases, the exception being their support for Mr. McQueen in the November 3, 1998 general election for sheriff.

11. The results of the two multiple vote elections in which all registered voters in the particular jurisdiction could have voted are contained in Table 3. The African American candidates in these elections ranked at the top of the vote cast by African American voters, and when there were two, they finished first and second. They were not

⁵ Given the multiple vote nature of these elections, the results reported for them are not the percentages of those voting in the particular election contest that voted for a particular candidate, as in Tables 1 and 2, but rather the percentage of those receiving ballots for the election that voted for a particular candidate. Partisan primary elections in which voters cast more than one vote are not included because the data necessary to perform these analyses have not been retained. Two multiple vote elections, those for four seats on the New Hanover Board of Education and for two nonpartisan Soil and Water

so favored by the non-African American voters. In the 2000 general election for the New Hanover County Board of Education, in which each voter had 3 votes to cast, Ms. Hankins was the candidate receiving the most votes from the African Americans receiving ballots, over 90 percent, but finished last among the six candidates in the votes cast by non-African Americans. In the nonpartisan Wilmington City Council election in 2000, in which voters also had three votes apiece, Ms. Hughes received a vote from over 90 percent of the African Americans receiving ballots, but finished sixth out of the 15 candidates in the EI analysis, and seventh in the regression analysis, in the non-African American vote with about 17 percent. Mr. McDuffie finished second in the votes cast by African Americans, receiving a vote from about 46 percent of them receiving ballots, but was ninth in the vote cast by non-African Americans, with a corresponding percentage of around 6.0.

12. The analyses of recent elections in both Pender and New Hanover Counties in which voters have been faced with a biracial choice of candidates reveal racially polarized voting. These results are similar to those I reported for elections across the state in my previous report for the Shaw case.

Richard L. Engstrom
February 9, 2005

Conservation District Supervisors in New Hanover County in the November 2002, have not been analyzed because the necessary data have not been provided.

TABLE 1**Racial Differences in Support for African American Candidates
Single Vote Elections****PENDER COUNTY**

Reported in the following order:

Ecological Inference
Regression Analysis
Homogeneous Precincts

Candidate	% of African Americans	% of Non- African Americans	Correlation Coefficient
<u>November 5, 2002</u>			
<i>County Commission, D. 2</i>			
Arthur (Monk)	90.3	23.3	.947*
Smith	115.0	25.5	
	----	31.4	
<i>Sheriff</i>			
Bennie L. Corbett	90.2	23.4	.943*
	128.0	17.7	
	----	26.1	
<i>District Court Judge</i>			
James Henry Faison	97.2	31.1	.884*
	96.3	48.0	
	----	48.8	
<u>September 10, 2002 (Dem. Primary)</u>			
<i>Sheriff</i>			
Bennie L. Corbett	60.4	3.4	.870*
(v. four others)	74.6	4.7	
	-----	3.9	

TABLE 1 (continued)

Candidate	% of African Americans	% of Non- African Americans	Correlation Coefficient
<u>November 7, 2000</u>			
<i>County Commission D.3</i>			
James H. Faison, Jr.	92.9	23.6	.962*
	110.4	28.7	
	----	34.2	
<u>May 5, 1998</u>			
<i>Board of Education, D.1</i>			
Irene C. Wallace	77.2	19.0	.216
	45.0	32.5	
	----	33.0	

TABLE 2**Racial Differences in Support for African American Candidates
Single Vote Elections****NEW HANOVER COUNTY**

Reported in the following order:

Ecological Inference
Regression Analysis
Homogeneous Precincts

Candidate	% of African Americans	% of Non- African Americans	Correlation Coefficient
<u>September 10, 2002 (Dem. Primary)</u>			
<i>Sheriff</i>			
James H. Smyre, Jr.	82.2	10.2	.948*
(v. two others)	91.2	9.1	
	78.6	13.0	
<u>May 2, 2000 (Dem. Primary)</u>			
<i>Register of Deeds</i>			
Sandra B. Randolph.	88.6	25.2	.928*
	95.2	22.6	
	89.7	26.1	
<u>November 2, 1999</u>			
<i>Wilmington City Council, Runoff</i>			
Sandra Spaulding	93.1	33.4	.910*
Hughes	114.4	27.4	
	98.6	30.3	
<u>November 3, 1998</u>			
<i>Sheriff</i>			
Joseph McQueen, Jr.	96.5	62.0	.872*
	111.1	61.3	
	93.4	62.8	

TABLE 2 (continued)

Candidate	% of African Americans	% of Non- African Americans	Correlation Coefficient
<i>Clerk of Court</i>			
Harold A. Hicks	90.9	21.2	.963*
	115.2	20.5	
	93.4	23.0	
<u>May 5, 1998</u>			
<i>Wilmington City Council (Special Election)</i>			
Herb McDuffie (v. 5 others)	67.5	3.6	.922*
	108.5	2.5	
	80.2	4.1	

Table 3

**Estimated Racial Differences in Candidate Support
Elections with More than One Vote**

NEW HANOVER COUNTY*

In the following order:
Ecological Inference
Regression Analysis
Homogeneous Precincts

Candidates	African American Voters	Non-African American Voters	Correlation Coefficient
<u>November 7, 2000</u>			
New Hanover Board of Education, 3 Votes			
Lethia S. Hankins	98.6	33.4	.943*
	104.1	32.6	
	93.6	34.6	
Mark A. Lewis.	80.9	37.7	.901*
	80.7	37.8	
	74.9	39.2	
Maryann Nunnally	80.6	45.1	.844*
	80.1	45.2	
	74.0	46.3	
Debbie Keck	0.9	46.5	-.902*
	-6.0	47.5	
	3.6	46.2	
Nancy Wigley	0.7	48.2	-.901*
	-7.3	49.4	
	3.5	48.2	
Jeannette S. Nichols	0.6	47.6	-.901*
	-7.6	48.7	
	2.4	47.4	

* African American candidates are identified in bold type.

TABLE 3 (continued)

Candidates	African American Voters	Non-African American Voters	Correlation Coefficient
<u>October 5, 1999</u>			
Wilmington City Council 3 Votes			
Sandra S. Hughes	93.0	17.7	.960*
	98.6	16.4	
	88.2	17.6	
Herb McDuffie	46.1	6.1	.905*
	46.4	6.1	
	49.8	7.0	
Ron Shackelford	27.4	26.4	-.071
	23.4	27.2	
	22.8	28.5	
Denny Best	22.8	4.9	.721*
	21.9	5.1	
	15.3	5.0	
Laura Padgett	13.2	54.2	-.770*
	16.3	53.5	
	14.1	51.4	
Berry A. Williams	6.4	17.4	-.424*
	6.2	17.4	
	7.0	16.9	
Frank Conlon	5.2	52.5	-.728*
	2.3	53.1	
	8.0	52.2	
Jim Quinn	4.0	51.0	-.852*
	-4.5	52.9	
	6.8	53.1	

TABLE 3 (continued)

Candidates	African American Voters	Non-African American Voters	Correlation Coefficient
Rod Rodriguez.	2.7 2.9 1.9	2.3 2.2 2.0	.166
Brett M. Silverman	2.5 1.2 0.2	1.5 1.7 1.5	-.115
Dana E. Page	1.7 2.0 2.1	3.2 3.1 3.0	-.216
Braxton D. Honeycutt	1.7 2.2 1.7	2.7 2.6 2.5	-.083
Jack Watkins	1.2 -0.8 2.4	23.3 23.8 23.5	-.840*
Lee Weathers	0.9 0.6 0.9	1.0 1.1 1.0	-.187
Michael Plesch	0.7 -0.6 0.5	6.7 7.0 7.0	-.555*

* African American candidates are identified in bold type.

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

04 CVS 6966

PENDER COUNTY, *et al.*

Plaintiffs,

v.

GARY O. BARTLETT, as Executive Director
of the State Board of Elections, *et al.*

Defendants.

FILED
2005 MAR -7 PM 3:10
WAKE COUNTY, N.C.

THIRD NOTICE OF FILING

Defendants' respectfully file the following documents, attached hereto, in support of Defendant's Motion for Summary Judgment:

1. Tables: Black Population, Black Voting Age Population, Black Democratic Registration in 2003 House Plan
2. Tables: Selected 2000/2002 Election Results for 2003 House Plan (Butterfield, Frye, Campbell)
3. Map & Statistics: Remedial 14 Amendment House Plan
(*Stephenson* Plaintiffs' Alternative 2003 House Plan)
4. Map & Statistics: VRA Review 01 House Plan
(*Stephenson* Plaintiffs' Alternative 2002 House Plan)

Respectfully submitted, this the 7th day of March, 2005.

ROY COOPER
Attorney General

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Counsel for the Defendants

Black Population, Black Voting Age Population, Black Democratic Registration in 2003 House Plan

Total Black Pop

Black
Voting Age PopBlack Dem.
Registration

Dist.	% Black Pop
27	55.98%
8	53.97%
102	51.04%
32	37.36%
23	36.54%
38	35.11%
55	34.77%
100	34.11%
69	33.41%
99	31.01%
20	30.87%
44	30.71%
49	29.90%
63	29.73%
66	28.84%
106	28.75%
1	28.69%
22	28.31%
10	27.73%
25	27.26%
6	27.03%
45	26.69%
77	26.50%
4	26.02%
46	25.74%
59	25.73%
50	24.98%
111	24.16%

Dist.	% Black VAP
27	52.93%
8	50.36%
102	46.11%
32	36.22%
23	34.12%
55	31.99%
38	31.63%
100	30.97%
69	30.73%
49	28.49%
99	28.29%
20	28.29%
63	27.86%
1	27.49%
44	27.45%
22	26.78%
66	26.61%
10	26.01%
25	25.87%
106	25.50%
4	24.86%
50	24.69%
77	24.38%
6	24.27%
45	24.19%
46	23.94%
59	23.52%
65	22.18%

Dist.	% Black Dems
102	65.14%
27	60.40%
8	58.61%
99	57.65%
100	50.34%
38	47.46%
106	46.21%
23	46.21%
32	45.35%
69	45.02%
63	44.14%
77	42.74%
44	42.06%
55	41.82%
4	40.76%
49	40.09%
22	39.02%
45	38.91%
14	38.55%
1	37.77%
25	37.72%
6	36.89%
9	36.63%
10	36.61%
66	36.44%
59	36.39%
57	36.34%
20	36.01%

Black Population, Black Voting Age Population, Black Democratic Registration in 2003 House Plan

Dist.	% Black Pop
14	24.06%
53	23.92%
2	23.74%
65	23.58%
30	23.35%
9	23.12%
57	22.84%
109	22.29%
11	21.93%
51	20.71%
26	20.26%
81	17.15%
47	16.46%
15	16.42%
54	16.02%
52	15.91%
3	15.81%
37	15.45%
95	14.87%
103	14.47%
34	14.30%
82	14.09%
61	13.40%
79	12.94%
17	12.85%
56	12.70%
112	12.08%
13	11.62%
35	11.49%
115	11.14%
110	11.12%
83	10.91%
28	10.82%
98	10.31%
67	10.15%
88	10.00%
75	9.33%
114	9.22%
108	8.88%
40	8.86%
62	8.81%
64	8.77%
74	8.74%
41	8.70%
16	8.63%
86	8.29%
70	7.83%
89	6.88%
96	6.77%
91	6.74%

Dist.	% Black VAP
53	21.75%
14	21.75%
111	21.71%
30	21.70%
2	21.46%
57	21.38%
9	21.18%
11	20.58%
109	19.62%
51	19.18%
26	18.83%
47	15.66%
81	15.64%
54	15.49%
37	14.96%
15	14.91%
3	14.77%
52	13.98%
95	13.39%
34	13.19%
103	13.03%
82	13.00%
79	11.96%
61	11.76%
56	11.72%
17	11.18%
112	10.78%
13	10.47%
35	10.39%
110	10.05%
115	9.96%
83	9.91%
28	9.80%
98	9.64%
67	9.24%
88	8.89%
62	8.63%
41	8.54%
40	8.49%
75	8.35%
64	8.24%
108	8.19%
114	8.07%
74	7.99%
86	7.64%
16	7.59%
70	7.06%
91	6.52%
89	6.39%
97	5.98%

Dist.	% Black Dems
109	35.98%
50	34.65%
65	34.20%
111	34.10%
11	33.20%
53	32.70%
52	32.69%
103	30.40%
26	30.04%
46	29.98%
3	29.57%
51	29.45%
37	29.34%
2	29.04%
82	28.88%
81	28.86%
30	27.73%
61	27.15%
79	26.17%
95	26.07%
98	26.01%
54	23.77%
15	22.18%
83	21.75%
28	21.21%
34	19.67%
17	19.36%
75	19.22%
41	18.89%
13	18.86%
62	18.73%
40	18.19%
16	18.14%
70	18.01%
88	17.90%
110	17.61%
35	17.12%
112	16.95%
67	16.65%
74	16.62%
56	16.60%
73	16.16%
47	15.76%
68	15.68%
64	15.29%
108	15.29%
115	15.11%
96	14.45%
89	14.35%
105	13.61%

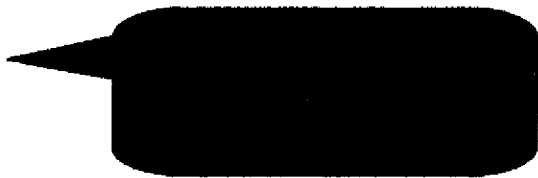
Black Population, Black Voting Age Population, Black Democratic Registration in 2003 House Plan

Dist.	% Black Pop
97	6.69%
68	6.43%
19	6.33%
73	6.14%
76	5.98%
36	5.80%
87	4.93%
104	4.84%
105	4.77%
94	4.40%
90	4.27%
113	4.17%
85	4.12%
78	4.01%
117	3.83%
80	3.63%
92	3.45%
116	3.24%
84	3.20%
119	1.44%
93	1.39%
118	1.38%
120	1.38%

Dist.	% Black VAP
96	5.93%
68	5.92%
73	5.70%
36	5.60%
19	5.51%
76	5.38%
105	4.48%
85	4.35%
87	4.32%
104	4.22%
94	4.12%
90	3.89%
78	3.84%
113	3.50%
80	3.37%
92	3.31%
117	3.26%
84	3.14%
116	2.65%
119	1.45%
118	1.34%
93	1.34%
120	1.15%

Dist.	% Black Dems
86	13.57%
91	12.91%
76	12.64%
97	11.59%
114	11.56%
36	11.55%
19	10.39%
87	10.05%
104	9.92%
94	9.58%
78	9.33%
80	9.15%
113	8.13%
92	7.61%
117	7.13%
90	6.15%
84	5.43%
85	5.39%
116	3.81%
93	2.16%
119	1.72%
118	1.43%
120	1.42%

 = Shading Indicates an African-American was elected to district in 2004 Election



Selected 2000/2002 Election Results for 2003 House Plan
(Butterfield, Frye, Campbell)

Dist.	Buttrfld -D
56	75.25%
102	74.64%
27	69.73%
47	68.63%
20	64.30%
8	63.52%
38	62.07%
66	60.92%
99	59.54%
100	59.27%
30	58.74%
32	58.32%
106	57.82%
54	57.58%
23	56.06%
50	55.81%
69	55.56%
35	54.96%
55	54.74%
114	53.83%
46	53.68%
49	53.65%
22	53.52%
2	53.29%
59	52.98%
1	52.71%
119	52.69%
57	52.34%
118	52.27%
4	52.04%
115	51.64%
63	50.42%

Dist.	Frye -D
102	76.10%
56	74.79%
47	72.79%
27	70.33%
66	65.29%
38	63.79%
20	62.49%
59	61.91%
30	61.73%
100	61.70%
8	60.35%
32	59.98%
57	59.67%
99	59.49%
106	59.08%
54	58.76%
63	58.30%
55	58.22%
69	57.36%
50	57.27%
35	57.12%
46	57.08%
22	55.38%
1	54.31%
65	54.11%
2	53.96%
23	53.43%
49	52.70%
114	52.53%
44	52.33%
118	51.80%

Dist.	Campbl -D
47	76.87%
102	76.26%
27	75.89%
56	73.05%
8	69.12%
20	68.85%
38	65.78%
32	64.89%
66	63.82%
30	62.42%
46	61.97%
100	61.60%
69	60.31%
22	60.18%
54	59.66%
55	59.60%
23	59.06%
106	58.85%
99	58.64%
49	58.54%
2	57.97%
35	57.72%
1	57.70%
50	57.61%
63	56.61%
59	56.54%
118	56.19%
4	55.83%
57	55.70%
119	54.55%
114	54.48%
44	54.11%

Selected 2000/2002 Election Results for 2003 House Plan
(Butterfield, Frye, Campbell)

Dist.	Buttrfld -D
81	48.35%
65	48.01%
111	47.79%
44	46.67%
17	46.35%
9	46.17%
34	46.09%
45	45.99%
77	45.65%
51	45.30%
6	44.96%
10	44.78%
25	44.51%
90	44.33%
86	44.11%
53	42.89%
112	42.86%
26	42.38%
93	41.96%
120	41.67%
41	41.53%
3	41.26%
116	40.56%
109	40.39%
16	40.35%
36	40.28%
14	40.00%
19	39.96%
13	39.69%
62	38.83%
11	38.50%
37	38.46%
113	38.36%
110	38.32%
103	38.01%
74	37.89%
97	37.84%
98	37.75%
88	37.05%
85	36.97%
91	36.86%
61	36.48%
67	36.12%
95	36.06%
40	35.94%
82	35.92%
15	35.02%
104	34.89%
52	34.75%

Dist.	Frye -D
119	51.56%
81	51.43%
115	51.09%
51	50.09%
45	49.91%
34	49.55%
77	49.36%
111	48.80%
4	47.63%
62	47.36%
17	47.28%
53	46.39%
41	46.08%
86	46.06%
26	45.47%
25	45.24%
61	45.10%
90	44.99%
9	44.98%
36	44.52%
93	43.97%
37	43.51%
6	43.21%
112	42.88%
52	42.62%
64	41.96%
10	41.68%
74	41.37%
120	41.35%
16	41.23%
14	40.96%
109	40.71%
91	40.67%
116	40.56%
103	40.41%
98	40.23%
82	40.21%
19	39.81%
40	39.53%
110	39.33%
95	39.23%
97	39.21%
104	38.88%
3	38.70%
13	38.52%
75	38.37%
88	38.32%
11	38.26%
113	38.23%
67	38.04%

Dist.	Campbi -D
65	54.06%
51	53.67%
115	52.98%
45	52.97%
81	52.82%
9	52.03%
10	51.69%
17	51.58%
111	51.57%
34	51.51%
53	51.43%
77	50.57%
6	50.51%
26	50.13%
25	50.08%
86	49.40%
112	47.47%
14	47.06%
13	46.77%
3	46.75%
90	46.18%
93	45.95%
41	45.57%
36	44.65%
37	44.53%
16	44.01%
11	43.60%
19	43.57%
116	43.51%
74	43.10%
120	42.69%
15	42.38%
97	42.36%
62	42.30%
110	42.16%
109	41.91%
81	41.76%
85	41.73%
52	41.56%
82	41.40%
28	41.21%
91	40.83%
40	40.74%
95	40.72%
103	40.43%
87	40.34%
75	40.12%
88	39.95%
113	39.92%

Selected 2000/2002 Election Results for 2003 House Plan
(Butterfield, Frye, Campbell)

Dist.	Buttrfld -D
75	34.40%
84	34.33%
94	34.19%
83	34.16%
108	33.82%
28	33.40%
87	33.00%
117	32.36%
79	32.06%
89	31.19%
96	30.98%
105	29.84%
64	29.70%
70	29.63%
76	27.96%
92	27.94%
80	27.50%
73	26.72%
68	26.51%
78	25.51%

Dist.	Frye -D
83	37.84%
87	37.20%
85	37.04%
28	36.84%
117	36.71%
79	36.63%
70	36.57%
84	35.67%
15	35.28%
108	34.76%
94	34.75%
96	34.43%
105	34.02%
89	33.09%
73	32.12%
78	31.81%
80	31.80%
68	31.72%
76	31.60%
92	31.27%

Dist.	Campbl -D
83	39.54%
67	39.42%
98	38.77%
79	38.52%
64	38.19%
104	37.80%
84	37.40%
117	36.68%
108	36.26%
89	35.83%
96	35.81%
94	35.07%
70	35.03%
92	33.30%
73	32.52%
105	32.47%
76	32.28%
80	31.33%
68	31.21%
78	30.22%

* Shading indicates districts that elected an African-American in November 2004 General Election.

FILED

STATE OF NORTH CAROLINA
 2005 MAY -2 PM 4:40
 WAKE COUNTY WAKE COUNTY, C.S.C.

IN THE GENERAL COURT OF JUSTICE
 SUPERIOR COURT DIVISION
 04 CVS 6966

PENDER COUNTY, *et al.*, _____)
)
 Plaintiffs,)
)
 v.)
)
 GARY O. BARTLETT, *et al.*,)
)
 Defendants.)

**AMENDED
 STIPULATIONS
 OF THE PARTIES**

I. HOUSE REDISTRICTING PLANS

1. The 1992 Plan: the 1992 House redistricting plan enacted by the General Assembly (1991 N.C. Sess. Laws 5 (Extra Session)). A map and statistical data pack of this plan, which was taken from the North Carolina General Assembly's DistrictBuilder System and the accuracy and authenticity of which are stipulated to by the parties, are attached as Exhibit A.

2. The 2001 Plan: the first House redistricting plan enacted by the General Assembly after the 2000 Census (2001 N.C. Sess. Laws 459, also known as "Sutton House Plan 3"), invalidated by the Honorable Knox V. Jenkins, whose decision was affirmed by the North Carolina Supreme Court at *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) ("*Stephenson I*"). A map and statistical data pack of this plan, which was taken from the North Carolina General Assembly's DistrictBuilder System and the accuracy and authenticity of which are stipulated to by the parties, are attached as Exhibit B.

3. The 2002 Plan: the second House redistricting plan ("Sutton House Plan 5") enacted by the General Assembly after the decision of the North Carolina Supreme Court in *Stephenson I*, invalidated by the Honorable Knox V. Jenkins, whose decision was affirmed by

the North Carolina Supreme Court at *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) ("*Stephenson II*"). A map and statistical data pack of this plan, which was taken from the North Carolina General Assembly's DistrictBuilder System and the accuracy and authenticity of which are stipulated to by the parties, are attached as Exhibit C.

4. Jenkins Plan: the House redistricting plan (also known as "Interim House Plan") adopted by the Honorable Knox V. Jenkins and affirmed by the North Carolina Supreme Court, which was used for the 2002 legislative elections. A map and statistical data pack of this plan, which was taken from the North Carolina General Assembly's DistrictBuilder System and the accuracy and authenticity of which are stipulated to by the parties, are attached as Exhibit D.

5. The 2003 Plan: the third House districting plan enacted by the General Assembly after the 2000 Census (2003 N.C. Sess. Laws 434 (1st Extra Sess.)), which was used for the 2004 legislative elections and which is the legislative districting plan currently in place. A map and statistical data pack of this plan, which was taken from the North Carolina General Assembly's DistrictBuilder System and the accuracy and authenticity of which are stipulated to by the parties, are attached as Exhibit E.

6. A district identified in the five House plans in ¶¶ 1-5 as a VRA District is a district either (1) identified by the General Assembly as a district drawn in order to comply with § 2 or § 5 of the Voting Rights Act, 28 U.S.C. § 1973(a) and § 1973c; or (2) identified by the Honorable Knox V. Jenkins or by the North Carolina Supreme Court in *Stephenson I* or *Stephenson II* as a district drawn in order to comply with § 2 or § 5 of the Voting Rights Act. By stipulating that any given district was identified by the General Assembly or the courts as a "VRA district," plaintiffs specifically do not stipulate that such district was in fact required by the Voting Rights Act.

II. THE GENERAL ASSEMBLY

7. The North Carolina General Assembly consists of the Senate and the House of Representatives. N.C. CONST. art. II, § 1. Members of both the Senate and the House of Representatives are elected for two-year terms. N.C. CONST. art. II, §§ 2 and 4.

8. The North Carolina House of Representatives has 120 members.

9. Pursuant to the decisions of the North Carolina Supreme Court in *Stephenson I* and *Stephenson II*, in 2002 and 2004 these 120 members were elected from 120 single-member districts. The terms of the members elected in 2002 commenced on January 1, 2003, and the terms of the members elected in 2004 commenced on January 1, 2005.

10. At the time of redistricting in 1981 and 1982, there were 3 African-Americans serving in the House. After the 1982 redistricting, 11 African-Americans served in the House in 1983. After the *Gingles* litigation and redistricting, 13 African-Americans served in the House in 1985 and in 1987; and 14 served in 1989. The names of the African-American Representatives and the districts they represented are contained in Exhibit F. Of the 120 members of the 1991 House, 81 were Democrats and 39 were Republicans; 105 were white, 14 were African-American, and 1 was a Native American. The demographic list for 1991 issued by the Principle Clerk of the House, which lists freshman, female and minority member of the House, is attached as Exhibit G.

11. After the 1991 redistricting, of the 120 members of the 1993 House, 78 were Democrats and 42 were Republicans; 101 were white, 18 were African-American, and 1 was a Native American. The demographic list for 1993 issued by the Principle Clerk of the House, which lists freshman, female and minority member of the House, is attached as Exhibit H.

12. Of the 120 members of the 1995 House, 52 were Democrats and 68 were Republicans; 102 were white, 17 were African-American, and 1 was a Native American. The demographic list for 1995 issued by the Principle Clerk of the House, which lists freshman, female and minority member of the House, is attached as Exhibit I.

13. Of the 120 members of the 1997 House, 59 were Democrats and 61 were Republicans; 102 were white, 17 were African-American, and 1 was a Native American. The demographic list for 1997 issued by the Principle Clerk of the House, which lists freshman, female and minority member of the House, is attached as Exhibit J.

14. Of the 120 members of the 1999 House, 66 were Democrats and 55 were Republicans; 102 were white, 17 were African-American, and 1 was a Native American. The demographic list for 1999 issued by the Principle Clerk of the House, which lists freshman, female and minority member of the House, is attached as Exhibit K.

15. Of the 120 members of the 2001 House, 62 were Democrats and 58 were Republicans; 101 were white, 18 were African-American, and 1 was a Native American. The demographic list for 2001 issued by the Principle Clerk of the House, which lists freshman, female and minority member of the House, is attached as Exhibit L.

16. After the 2001 and 2002 redistricting and elections under the Jenkins Plan, of the 120 members of the 2003 House, 60 or 61 were Democrats and 59 or 60 were Republicans (the fluctuation in numbers being to due to a representative who changed party affiliation twice during the 2003 session); 101 were white, 18 were African-American, and 1 was a Native American. The demographic list for 2003 issued by the Principle Clerk of the House, which lists freshman, female and minority member of the House, is attached as Exhibit M.

17. After election under the legislature's 2003 Plan, of the 120 members of the current 2005 House, 63 are Democrats and 57 are Republicans; 100 are white, 19 are African-American, and 1 is a Native American. A listing of all 2005 representatives by political party and race is attached as Exhibit N.

III. REDISTRICTING SINCE 1982 AS IT HAS EFFECTED PENDER COUNTY

18. In the House redistricting plan enacted in 1982 and modified in response to *Gingles*, which remained in effect until the 1992 elections, Pender County was divided between two districts: District 12, which also included Sampson and Bladen counties, and District 14, which also included Brunswick County and a portion of New Hanover County.

19. In the 1992 Plan, which remained in effect until the 2002 elections, Pender County was divided between three districts: District 12, which included portions of Pender, and Sampson counties; District 96, which included portions of Pender, Bladen, Cumberland and Sampson counties; and District 98, which included portions of Pender, Brunswick, Columbus and New Hanover counties. District 98 was identified by the General Assembly as a VRA district; it had a total black population of 59.26% and a black voting age population of 55.72%, based on the 1990 Census. Based on the 2000 Census, District 98 had a total black population of 50.70% and a black voting age population of 47.07. *See Exhibit A.*

20. In the 2001 Plan, Pender County was divided between five districts: District 13, which included portions of Pender, Carteret, Craven and Onslow counties; District 15, which included portions of Pender, New Hanover and Onslow counties; District 18, which included portions of Pender, Brunswick, Columbus and New Hanover Counties; District 19, which included portions of Pender, Bladen, Cumberland, New Hanover and Sampson counties; and District 20, which included portions of Pender, Johnston and Sampson counties. District 18 was

identified by the General Assembly and the courts as a VRA district; it had a total black population of 44.00%, a black voting age population of 40.38%. *See Exhibit B.* The State's § 5 preclearance submission materials to the United States Department of Justice regarding District 18 are attached as Exhibit O (without attachments).

21. In the 2002 Plan, Pender County was in a single district – District 16 – which also included a portion of New Hanover County. District 16 was not identified by the General Assembly as a VRA district. However, District 18, which included portions of three counties (Brunswick, Columbus and New Hanover), was identified by the General Assembly and the courts as a VRA district. District 18 had a total black population of 44.00% and a black voting age population of 40.41%. *See Exhibit C.* The State's § 5 preclearance submission materials to the United States Department of Justice regarding District 18 are attached as Exhibit P (without attachments).

22. In the Jenkins Plan, Pender County was in a single district – District 16 – which also included a portion of New Hanover County. District 16 was not identified by Judge Jenkins as a VRA district. However, District 18, which included portions of three counties (Brunswick, Columbus and New Hanover), was identified by Judge Jenkins as a VRA district; it had a total black population of 46.99% and a black voting age population of 43.44%. *See Exhibit D.*

23. In the 2003 Plan, Pender County was divided between two districts – Districts 16 and 18 – both of which also contained portions of New Hanover County. District 18 was identified by the General Assembly as a VRA district, drawn to comply with the provisions of § 2 of the Voting Rights Act; it has a total black population of 42.89%, a black voting age population of 39.36% and black Democratic registration of 53.72%. *See Exhibit E.* That State's § 5 preclearance materials regarding District 18 are attached as Exhibit Q (without attachments).

IV. NEW HANOVER COUNTY

24. New Hanover County, bounded by Pender and Brunswick counties, the Cape Fear River and the Atlantic Ocean, covers 198 square miles, making it the second smallest county in North Carolina. It is also one of North Carolina's most densely populated counties. The first federal census in 1790, showed New Hanover County's population at 7,000. The population in 2000, according to the 2000 Census, of 160,307 was a 33.3 percent increase from 1990. The United States Census Bureau projects that, by 2010, the population of New Hanover County will be nearly 195,000.

25. Originally including the present-day Pender County, New Hanover County was formed in 1729 from Craven County and was named for the House of Hanover, the ruling family of Britain at that time. New Hanover County includes the historically-significant port city of Wilmington, the county seat and the home of the University of North Carolina at Wilmington, as well as the resort towns of Carolina Beach, Kure Beach and Wrightsville Beach. Tourism and film production as well as service and retail businesses are central to the economy of the county.

26. In the late nineteenth century, the port city of Wilmington was the largest city in North Carolina. A majority of the city's population was African American. By 1897, blacks owned 13.6% of the 918 businesses listed in the Wilmington city directory. There were 40 African American justices of the peace in New Hanover County, along with the county treasurer, recorder of deeds, coroner, and assistant sheriff. Wilmington had three African American aldermen, two all-black fire companies, and numerous black policemen, mail carriers, and health inspectors.

27. On November 10, 1898, an incident occurred in Wilmington that is commonly known as "the Wilmington Race Riot." According to many historical accounts, there is evidence

to support a finding that a white mob took control of the reins of government in the city and, in so doing forced the resignation of the existing government, including the three African American aldermen, from office by threatening their safety, destroyed the local black-owned newspaper office and terrorized the African American community. *See, e.g.,* H. LEON PRATHER, SR., *WE HAVE TAKEN A CITY: WILMINGTON RACIAL MASSACRE AND COUP OF 1898* (1984). In the months thereafter, many African Americans fled Wilmington, and political upheaval resulted across the state and legal restrictions were placed on the right of African Americans to vote. *See* Section VII *infra*. Copies of headlines from the November 11, 1898, editions of the Wilmington Morning Star, the New York Herald and the Raleigh News & Observer are attached as Exhibit R.

28. In 2000, the North Carolina General Assembly created the 1898 Wilmington Race Riot Commission. 2000 N.C. Sess. Laws 138, § 17.1. Pursuant to § 17.1(b) of that Act,

The purpose of the Commission shall be to develop a historical record of the 1898 Wilmington Race Riot. In developing such a record, the Commission shall gather information, including oral testimony from descendants of those affected by the riot or others, examine documents and writings, and otherwise take such actions as may be necessary or proper in accurately identifying information having historical significance to the 1898 Wilmington Race Riot, including the economic impact of the riot on African-Americans in this State.

The Commission is chaired by North Carolina Representative Thomas E. Wright of New Hanover County. Rep. Wright represents District 18, which includes a portion of Pender County and a portion of New Hanover County. Professor Irving Joyner of North Carolina Central University is the vice-chair. The full board is composed of thirteen members who are appointed by the legislature, the governor, mayor and city council of Wilmington, and New Hanover County Commission. The Department of Cultural Resources provides research and administrative assistance. A final report from the Commission is expected to be completed by December 31, 2005.

29. New Hanover County is governed by a Board of County Commissioners comprised of five members, who are elected at large through partisan elections in even-numbered years. Members are elected to serve staggered terms of 4 years, with elections held every two years. All five of the current members of the New Hanover Board of County Commissioners are Republicans. Since 1980, one minority, Jonathan Barfield, Sr., a black Democrat, won election to the New Hanover Board of County Commissioners. He served three terms and left office in 1992. There are currently no African Americans serving on the New Hanover County Board of County Commissioners.

30. Since 1981, New Hanover County has been represented by eleven white representatives and one African American representative, Thomas Wright, who was first elected to represent a district that included a portion of New Hanover County in 1992. A listing of the names, district, race and years elected for these representatives is attached as Exhibit S.

V. PENDER COUNTY

31. Pender County is located in southeastern North Carolina and encompasses approximately 875 square miles. The county is a combination of primarily rural inland areas and resort-vacation areas along the coast and on the Atlantic barrier islands.

32. According to the 2000 Census, Pender County had a population of 41,082 people.

33. Pender County was created in 1875 as a result of Reconstruction politics. Prior to 1875, the area now comprising Pender County was part of New Hanover County. During Reconstruction, Republicans, who allied themselves with the local African American population, exerted increasing influence in Wilmington and New Hanover County. Conservatives, who controlled the General Assembly, sought to isolate and limit the influence of Republicans and African Americans in New Hanover County by taking the northern two-thirds of the county,

which included almost all of New Hanover's agricultural population, and formed that area into Pender County, named for Confederate General William D. Pender. This reduced New Hanover County to an area comprised of little more than the City of Wilmington and, at that time, an almost uninhabited peninsula.

34. Since its inception, Pender County has been governed by a Board of County Commissioners comprised of five members. At least since 1982, the county has been divided into five districts for purposes of electing the five commissioners. Currently, and at least since 1996, while each commissioner resides in and has been elected through partisan races from individual districts, all elections for county commissioners have been county-wide elections. Commissioners are currently elected for four year terms; terms for the five members are staggered. Three of the current five members of the Board of County Commissioners elected in the 2004 elections are Democrats, while two are Republicans.

35. Since 1954, three African Americans have been elected to serve as county commissioners in Pender County. They are: Willie Nixon (District 1, 1980-1992); Bonnie Parker (District 3, 1982-1986/1990-1994); and Cleveland Simpson (District 3, 1994-2000). One additional African American, James Faison, Jr., was appointed to serve in Mr. Simpson's position from February 2000 until December 2000 following Mr. Simpson's resignation from office. Mr. Faison ran for the seat himself in the 2000 election but was defeated. There are currently no African Americans serving on the Pender County Board of County Commissioners.

36. Since 1981, Pender County has been represented by seven white representatives and one African American representative, Thomas Wright, who was first elected to represent a district that included a portion of Pender County in 1992. A listing of the names, district, race and years elected for these representatives is attached as Exhibit S.

VI. ECONOMIC, HEALTH AND EDUCATION DISPARITIES

37. The United States Census Bureau publishes a Profile of General Demographic Characteristics (Table DP-1), a Profile of Selected Social Characteristics (Table DP-2), a Profile of Selected Economic Characteristics (Table DP-3) and a Profile of Selected Housing Characteristics (Table DP-4) for various geographic regions using data from the 2000 Census. These profiles describe the disparities between majority and minority populations in various categories. Tables DP-1, DP-2, DP-3 and DP-4 for Pender County are attached as Exhibit T. Tables DP-1, DP-2, DP-3 and DP-4 for New Hanover County are attached as Exhibit U.

38. The North Carolina State Data Center, a consortium of state and local agencies established in cooperation with the US Bureau of the Census to provide the public with data about North Carolina and its component geographic areas publishes various profiles regarding economic, health and education data for various geographic regions using data derived from the 2000 Census and provided by the United States Census Bureau. These profiles describe the disparities between majority and minority populations in various categories. Primary Profiles 4, 6, 10, and 11; Housing Profiles 3 and 4; Income Profile 4; Employment Profile; Disability Profiles 4-6 and Poverty Profiles 1-6 for Pender County are attached as Exhibit V. Primary Profiles 4, 6, 10, and 11; Housing Profiles 3 and 4; Income Profile 4; Employment Profile; Disability Profiles 4-6 and Poverty Profiles 1-6 for New Hanover County are attached as Exhibit W.

39. The North Carolina Department of Health and Human Services State Center for Health Statistics has published various summaries of pregnancy healthcare and neonatal healthcare, neonatal and infant mortality and related statistics for North Carolina's 100 counties, as well as a summary of 1999-2002 North Carolina Race-Specific and Sex-Specific Age-

Adjusted Death Rates for each county. These reports and summaries describe the disparities between majority and minority populations in various categories. Copies of these reports and summaries are attached as Exhibit X.

40. The North Carolina Governor's Office, in conjunction with the North Carolina State Board of Education, using data obtained from school, district, and state levels compile a NC School Report Card each year. The report card includes the results of the End-of-Grade testing across school, district, and state levels. The report card for New Hanover County indicates that 70.6 percent of African-American students passed both the reading and math components of the ABC's End-of-Grade Tests; 74.0 percent of African-American students passed both components in Pender County. The ABC Report Cards for New Hanover and Pender counties are attached as Exhibit Y.

41. The Accountability Services Division of the N.C. Department of Public Instruction also keeps track of SAT scores of North Carolina students. Statistics are reported in The North Carolina SAT Report. Upon contacting the department, individual system statistics are available. In New Hanover County, the mean SAT scores for Black students in 2004 was 856. The mean SAT score for Black students in Pender County in 2004 was 853.

42. The North Carolina State Data Center maintains a web-based database called LINC ("Log into North Carolina") at <http://linc.state.nc.us/>, which contains data derived from the 2000 Census. "LINC Topic Report: Decennial Census – Education" for New Hanover County, taken from the LINC website, is attached as Exhibit Z. "LINC Topic Report: Decennial Census – Education" for Pender County, taken from the LINC website, is attached as Exhibit AA.

43. The North Carolina Department of Public Instruction monitors and maintains reports on Adequate Yearly Progress ("AYP") for schools and school systems throughout North

Carolina. These reports are available at <http://ayp.ncpublicschools.org/>, and they contain data concerning grade level proficiencies in mathematics and writing for grades 3 through 8 and grade 10. The 2004 AYP Report for New Hanover County is attached as Exhibit BB. The 2004 AYP Report for Pender County is attached as Exhibit CC.

VII. PUBLIC RECORD MATERIALS ON DISENFRANCHISEMENT, DISCRIMINATION AND RACIALLY POLARIZED VOTING

44. Attached as Exhibit DD is a compendium of documents from the public record that were submitted to and considered by the General Assembly when it undertook Congressional redistricting in 1997 and the United States Department of Justice when it precleared the 1997 Congressional Redistricting Plan. These materials were also presented to and considered by the three-judge court in the *Shaw* litigation in support of Congressional District 1, which was drawn to comply with § 2 of the Voting Rights Act. These documents, which include laws and practices designed to discourage or prevent minority citizens from voting as well other racially discriminatory laws in North Carolina's history, concern the lingering effects of racially discriminatory laws, racially polarized voting and racial attitudes in North Carolina.

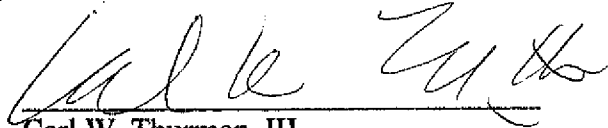
VIII. EVIDENTIARY STIPULATIONS

45. The parties stipulate to the authenticity of all exhibits attached hereto.

46. The parties stipulate that defendants' expert, Dr. Kerry L. Haynie, whose testimony is offered in deposition form, is an expert in political science in the area of substantive and descriptive representation by minority representatives.

47. The parties stipulate that defendants' expert, Dr. Richard L. Engstrom, whose testimony is offered in deposition form, is an expert on racially polarized voting, including the methodology and evaluation by statistical analysis to determine whether racially polarized voting exists.

This, the 27th day of April, 2005.

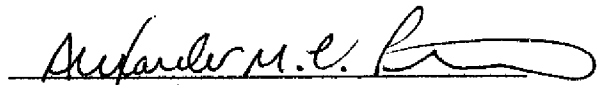


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NORTH CAROLINA:

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY:

04 CVS 0696

PENDER COUNTY, et al.,
Plaintiffs,

v.

GARY O. BARTLETT, as
Executive Director of the
State Board of Elections, et al.,
Defendants.

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NORTH CAROLINA

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MEMORANDUM OF DECISION AND ORDER RE: SUMMARY JUDGMENT

THIS MATTER is before the Court upon plaintiffs' ("Pender County") and defendants' ("BOE") cross motions for summary judgment pursuant to Rule 56, North Carolina Rules of Civil Procedure. Pender County seeks permanent injunctive relief to forbid the use of House districts 16 and 18 as currently constituted under the North Carolina General Assembly's November 25, 2003, legislative redistricting plan.

Procedural Background

This case was instituted on May 14, 2004, by the filing of a complaint in the Superior Court of Wake County. The subject matter of the case involves a legal challenge by Pender County and the other named plaintiffs to portions of the N.C. House of Representatives' legislative redistricting plan adopted by the North Carolina General Assembly on November 25, 2003.

Pender County has been divided between two House Districts in the 2003 Redistricting Plan. Pender County contends that this division violates the Whole County Provision (WCP) of the North Carolina Constitution as defined in *Stephenson v. Bartlett*, 355 N.C. 354 (2002) (*Stephenson I*) and *Stephenson v. Bartlett*, 357 N.C. 301 (2003) (*Stephenson II*).

N.C.G.S. 1-267.1 requires that lawsuits seeking to challenge legislative redistricting plans be filed in the Superior Court of Wake County and that such challenges be heard by a Three-Judge Panel appointed by the Chief Justice of the State of North Carolina.

Chief Justice I. Beverly Lake, Jr., signed an Order dated May 24, 2004, appointing the Three-Judge Panel for Redistricting Challenges as defined in G.S. 1-267.1 to hear and determine the action challenging that portion of the 2003 Legislative Redistricting Plan relating to House seats in North Carolina House Districts 16 and 18 (Pender and New Hanover Counties).

The BOE filed an Answer on June 4, 2004, asserting as one of many defenses, that the division of Pender County into two House districts was required by federal law, the supremacy of which under the federal and state constitutions was specifically acknowledged in *Stephenson I and II*.

The BOE contended that House District 18 was drawn for the purpose of providing black voters in Pender and New Hanover Counties an equal opportunity to elect a candidate of their choice in order to comply with Section 2 of the Voting Rights Act ("VRA").

On June 11, 2004, Pender County filed a motion for preliminary injunction and motion for summary judgment on permanent injunction seeking to enjoin the defendants from proceeding with primary and general elections for the 16th and 18th North Carolina House Districts as they now exist under the November 25, 2003, legislative redistricting plans adopted by the North Carolina General Assembly.

The Three-Judge Panel scheduled a hearing on the motion for preliminary injunction for Friday, June 25, 2004. The parties submitted affidavits, stipulations of fact, and memoranda of law several days prior to the hearing on the motion for preliminary injunction.

The hearing was held as scheduled on June 25, 2004. The Three-Judge Panel advised that it would only consider the issue of whether or not a preliminary injunction should issue to stop the election process. The parties made oral arguments and the Three-Judge Panel recessed for two hours to consider the matter. The Three-Judge Panel reconvened to

announce its unanimous decision in open court and denied the motion for preliminary injunction. A written summary of the decision was provided to the parties, filed with the Clerk of Superior Court of Wake County and provided that a written order would follow in due course.

There was no request from the parties for findings by the Three-Judge Panel pursuant to Rule 52, North Carolina Rules of Procedure and thus findings of fact and conclusions of law are not required when a motion for preliminary injunction is denied. The Three-Judge Panel entered its Order denying Pender County's motion for preliminary injunction in September, 2004.

On February 25, 2005, the parties filed cross motions for summary judgment. Thereafter, the parties filed Stipulations of Fact and Amended Stipulations of Fact (April 27, 2005) together with briefs and reply briefs in support of their respective positions.

On July 14, 2005, the Three-Judge Panel noticed the motions for summary judgment for hearing on Tuesday, August 30, 2005. On August 30, 2005, the parties presented their arguments before the Three-Judge Panel and the Panel took the motions under advisement. The Panel has now had the time to review and consider the Amended Stipulations of Fact, the arguments, memoranda of law, and the record in this case. This matter is ripe for disposition.

At the outset, the Court will address the issue as to whether or not Pender County, acting through its duly elected County Commissioners, can sue the State of North Carolina over its legislatively adopted Redistricting Plan.

The Court notes that this action is brought on behalf of Pender County by Pender County Commissioners Strickland, Williams, Rivenbark, Holland and Meadows, both individually and in their official capacities as county commissioners. The BOE defendants are sued in their official capacities, and not as individuals, as Executive Director of the State Board of Elections, Members of the State Board of Elections, the then Co-Speakers of the North Carolina House of Representatives, the President Pro-Tempore of the North Carolina Senate, the Governor of the State of North Carolina and the Attorney General of the State of North Carolina. Thus, in effect, by commencing this action against the heads of the Executive and Legislative Branches

and the State Board of Elections in their official capacities, Pender County has sued those branches of the government of the State of North Carolina and the agency responsible for executing the legislation at issue.

Pender County, a municipal corporation, is a political subdivision of the State of North Carolina and can only exercise those municipal powers that have been granted to it by the legislature. *Jones v. Commissioners*, 137 N.C. 579, 596 (1905); *Bowers v. City of High Point*, 339 N.C. 413, 417 (1994); *Homebuilders Ass'n of Charlotte*, 335 N.C. 37, 41-42 (1994).

For over 100 years North Carolina followed the narrow rule of common law known as "Dillon's Rule" which provided that:

A municipal corporation possesses and can exercise the following powers and no others: first, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential for the accomplishment of the declared objects and purposes of the corporation - not simply convenient, but indispensable. *Bellsouth Telecommunications, Inc. v. City of Laurinburg*, 168 N.C. App. 75(2005).

Dillon's Rule has been broadened by the General Assembly by the enactment of N.C.G.S. 160A-4, in order to make it clear that the provisions of Chapter 160A of the General Statutes of North Carolina, which pertains to cities and towns, shall be broadly construed to include any additional and supplementary powers that are reasonably necessary and expedient to carry them into effect. *Bellsouth Telecommunications*, supra. However, nowhere in this statute does the legislature give to cities and towns the authority to sue the State of North Carolina.

This Court is unaware of any statute that authorizes a county to file a civil action against the State of North Carolina to challenge the constitutionality of a redistricting statute enacted by the General Assembly of North Carolina. See discussion in *Appeal of Martin*, 286 N.C. 66, at 73-74 (1974), wherein the Supreme Court held that a county did have standing to challenge the constitutionality of a statute limiting its taxing power. Furthermore, the concept underlying Dillon's Rule is

recognized nationally. *Coleman v. Miller*, 307 US 433 (1939).

Therefore, the Court holds that Pender County, and its County Commissioners acting in their official capacities, have no standing to bring this action, and they will be dismissed. This does not, however, end the case as the individual claims of Strickland, Williams, Rivenbark, Holland and Meadows as they, as individual private citizens and voters of Pender County, have standing to sue to seek redress from allegedly unconstitutional action by the BOE in the enactment and execution of the 2003 Legislative Redistricting Plan for the House of Representatives.

Resolving the issue of standing, however, does not resolve the case. Accordingly, the Court will address the merits of the claim. To that end, pertinent stipulations of fact and other undisputed facts of record follow:

FACTUAL BACKGROUND

I. THE NORTH CAROLINA GENERAL ASSEMBLY

1. The North Carolina General Assembly consists of the Senate and the House of Representatives. N.C. CONST. art. II, Section 1. Members of both the Senate and the House of Representatives are elected for two-year terms. N.C. CONST. art. II, Sections 2 and 4. The North Carolina House of Representatives has 120 members. The North Carolina Senate has 50 members.

2. Pursuant to the decisions of the North Carolina Supreme Court in *Stephenson I* and *Stephenson II*, in 2002 and 2004 these 120 house members were elected from 120 single-member districts. The terms of the members elected in 2002 commenced on January 1, 2003, and the terms of the members elected in 2004 commenced on January 1, 2005.

3. At the time of redistricting in 1981 and 1982, there were 3 African-Americans serving in the House. After the 1982 redistricting, 11 African-Americans served in the House in 1983. After the *Gingles* litigation and redistricting, 13 African-Americans served in the House in 1985 and in 1987; and 14 served in 1989. The names of the African-American Representatives and the districts they represented are contained in Exhibit F. Of the 120 members of the 1991 House, 81 were Democrats and 39 were

Republicans; 105 were white, 14 were African-American, and 1 was a Native American.

4. After the 1991 redistricting, of the 120 members of the 1993 House, 78 were Democrats and 42 were Republicans; 101 were white, 18 were African-American, and 1 was a Native American.

5. Of the 120 members of the 1995 House, 52 were Democrats and 68 were Republicans; 102 were white, 17 were African-American, and 1 was a Native American.

6. Of the 120 members of the 1997 House, 59 were Democrats and 61 were Republicans; 102 were white, 17 were African-American, and 1 was a Native American.

7. Of the 120 members of the 1999 House, 66 were Democrats and 55 were Republicans; 102 were white, 17 were African-American, and 1 was a Native American.

8. Of the 120 members of the 2001 House, 62 were Democrats and 58 were Republicans; 101 were white, 18 were African-American, and 1 was a Native American.

9. After the 2001 and 2002 redistricting and elections under the Jenkins Plan ("Interim House Plan" drawn by Judge Jenkins and in effect for the 2002 election), of the 120 members of the 2003 House, 60 or 61 were Democrats and 59 or 60 were Republicans (the fluctuation in numbers being due to a representative who changed party affiliation twice during the 2003 session); 101 were white, 18 were African-American, and 1 was a Native American.

10. After election under the legislature's 2003 Plan, of the 120 members of the current 2005 House, 63 are Democrats and 57 are Republicans; 100 are white, 19 are African-American, and 1 is a Native American.

II. REDISTRICTING SINCE 1982 AS IT HAS AFFECTED PENDER COUNTY

11. In the House redistricting plan enacted in 1982 and modified in response to *Gingles*, which remained in effect until the 1992 elections, Pender County was divided between two districts: District 12, which also included Sampson and Bladen counties, and District 14, which also included Brunswick County and a portion of New Hanover County.

12. In the 1992 Plan, which remained in effect until the 2002 elections, Pender County was divided between three districts: District 12, which included portions of Pender, and Sampson counties; District 96, which included portions of Pender, Bladen, Cumberland and Sampson counties; and District 98, which included portions of Pender, Brunswick, Columbus and New Hanover counties. District 98 was identified by the General Assembly as a VRA district; it had a total black population of 59.26% and a black voting age population of 55.72%, based on the 1990 Census. Based on the 2000 Census, District 98 had a total black population of 50.70% and a black voting age population of 47.07%.

Disaggregated Data for District 98 Using 2000 Census Data

13. District 98 elected Representative Wright in 1992, 1994, 1996, 1998, and 2000. Using the 2000 Census data, District 98 had a voter registration total of 38,998. Of this number, Democratic voters comprised 62.53%, Republican voters comprised 22.21%, and Unaffiliated voters comprised 14.99%. The percentage of black Democratic voters was 53.37% as compared to 43.73% white. Since black Democratic voters constituted the majority of Democrats in District 98, Representative Wright had the obvious edge over a white Democratic challenger in any primary for House Seat in District 98. The election results for 1992, 1994, 1996, 1998 and 2000 in District 98 are the proof in the pudding that a black Democrat had the best chance of winning a House seat because he or she could win the Democratic primary and face a General Election minority of Republican (22.21%) and/or combination of unaffiliated voters (14.99%) whose combined total was less than 38% of the registered voters in the district. That is, if a Republican attempted to run in the first place. In the General Election, the Democratic registered voters, without regard to race, made up 62.53% of the total voters in District 98. The General Assembly created District 98 as a VRA district and Representative Wright continually won re-election as a result.

14. In the 2001 Plan (Sutton House Plan 3), Pender County was divided between five districts: District 13, which included portions of Pender, Carteret, Craven and Onslow counties; District 15, which included portions of Pender,

New Hanover and Onslow counties; District 18, which included portions of Pender, Brunswick, Columbus and New Hanover Counties; District 19, which included portions of Pender, Bladen, Cumberland, New Hanover and Sampson counties; and District 20, which included portions of Pender, Johnston and Sampson counties. District 18, which included Representative Wright's residence, was identified by the General Assembly and the courts as a VRA district; it had a total black population of 44.00%, a black voting age population of 40.38%. There was no election conducted for District 18 as drawn under Sutton House Plan 3 and the record contains no disaggregated data relating to the number of black registered voters by party affiliation. Democratic registered voters did constitute 62.36% of the proposed district and there were 15,594 black registered voters located in that district.

North Carolina's Section 5 Submission for 2001 House Redistricting Plan (Sutton 3) to the USDOJ for Preclearance under Section 5 of the VRA. (Exhibit 0)

15. The State of North Carolina is required to submit its Redistricting Plan to the USDOJ as 40 of its counties are subject to Section 5 of the VRA. Portions of the Sutton 3 Plan submission follow as Sutton 3 related to House District 18, the present District (although redrawn) which is challenged in this action. Excerpts follow:

The effect of the adoption of Sutton 3 on North Carolina's minority voters is to maintain, in the face of changed demographics and changed federal law, the opportunity of minority voters to elect representatives of their choice.

The 1992 plan, based on 2000 Census data, contained 14 majority-black House districts, 10 of which (District 5, 7, 8, 26, 70, 78, 79, 87, and 97) included Section 5 counties. Three other majority-black districts (Districts 21 in Wake, 59 in Mecklenburg, and 66 in Forsyth) were in non-Section 5 counties but counties that were the subject of section 2 litigation in Gingles, which required the drawing of single member black districts. Another majority-black district, District 98, is located in four non Section 5 counties in southeastern North Carolina and was drawn as a result of objections by the U.S. Department of Justice during Section 5 preclearance review in 1991. (At the

time, preclearance review also included review under Section 2 principles).....

In addition, Sutton 3 resulted in three non-Section 5 districts which, though less than 50% black in total population, nonetheless have at least 40% black total population and afford black voters a strong likelihood of being a dominant political force able to elect representatives of their choice. Those districts are as follows:

District 18 (the equivalent of District 98 in the previous plan) -Parts of Brunswick, Columbus, New Hanover and Pender counties (all non Section 5)..... This district was drawn as a majority black district in 1992 in non-Section 5 counties in response to an objection interposed during Section 5 preclearance that said minority voting strength was not being recognized sufficiently in southeastern North Carolina. The preclearance policies which resulted in those objections subsequently led to the U.S. Supreme Court's decision in Shaw v. Reno and related cases. After Shaw , former district 98's non-compact configurations raised questions regarding the predominance of race in the district's design and narrow tailoring. The proposed District 18 is a more compact district with a black percentage of 44%. The black percentage of Democratic voter registration is 53.04% in the new district and the chart shows Democratic nominees in the district winning victories of more than 65% without regard to race.

When Sutton 3 received its final approval in the House of Representatives on November 1, 2001, every minority member of the House of Representatives voted "Yes." When it received final approval in the Senate November 13, all the minority Senators who were present voted "Yes."

16. In the 2002 Plan (Sutton House Plan 5), Pender County was in a single district - District 16 - which also included a portion of New Hanover County. District 16 was not identified by the General Assembly as a VRA district. District 18, that included portions of three counties (Brunswick, Columbus and New Hanover), was identified by the General Assembly and the courts as a VRA district.

District 18 had a total black population of 44.00% and a black voting age population of 40.41%.

There was no election conducted for District 18 as drawn under Sutton House Plan 5 and the record contains no disaggregated data relating to the number of black registered voters by party affiliation. Democratic registered voters did constitute 61.74% of the proposed district and there were 19,429 black registered voters located in that district.

17. *North Carolina's Section 5 Submission for 2002 House Redistricting Plan (Sutton 5) to the USDOJ for Preclearance under Section 5 of the VRA. (Exhibit P)- Relating to District 18.*

Because forty (40) North Carolina counties are subject to Section 5 of the VRA, the 2002 redistricting plan was subject to review by the United States Attorney General. Once again, the State of North Carolina submitted its entire redistricting plan for the House of Representatives to the USDOJ for Section 5 review. The plan was "pre-cleared" by the USDOJ on March 30, 2004, and there was no objection under Section 5 of the VRA. Excerpts follow:

In addition, Sutton 5 Corrected resulted in four non-Section 5 districts which, though less than 50% black in total population, nonetheless have at least 40% black population and afford black voters a strong likelihood of being a dominant political force able to elect representatives of their choice. Those districts are as follows:

** District 18(the equivalent of District 98 in the 1992 plan) -Parts of Brunswick, Columbus and New Hanover, counties (all non-section 5). The proposed District 18 is a more compact district with a black percentage of 44%. The 2002 reconfiguration additionally attempts to comply with the Stephenson decision by containing the district within three rather than four non-Section 5 counties, allowing Pender County to be undivided. The black Democratic voter registration is 51.71% in the 2002 district and the chart..... Shows statewide Democratic nominees in the district winning victories of more than 60% without regard to race. Rep. Thomas Wright, black legislator who has represented District 98 since 1992..... voted for Sutton 5.*

..... Statewide, Sutton 3, resulted in a set of districts that reasonably maintains the position of racial minorities with respect to their effective exercise of the electoral franchise. Sutton 5 Corrected preserves the same pattern.

18. In the Jenkins Plan (Interim House Plan), Pender County was in a single district identified as District 16 that also included a portion of New Hanover County. District 16 was not identified by Judge Jenkins as a VRA district. However, District 18, that included portions of three counties (Brunswick, Columbus and New Hanover), was identified by Judge Jenkins as a VRA district; it had a total black population of 46.99% and a black voting age population of 43.44%.

The Attorney General of the United States interposed no objections and pre-cleared the Jenkins Plan under Section 5 of the VRA on July 12, 2002.

Disaggregated Data for Jenkins District 18 Using 2000 Census Data

District 18 elected Representative Wright in 2002. Using the 2000 Census data, District 18 had a voter registration total of 40,450. Of this number, Democratic voters comprised 64.31%, Republican voters comprised 20.77%, and Unaffiliated voters comprised 14.65%. The percentage of Democratic voters that were black was 52.58 as compared to 44.08 white. Since black Democratic voters constituted the majority of Democrats in District 18, Representative Wright held obvious edge over any white Democratic challenger in any primary for House Seat in District 18. The election results for 2002 in District 98 are the proof in the pudding that Representative Wright, a black Democrat had the best chance of winning a house seat because he won win the party primary, if one was held, and face a General Election minority of Republican (20.77%) and/or combination of unaffiliated voters (14.65%) whose combined total was less than 32% of the registered voters in the district. That is, if a Republican attempted to run in the first place. In the General Election, the Democratic registered voters, without regard to race, made up 64.31% of the total voters in District 18. Judge Jenkins created District 18 as a VRA district and Representative Wright won re-election as a result.

19. In the 2003 Plan, Pender County was divided between two districts - Districts 16 and 18 - both of which also contained portions of New Hanover County. District 18 was identified by the General Assembly as a VRA district, purportedly drawn to comply with the provisions of Section 2 of the Voting Rights Act. District 18 has a total black population of 42.89%, a black voting age population of 39.36% and black Democratic registration of 53.72%. Representative Wright resides in District 18.

Disaggregated Data for 2003 House Plan District 18 Using 2000 Census Data

Using the 2000 Census data, District 18 had a voter registration total of 38,850. Of this number, Democratic voters comprised 59.01%, Republican voters comprised 23.99%, and Unaffiliated voters comprised 16.57%. The percentage of Democratic voters that are black was 53.72% as compared to 44.96% white. Since black Democratic voters constituted the majority of Democrats in District 18, Representative Wright had the obvious edge over a white Democratic challenger in any primary for House Seat in District 18. The election results for 2004 in District 98 are the proof in the pudding that Representative Wright, a black Democrat had the best chance of winning a House seat because he would win the party primary, if one was held, and face a General Election minority of Republican (23.99%) and/or combination of unaffiliated voters (16.57%) whose combined total was less than 41% of the registered voters in the district. That is, if a Republican attempted to run in the first place. In the General Election, the Democratic registered voters, without regard to race, made up 59.01% of the total voters in District 18. Representative Wright won re-election in 2004 in District 18. He had no primary opposition and no Republican opposition in the General Election. It appears from this that Thomas Wright is clearly the candidate of choice of black voters in District 18 as presently constituted.

20. North Carolina's Section 5 Submission for 2003 House Redistricting Plan (Sutton 5) to the US District Court for the District of Columbia for Preclearance under Section 5 of the VRA. (Exhibit Q)- Relating to District 18.

Again, because forty (40) North Carolina counties are subject to Section 5 of the VRA, the 2003 redistricting plan was subject to review by the United States Attorney

General. Once again, the State of North Carolina submitted its entire redistricting plan for the House of Representatives to the USDOJ for Section 5 review. The plan was "pre-cleared" by the USDOJ on March 30, 2004, and there was no objection under Section 5 of the VRA. Excerpts follow:

Minority Voting Strength Statewide

The 2003 House Redistricting Plan's lack of discriminatory or retrogressive intent is further demonstrated by the plan's attention to minority voters throughout the state in non-Section 5 counties as well as areas covered by Section 5. Statewide, the 2003 House Redistricting Plan maintains or increases the overall electoral strength and effectiveness of minority voters based on the number of districts with black populations of over 50%, over 40% and over 30% as follows: (Chart omitted)..... The 2003 House Redistricting Plan, in areas not covered by Section 5, includes five majority-black (BPOP) districts:..... There are four over 40% black (BPOP) districts: Districts 72, 18, 29 and 31. Based on the minority populations and past election results, these nine districts can be expected to continue to elect at least eight black Representatives.

Past election results in North Carolina demonstrate that districts with a black voting age population (BVAP) of 37.81% and above can provide an effective opportunity for the election of black candidates.....

In North Carolina, a more important indicator of effective black voting strength is the percentage of registered Democrats who are black. The profiles of districts in the court-drawn 2002 Interim Plans which have elected black representatives run from a low of 52.58% in District 18 to a high of 78.87% in District 60. (emphasis added)

With the foregoing factual background in mind, the Court will now discuss the major issue framed by the parties.

DISCUSSION

The parties to this action have gone to great lengths to frame the major issue before this Court as follows:

Is the present configuration of House District 18 required by Section 2 of the Voting Rights Act?

Pender County frames the issue in its Memorandum in Support of Motion for Summary Judgment and Permanent Injunction thus:

Under Article II, Section 5(3) of the North Carolina Constitution and the holdings in Stephenson I and II, Pender County should be placed in a single house district unless federal law requires otherwise. Based on the answer filed by Defendants, the only contested legal issue appears to be whether Section 2 of the Voting Rights Act (42 U.S.C. 1973) requires that Pender County be split. The controlling case law on this point is abundantly clear that Pender County need not be split in order to abide by Section 2 of the VRA. (Memorandum page 8, 2/25/05)

The BOE frames the issue in its Brief in Support of Defendant's Motion for Summary Judgment thus:

In the 2003 House Plan, which only divides 47 of North Carolina's 100 counties, this included the drawing of House District 18 to comply with Section 2 of the Voting Rights Act. Specifically, District 18, a district first drawn (as former District 98) to comply with Section 2 in 1992, was drawn in its current form so that it continued to offer minorities in that part of the State the opportunity to elect a candidate of choice; otherwise the State would be vulnerable to a Section 2 Voting Rights Act claim. (Brief, page 6, 3/8/05)

Because of the developing law regarding Section 2 of the Voting Rights Act, the North Carolina General Assembly had a reasonable basis to believe that federal law required drawing House District 18 so that it continued to offer minorities in the southeastern part of the state the opportunity to elect a candidate of choice; otherwise the State would be vulnerable to a Section 2 Voting Rights Act claim. (Brief page 30, 3/8/05)

At the outset, the Court notes that it is not "bound or hog-tied" by the issues as framed by the parties. The Court's responsibility is to review House District 18 as

drawn by the General Assembly under the 2003 House Redistricting Plan and to determine, based on the evidence presented, whether or not House District 18 was drawn in violation of the North Carolina Constitution and the tenets set forth in *Stephenson I*, *Stephenson II* and the applicable federal law.

In *Stephenson I*, the Supreme Court stated:

On remand, to ensure full compliance with federal law, legislative districts required by the VRA shall be formed prior to creation of non-VRA districts. The USDOJ precleared the 2001 legislative redistricting plans and the VRA districts contained therein, on 11 February 2002. This administrative determination signified that, in the opinion of the USDOJ, the 2001 legislative redistricting plans had no retrogressive effect upon minority voters. In the formation of VRA districts within the revised redistricting plans on remand, we likewise direct the trial court to ensure that VRA districts are formed consistent with federal law and in a manner having no retrogressive effect upon minority voters. To the maximum extent practicable, such VRA districts shall also comply with the legal requirements of the WCP as herein established for all redistricting plans and districts throughout the State. (*emphasis added*) 355 N.C. 383

House District 18, as presently and previously drawn, was denominated by Judge Jenkins and the General Assembly as a VRA District. House District 18, as were its predecessors in all of the redistricting plans since 1992, is a single member district. Since present House District 18 and its predecessor Districts were not located in Section 5 VRA counties, House District 18 was identified as a VRA district under Section 2 of the VRA.

It is undisputed that the North Carolina General Assembly, with the consent of Representative Wright, wanted to maintain House District 18 as an effective black voting district so as to avoid a challenge under Section 2 of the VRA in the event the redistricting plan failed to contain an effective black voting district in the southeastern portion of North Carolina similar to former House District 98.

While the General Assembly and its redistricting plan must be given great deference, the intent to create a Section 2 VRA district to comply with federal law and the designation of House District 18 as a Section 2 VRA district does not, in and of itself, answer the question presented. House District 18 must be, in fact and in law, a Section 2 VRA district.

As a result, this Court must look to the United States Supreme Court for guidance relative to the requirements and limitations of Section 2 VRA districts.

This Court recognizes that *Thornburg v. Gingles*, 478 U.S. 30, 92 L. Ed. 2d, 25, 114 S. Ct. 2647 (1986), is the seminal decision on Section 2 claims under the VRA involving multi-member districts. Since *Gingles* there have been a number of cases that have discussed and refined issues relating to Section 2 claims in single-member districts, which is what House District 18 is relative to the *Gingles* decision.

Accordingly, pertinent parts of those Supreme Court Cases follow:

Grove v. Emison, 507 U.S. 25, 122 L. Ed. 2d 388 (1993).

In this case, the United States Supreme Court addressed a Section 2 VRA claim as applied to a single member district and required that the *Gingles* threshold factors apply to a Section 2 VRA claim of vote dilution affecting a single-member district as well as to a multimember district.

Our precedent requires that, to establish a vote-dilution claim with respect to a multimember districting plan (and hence to justify a supermajority districting remedy), a plaintiff must prove three threshold conditions:

First, 'that [the minority group] is sufficiently large and geographically compact to constitute a majority in a single member district'; second, 'that it is politically cohesive'; and third, 'that the white majority votes sufficiently as a bloc to enable it... usually to defeat the minority's preferred candidate.' *Gingles*, 478 U.S., at 50-51, 92 L. Ed. 2d, 106 S. Ct. 2752. We have not previously considered whether these *Gingles* threshold factors apply to a

Section 2 dilution challenge to a single member districting scheme, a so called "vote fragmentation" claim. See *id.*, at 46-47, n. 12, 92 L. Ed. 2d 25,106 S. Ct. 2752. We have, however, stated on many occasions that multimember districting plans, as well as at-large plans, generally pose greater threats to minority-voter participation in the political process than do single-member districts. (citations omitted)- which is why we have strongly preferred single-member districts for federal-court-ordered reapportionment. (citations omitted) It would be peculiar to conclude that a vote-dilution challenge to the (more dangerous) multimember district requires a higher threshold showing than a vote-fragmentation challenge to a single member district. Certainly the reasons for the three Gingles prerequisites to continue to apply: The "geographically compact majority" and "minority political cohesion" showings are needed to establish that the minority has the potential to elect a representative of its own choice in some single-member district see *Gingles*, *supra*, at 50, n. 17, (other citations omitted). And the "minority political cohesion" and "majority bloc voting" showings are needed to establish that the challenged district thwarts a distinctive minority vote by submerging it in a larger white voting population. (citation omitted). Unless these points are established, there neither has been a wrong nor can be a remedy. (emphasis added) 507 U.S. 39-41

Voinovich v. Quilter, 507 U.S. 146 (1993).

Voinovich followed on the heels of *Crowe*. *Voinovich* considered whether or not Ohio's creation of several legislative districts dominated by minority voters violated Section 2 of the VRA. *Voinovich* is instructive on two fronts: first, for purposes of understanding the application of Section 2 to single-member districts and second, for its discussion of the power of the States in deciding their own legislative reapportionments.

Section 2 thus prohibits any practice or procedure that, "interact[ing] with social and historical conditions," impairs the ability of a protected class to elect its candidate of choice on an equal basis with other voters. (citation omitted).

A.

In the context of single-member districts, the usual device for diluting minority voting power is the manipulation of district lines. A politically cohesive minority group that is large enough to constitute the majority in a single member district has a good chance of electing its candidate of choice, if the group is placed in a district where it constitutes a majority. Dividing the minority group among various districts so that it is a majority in none may prevent the group from electing its candidate of choice: If the majority in each district votes a bloc against the minority candidate, the fragmented minority group will be unable to muster sufficient votes in any district to carry its candidate to victory.

This case focuses not on the fragmentation of a minority group among various districts but on the concentration of minority voters within a district. How such concentration or "packing" may dilute minority voting strength is not difficult to conceptualize. A minority group, for example, might have sufficient numbers to constitute a majority in three districts. So apportioned, the group inevitably will elect three candidates of its choice, assuming the group is sufficiently cohesive. But if the group is packed into two districts in which it constitutes a super-majority, it will be assured only two candidates. As a result, we have recognized that "[d]ilution of racial minority group voting strength may be caused" either "by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority."

507 U.S. 153-154

The practice challenged here, the creation of majority-minority districts, does not invariably minimize or maximize minority voting strength. Instead, it can have either effect or neither. On the one hand, creating majority-black districts necessarily leaves fewer black voters and therefore diminishes black-voter influence in predominantly white districts. On the other hand, the creation of majority-black districts can enhance the influence of

black voters. Placing black voters in a district in which they constitute a sizeable and therefore "safe" majority ensures that they are able to elect their candidate of choice. Which effect the practice has, if any at all, depends entirely on the facts and circumstances of each case. (emphasis added.) 507 U.S. 154-155

Section 2 contains no per se prohibitions against particular types of districts: It says nothing about majority-minority districts, districts dominated by certain political parties, or even districts based on partisan political concerns. Instead, Section 2 focuses exclusively on the consequences of apportionment. Only if the apportionment scheme has the effect of denying a protected class the equal opportunity to elect its candidate of choice does it violate Section 2; where such an effect has not been demonstrated, Section 2 simply does not speak to this matter. See 43 USC 1973(b).

The District Court's decision was flawed for another reason. By requiring the appellants to justify the creation of the majority-minority districts, the District Court placed the burden of justifying apportionment on the State. Section 2, however, places at least the initial burden of proving an apportionment's invalidity squarely on the plaintiff's shoulders. Section 2(b) specifies that 2(a) is violated if "it is shown" that a state practice has the effect of denying a protected group equal access to the electoral process. (citation omitted) The burden of "show[ing]" the prohibited effect, of course, is on the plaintiff; surely Congress could not have intended the State to prove the invalidity of its own apportionment scheme. See Gingles, 478 U.S. 46 (citations omitted) (plaintiffs must demonstrate that the device results in unequal access to the electoral process)..... 507 U.S. 155,156

Of course, the federal courts may not order the creation of majority-minority districts unless necessary to remedy a violation of federal law. See *Grove*, ante at 40-41 (citations omitted). But that does not mean that the State's powers are similarly limited. Quite the opposite is true: Federal Courts are barred from intervening in state apportionment in

the absence of a violation of federal law precisely because it is the domain of the States, and not the federal courts, to conduct apportionment in the first place. Time and again we have emphasized that "reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court." *Grove, ante*, at 34 (citations omitted). 507 U.S. 156.....

Had the District Court employed the Gingles test in this case, it would have rejected appellees' Section 2 claim. Of course, the Gingles factors cannot be applied mechanically and without regard to the nature of the claim. For example, the first Gingles precondition, the requirement that the group be sufficiently large to constitute a majority in a single district, would have to be modified or eliminated when analyzing the influence-dilution claim we assume, *arguendo*, to be actionable today. The complaint in such a case is not that black voters have been deprived of the ability to constitute a majority, but of the possibility of being a sufficiently large minority to elect the candidate of their choice with the assistance of cross over votes from the white majority. We need not decide how Gingles first factor might apply here, however, because appellees have failed to demonstrate Gingles' third precondition - sufficient white majority bloc voting to frustrate the election of the minority group's candidate of choice. The District Court specifically found that Ohio does not suffer from "racially polarized voting". 794 F. Supp. at 700-701. (citations omitted)

Here, as in *Gingles*, "in the absence of significant white block voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters." *Gingles*, 478 U.S. at 49, n. 15. The District Court's finding of a Section 2 violation, therefore, must be reversed. 507 U.S. 158.

SHAW V. HUNT, 517 U.S. 899, 135 L. ED. 2d 207 (1996).

This case involves the infamous North Carolina U.S. House District 12, sometimes known as the "chicken district" that ran east and west along Interstate 85. House District 12 was formed in response to the USDOJ's

objections to North Carolina's 1991 Congressional Redistricting Plan under **now unenforceable** Attorney General regulations which required preclearance under Section 5 VRA review be withheld if there were Section 2 problems in the proposed redistricting plan.

With respect to Section 2, appellees contend, and the District Court found, that failure to enact a plan with a second majority-black district would have left the State vulnerable to a lawsuit under this section. Our precedent establishes that a plaintiff may allege a Section 2 violation in a single-member district if the manipulation of districting lines fragments politically cohesive minority voters among several districts or packs them into one district or a small number of districts, and thereby dilutes the voting strength of members of the minority. (citations omitted). To prevail on such a claim, a plaintiff must prove that the minority group is "sufficiently large and geographically compact to constitute a majority in a single-member district"; that the minority group "is politically cohesive"; and that "the white majority votes sufficiently as a bloc to enable it ...usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986); *Grove v. Emison*, 507 U.S. 25 (1993) (citations omitted) A court must also consider all other relevant circumstances and must ultimately find based on the totality of those circumstances that members of a protected class "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their own choice. [42 USC 1973(b)]." 517 U.S. 914

We assume, *arguendo*, for purpose of resolving this suit, that compliance with Section 2 could be a compelling interest, and we likewise assume, *arguendo*, that the General Assembly believed a second majority-minority district was needed in order not to violate Section 2, and that the legislature at the time it acted had a strong basis in evidence to support that conclusion. 517 U.S. 915

Where, as here, we assume avoidance of Section 2 liability to be a compelling state interest, we think that the racial classification would have to realize that goal; the legislative action must, at a minimum,

remedy the anticipated violation or achieve compliance to be narrowly tailored.

District 12 could not remedy any potential Section 2 violation. As discussed above, a plaintiff must show that the minority group is "geographically compact" to establish Section 2 liability. No one looking at District 12 could reasonably suggest that the district contains a "geographically compact" population of any race. Therefore where that district sits, "there neither has been a wrong nor can be a remedy." *Grove, supra*, at 41.

If a Section 2 violation is proved for a particular area, it flows from the fact that individuals in this area "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. 42 USC 1973(b). The vote dilution injuries suffered by these persons are not remedied by creating a safe majority black district somewhere else in the State. For example, if a geographically compact, cohesive minority population lives in southeastern North Carolina, as the Justice Department's objection letter suggested, District 12 that spans the Piedmont Crescent would not address that Section 2 violation. The black voters of south-central to southeastern region would still be suffering precisely the same injury that they suffered before District 12 was formed. District 12 would not address the professed interest of relieving the vote dilution, much less be narrowly tailored to accomplish this goal. **517 US 916, 917**

This Court notes that House District 18's predecessor, House District 98, was created in response to the USDOJ's same preclearance Section 5 and 2 review and objections to the 1991 redistricting plan. House District 98, although not precisely aligned with the present, compact, two-county effective minority district of House District 18, was then thought to have been required under Section 2 of the VRA by the USDOJ for southeastern North Carolina. There was no challenge to House District 98 as a Section 2 VRA. Representative Wright was elected in 1992, 1994, 1996, 1998, and 2000 in a district created as a VRA district for purposes of Section 2 of the VRA and to alleviate the objections of the USDOJ under its regulatory scheme. A

Section 2 VRA objection from the USDOJ is no longer appropriate to hold up a Section 5 VRA preclearance and has not been a stumbling block since 1996. Here's why.

Prior to the Supreme Court's decision in **Reno v. Bossier Parish School Bd**, 520 U.S. 471 (1996) the Attorney General's regulations interpreting the VRA required that a proposed redistricting change be free of discriminatory purpose and retrogressive effect (Section 5), but also if the Attorney General concluded that a "bar to implementation of the change is necessary to prevent a clear violation of amended Section 2, the Attorney General shall withhold Section 5 preclearance." 28 CFR Section 51.55(b)(2) (1996).

Section 5 of the VRA freezes election procedures in a "covered jurisdiction" until that jurisdiction proves that its proposed changes do not have the purposes and will not have the effect of denying or abridging the right to vote based on race.

Reno held, *inter alia*, that pre-clearance under Section 5 may not be denied solely on the basis that the new redistricting plan violates Section 2 of the VRA. In so holding, the Supreme Court struck down the Attorney General's regulation that required Section 5 preclearance to be withheld on the basis of a suspected Section 2 VRA violation. **Reno**, *supra*, 520 U.S. 483-485.

"Preclearance under Section 5 affirms nothing but the absence of backsliding." **Reno v. Bossier Parish School Bd.**, 528 U.S. 335

As a consequence of the **Reno** decision, at the time of the 2000 census and its required redistricting plans, the USDOJ was no longer able to use its objections to redistricting plans on the basis of perceived Section 2 VRA violations.

Simply put, the USDOJ did not have the jurisdiction or authority under its Section 5 review to pass on or object to the creation of House District 18 or to cloak House District 18 with a mantle of legitimacy as a Section 2 VRA district. Thus, the preclearance of North Carolina's 2003 House Redistricting Plan under Section 5 of the VRA did not provide one iota of cover for House District 18's designation as a VRA district under Section 2.

House District 18 must rise or fall on its ability to stand alone as a Section 2 VRA district and it must be able to meet the Section 2 elements as set forth above.

House District 18

It is undisputed that the General Assembly intended House District 18 to be created as a Section 2 VRA district and that the General Assembly believed that it was required to draw a Section 2 VRA district in the southeastern North Carolina Region in order to comply with Section 2 of the VRA.

Nothing in *Stephenson I and II* guarantees any county protection from being divided when necessary to comply with the VRA; one-man, one-vote; or other federal mandates.

The difficulty in analyzing and deciding this case is the posture in which House District 18 presents itself to the Court on two separate grounds:

First, House District 18 was drawn as a "preemptive strike" against legislative concerns that, if a Section 2 VRA effective minority district was not maintained in the southeast to replace former House District 98, then there would be a lawsuit filed challenging the **absence** of an effective minority district in southeastern North Carolina on the basis of Section 2 of the VRA.

Having taken the initiative and created House District 18 as a Section 2 VRA district in this preemptive fashion, the BOE is in the unusual position of having to defend its decision as if it had the burden of proving that a Section 2 VRA violation would have occurred, in fact and as a matter of law, in the absence of the creation of House District 18.

Second, House District 18 is **not** a majority-minority district because of the number of black voters located therein. House District 18, at best, can be described as an "ability to elect" or "coalition" district. An "ability to elect district" is a district where "minority citizens are able to form coalitions with voters from other racial and ethnic groups, having no need to be a majority with a single district in order to elect candidates of their own choice." *Georgia v. Ashcroft*, 539 U.S. 461, 481 (2003).

Pender County's able and competent counsel goes for the jugular on this very point and argues that under the first prong of the **Gingles** threshold test as interpreted by the United States Court of Appeals in **Hall v. Virginia**, 385 F.3d 421 (4th Cir.2004), a district in which black voters do not form a numerical majority cannot maintain a Section 2 VRA claim in the first place.

*The district court dismissed the complaint on the grounds that the plaintiffs could not satisfy the requirements established in **Thornburg v. Gingles** that a minority group seeking relief under Section 2 "demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district." 478 U.S. 30,50 (1986). Because we agree that **Gingles** establishes a numerical majority requirement for all Section 2 claims, we affirm the order of the district court dismissing the complaint with prejudice." **Hall**, at p 2. slip op.*

If this Court agrees with the Fourth Circuit's imposition of the first prong of **Gingles** as a "bright line" requirement that the minority group seeking Section 2 VRA relief must be a numerical majority, then this case is over and District 18 as presently drawn is "toast" because House District 18 is not a numerical majority black voter district. The easy way out for the Court would be to stop here, run for cover using **Hall** for protection, and grant summary judgment. To take such action under the particular facts presented, however, would be a shameful example of judicial irresponsibility and this Court rejects the carrot dangled by the **Hall** decision.

After careful consideration of the undisputed facts pertaining to House District 18 and hours of "eye straining" review of the many United States Supreme Court decisions which followed **Gingles** into the murky legal quagmire of Section 2 of the VRA, this Court must respectfully disagree with the Fourth Circuit's imposition of a "bright line" requirement that a minority group seeking Section 2 VRA relief must constitute (literally) a numerical majority of black population and/or black voting age population.

Furthermore, this Court is not bound by a decision of the Fourth Circuit, only by a decision of the United States Supreme Court. **State v. McDowell**, 310 N.C. 61, 74 (1984).

With all due respect, a "bright line test" requiring a voting age majority of minority voters to be present in a single-member district has not yet been etched in stone by the Supreme Court of the United States. Until that day comes, this Court is free to consider the issue of whether or not black voters in House District 18 have the potential, on the strength of their own ballots, to elect candidates of their own choice.

This Court is of the opinion that the first **Gingles** precondition for establishing a Section 2 VRA claim - that a minority must be able to constitute a "majority" in a single member district - depends on the political realities extant in the particular district in question, not just the raw numbers of black voters present in the general population of the district.

The proper factual inquiry in analyzing a "coalition" or an "ability to elect district", in our opinion, is not whether or not black voters make up the majority of voters in the single-member district, but whether or not the political realities of the district, such as the political affiliation and number of black registered voters when combined with other related, relevant factors present within the single-member district operate to make the black voters a **de facto** majority that can elect candidates of their own choosing. Put another way, we believe the proper inquiry is whether the black voters in the district possess the political ability, through the voting booth, to elect candidates of their own choice.

As a matter of practical common sense, such an inquiry must focus on the **potential of black voters to elect representatives of their own choosing** not merely on sheer numbers alone. Potential is not a "new" word that this Court has plucked out of thin air. Potential has been a frequently used term within the context of Section 2 VRA analysis.

The United States Supreme Court in **Grove**, supra, at 40, noted that a minority group claiming to have had its voting power diluted in violation of Section 2, must establish that the group "has the **potential** to elect a

representative of its own choice in some single-member district."

Even in *Gingles*, potential was used: "[u]nless minority voters possess the **potential** to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice." *Gingles*, supra at 50, n.17. (emphasis added.)

Accordingly, in the event that this Court's inquiry reveals that blacks constitute a **de facto** majority with the potential to elect candidates of their own choice because of the political realities present in the district, then and in that event the **de facto** majority black voters present in the district would be present in sufficient numbers to satisfy the "majority" requirement in *Gingles*, as that **de facto** majority would possess the potential political power to elect a representative of its own choice in House District 18.

This Court concludes that employing a practical, common sense approach to the facts related to House District 18 has support outside of the Fourth Circuit. The United States Court of Appeals for the First Circuit in the case of *Metts v. Murphy*, 363 F.3d 8 (1st Cir. 2004) discussed the first prong of *Gingles* and stated:

First, several Supreme Court opinions after *Gingles* have offered the prospect, or at least clearly reserved the possibility that *Gingles*' first precondition - that a racial minority must be able to constitute a "majority" in a single-member district - could extend to a group that was a numerical minority but had predictable cross-over support from other groups. (citations omitted) "[T]he first *Gingles* precondition, the requirement that the group be sufficiently large to constitute a majority in a single district, would have to be modified or eliminated when analyzing the influence-dilution claim we assume, *arguendo*, to be actionable today." Further, the Court has so far reserved judgment on a second-cousin question: whether dilution of a minority racial group's influence, as opposed to the power to elect, could violate section 2- a position that would require substantial modification of *Gingles*' first-

prong "majority" precondition. *Grove*, 507 U.S. at 41, n. 5.

Second, where single member districts are at issue - as in our case - opinions have increasingly emphasized the open-ended, multi-factor inquiry that Congress intended for section 2 claims. (citations omitted) To say that *Gingles* applies as a precondition to section 2 liability may not tell one very much if *Gingles* itself is no longer to be "mechanically" applied.....

[2] It is no accident that most cases under section 2 have been decided on summary judgment or after a verdict, and not on a motion to dismiss. This caution is especially apt where, as here, we are dealing with a major variant not addressed in ***Gingles*** itself- the single member district - and one with a relatively unusual history.....

We are thus unwilling at the complaint stage to foreclose the possibility that a section 2 claim can ever be made out where the African-American population of a single member district is reduced in redistricting legislation from 26 to 21 per-cent. Yes, one would ordinarily expect the consequences to be small, but not always, and arguably not here (based on past history). At this point we know practically nothing about the motive for the change in the district or the selection of the present configuration, the contours of the district chosen or the feasible alternatives, the impact of alternative districts on other minorities, or anything else that would help gauge how mechanically or flexibly the ***Gingles*** factors should be applied. 363 F.3rd 11,12.

With the foregoing comments in mind, the Court will now examine the undisputed evidence related to House District 18 and determine whether or not House District 18, as presently constituted, is a ***de facto*** black majority district under a Section 2 VRA analysis sufficient to meet the first prong of ***Gingles***.

Past election results in North Carolina demonstrate that districts with a black voting age population (BVAP) of 37.81% and above can provide an effective opportunity for the election of black candidates.

In North Carolina, a **more important indicator of effective black voting strength is the percentage of registered Democrats who are black.**

Using the 2000 Census data, District 18 had total voter registration total of 38,850. Of this number, Democratic voters comprised 22,960 (59.01%)an overwhelming majority. Republican voters comprised 9,285 (23.99%)and Unaffiliated voters comprised 6,437 (16.57%).

District 18 has a total black population of 27,023 (42.89%), a black voting age population of 19,173 (39.36%) and a black Democratic voter registration of 12,334 (53.72%). With the majority of Democratic voters being black, it is not rocket science to conclude that the candidate in the Democratic primary for House District 18 who will be successful in that primary will be the black Democratic voters' candidate of choice.

The election results for 2004 in District 98 are the proof in the pudding that Representative Wright, a black Democrat, had the best chance of winning the House seat in District 18 because he would win the party primary, if one was held, and face a General Election minority of Republican (23.99%) and/or combination of unaffiliated voters (16.57%) whose combined total was less than 41% of the registered voters in the district.

The fact of the matter is that Representative Wright had no primary opposition and no Republican opposition in the General Election in 2004. The reason no Republican ran is also not rocket science. In the General Election, the Democratic voters, without regard to race, make up 59.01% of the total voters in District 18. It is clear that Representative Wright is the black voters' candidate of choice and that they have, in House District 18, the ability to elect him to office in the General Election by means of the Democratic primary and the Democratic party.

There has been no evidence presented to contradict these facts from the undisputed evidence in the record, or to call into question the only reasonable conclusion that can be drawn from the present configuration of House District 18: House District 18 is geographically compact and politically cohesive among the registered Democratic voters to be an effective, viable "ability to elect district" that is, a "coalition district" where Democrats

vote for the Democratic candidate who wins the party primary and **a de facto majority** district for black voters who are able to elect the representative of their choice to the North Carolina House of Representatives.

Accordingly, this Court concludes as a matter of law that House District 18, as presently drawn, contains a black voting age population that is "sufficiently large and geographically compact" so as to constitute a majority in House District 18 which has potential and the proven ability to elect its candidate of choice to the North Carolina House of Representatives.

Representative Thomas Wright is clearly the candidate of choice of black voters in House District 18, as presently constituted, and as well in the previous districts.

This Court therefore concludes as a matter of law that House District 18, as presently drawn, satisfies the first two **Gingles** threshold conditions for a Section 2 VRA claim as set out below:

First, that the black voters in House District 18 are a sufficiently large and geographically compact group so as to constitute a majority in the single-member district; and

Second, that the black majority voters are politically cohesive within the majority Democratic party in House District 18 and that within the Democratic party the voters are politically cohesive.

In making these conclusions, the Court has considered all of the undisputed evidence of record, including the prior voting patterns of House District 98 and Interim House District 18, as well as the evidence discussed above relative to present House District 18.

This Court, upon careful consideration of the evidence presently before the Court relating to the third prong of **Gingles** -- requiring that there be sufficient white majority bloc voting to impair the ability of black voters to elect their chosen representatives - **Gingles**, 478 U.S. at 49, n. 15. - is of the opinion that there more likely than not exist genuine issues of material fact on this question.

At the very least, given this Court's determination that the first two prongs of **Gingles** have in fact and in law been satisfied with respect to House District 18's qualification as a Section 2 VRA district, it would be in the interests of justice and fair play to provide both sides an opportunity to present evidence on this Third prong and also on the "totality of the circumstances" of Section 2 of the VRA.

This is because proof of the **Gingles** preconditions is not alone enough to establish proof that House District 18 is a Section 2 VRA district. "The ultimate determination of vote dilution under the Voting Rights Act still must be made on the basis of the 'totality of the circumstances.'" **Lewis v. Alamance County**, 99 F. 3d 600, 604 (4th Cir. 1996).

Reduced to essentials, the Court's decision is as follows:

First, the Court will dismiss Pender County and the plaintiff-commissioners in their official capacities, leaving the individual plaintiffs to prosecute the remainder of this action.

Second, the Court, having declared that House District 18, as presently drawn, meets the first and second **Gingles** preconditions, will grant partial summary judgment in favor of the BOE on those issues and will deny Pender County's motion for summary judgment.

Third, the Court, having determined that there are questions of material fact that may be in dispute relating to the racial bloc voting third **Gingles** precondition and that the Court would like to provide the parties an opportunity to focus the evidence on this issue and also on the "totality of the circumstances" required in any Section 2 VRA analysis, will make no ruling affecting those issues and will, after a status conference, schedule an evidentiary hearing on the remaining issues.

Fourth, after hearing evidence on the remaining issues, the Court will resolve any disputes of fact, and enter its final judgment accordingly.


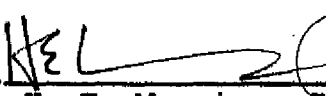

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That Pender County lacks standing to bring this action against the State of North Carolina defendants and is hereby dismissed as a party to this action.
2. That Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland, and Eugene Williams, in their official capacities as County Commissioners of Pender County, lack standing to bring this action against the State of North Carolina defendants and they are hereby dismissed, in the official capacities, as parties to this action.
3. That Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland and Eugene Williams, as individual citizens and voters of Pender County, have standing to bring this action and they remain as plaintiff parties to this action.
4. That House District 18, as presently constituted, meets the first two (2) threshold tests set out in *Thornburg v. Gingles*, supra., in that based on the undisputed evidence of record and the law: (1) House District 18 has a black minority population that is sufficiently large and geographically compact as to constitute a *de facto* majority in that single member district and (2) House District 18's black minority group is politically cohesive.
5. That the Court has determined that material issues of fact remain in dispute as relates to the third (3) *Gingles* threshold test relating to whether or not there is "racially polarized voting" and as relates to the "totality of circumstances" as to whether or not the members of the black minority have less opportunity than other members of the electorate to participate in the political process and elect representatives of their own choosing as required under 42 USC 1973(b) to establish a Section 2 VRA district. See *Shaw v. Hunt*, supra at 517 US 914.
6. That Pender County's (Plaintiffs') Motion for Summary Judgment on the grounds that House District 18, as presently constituted, cannot comply with Section 2 of the Voting Rights Act, is denied for the reasons set forth in this Memorandum of Decision and Order.
7. That the BOE (State of North Carolina defendants) Motion for Summary Judgment on the grounds that House District 18, as presently constituted, complies with Section 2 of the Voting Rights Act is allowed in part

and denied in part for the reasons set forth in this Memorandum of Decision and Order.

8. That the Court will conduct a scheduling conference with the remaining parties' counsel within 10 days of the date of this Memorandum of Decision and Order regarding the trial of the remaining issues in this case. It is the intent of this Court that the remaining issues will be set for an evidentiary hearing in the first part of January, 2006.

This the 2nd day of December, 2006.


W. Erwin Spainhour H. E. Manning, Jr. Quentin T. Sumner

Three-Judge Panel for Redistricting Challenges G.S.1-267.1

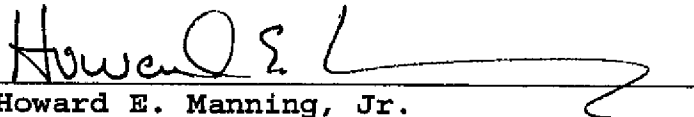
Certificate of Service

This is to certify that a copy of the foregoing Memorandum of Decision and Order Re: Summary Judgment was served this date on counsel for the parties by facsimile as permitted by the North Carolina Rules of Civil Procedure as follows:

Alexander McC. Peters (*Special Litigation*) at 919-716-6763
Counsel for State Defendants (BOE)

Carl W. "Trey" Thurman (*Pender County*) at 910-763-7476
Counsel for Plaintiffs

This the 2nd day of December, 2005.


Howard E. Manning, Jr.
Superior Court Judge

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04-CVS-0696

PENDER COUNTY, DWIGHT STRICKLAND,)
Individually and as a Pender County Commissioner,)
DAVID WILLIAMS, Individually and as a Pender)
County Commissioner, F.D. RIVENBARK,)
Individually and as a Pender County Commissioner,)
STEPHEN HOLLAND, Individually and as a)
Pender County Commissioner, and EUGENE)
MEADOWS, Individually and as a Pender County)
Commissioner)

PLAINTIFFS,)

V.)

GARY BARTLETT, as Executive Director of the)
State Board of Elections; LARRY LEAKE,)
ROBERT CORDLE, GENEVIEVE C. SIMS,)
LORRAINE G. SHINN, and CHARLES)
WINFREE in Their Official Capacities as Members)
Of the North Carolina Board of Elections; JAMES)
B. BLACK in His Official Capacity as Co-Speaker)
of the North Carolina House of Representatives;)
RICHARD T. MORGAN, in His Official Capacity)
as Co-Speaker of the North Carolina House of)
Representatives; MARC BASNIGHT, in His)
Official Capacity as President Pro Tempore of the)
North Carolina Senate; MICHAEL EASLEY, in)
His Official Capacity as Governor of the State of)
North Carolina; ROY COOPER, in His Official)
Capacity as Attorney General of the State of North)
Carolina;)

DEFENDANTS)


NOTICE OF APPEAL

BY
MADE TO ORDER, C.S.C.
2006 DEC 30 AM 11:50
411 330

Now COME Plaintiffs Pender County and Dwight Strickland, David Williams,
F.D. Rivenbark, Stephen Holland and Eugene Meadows, in their official capacities, and
hereby give Notice of Appeal of the December 2, 2005 Order of the Honorable three

Judge Panel granting partial summary judgment in favor of Defendants. This appeal is taken to the North Carolina Court of Appeals and the North Carolina Supreme Court pursuant to N.C.G.S. 120-2.5

Respectfully submitted, this the 29th day of December, 2005.


 CARL W. THURMAN III
 Pender County Attorney
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 3169 Wrightsville Ave.
 Wilmington, North Carolina 28403
 910-763-7487
 Attorney for Plaintiffs

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

2016 JAN -9 AM11:27

04 CVS 6966

PENDER COUNTY, et al.,)
vs.)
The State of North Carolina)

Plaintiffs,

JOINT STIPULATIONS OF THE PARTIES

V.

GARY O. BARTLETT, *et al.*,

Defendants.

Now COME the parties in the above-captioned case and stipulate the following for purposes of resolving the undecided issues in this case:

On 2 December 2005, the three-judge panel issued its Memorandum of Decision and Order Re: Summary Judgment. The order held that Pender County and the plaintiff County Commissioners in their official capacities lacked standing to bring this action. The court also held that House District 18 as presently constituted meets the first two threshold tests set out in *Thornburg v. Gingles* in that based on the undisputed evidence of record and law the district has a black minority population sufficiently large and geographically compact to constitute a *de facto* majority in that single member district and the district's minority group is politically cohesive. The court, however, determined there may exist genuine issues of material fact regarding the third *Gingles* threshold test relating to whether or not there is racially polarized voting and relating to the totality of the circumstances as to whether or not the members of the black minority have less opportunity than other members of the electorate to participate in the political process and elect representatives of their own choosing. Consequently the court left these remaining issues for final determination after an evidentiary hearing as necessary.


Defendants have presented evidence they contend shows that there was a strong basis for the General Assembly to have believed at the time of the enactment of the 2003 House Redistricting Plan that House District 18 should be drawn to comply with Section 2 of the Voting Rights Act. Plaintiffs stipulate that the evidence presented by the defendants is sufficient to support a finding of fact that the African-American populations in Pender and New Hanover counties are politically cohesive and racially polarized voting exists in Pender and New Hanover counties so that African-American candidates usually are overwhelmingly the choice of African-American voters, but are not the choice of non-African-American voters. Plaintiffs further stipulate that the evidence presented by the defendants is sufficient to support a finding of fact that the racial difference in the preference of voters results in the white majority voting sufficiently as a block to usually enable it to defeat the minority's preferred candidate.

The plaintiffs also stipulate that the evidence presented by the defendants is sufficient to support a finding of fact that for many decades African-Americans in North Carolina, including minorities in Pender and New Hanover counties, were victims of racial discrimination and a substantial number of the African-American citizens in Pender and New Hanover counties are still at a disadvantage in comparison to white citizens with regard to income, housing, education and health which hinders their ability to participate effectively in the political process and elect representatives of their own choosing.

Plaintiffs hereby advise the court that they do not wish to be heard further or to present evidence regarding the remaining issues, although plaintiffs do intend to proceed with an appeal of the adverse holdings in the court's Memorandum and Order of 2 December 2005.

The parties agree that, based on the foregoing stipulations, there exist no genuine questions of material fact on the issues remaining for decision in this case and the Court accordingly may enter its final judgment on the merits.

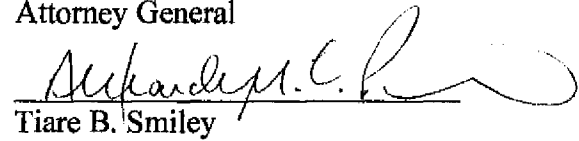
Respectfully submitted, this the 5th day of December, 2005.



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Counsel for the Defendants

NORTH CAROLINA:

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY:

04 CVS 0696

PENDER COUNTY, et al.,
Plaintiffs,

v.

GARY O. BARTLETT, as
Executive Director of the
State Board of Elections, et al.,
Defendants.

BY

WAKE COUNTY C.S.C.

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FILED

MEMORANDUM OF DECISION AND JUDGMENT

THIS MATTER is before the Court for entry of final judgment upon plaintiffs' claims for permanent injunctive relief to forbid the use of House Districts 16 and 18 as currently constituted under the North Carolina General Assembly's November 25, 2003, legislative redistricting plan.

Procedural Background

This case was instituted on May 14, 2004, by the filing of a complaint in the Superior Court of Wake County. The subject matter of the case involves a legal challenge by Pender County and the other named plaintiffs to portions of the N.C. House of Representatives' legislative redistricting plan adopted by the North Carolina General Assembly on November 25, 2003.

Pender County has been divided between two House Districts in the 2003 Redistricting Plan. Pender County contends that this division violates the Whole County Provision (WCP) of the North Carolina Constitution as defined in *Stephenson v. Bartlett*, 355 N.C. 354 (2002) (*Stephenson I*) and *Stephenson v. Bartlett*, 357 N.C. 301 (2003) (*Stephenson II*).

N.C.G.S. 1-267.1 requires that lawsuits seeking to challenge legislative redistricting plans be filed in the Superior Court of Wake County and that such challenges be

heard by a Three-Judge Panel appointed by the Chief Justice of the State of North Carolina.

Chief Justice I. Beverly Lake, Jr., signed an Order dated May 24, 2004, appointing the Three-Judge Panel for Redistricting Challenges as defined in G.S. 1-267.1 to hear and determine the action challenging that portion of the 2003 Legislative Redistricting Plan relating to House seats in North Carolina House Districts 16 and 18 (Pender and New Hanover Counties).

The BOE filed an Answer on June 4, 2004, asserting as one of many defenses, that the division of Pender County into two House districts was required by federal law, the supremacy of which under the federal and state constitutions was specifically acknowledged in **Stephenson I and II**.

The BOE contended that House District 18 was drawn for the purpose of providing black voters in Pender and New Hanover Counties an equal opportunity to elect a candidate of their choice in order to comply with Section 2 of the Voting Rights Act ("VRA").

On June 11, 2004, Pender County filed a motion for preliminary injunction and motion for summary judgment on permanent injunction seeking to enjoin the defendants from proceeding with primary and general elections for the 16th and 18th North Carolina House Districts as they now exist under the November 25, 2003, legislative redistricting plans adopted by the North Carolina General Assembly.

The Three-Judge Panel scheduled a hearing on the motion for preliminary injunction for Friday, June 25, 2004. The parties submitted affidavits, stipulations of fact, and memoranda of law several days prior to the hearing on the motion for preliminary injunction.

The hearing was held as scheduled on June 25, 2004. The Three-Judge Panel advised that it would only consider the issue of whether or not a preliminary injunction should issue to stop the election process. The parties made oral arguments and the Three-Judge Panel recessed for two hours to consider the matter. The Three-Judge Panel reconvened to announce its unanimous decision in open court and denied the motion for preliminary injunction. A written summary of the decision was provided to the parties, filed with the

Clerk of Superior Court of Wake County and provided that a written order would follow in due course.

There was no request from the parties for findings by the Three-Judge Panel pursuant to Rule 52, North Carolina Rules of Procedure and thus findings of fact and conclusions of law are not required when a motion for preliminary injunction is denied. The Three-Judge Panel entered its Order denying Pender County's motion for preliminary injunction in September, 2004.

On February 25, 2005, the parties filed cross motions for summary judgment. Thereafter, the parties filed Stipulations of Fact and Amended Stipulations of Fact (April 27, 2005) together with briefs and reply briefs in support of their respective positions.

On July 14, 2005, the Three-Judge Panel noticed the motions for summary judgment for hearing on Tuesday, August 30, 2005. On August 30, 2005, the parties presented their arguments before the Three-Judge Panel and the Panel took the motions under advisement.

On December 2, 2005, this Court entered a Memorandum of Decision and Order Re: Summary Judgment. The Court ruled in pertinent part as follows:

1. That Pender County lacks standing to bring this action against the State of North Carolina defendants and is hereby dismissed as a party to this action.
2. That Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland, and Eugene Williams, in their official capacities as County Commissioners of Pender County, lack standing to bring this action against the State of North Carolina defendants and they are hereby dismissed, in the official capacities, as parties to this action.
3. That Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland and Eugene Williams, as individual citizens and voters of Pender County, have standing to bring this action and they remain as plaintiff parties to this action.
4. That House District 18, as presently constituted, meets the first two (2) threshold tests set out in *Thornburg v. Gingles*, supra., in that based on the undisputed evidence of record and the law: (1) House District 18 has a black minority population that is

sufficiently large and geographically compact as to constitute a *de facto* majority in that single member district and (2) House District 18's black minority group is politically cohesive.

5. That the Court has determined that material issues of fact remain in dispute as relates to the third (3) *Gingles* threshold test relating to whether or not there is "racially polarized voting" and as relates to the "totality of circumstances" as to whether or not the members of the black minority have less opportunity than other members of the electorate to participate in the political process and elect representatives of their own choosing as required under 42 USC 1973(b) to establish a Section 2 VRA district. See *Shaw v. Hunt*, *supra* at 517 US 914.

Accordingly, Pender County's (Plaintiffs') Motion for Summary Judgment on the grounds that House District 18, as presently constituted, cannot comply with Section 2 of the Voting Rights Act, is denied and the BOE (State of North Carolina defendants) Motion for Summary Judgment on the grounds that House District 18, as presently constituted, complies with Section 2 of the Voting Rights Act is allowed in part and denied in part for the reasons set forth in this Memorandum of Decision and Order.

(Memorandum of Decision and Order Re: Summary Judgment, December 2, 2005, page 32)

Because the Memorandum of Decision and Order Re: Summary Judgment did not dispose of all claims and the Court determined that there were issues of fact to the third prong of *Gingles* and the "totality of circumstances" under 24 USC 1973(b), the MDO was interlocutory.

Following the MDO, a status conference was held to determine a hearing date for the Panel to hear evidence on the two (2) remaining issues relating to the Section 2 VRA status of House District 18. Counsel for the parties advised that they believed they could enter into a stipulation relating to the evidence in the record that would support the remaining issues to be decided before final judgment could be entered.

Thereafter, on January 5, 2006, counsel for both sides agreed on a **Joint Stipulation of the Parties** and furnished a copy to the Panel. The original was filed on January 9,

2006. As part of the Joint Stipulation, "Plaintiffs hereby advise the court that they do not wish to be heard further or to present evidence regarding the remaining issues, although plaintiffs intend to proceed with an appeal of the adverse holdings in the court's Memorandum and Order of 2 December 2005." (Joint Stipulation, page 2)

The Court, after examining the Joint Stipulation of the Parties as well as the undisputed facts of record and prior stipulations of the parties, is of the opinion that there are no issues of material fact to be decided by the Panel and that no further evidentiary hearings are requested or required and thus, this matter is ripe for entry of final judgment.

In addition to those findings and conclusions set forth in ***The Memorandum of Decision and Order Re: Summary Judgment*** entered in this case on December 2, 2005, the Court based on the undisputed facts of record and the stipulations of the parties, has considered the following additional relevant facts and circumstances:

(1) For many decades African-Americans in North Carolina, including the African-American minorities in Pender and New Hanover counties, were victims of racial discrimination. There is plenary evidence of racial discrimination in this record to support this finding.

(2) A substantial number of the African-American citizens in Pender and New Hanover Counties were still at a disadvantage in comparison to white citizens in Pender and New Hanover counties with regard to income, housing, education, and health which hindered their ability to participate effectively in the political process and elect representatives of their own choosing.

(3) Other than House District 18 and its predecessor districts, there was no house district in which African-Americans had an opportunity to elect a Representative of their own choosing to the House of Representatives from southeastern North Carolina.

(4) The African-American populations in Pender and New Hanover counties, which include those African-Americans within House District 18, are politically cohesive.

(5) Racially polarized voting existed in Pender and New Hanover Counties so that African-American candidates usually were overwhelmingly the choice of African-American voters, but were not the choice of non-African American voters.

(6) The racial difference in the preference of voters in Pender and New Hanover counties resulted in the white majority voting sufficiently as a block to usually enable the white majority to defeat the African-American minority's preferred candidate.

(7) At the time of the enactment of the 2003 House Redistricting Plan, there was a strong basis in fact for the General Assembly to have reasonably believed that House District 18 should be drawn in order to comply with Section 2 of the VRA.

(8) That House District 18, as presently constituted, satisfies the three-prong factual threshold inquiry required by **Gingles**, in that (1) House District 18 has a black minority population that is sufficiently large and geographically compact as to constitute a de facto majority in that single member district; (2) House District 18's black minority group is politically cohesive; and (3) the white majority votes sufficiently as a bloc to enable itusually to defeat the black minority's preferred candidate. **Thornburg v. Gingles, 478 U.S. 30, 50-52 (1986); Grove v. Emison, 507 U.S. 25 (1986).**

In conclusion, this Court has considered all of the foregoing and all other relevant circumstances as they existed at the time of the enactment of the 2003 House Redistricting Plan as related to House District 18 and finds, based on the totality of those circumstances, that the African-American minority in Pender and New Hanover counties living in House District 18 had less opportunity than other members of the electorate to participate in the political process and to elect a representative to the North Carolina House of Representatives of their choice.

Accordingly, this Court concludes as a matter of law:

(A) That House District 18 was required to be drawn as it was under the 2003 House Redistricting Plan in order to provide the African-American minority in Pender and New Hanover counties living in House District 18 with an equal

opportunity to participate in the political process as other members of the electorate and thus, an equal opportunity to elect a representative to the North Carolina House of Representatives of their choice as required by Section 2 of the VRA. 42 U.S.C. 1973(b)

(B) That the failure of the General Assembly to draw House District 18 as a **de facto** majority district in the 2003 House Redistricting Plan would have resulted in violation of Section 2 of the VRA and thus House District 18 was necessary in order to comply with Federal Law.

(C) That House District 18 is a valid Section 2 VRA district, drawn in accordance with the authority of the General Assembly of North Carolina to enact redistricting legislation and in compliance with the requirements of Section 2 of the VRA.

(D) That because House District 18 is a valid Section 2 VRA district, Pender and New Hanover counties could be split in accordance with the Supreme Court's interpretation of the Whole County Provision ("WCP") of the North Carolina Constitution. **Stephenson I, 355 N.C. 354, 383.**

(E) That House District 18 complies, to the maximum extent practicable, with the legal requirements of the WCP as established in **Stephenson I.**

(F) That House District 18 is in conformity with the North Carolina Constitution and its creation was a valid exercise of the redistricting authority of the North Carolina General Assembly.

Based upon the foregoing, the entry of a final judgment is appropriate at this time.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the Memorandum of Decision and Order Re: Summary Judgment entered December 2, 2005, is incorporated as part and parcel of this Memorandum of Decision and Judgment to the extent it is not inconsistent with this Memorandum of Decision and Judgment. Any part of said Memorandum of Decision and Order Re: Summary Judgment entered December 2, 2005 inconsistent with this Judgment is surplus and has no further force or effect.

2. That House District 18 is a valid Section 2 VRA district, drawn in accordance with the authority of the General Assembly of North Carolina to enact redistricting legislation and in compliance with the requirements of Section 2 of the VRA.

3. That because House District 18 is a valid Section 2 VRA district, Pender and New Hanover counties could be split in accordance with the Supreme Court's interpretation of the Whole County Provision ("WCP") of the North Carolina Constitution. *Stephenson I*, 355 N.C. 354, 383.

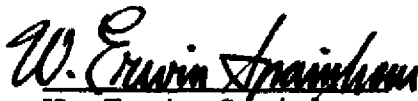
4. That House District 18 complies, to the maximum extent practicable, with the legal requirements of the WCP as established in *Stephenson I*.

5. That House District 18 is in conformity with the North Carolina Constitution and its creation was a valid exercise of the redistricting authority of the North Carolina General Assembly.

6. That this action is dismissed.

7. That in the discretion of the Court, the parties shall bear their own costs.

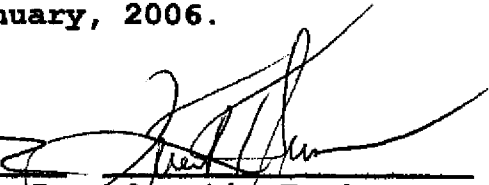
This the 9th day of January, 2006.



W. Erwin Spainhour



H. E. Manning, Jr.



Quentin T. Sumner

Three-Judge Panel for Redistricting Challenges G.S.1-267.1

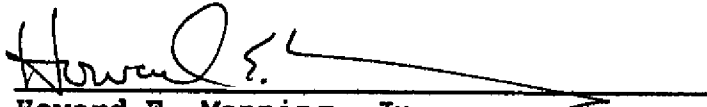
Certificate of Service

This is to certify that a copy of the foregoing Memorandum of Decision and Judgment was served this date on counsel for the parties by facsimile as permitted by the North Carolina Rules of Civil Procedure as follows:

**Alexander McC. Peters (Special Litigation) at 919-716-6763
Counsel for State Defendants (BOE)**

**Carl W. "Trey" Thurman (Pender County) at 910-763-7476
Counsel for Plaintiffs**

This the 9th day of January, 2006.


Howard E. Manning, Jr.
Superior Court Judge

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

FILED
2011-02-01 PM 2:13

SUPERIOR COURT DIVISION

04-CVS-0696

PENDER COUNTY, DWIGHT STRICKLAND,)
 Individually and as a Pender County Commissioner,)
 DAVID WILLIAMS, Individually and as a Pender)
 County Commissioner, F.D. RIVENBARK,)
 Individually and as a Pender County Commissioner,)
 STEPHEN HOLLAND, Individually and as a)
 Pender County Commissioner, and EUGENE)
 MEADOWS, Individually and as a Pender County)
 Commissioner)

PLAINTIFFS,)

V.)

GARY BARTLETT, as Executive Director of the)
 State Board of Elections; LARRY LEAKE,)
 ROBERT CORDLE, GENEVIEVE C. SIMS,)
 LORRAINE G. SHINN, and CHARLES)
 WINFREE in Their Official Capacities as Members)
 Of the North Carolina Board of Elections; JAMES)
 B. BLACK in His Official Capacity as Co-Speaker)
 of the North Carolina House of Representatives;)
 RICHARD T. MORGAN, in His Official Capacity)
 as Co-Speaker of the North Carolina House of)
 Representatives; MARC BASNIGHT, in His)
 Official Capacity as President Pro Tempore of the)
 North Carolina Senate; MICHAEL EASLEY, in)
 His Official Capacity as Governor of the State of)
 North Carolina; ROY COOPER, in His Official)
 Capacity as Attorney General of the State of North)
 Carolina;)


DEFENDANTS)

NOTICE OF APPEAL

Now COME Plaintiffs Pender County and Dwight Strickland, David Williams,
 F.D. Rivenbark, Stephen Holland and Eugene Meadows, in their individual and official
 capacities, and hereby give Notice of Appeal of the January 9, 2006 Order of the

Honorable three Judge Panel granting judgment in favor of Defendants. This appeal is taken to the North Carolina Court of Appeals and the North Carolina Supreme Court pursuant to N.C.G.S. 120-2.5

Respectfully submitted, this the 30 day of January, 2006.


CARL W. THURMAN III
Pender County Attorney
NC State Bar No. 17106
3169 Wrightsville Ave.
Wilmington, North Carolina 28403
910-763-7487
Attorney for Plaintiffs

STIPULATION OF SERVICE AND SETTLEMENT OF RECORD

Counsel for Appellants and Appellees stipulate and agree as follows:

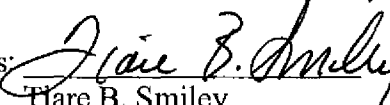
1. A Notice of Appeal from the Order of December 2, 2005, was timely filed on December 30, 2005 and a Notice of Appeal from the Order of January 9, 2006 was timely filed on January 30, 2006. A proposed Record on Appeal was timely served on January 30, 2006. The certificate showing service of the proposed record is omitted from the settled record.
2. Objections to the proposed record were served on February 2, 2006.
3. The Parties settled the record on appeal on February 10, 2006 as shown by signature below without need of a hearing before the Three Judge Panel.
4. All captions, signatures, headings of papers, certificates of service and documents filed with the trial court not necessary for an understanding of the issues on appeal are omitted from the settled record, except as required by Rule 9 of the Rules of Appellate Procedure.
5. The foregoing constitutes the agreed-upon record on appeal.

This the 16th day of February, 2006.

For the Plaintiffs-Appellants:


Carl W. Thurman III

For the Defendants-Appellees:


Hare B. Smiley
Alexander McC. Peters

ASSIGNMENTS OF ERROR

The Plaintiffs/Appellants assign as error the following

1. The Three Judge Panel's conclusion that Pender County lacked standing to bring this action against the State of North Carolina Defendants. R p. 170, 184
2. The Three Judge Panel's conclusion that the Pender County Commissioners acting in their official capacity lacked standing to bring this action against the State of North Carolina Defendants. R p. 170, 184
3. The Three Judge Panel's conclusion that House District 18, as presently constituted, meets the first threshold test set in *Thornburg v. Gingles*, 478 U.S. 30, 92. L.Ed. 2d 25, 114 S. Ct. 2647 (1986). R p. 170, 185
4. The Three Judge Panel's conclusion that Plaintiffs' were not entitled to summary judgment on the issue of whether House District 18 violates the North Carolina Constitution and the holdings in *Stephenson v. Bartlett*, 355 N.C. 354 (2002) and *Stephenson v. Bartlett*, 357 N.C. 301 (2003). R p. 170, 185
5. The Three Judge Panel's conclusion that drawing House District 18 as presently constituted was required by Section 2 of the Voting Rights Act (42 USC 1973). R p. 184-185
6. The Three Judge Panel's conclusion that Plaintiffs' were not entitled to a judgment that House District 18 violates the North Carolina Constitution and the holdings in *Stephenson v. Bartlett*, 355 N.C. 354 (2002) and *Stephenson v. Bartlett*, 357 N.C. 301 (2003). R p. 185
7. The Three Judge Panel's conclusion that the General Assembly validly exercised its redistricting authority under the North Carolina Constitution and the holdings in *Stephenson v. Bartlett*, 355 N.C. 354 (2002) and *Stephenson v. Bartlett*, 357 N.C. 301 (2003) in drawing House District 18. R p. 185

8. The Three Judge Panel's conclusion that because House District 18 is a Section 2 VRA district that Pender and New Hanover Counties could be split more than once in drawing the district. R p. 185
9. The Three Judge Panel's conclusion that House District 18 complies, to the maximum extent practicable, with the legal requirements of the WCP as established in *Stephenson I*. R p. 185
10. The Three Judge Panel's conclusion that the North Carolina General Assembly was required to draw House District 18 by Section 2 of the VRA. R p. 185

NAMES AND ADDRESSES OF COUNSEL FOR THE APPEAL

For the Appellants: Carl W. Thurman III
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N.C Department of Justice
P.O. Box 629
Raleigh, NC 27602
Phone: 919-716-6900
Facsimile: 919-716-6763

No. 103A06

TENTH DISTRICT

NORTH CAROLINA SUPREME COURT

PENDER COUNTY, DWIGHT STRICKLAND,)
Individually and as a Pender County Commissioner,))
DAVID WILLIAMS, Individually and as a Pender)
County Commissioner, F.D. RIVENBARK,)
Individually and as a Pender County Commissioner,))
STEPHEN HOLLAND, Individually and as a)
Pender County Commissioner, and EUGENE)
MEADOWS, Individually and as a Pender County)
Commissioner)

PLAINTIFFS,)

V.)

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State Board of Elections; LARRY LEAKE,)
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LORRAINE G. SHINN, and CHARLES)
WINFREE in Their Official Capacities as Members)
Of the North Carolina Board of Elections; JAMES)
B. BLACK in His Official Capacity as Co-Speaker)
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RICHARD T. MORGAN, in His Official Capacity)
as Co-Speaker of the North Carolina House of)
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Official Capacity as President Pro Tempore of the)
North Carolina Senate; MICHAEL EASLEY, in)
His Official Capacity as Governor of the State of)
North Carolina; ROY COOPER, in His Official)
Capacity as Attorney General of the State of North)
Carolina;)

DEFENDANTS)

From Wake County

04-CVS-0696

(Three Judge Panel on Redistricting)

(Direct Appeal pursuant to

N.C.G.S 120-2.5)

CERTIFICATE OF SERVICE OF
RECORD ON APPEAL

2006 FEB 28 AM 10:41
CLERK OF COURT
NORTH CAROLINA

I hereby certify, pursuant to Rule 26 of the Rules of Appellate Procedure, that as

Counsel for Plaintiffs/Appellants I have this day served a copy of the Record on Appeal

upon counsel for Defendants/Appellees via Unites States Mail, postage prepaid, at the
address listed below:

Tiare B. Smiley, Esq.
Alexander McC. Peters, Esq.
Post Office Box 629
Raleigh, NC 27602-0629

This the 24th day of February, 2006.

A handwritten signature in black ink, appearing to read "Carl W. Thurman III", written over a horizontal line.

CARL W. THURMAN III
Pender County Attorney
NC State Bar No. 17106
3169 Wrightsville Ave.
Wilmington, North Carolina 28403
910-763-7487
Attorney for Plaintiffs/Appellants

