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STATE OF NORTH CAROLINA
COUNTY OF WAKE

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WAKE COUNTY, S.C.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, et al.,

BY _____

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, et al.,

Defendants.

**PLAINTIFFS' EMERGENCY
MOTION TO COMPEL
LEGISLATIVE
DEFENDANTS TO
PRODUCE REVISED
CALCULATIONS OF DR.
JEFFREY LEWIS**

Plaintiffs submit this emergency motion to compel Legislative Defendants to turn over corrected calculations that one of their experts, Dr. Jeffrey Lewis, has performed with respect to the central conclusions in his report. In his April 30 report, Dr. Lewis purported to estimate the minimum African American citizen voting age population (“Black CVAP”) needed for an African American-preferred candidate to win a general election in certain county groupings. At his deposition on June 11, Dr. Lewis testified that he had made an error in these calculations, that he had since re-calculated his estimates, and that the new numbers substantially differ from those listed in his report. Plaintiffs immediately asked Legislative Defendants to provide Dr. Lewis’s corrected estimates, and followed up about this issue several times in the weeks since his deposition. Legislative Defendants did not respond to Plaintiffs’ requests for weeks, and when they finally responded this morning, they refused to produce Dr. Lewis’s revised calculations. This is improper and highly prejudicial to Plaintiffs with trial quickly approaching. Legislative Defendants should be ordered to produce Dr. Lewis’s corrected calculations without delay and to pay Plaintiffs’ fees in connection with this motion.

BACKGROUND

On April 30, 2019, Legislative Defendants served an expert report of Dr. Jeffrey B. Lewis titled “Estimates of Candidate Support among African American and White Voters and Estimates of the Minimum African American Population Required for Effective African American Districts in Various Places in North Carolina.” The culmination of Dr. Lewis’s report was a table in which Dr. Lewis purported to estimate the minimum African American citizen voting age population (“Black CVAP”) that he claimed is needed for the candidate of choice of the African American community to win a general election in certain counties and county

groupings. Dr. Lewis presented these estimates in the final column (i.e., the farthest to the right) in Table 4 of his report, which is attached as Exhibit A.

In their rebuttal reports, Plaintiffs' experts Dr. Chen and Dr. Mattingly presented analyses based on Dr. Lewis' Table 4 Black CVAP estimates. Dr. Chen and Dr. Mattingly, who had each previously generated a large number of simulated non-partisan districting plans for purposes of their opening reports, evaluated how many of their simulated plans produced districts in the county groupings that Dr. Lewis analyzed with Black CVAPs above Dr. Lewis's estimated thresholds. *See* Ex. B at 86-89, 138-143; Ex. C at 14-16. For example, Dr. Lewis's April 30 report estimated that the minimum Black CVAP needed for an African American-preferred candidate to win in the Person-Granville-Vance-Warren county grouping is 32%, Ex. A at 20, and so Dr. Chen and Dr. Mattingly determined how many of their simulations of this county grouping produced a district with a Black CVAP above 32%, Ex. B at 88, 138-143; Ex. C at 16.

At his deposition on June 11, Dr. Lewis testified that he had substantially "miscalculated" the Black CVAP estimates in Table 4 of his report. Ex. D at 289:23-24. Dr. Lewis had assumed that "no white[s] who are not Democrats [would] support the African American-preferred candidate," Ex. A at 21, but Dr. Lewis "realized" after completing his report that a substantial number "of the whites that aren't Democrats" in North Carolina are "unaffiliated" voters. Ex. D at 289:16-290:12. Dr. Lewis explained that "obviously[] it's not a reasonable assumption that zero percent of these unaffiliated voters would support the Democrat" preferred by the African American community. *Id.* at 289:16-290:12. Dr. Lewis testified that, prior to his deposition, he had corrected this assumption and calculated revised Black CVAP thresholds for his Table 4. *Id.* at 292:16-295:2 ("Q: And have you done those calculations? A: I -- I have done them, yeah."). Dr. Lewis testified that, under his revised calculations, each and every one of the Black CVAP

thresholds in the final column of his Table 4 went down by between “8 and 10 points.” *Id.* at 291:7-16; *see also id.* at 293:20:25 (“Q. -- the numbers presented in the far right column of Table 4 . . . would go down by 8 to 10 points? A. That’s right”). Dr. Lewis confirmed that he had the revised numbers “somewhere,” but not “with [him]” at the deposition. *Id.* at 294:13-18.

Several hours after Dr. Lewis’s deposition ended, Plaintiffs emailed Legislative Defendants requesting that they send “Dr. Lewis’ revised numbers for the far-right column of Table 4 – which he testified he has already calculated -- by 12pm” the next day (*i.e.*, June 12). Ex. E (6/11/19 email from D. Jacobson). Legislative Defendants never responded to this email.

On July 1, the parties exchanged witness lists for trial, and Dr. Lewis is on Legislative Defendants’ witness list. The next day, Legislative Defendants served their exhibit list, which includes Dr. Lewis’s original Table 4 with his admittedly erroneous Black CVAP thresholds.

Late in the evening of July 2, Plaintiffs followed up with Legislative Defendants about the unanswered June 11 email requesting Dr. Lewis’s revised calculations. Plaintiffs explained that, “[g]iven that [Legislative Defendants] have included Dr. Lewis on [their] witness list and appear to have included his Table 4 on [their] exhibit list,” Plaintiffs needed Dr. Lewis’s revised calculations without delay to prepare for trial. Ex. E (7/3/19 email from D. Jacobson). Plaintiffs requested that Legislative Defendants provide the corrected numbers by 5 p.m. the next day (*i.e.*, July 3). Legislative Defendants did not respond to this email either.

After the 5 p.m. deadline had passed with no response, Plaintiffs again emailed Legislative Defendants, advising that their “continued failure to respond to [Plaintiffs’] emails below about Dr. Lewis’ revised calculations is unreasonable.” *Id.* (7/3/19 email from S. Jones). Plaintiffs stated that unless Legislative Defendants provided the revised calculations by 9 a.m. the next morning (*i.e.*, June 4), Plaintiffs would file an emergency motion to compel with the

Court. *Id.* Legislative Defendants again did not respond by 9 a.m. the next day. A day later on July 5, Legislative Defendants finally responded, stating that they refuse to produce Dr. Lewis's revised calculations. *Id.* (7/5/19 email from K. McKnight).

ARGUMENT

I. This Court Should Compel Legislative Defendants to Immediately Produce Dr. Lewis' Revised Calculations

Legislative Defendants should be ordered to immediately produce Dr. Lewis's corrected calculations for his Table 4. Dr. Lewis made clear that he had already calculated these corrected numbers and they are sitting "somewhere," presumably on his and/or Legislative Defendants' counsel's computers. Ex. D at 294:13-18. These estimates of the minimum Black CVAP needed for the candidate of choice of African Americans to win in certain county groupings are no small matter—they reflect the principal conclusions of Dr. Lewis' report. Indeed, the title of Dr. Lewis' report is "Estimates of Candidate Support among African American and White Voters and *Estimates of the Minimum African American Population Required for Effective African American Districts in Various Places in North Carolina.*" Ex. A (emphasis added). Moreover, in their rebuttal reports, Plaintiffs' experts Dr. Chen and Dr. Mattingly conducted analysis of their nonpartisan maps keyed off Dr. Lewis' estimates, and that analysis must be adjusted based on Dr. Lewis' corrected numbers.

Trial is now just ten days away. Legislative Defendants have included Dr. Lewis on their witness list, and his Table 4 is on their exhibit list. Needless to say, Plaintiffs' ability to prepare for trial (including having their experts revisit their prior analyses of Dr. Lewis's original erroneous calculations) is prejudiced by Legislative Defendants' failure to produce Dr. Lewis's revised calculations. Even if Legislative Defendants say that Dr. Lewis will not present his Table 4 analysis in his direct examination (which they have not yet said), Plaintiffs still have a

right to this information for cross-examination. Even if Legislative Defendants do not present Dr. Lewis as a witness at all, Plaintiffs would still have a right to his corrected numbers for purposes of Plaintiffs' experts own analyses, which are based on Dr. Lewis's original estimates.

Legislative Defendants' refusal to produce their expert's revised calculations changing the main conclusions in his report is unreasonable and highly prejudicial to Plaintiffs.

Legislative Defendants should be ordered to produce these revised calculations immediately.

II. The Court Should Award Fees and Expenses and Other Appropriate Relief

Rule 37(a)(4) provides that, where a motion to compel is granted, "the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion . . . to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust." Thus, an award of fees and expenses is "mandatory" upon granting a motion to compel, *Graham v. Rogers*, 121 N.C. App. 460, 463, 466 S.E.2d 290, 293 (1996), unless the party that resisted discovery can show its opposition was "substantially justified" or awarding fees and expenses would otherwise be unjust. "[T]he burden of proving the non-compliance was justified" rests with the party compelled to produce discovery. *Graham*, 121 N.C. App. at 4635, 466 S.E.2d at 294. This Court "also retains inherent authority to impose sanctions for discovery abuses beyond those enumerated in Rule 37." *Cloer v. Smith*, 132 N.C. App. 569, 573, 512 S.E.2d 779, 782 (1999).

There is no justification for Legislative Defendants' refusal to provide Dr. Lewis's revised calculations and corrected estimates. Dr. Lewis testified at deposition that he made a material error in calculating his original estimates and that he had since calculated new, corrected numbers. The only reasonable course for Legislative Defendants in these circumstances was to

immediately provide Plaintiffs with the corrected numbers. Their unwillingness to do so, and their refusal even to respond to Plaintiffs' repeated requests until this morning, warrants the imposition of fees in connection with this motion.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court compel Legislative Defendants to immediately turn over Dr. Lewis's revised calculations for the final column of Table 4 to his report, and award Plaintiffs' their fees and costs in connection with this motion.

Respectfully submitted this the 5th day of July, 2019

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to the following persons at the following addresses which are the last addresses known to me:

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This the 5th day of July, 2019.


Edwin M. Speas, Jr.

EXHIBIT A

Estimates of Candidate Support among African
American and White Voters

and

Estimates of the Minimum African American
Population Required for Effective
African American Districts
in Various Places in North Carolina

Jeffrey B. Lewis

April 30, 2019

County group	Participation (Pct. of CVAP)		Black candidate support		Pct. Black needed of	
	Black	White	Black	White	Voters	CVAP
Alamance-Guilford- Randolph	65	68	98	19	39	41
Bladen Co.	63	62	99	31	28	27
Bladen-Greene- Harnett-Johnston-Lee- Sampson-Wayne	56	62	98	19	39	41
Columbus-Pender- Robeson	52	51	99	32	26	26
Cumberland Co.	60	49	98	20	39	34
Davie-Forsyth	64	70	98	18	39	41
Forsyth Co.	64	70	98	20	39	40
Forsyth-Yadkin	64	69	98	19	39	41
Franklin-Nash	63	69	98	20	38	40
Guilford Co.	66	72	98	21	38	40
Lenoir-Pitt	60	62	98	22	37	38
Nash Co.	64	71	98	20	38	41
Person-Granville- Vance-Warren	62	63	99	27	32	32

Table 4: Analysis of a hypothetical 2016 general election contest in various areas. Presents estimates of African American and white support for a hypothetical African American-preferred candidate competing in various areas of North Carolina as well as the fraction of the electorate and population in each of these areas that needs to be African American in order for the African American-preferred candidate to have an even chance of winning. The modeling assumptions used are described in the text.

racial/ethnic and partisan composition of the 2016 General election voters to estimate the approximate African American population required for African American-preferred candidates to have an even chance of winning in a general election in the areas that I analyze. The assumptions about voter behavior fill in for the estimates of candidate support among African American and white voters used in the analysis of general elections shown in Table 3.

For this analysis, I assume a general election contest that pairs an African American Democrat against a white Republican and that support for minor party candidates is negligible. In order to approximate the rate at which African American voters will support the African American-preferred candidate (the African American Democrat), I make the following assumptions about voting behavior:

1. 100 percent of African Americans who are not Republicans and participate in the election will support the African American-preferred candidate.
2. No Republicans of any race or ethnicity and no white who are not Democrats support the African American-preferred candidate.
3. 75 percent of white (non-African American) Democrats support the African American-preferred candidate (who is also, by assumption, the Democrat).

Given these assumptions and the observed rates of electoral participation and party registration among African American and white voters in each area belonging to each party, I calculate African American voter cohesion and white crossover voting as well as the fraction of African American citizen voting age population in each area that would be required in order for the African American-preferred candidate to have an even chance winning against their Republican opponent in this hypothetical general election. These estimates are shown in Figure 4. The estimated needed fraction of African American population required for the African American-preferred candidate to have an even chance of prevailing ranges from 26 to 41 percent. The variation is largely driven

EXHIBIT B

[CORRECTED] RESPONSE REPORT OF JOWEI CHEN, Ph.D.

June 7, 2019

Response to Dr. Hood's and Dr. Thornton's claims that the General Assembly Followed the 2017 House and Senate Plans Criteria:

In their rebuttal reports, Dr. Hood and Dr. Thornton claim that in drawing the 2017 House Plan and the 2017 Senate Plan, the General Assembly followed the 2017 House and Senate Plans Criteria adopted by the House and Senate Redistricting Committees on August 10, 2017 (hereinafter: "The Adopted Criteria"). Specifically, Dr. Hood argues that "Taking into account all the criteria discussed [in the Adopted Criteria], a map drawer creating district boundary lines within a county group is quite constrained as to the amount of discretion they may exercise" (p. 2-3, Hood report of April 30, 2019). Dr. Hood further conducts an analysis to purportedly demonstrate that the 2017 Plans comply with the Adopted Criteria, and he concludes that "[t]he 2017 House and Senate plans met the goals stated in the adopted redistricting criteria." (p. 9 of Hood report of April 30, 2019). Similar to Dr. Hood, Dr. Thornton asserts that the Adopted Criteria reflect "the actual criteria utilized by those who constructed the enacted [2017] map, " and Dr. Thornton bases much of the analysis in her report upon this assumption (Para. 32, 33-56, 80-86, Thornton report of May 7, 2019).

I have two responses to this claim by Dr. Hood and Dr. Thornton. My first response is that Dr. Hofeller logically could not have been following the 2017 Adopted Criteria in June 2017, which is when he drafted much of the General Assembly's eventually enacted House and Senate districts. My second response to Dr. Hood's and Dr. Thornton's argument is that at all times in drawing the 2017 Plans, including after the 2017 Adopted Criteria were passed on August 10, 2017, Dr. Hofeller appeared to violate the Adopted Criteria's prohibition against any "consideration of racial data" (2017 House and Senate Plans Criteria, August 10, 2017). I explain both of these findings in detail below.

Dr. Hofeller Could Not Have Followed the Adopted Criteria When He Drafted the House and Senate Districts During June 2017: As detailed above, Dr. Hood and Dr. Thornton argue that the General Assembly followed the 2017 Adopted Criteria in producing the 2017

Dr. Lewis' Black CVAP Threshold Estimates for House Plan County Groupings: For each Black CVAP threshold estimate that Dr. Lewis produced for a specific House Plan county grouping, I first analyzed the number of enacted 2017 House Plan districts in this county grouping that satisfy Dr. Lewis' Black CVAP threshold. Next, I analyze the 2,000 computer-simulated House plans from my original April 8, 2019 report, and I analyze how many of these computer-simulated House plans also contain at least as many districts within this county grouping that satisfy Dr. Lewis' Black CVAP threshold.

Table 5 describes my findings for each of the House county groupings that Dr. Lewis analyzed, and Table 6 describes my findings for each of the Senate county groupings that Dr. Lewis analyzed. Each row in these Tables describes one of the county groupings for which Dr. Lewis produced a Black CVAP threshold estimate. Many groupings appear multiple times because Dr. Lewis produced different estimates for the county grouping using results from different elections.

The first row of Table 5, for example, describes the Bladen-Greene-Harnett-Johnston-Lee-Sampson-Wayne county grouping, in which Dr. Lewis estimated a Black CVAP of 21% was necessary for an African-American candidate to win the 2016 Democratic Attorney General Primary, as reported in the third column. The fourth column reports that the 2017 House Plan contains 5 districts (HDs 10, 21, 22, 51, and 53) that satisfy this Black CVAP threshold. The fifth column reports that 95.4% of the computer-simulated plans in House Simulation Set 1 from my original report also contain at least 5 or more districts satisfying this Black CVAP threshold of 21%. Similarly, the seventh column reports that 91.5% of the plans in House Simulation Set 2 from my original report also contain at least 5 or more districts satisfying this Black CVAP threshold. The sixth column reports that 37 (3.7%) of the computer-simulated plans in Simulation Set 1 contain *more* than 5 districts satisfying the 21% Black CVAP threshold, and the eighth column reports that 10 (1%) of the computer-simulated plans Simulation Set 2 contain more than 5 districts satisfying the 21% Black CVAP threshold. Hence, not only do almost all of the computer-simulated plans match the 2017 House Plan's number of districts satisfying Dr. Lewis' 21% Black CVAP threshold, it is actually possible to create more such districts than the 2017 House Plan contains.

Table 5: House Computer-Simulated Districts Achieving Dr. Lewis' Estimated Black CVAP Thresholds

House County Grouping (# of Districts):	Election for Which Dr. Lewis Estimates Black CVAP Threshold	Dr. Lewis' Black CVAP Threshold:	Number of Enacted 2017 House Plan Districts Satisfying Dr. Lewis' Black CVAP Threshold:	House Simulation Set 1 Plans With At Least As Many Black CVAP Threshold Districts As 2017 House Plan:	House Simulation Set 1 Plans With More Black CVAP Threshold Districts Than The 2017 House Plan:	House Simulation Set 2 Plans With At Least As Many Black CVAP Threshold Districts As 2017 House Plan:	House Simulation Set 2 Plans With More Black CVAP Threshold Districts Than The 2017 House Plan:
Bladen; Greene; Harnett; Johnston; Lee; Sampson; Wayne (7)	Attorney General, Primary (2016)	21%	5 (HD-10, 21, 22, 51, 53)	954 (95.4%) (HD-21 and 22 frozen)	37 (3.7%)	915 (91.5%) (HD-21 and 22 frozen)	10 (1%)
Bladen; Greene; Harnett; Johnston; Lee; Sampson; Wayne (7)	Hypothetical State House (2016)	41%	1 (HD-21)	1,000 (100%) (HD-21 frozen)	0 (0%)	1,000 (100%) (HD-21 frozen)	0 (0%)
Columbus; Pender; Robeson (3)	Attorney General, Primary (2016)	4%	3 (HD 16, 46 and 47)	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Columbus; Pender; Robeson (3)	Hypothetical State House (2016)	26%	2 (HD 46 and 47)	565 (56.5%)	0 (0%)	250 (25%)	0 (0%)
Cumberland (4)	Attorney General, Primary (2016)	13%	4 (HD 42, 43, 44, 45)	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Cumberland (4)	Hypothetical State House (2016)	34%	2 (HD 42 and 43) (HD-44 barely misses at 33.84%)	1,000 (100%)	701 (70.1%)	1,000 (100%)	872 (87.2%)

Cumberland (4)	Commissioner of Labor, Primary (2016)	65%	0	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Forsyth; Yadkin (5)	Hypothetical State House (2016)	41%	1 (HD-72)	961 (96.1%)	120 (12%)	754 (75.4%)	13 (1.3%)
Forsyth; Yadkin (5)	Attorney General, Primary (2016)	42%	1 (HD-72)	927 (92.7%)	66 (6.6%)	705 (70.5%)	8 (0.8%)
Franklin; Nash (2)	Lt. Gov, Primary (2016)	12%	2 (HD-7, 25)	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Franklin; Nash (2)	Hypothetical State House (2016)	40%	1 (HD-25)	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Granville; Person; Vance; Warren (2)	Hypothetical State House (2016)	32%	1 (HD-32)	1,000 (100%)	115 (11.5%)	1,000 (100%)	32 (3.2%)
Granville; Person; Vance; Warren (2)	Attorney General, Primary (2016)	34%	1 (HD-32)	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Guilford (6)	Commissioner of Labor, Primary (2016)	5%	6 (HD-57, 58, 59, 60, 61, 62)	1,000 (100%) (HD-57, 61, and 62 frozen)	0 (0%)	1,000 (100%) (HD-57, 61, and 62 frozen)	0 (0%)
Guilford (6)	Sheriff, Primary (2014)	23%	5 (HD-57, 58, 59, 60, 61)	1,000 (100%) (HD-57 and 61 frozen)	0 (0%)	1,000 (100%) (HD-57 and 61 frozen)	0 (0%)
Guilford (6)	Attorney General, Primary (2016)	26%	4 (HD-57, 58, 60, 61)	1,000 (100%) (HD-57 and 61 frozen)	1000 (100%)	1,000 (100%) (HD-57 and 61 frozen)	1000 (100%)
Guilford (6)	Sheriff, Primary (2018)	30%	4 (HD-57, 58, 60, 61)	1,000 (100%) (HD-57 and 61 frozen)	72 (7.2%)	1,000 (100%) (HD-57 and 61 frozen)	179 (17.9%)
Guilford (6)	Sheriff, General (2018)	31%	4 (HD-57, 58, 60, 61)	1,000 (100%) (HD-57 and 61 frozen)	72 (7.2%)	1,000 (100%) (HD-57 and 61 frozen)	164 (16.4%)

Guilford (6)	Hypothetical State House (2016)	40%	4 (HD-57, 58, 60, 61)	994 (99.4%) (HD-57 and 61 frozen)	0 (0%)	905 (90.5%) (HD-57 and 61 frozen)	0 (0%)
Guilford (6)	Sheriff, General (2014)	43%	2 (HD-58, 60)	0 (0%)	0 (0%)	1 (0.1%)	0 (0%)
Lenoir; Pitt (3)	Attorney General, Primary (2016)	18%	3 (HD-8, 9, 12)	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Lenoir; Pitt (3)	Hypothetical State House (2016)	38%	2 (HD-8, 12)	134 (13.4%)	0 (0%)	270 (27%)	0 (0%)

House Districts Satisfying Dr. Lewis' Black CVAP Threshold Estimates for Individual Counties: Dr. Lewis also produced Black CVAP threshold estimates for individual counties within larger county groupings. For each county that Dr. Lewis examined, I counted the number of 2017 House Plan districts wholly within the county that satisfy Dr. Lewis' estimated Black CVAP threshold for that county. I then analyzed whether each computer-simulated House plan contains as many or more districts in the county that satisfy this Black CVAP threshold.

Table 7 illustrates the results of this analyses for the 2017 House Plan and House Simulation Set 1 and Set 2. Overall, in every county that Dr. Lewis analyzed, the vast majority of the computer-simulated plans match or exceed the 2017 House Plan's number of districts satisfying most of Dr. Lewis' various Black CVAP thresholds. In fact, for most of Dr. Lewis' various Black CVAP thresholds, all 1,000 simulated plans in House Simulation Set 1 and Set 2 either match or exceed the 2017 House Plan's number of districts above the Black CVAP threshold.

Finally, as Table 7 illustrates, there are four counties in which some computer-simulated House plans exceed the 2017 House Plan's number of districts above one of Dr. Lewis' Black CVAP thresholds. These counties are: Cumberland County (34% Black CVAP threshold); Forsyth County (44% Black CVAP threshold); Guilford County (26%, 30%, and 31% Black CVAP threshold); and Pitt County (28% Black CVAP threshold). Thus, in these four counties, the computer-simulated plans demonstrate that it is possible to create more African-American districts exceeding Dr. Lewis' Black CVAP thresholds than the 2017 House Plan does.

Senate Districts Satisfying Dr. Lewis' Black CVAP Threshold Estimates for Individual Counties: For each individual county that Dr. Lewis examined, I also counted the number of 2017 Senate Plan districts wholly within the county that satisfy Dr. Lewis' estimated Black CVAP threshold for that county. I then analyzed whether each computer-simulated Senate plan contains as many or more districts in the county that satisfy this Black CVAP threshold.

**Table 7:
Comparison of 2017 House Plan and House Simulation Set 1 and Set 2
On Number of Districts with Dr. Lewis' Black CVAP Thresholds in Individual Counties**

County:	Number of 2017 House Plan Districts Wholly Within County:	Election for Which Dr. Lewis Estimates Black CVAP Threshold:	Dr. Lewis' Black CVAP Threshold:	Number of 2017 House Plan Districts Satisfying Dr. Lewis' Black CVAP Threshold:	House Simulation Set 1 Plans Containing At Least the Same Number of Districts with Dr. Lewis' Black CVAP Threshold as the 2017 House Plan:	House Simulation Set 1 Plans Containing More Districts with Dr. Lewis' Black CVAP Threshold than the 2017 House Plan:	House Simulation Set 2 Plans Containing At Least the Same Number of Districts with Dr. Lewis' Black CVAP Threshold as the 2017 House Plan:	House Simulation Set 2 Plans Containing More Districts with Dr. Lewis' Black CVAP Threshold than the 2017 House Plan:
Bladen	0	Attorney General, Primary (2016)	14%	0	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Bladen	0	Hypothetical State House (2016)	27%	0	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Bladen	0	Lt. Gov., General (2016)	32%	0	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Bladen	0	President, General (2016)	37%	0	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Columbus	0	Sheriff, General (2018)	31%	0	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Cumberland	4	Attorney General, Primary (2016)	13%	4 (HD 42, 43, 44, 45)	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Cumberland	4	Hypothetical State House	34%	2 (HD 42, 43)	1,000 (100%)	701 (70.1%)	1,000 (100%)	872 (87.2%)

					60)							
Nash	1	General (2014) Sheriff, Primary (2014)	30%	1 (HD 25)	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)		
Nash	1	Hypothetical State House (2016)	41%	1 (HD 25)	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)		
Nash	1	Sheriff, General (2014)	54%	0	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)		
Pitt	2	Sheriff, General (2018)	28%	1 (HD 8)	1,000 (100%)	392 (39.2%)	1,000 (100%)	392 (39.2%)	1,000 (100%)	624 (62.4%)		
Robeson	1	Sheriff, Primary (2018)	36%	0	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)		

**Table 8:
Comparison of 2017 Senate Plan and Senate Simulation Set 1 and Set 2
On Number of Districts with Dr. Lewis' Black CVAP Thresholds in Individual Counties**

County:	Number of 2017 Senate Plan Districts Wholly Within County:	Election for Which Dr. Lewis Estimates Black CVAP Threshold:	Dr. Lewis' Black CVAP Threshold:	Number of 2017 Senate Plan Districts Satisfying Dr. Lewis' Black CVAP Threshold:	Senate Simulation Set 1 Plans Containing At Least the Same Number of Districts with Dr. Lewis' Black CVAP Threshold as the 2017 Senate Plan:	Senate Simulation Set 1 Plans Containing More Districts with Dr. Lewis' Black CVAP Threshold than the 2017 Senate Plan:	Senate Simulation Set 2 Plans Containing At Least the Same Number of Districts with Dr. Lewis' Black CVAP Threshold as the 2017 Senate Plan:	Senate Simulation Set 2 Plans Containing More Districts with Dr. Lewis' Black CVAP Threshold than the 2017 Senate Plan:
Bladen	0	Attorney General, Primary (2016)	14%	0	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Bladen	0	Hypothetical State Senate (2016)	27%	0	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Bladen	0	Lt. Gov., General (2016)	32%	0	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Bladen	0	President, General (2016)	37%	0	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Columbus	0	Sheriff, General (2018)	31%	0	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Cumberland	1	Attorney General, Primary (2016)	13%	1 (SD 19)	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Cumberland	1	Hypothetical State Senate (2016)	34%	0	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Cumberland	1	Commissioner of Labor, Primary (2016)	65%	0	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)
Forsyth	1	Commissioner	5%	1 (SD 32)	1,000 (100%)	0 (0%)	1,000 (100%)	0 (0%)

EXHIBIT C

REBUTTAL OF DEFENDANT'S EXPERT REPORTS FOR COMMON CAUSE V. LEWIS

JONATHAN C. MATTINGLY
JUNE 7, 2019

1. REBUTTAL OF COMMON POINTS AROUND THE EFFECT OF POLITICAL GEOGRAPHY

A number of the experts discuss the potential effect that the North Carolina political geography has on redistricting.¹ Specifically, Dr. Hood mentions the possibility of natural packing, and Dr. Barber the urban versus rural divide. These points demonstrate the need for a methodology that accounts for this political geography; ensemble methods precisely capture it. One of the strengths of the ensemble method based on Markov Chain Monte Carlo is that it translates clearly stated redistricting criteria into a distribution on redistricting plans. The distribution on redistricting plans can distinguish between typical plans and atypical plans. This determination is fundamentally informed by the geometry of the state, its political geography, and the spatial structure of the elections used to probe the redistricting plan.

The fundamental power of the ensemble method is that it begins with a clear set of redistricting criteria as an input. It then creates a large, representative ensemble of redistricting plans which accounts for the geometry of the state and the geography of where people live and how they vote. Any collection of voting data can then be applied to this ensemble of restricting plans to obtain a collection of election results. The election results give a benchmark against which a particular redistricting may be compared under the same set of voting data. It is only the relative difference between the ensemble and the enacted plan which matters. Our ensemble of restricting plans naturally incorporates how nonpartisan redistricting criteria interact with the political geography and geometry of the state. It naturally adapts to natural packing in urban areas and other effects. It is capable of separating these natural effects from those of partisan gerrymandering. Because of this, this mode of analysis can separate bias that natural packing might induce from other effects. Additionally, none of these analyses rely on any forms of partisan symmetry or ideas of proportional representation. The ensemble method does not impose any idea of fairness nor does it select for a particular seats-to-votes curve. Rather it illuminates what the result would have typically been had only the stated redistricting criteria been utilized. It is quite possible, and often happens that the results from the ensemble method do not yield proportional representation and one party gains a natural advantage. One can then use this natural advantage as a benchmark to detect when a particular plan is biased beyond the neutral standard the ensemble establishes.

My report demonstrates that Republicans do have some natural advantage in North Carolina, but not nearly enough to explain the partisan bias of the enacted House and Senate plans. For example, in the Senate, using the AG16 election data, the ensemble shows that the Republicans will receive a majority of the seats with a minority of the statewide vote. However, the enacted plan gives the Republicans a supermajority using these same votes.² Similarly, in the House, using the CI12 election data with 51.8% statewide democratic votes, the ensemble shows that the Democrats win, on average, roughly 46% percent of the seats, whereas Democrats win around 42% of the seats under the enacted plan³. Hence there is a natural bias in favor of the Republicans, but it is significantly smaller than that of the enacted plan. These examples further demonstrate how ensemble methods are capable of separating geographic effects of natural packing from excessive partisan gerrymandering. We found similar results in our analysis of redistricting for the Wisconsin state legislature.⁴

Two of the defense's experts critique our choice of criteria in the ensemble, but take opposing views. Dr. Thornton claims that we have not considered the Reock score, incumbency, nor have achieved appropriate population deviations.⁵ On the other hand, Dr. Brunell claims that our ensemble would only be valid if it *did* take partisanship into account, favoring the Republican party. He goes on to claim that we could conclude excessive gerrymandering only if the enacted plan were extreme amongst already gerrymandered plans which were designed with partisanship. We prefer to identify partisan gerrymandering by comparing a plan in questions to what would have happened if partisanship had not been explicitly considered. As discussed above, our ensemble describes what would have happened in the absence of gerrymandering, when

¹For example see section V of Dr. Hood's report and Section 4 of Dr. Barber's report.

²See the corrected version of Figure 2 from my original report in the appendix of this report.

³See Figure 5 of my report; specifically 2012 Commissioner of Insurance race.

⁴See Fig 8 and 9 from "Evaluating Partisan Gerrymandering in Wisconsin" and the surrounding discussions. <https://arxiv.org/abs/1709.01596>

⁵Contrary to Dr. Thornton's claim, the initial report included everything but the Reock score, which has been included in this rebuttal; see Section 4 for details.

the ... ensemble. This appears to be the case in nearly every instance.” The figure on p. 16 in fact shows that the enacted plan is far in the tails of the marginal plots. It shows that three districts have significantly more Democrats packed in them than is almost ever seen in the ensemble, while two districts have exceptionally few democrats. This packing and cracking is repeated in many of the cluster level plots. The use of “range” by Dr. Thornton is an attempt to make the behavior seem typical when just the opposite is true. Furthermore, these plots only show marginal distributions, which is a more forgiving perspective when characterizing outliers. The paragraph in my report that precedes this figure shows that when looking at the districts in their totality, **none** of the maps in the ensemble have so few Democrats in the two most Republican districts and as many Democrats in the three most Democratic districts.

- (2) In paragraph 64, “In this matter, we have an unknown pool of potential Republicans and Democrat legislators to be chosen based on an approximation of the percent of the voters who would vote Democratic and, thereby, presumably elect a Democratic legislator.” Dr. Thornton seems to be advocating proportional representation and implying that we do also. We do not. We expressly only consider how the accepted, nonpartisan redistricting criteria are express through their interaction with geopolitical structure of the state.
- (3) In paragraph 65, Dr. Thornton claims I have used uniform swing adjustments. I did not in my initial report, although I do use uniform swing adjustments in my rebuttal to respond to Dr. Brunell.
- (4) In paragraph 67 and 68, Dr. Thornton’s coin flip analysis is built on the idea of the outcome of an election in one district being unrelated to the outcome in an other district as is the case with successive coin flips. This misses many factors, including the idea that removing voters to pack one district dilutes them from another district.
- (5) In paragraph 87, Dr. Thornton claims I have calculated the average number of Democratic seats across all 17 elections. While the data I have provided may be used to calculated this number, I have not done so in my report and have instead focused either on voting data from individual historical elections or on aggregate numbers that focus solely on deviations from the ensemble of plans.

5. IN RESPONSE TO DR. LEWIS’S REPORT

Based on the legislature’s redistricting criteria, we did not consider race when sampling the space of redistricting plans. The defense’s expert, Dr. Lewis, has provided three analyses of selected clusters to estimate the percentage of Black citizens required in a district that will ensure a black candidate be elected. The first two analyses are based on a linear regression model which estimates voting outcomes based on demographic data; the linear model is then employed on primary elections and general elections (Tables 2 and 3 of Dr. Lewis’s report, respectively). The third analysis makes several assumptions about how black voters and Democratic voters will support a minority candidate. The results of this analysis lead to a large and uncertain range of the fraction of black democratic voters needed to elect a minority candidate. For example, in Guilford county, Dr. Lewis projects that the percentage of black citizens within a district would need to be anywhere between 5% and 41% depending on the election considered.

For each of Dr. Lewis’s results we first determine if the counties in the result belong to a House cluster, Senate cluster, or both. If the counties belong to a subset of a cluster, we only consider districts in a plan that strictly lie within the subset. We omit county groups that have no districts contained within them. We then ask how many districts in the enacted plan have a greater fraction of black citizen voting age population than the Dr. Lewis’s reported threshold. We then count the number of plans in the ensemble that have as many (or more) districts above the threshold than the enacted plan.

We extend Tables 2 through 4 of Dr. Lewis’s report for our primary ensemble in Tables 3, 4, and 5. For the majority of Dr. Lewis’s results, we find that all, or nearly all, plans from our ensemble have as many districts above Lewis’s reported thresholds as the enacted plan. In many of the other results from Dr. Lewis, we find that a significant fraction of the ensemble plans have as many districts above Lewis’s reported thresholds as the enacted plan.

To analyze the effect of enforcing a minimum fraction of black citizen voting age population (BCVAP) on our ensembles, we consider Table 4 of Dr. Lewis’s report. For the Forsyth-Yadkin and Lenoir-Pitt clusters in the House, the Plaintiffs’ counsel has asked me to analyze the partisan characteristics of the subset of plans in the ensemble that produce at least as many districts as the enacted plan above Dr. Lewis’ Black CVAP thresholds from his Table 4. We visualize these results in Figures 7 and 8, and find almost no differences in the ensembles whether we consider the thresholds proposed by Dr. Lewis or not.

Counties; Election (Year)	Black CVAP Needed (%) from Lewis	House		Senate	
		No. above BCVAP Enacted from Lewis	% of Ensemble with the same or more above than Enacted	No. above BCVAP Enacted from Lewis	% of Ensemble with the same or more above than Enacted
Alamance-Guilford-Randolph; Attorney General (2016)	22	-	-	2	100.0
Bladen-Greene-Harnett-Johnston-Lee-Sampson-Wayne; Attorney General (2016)	21	5	99.92	-	-
Columbus-Pender-Robeson; Attorney General (2016)	4	3	100.0	-	-
Cumberland; Attorney General (2016)	13	4	100.0	-	-
Cumberland; Commissioner of Labor (2016)	65	0	100.0	-	-
Davie-Forsyth; Attorney General (2016)	42	-	-	1	0.05
Forsyth; Attorney General (2016)	44	1	59.01	0	100.0
Forsyth; Commissioner of Labor (2016)	5	4	100.0	1	100.0
Forsyth-Yadkin; Attorney General (2016)	42	1	71.21	-	-
Franklin-Nash; Lieutenant Governor (2016)	12	2	100.0	-	-
Guilford; Attorney General (2016)	26	4	100.0	1	100.0
Guilford; Commissioner of Labor (2016)	5	6	100.0	2	100.0
Guilford; Sheriff (2014)	23	5	99.93	1	100.0
Guilford; Sheriff (2018)	30	4	100.0	1	100.0
Lenoir-Pitt; Attorney General (2016)	18	3	100.0	-	-
Nash; Sheriff (2014)	30	1	100.0	-	-
Person-Granville-Vance-Warren; Attorney General (2016)	34	1	100.0	-	-
Robeson; Sheriff (2018)	36	0	100.0	-	-

TABLE 3. We contextualize Table 2 of Dr. Lewis's report with our primary ensembles in both the North Carolina House and Senate. We examine how many districts in the enacted plan both lie within the specified counties and have a greater black CVAP than reported by Dr. Lewis for a particular election (and year). We then examine the fraction of plans in the ensemble that have the same number, or more, districts that are also above the black CVAP requirement within the specified counties.

Counties; Election (Year)	Black CVAP Needed (%) from Lewis	House		Senate	
		No. above BCVAP Enacted from Lewis	% of Ensemble with the same or more above than Enacted	No. above BCVAP Enacted from Lewis	% of Ensemble with the same or more above than Enacted
Guilford; Sheriff (2014)	43	2	8.88	1	100.0
Guilford; Sheriff (2018)	31	4	100.0	1	100.0
Nash; Sheriff (2014)	54	0	100.0	-	-
Pitt; Sheriff (2018)	28	1	100.0	-	-

TABLE 4. We contextualize Table 3 of Dr. Lewis's report with our primary ensembles in both the North Carolina House and Senate. We examine how many districts in the enacted plan both lie within the specified counties and have a greater black CVAP than reported by Dr. Lewis for a particular election (and year). We then examine the fraction of plans in the ensemble that have the same number, or more, districts that are also above the black CVAP requirement within the specified counties.

Counties	Black CVAP Needed from Lewis (%)	House		Senate	
		No. above BCVAP Enacted	% of Ensemble with the same or more above than Enacted	No. above BCVAP Enacted from Lewis	% of Ensemble with the same or more above than Enacted
Alamance-Guilford-Randolph	41	-	-	1	100.0
Bladen-Greene-Harnett-Johnston-Lee-Sampson-Wayne	41	1	100.0	-	-
Columbus-Pender-Robeson	26	2	16.39	-	-
Cumberland	34	2	100.0	-	-
Davie-Forsyth	41	-	-	1	1.05
Forsyth	40	1	81.58	1	6.65
Forsyth-Yadkin	41	1	76.62	-	-
Franklin-Nash	40	1	67.13	-	-
Guilford	40	4	96.67	1	100.0
Lenoir-Pitt	38	2	77.84	-	-
Nash	41	1	61.65	-	-
Person-Granville-Vance-Warren	32	1	100.0	-	-

TABLE 5. We contextualize Table 4 of Dr. Lewis's report with our primary ensembles in both the North Carolina House and Senate. We examine how many districts in the enacted plan both lie within the specified counties and have a greater black CVAP than reported by Dr. Lewis for a particular election (and year). We then examine the fraction of plans in the ensemble that have the same number, or more, districts that are also above the black CVAP requirement within the specified counties.

EXHIBIT D



Deposition of:
Jeffrey Lewis , Ph.D.

June 11, 2019

In the Matter of:
Common Cause v. Lewis, David et al

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Page 286

1 right?
2 A. That is correct.
3 Q. Any connection at all between
4 Table 4 and the ecological regression
5 analysis earlier in the report?
6 A. Well, again, if narrowly we mean
7 using ecological regression to estimate
8 the rate of support for candidates among
9 African Americans and whites, then that's
10 true. Yeah.
11 Q. There was no aggression --
12 regression analysis that went into this
13 Table 4 --
14 A. No, the assumptions that those
15 numbers are based on are as stated.
16 Q. Right. So let's look at those
17 assumptions, which are on page 21 of your
18 report.
19 A. Yes.
20 Q. You say you make three
21 assumptions that underlie this -- this
22 model. And I'm just going to read them
23 off. Assumption 1 is 100 percent of
24 African Americans who are not Republicans
25 and participate in the election will

Page 287

1 support the African American preferred
2 candidate.
3 Assumption 2 is no Republicans
4 of any race or ethnicity and no white who
5 are not Democrats support the African
6 American preferred candidate.
7 Assumption 3 is 75 percent of
8 whites (non-African American) Democrats
9 support the African American preferred
10 candidate (who is also by assumption the
11 Democrat).
12 Those are the three assumptions
13 that underlie this model?
14 A. Correct, yes.
15 Q. And the estimates that you
16 provide in the final column of Table 4 on
17 the prior page, the CVAP column, those
18 estimates are driven by these three
19 assumptions; is that right?
20 A. In combination with the known
21 rates of participation.
22 Q. If you change those three
23 assumptions, it would change the numbers
24 you got?
25 A. Oh, of course, yes.

Page 288

1 Q. Okay.
2 A. Otherwise, you wouldn't have to
3 make those assumptions.
4 Q. How did you come up with those
5 three assumptions?
6 A. Yeah. So, again, I think the --
7 the idea there -- and -- and I will say
8 that -- that this is the one area of the
9 report where I think my opinion differs
10 now from the report, that in going back
11 over and preparing for this discussion
12 today, I -- I didn't -- so when I came up
13 with those instances -- those numbers, I
14 was thinking, you know, sort of about, you
15 know, what I think is pretty consistent
16 with public survey data about the rates at
17 which different kinds of voters support
18 different kinds of candidates.
19 And, again, very ballpark, like
20 you can see that these numbers, there's no
21 attempt to make this seem like a
22 super-precise thing. We're picking
23 zero percent or 100 percent or 75 percent.
24 Obviously, none of those things could be
25 exactly right.

Page 289

1 The area which -- which I would
2 want to amend the report now, if -- if I
3 were to rely on this analysis in any way,
4 is that -- is that I went back and
5 checking these, some of the numbers from
6 surveys just to make sure that it seemed
7 like I had done it right, I saw there were
8 more survey -- there's -- well, let me
9 just put it this way: There's only one
10 survey, public survey, I'm aware of where
11 they have validated voter registration for
12 voters in North Carolina, so I'm going to
13 look at that just to get a sense of, you
14 know, whether these numbers kind of worked
15 out.
16 And what I noticed that I hadn't
17 noticed before is like, oh, man, this
18 survey data includes a lot of
19 non-affiliated voters, unaffiliated
20 voters. And I hadn't realized that when I
21 had tried to tabulate that out of the data
22 that I got from BOE.
23 I don't know, obviously I -- I
24 miscalculated that number, and so I sort
25 of just neglected that, which in some

Page 290

1 states you could do because in some states
2 the fraction of voters that are registered
3 without a party affiliation is very small.
4 So in doing that, I figured out
5 that actually 40 percent of the whites
6 that aren't Democrats are unaffiliated in
7 these -- across these counties. It varies
8 a little bit but across all.
9 And so, obviously, it's not a
10 reasonable assumption that zero percent of
11 these unaffiliated voters would support
12 the Democrat. I think a much more
13 reasonable assumption, if you want to take
14 an instance in which you thought that
15 there was going to be a relatively modest
16 amount of white crossover voting, which I
17 think is in some ways the correct
18 hypothetical to think about minority vote
19 dilution, you know, you don't have to rely
20 on the fact that whites particularly like
21 this particular candidate or something
22 like that, might be like 40 percent.
23 So if you thought 40 percent of
24 the non-Democratic whites were
25 unaffiliated, and you thought that

Page 291

1 40 percent of those would support the
2 Democratic candidate or the minority
3 preferred candidate, then probably a
4 better estimate of what the white
5 non-Democratic vote going to the Democrats
6 should be is on the order of 15 percent.
7 And if you make that -- if you
8 -- if you have that be the model -- so
9 that's 40 times 40 would be 16 percent --
10 so rounding, you know, as I've done all
11 these numbers, sometimes up or sometimes
12 down, would be about 15 percent, you
13 actually change the numbers in this final
14 column or you would, I think, you know,
15 kind of, on the order of like somewhere
16 between 8 and 10 points.
17 Q. So let me -- let me just try to
18 unpack that because there was a lot there.
19 A. Yeah, that was a lot there.
20 Q. I appreciate the clarification.
21 A. Yeah.
22 Q. So you're saying that if you
23 could go back and sort of do it over
24 again --
25 A. 100 percent, yeah.

Page 292

1 Q. -- Assumption Number 2 here --
2 A. Yes.
3 Q. -- the second half of that
4 assumption where it says no white who are
5 not Democrats would support the African
6 American preferred candidate, you would
7 change that assumption?
8 A. Yes, I would.
9 Q. And you would change that
10 assumption to be what exactly? Because
11 you -- the first part, would you still
12 assume no Republicans of any race would
13 support the African American --
14 A. No.
15 Q. -- preferred candidate?
16 A. No, I'm -- Well, I wouldn't
17 focus on -- I mean, again, you can see
18 that like immediately what I -- you know,
19 implicitly what Republicans are here are
20 non-Democrats. And, again, I was under
21 the false impression that the
22 non-Democrats were overwhelmingly
23 Republicans.
24 Now I think if we were to
25 rewrite these things, we would rewrite it

Page 293

1 to say non-Democrats, right, and so it
2 wouldn't say Republicans and it wouldn't
3 be none; it would be 15 percent.
4 Q. So the -- this -- the number
5 here, which is zero currently, would
6 change to 15 percent?
7 A. That's right.
8 Q. And that's based on an
9 assumption of how many -- what percentage
10 of unaffiliated voters, white
11 unaffiliated?
12 A. 40 percent.
13 Q. 40 percent, okay.
14 A. So 40 times 40, 40 percent of
15 the 40 percent would be about 15 percent.
16 Q. And you're saying that, if I'm
17 understanding you right, if you did that
18 adjustment --
19 A. Yes.
20 Q. -- the numbers presented in the
21 far right column of Table 4 --
22 A. Yes.
23 Q. -- would go down by 8 to 10
24 points?
25 A. That's right.

Page 294

1 Q. Okay. And have you done those
2 calculations?
3 A. I -- I have -- I have done them,
4 yeah.
5 Q. I'm sorry, I couldn't hear you?
6 A. Yes, I have.
7 Q. And so you calculated how much
8 for each of those?
9 A. I don't know --
10 Q. However many rows?
11 A. -- exactly, but I'm telling you
12 that --
13 Q. You have it somewhere; simply
14 it's not here?
15 A. I -- yes, I -- I don't have it
16 with me, but -- but those numbers go in
17 the neighborhood of, say, 9 points, 10
18 points, 8 points.
19 Q. Okay.
20 A. It depends on how high it was to
21 begin with. You get bigger changes on
22 bigger numbers and smaller changes on
23 smaller numbers.
24 Q. Sure. It's going to depend on
25 the row, but you're saying it's within the

Page 295

1 balance of 8 to 10 points?
2 A. That's what I'm saying, yeah.
3 Q. Okay. I appreciate that
4 clarification. So if I could just go back
5 to the three assumptions as originally
6 written, but on the understanding that
7 you're sort of saying you would modify one
8 of them --
9 A. Yeah, of course.
10 Q. -- is it your testimony that you
11 came up with those assumptions originally?
12 A. Yes.
13 Q. Nobody told you to apply those
14 assumptions?
15 A. No, they did not.
16 Q. And your testimony, if I
17 understood it, was that you came with
18 those assumptions based on a survey data?
19 A. I think, yeah. I mean, not
20 specifically, like I didn't found them on
21 that. I didn't in the sense, but just in
22 the -- in the sense that, yes, from survey
23 data, we know that Democrats -- that
24 African Americans in general elections are
25 very highly reliable Democratic voters.

Page 296

1 We know that -- we know that white
2 Democrats are less reliable. And -- and
3 we know that Republicans are not reliable
4 Democratic voters.
5 So, again, this is a
6 hypothetical that's supposed to give a
7 sense of the voting power of African
8 American population.
9 So if you had an instance in
10 which you had a highly polarized partisan
11 election in which there was very, very
12 high African American cohesion and some
13 defection of white Democrats, you know,
14 what order of magnitude would you need the
15 CVAP to be in order for the -- the African
16 American preferred candidate to have a
17 reasonable chance of prevailing?
18 Q. And what did you say what survey
19 it was that you relied on?
20 A. Yes, so the -- the one that I --
21 I kind of went to sort of check some of
22 these in the context of -- of North
23 Carolina, when it --
24 Q. Yeah.
25 A. -- you know, it seemed like that

Page 297

1 would be a useful thing to do, is the
2 congressional campaign election,
3 cooperative campaign -- congressional --
4 let me try this one more time.
5 I've been sitting in this chair
6 for a while now. Let me -- let me speak
7 clearly. I think it's called the
8 Cooperative Congressional Election Study,
9 CCES, out of Harvard. And that's been
10 going on for like ten years.
11 And one of the nice things that
12 they do in that study is they validate
13 vote. So they match up their respondents
14 to actual voter registration and
15 participation records, which allows them
16 to -- to be able to -- to have a variable
17 in there that's not your partisan
18 identification, which is what we usually
19 think about as political scientists. We
20 think about what you say your affiliation
21 to a different party is, which may or may
22 not reflect your formal registration
23 status.
24 But they actually have the
25 formal registration status of the North

EXHIBIT E

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Friday, July 5, 2019 9:49 AM
To: Jones, Stanton; Jacobson, Daniel
Cc: Riggins, Alyssa; Nate Pencook; Majmundar, Amar; Brennan, Stephanie; John Branch; Cox, Paul; Strach, Phillip J.; McKnight, Michael D.; Raile, Richard; Stanley, Trevor M.; Braden, E. Mark; Speas, Edwin M.; Mackie, Caroline P.; melias@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com; zzz.External.ABranch@perkinscoie.com; Gersch, David P.; Theodore, Elisabeth
Subject: RE: Common Cause v. Lewis - Scheduling Expert Witness Depositions - Mattingly dates

External E-mail

Good morning, Stanton.

Legislative Defendants do not intend to produce any amended Table 4 for Dr. Lewis. There is a procedure in place for Plaintiffs to object to the existing Table 4 and Plaintiffs can take advantage of that procedure if they deem it necessary.

We do not think an "emergency motion" is merited.

Kind regards,

Kate

Katherine L. McKnight
Partner

BakerHostetler

Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
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From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Wednesday, July 3, 2019 5:48 PM
To: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>
Cc: McKnight, Katherine L. <kmcknight@bakerlaw.com>; Riggins, Alyssa <alyssa.riggins@ogletree.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; John Branch <JBranch@shanahanlawgroup.com>; Cox, Paul <pcox@ncdoj.gov>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Raile, Richard <rRaile@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Speas, Edwin M. <ESpeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; melias@perkinscoie.com; AKhanna@perkinscoie.com; ABranch@perkinscoie.com; Gersch, David P.

<David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Subject: Re: Common Cause v. Lewis - Scheduling Expert Witness Depositions - Mattingly dates

Counsel for legislative defendants:

Your continued failure to respond to our emails below about Dr. Lewis' revised calculations is unreasonable. Unless you provide the revised calculations by 9am tomorrow, we will file an emergency motion with the Court.

Regards,
Stanton

Sent from my iPhone

On Jul 3, 2019, at 12:08 AM, Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com> wrote:

Counsel for Legislative Defendants,

I am writing to follow up on this email from several weeks ago. Given that you have included Dr. Lewis on your witness list and appear to have included his Table 4 on your exhibit list, please send us by 5pm tomorrow (7/3) the corrected version of Dr. Lewis' table 4 based on the revised estimates he testified about at his deposition. As you know, Dr. Lewis testified that his numbers in the far-right column of this Table 4 were erroneous and that he had calculated corrected numbers. We have a right to this information without delay to prepare for trial.

Best,
Dan

Daniel Jacobson
Senior Associate

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Washington | District of Columbia 20001-3743
T: +1 202.942.5602
Daniel.Jacobson@arnoldporter.com | www.arnoldporter.com

From: Jacobson, Daniel

Sent: Tuesday, June 11, 2019 7:10 PM

To: 'McKnight, Katherine L.' <kmcknight@bakerlaw.com>

Cc: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Riggins, Alyssa <alyssa.riggins@ogletree.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; John Branch <JBranch@shanahanlawgroup.com>; Cox, Paul <pcox@ncdoj.gov>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Raile, Richard <rraile@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Speas, Edwin M. <ESpeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; melias@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Subject: RE: Common Cause v. Lewis - Scheduling Expert Witness Depositions - Mattingly dates

Counsel,

At his deposition today, Dr. Lewis testified that he made an error in the analysis underlying Table 4 of his report and that he has since calculated revised estimates for the numbers that appear in the far-right

column of Table 4. Please send us Dr. Lewis' revised numbers for the far-right column of Table 4 – which he testified he has already calculated -- by 12pm tomorrow. To be clear, we are not asking for, nor do we consent to, the submission of a revised report for Dr. Lewis.

Best,
Dan

Daniel Jacobson
Senior Associate

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From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Monday, June 10, 2019 9:08 PM
To: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>
Cc: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Riggins, Alyssa <alyssa.riggins@ogletree.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; John Branch <JBranch@shanahanlawgroup.com>; Cox, Paul <pcox@ncdoj.gov>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Raile, Richard <rraile@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Speas, Edwin M. <ESpeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; melias@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Subject: Re: Common Cause v. Lewis - Scheduling Expert Witness Depositions - Mattingly dates

External E-mail

Good evening, Dan.

I understand you need this information for your security desk: Dr. Lewis and Mark Braden will attend the deposition tomorrow.

Kind regards,

Kate

On Jun 10, 2019, at 8:38 PM, Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com> wrote:

Counsel for Legislative Defendants,

Can you confirm that Dr. Lewis will be appearing for his deposition tomorrow?

Daniel Jacobson
Senior Associate

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