

American voters out of crossover districts into adjoining districts makes a districting plan better for the Democratic Party. In short, Plaintiffs seek the elimination of crossover districts to advance their political agenda through the North Carolina judiciary.

Plaintiffs' factual allegations and arguments are based upon cherry-picked and therefore misleading statements from the legislative record. They omit key portions of the legislative record and conflate two separate and "analytically distinct" federal claims: racial gerrymandering and racial vote dilution. *Miller v. Johnson*, 515 U.S. 900, 911 (1995). In truth, the omitted portions of the legislative record – and the record before the *Covington* Court – demonstrate that the Legislative Defendants have consistently argued that they did not use race to draw the 2017 districts. But the record also shows that the legislature and its leaders did consider racial statistics for the 2017 districts (requested by Democratic members) and concluded that because of these statistics the 2017 Plans cannot be challenged for vote dilution. These facts were explained to the *Covington* Court by counsel for the Legislative Defendants.

At bottom, Plaintiffs' allegations regarding statements made to the *Covington* court are baseless and reckless. More pertinent to this case, the Court is obligated by federal law to consider the vote dilution impact of Plaintiffs' standardless partisan gerrymandering claims before it even considers its jurisdiction to declare the 2017 districts illegal, much less whether 2017 performing crossover districts should be replaced by districts intentionally designed to benefit Democrats through the use of race.

Record of Senate Legislative Proceedings

In *Covington*, the federal district court found that the legislative record developed in 2011 did not contain sufficient evidence of legally significant racial polarized voting ("RPV") to justify the use of race in the drawing of the 2011 majority black districts. As explained by Senator Hise

during the consideration of the proposed Senate Plan by the Senate Redistricting Committee, “data identifying the race of individuals or voters *shall not be used in the drawing of legislative districts in the 2017 House or Senate maps.*” See Ex. 1, Transcript of Proceedings before Senate Redistricting Committee (8/24/17) (emphasis added) p. 11:2-9. As explained by Senator Hise:

Despite a voluminous record that was established by the General Assembly during the 2011 redistricting process, the three-judge panel in the *Covington* case said that this did not constitute substantial evidence that would justify using race to draw districts in compliance with the requisites of the Voting Rights Act. Therefore, we do not believe it is appropriate given this Court’s order in this case, for the Committee to *consider race when drawing districts.*

Id. pp. 11:24-12:15 (emphasis added)

Democratic Senators immediately criticized Senator Hise for not considering race and offered amendments to change the racial percentages in proposed Senate Districts. *Id.* pp. 14:15-16:17 (Sen. Blue); pp. 52:19-53:19; 56:15-57:19 (Blue amendment to unite African American Communities in Wake County, adopted by the Committee); pp. 81:3-82:2 (Sen. Blue arguing that the General Assembly could not fix the illegal racial gerrymanders without considering race.) This criticism continued following the meeting of the Senate Redistricting Committee. Democratic Senator Floyd McKissick requested and the legislature’s central staff posted a “stat pack” for the proposed 2017 Senate Plan which included racial statistics for the proposed Senate Plan. This information included black voting age population for all of the proposed districts. This information was available to the Senators during the Senate floor proceedings on August 25, 2017 (See Ex. 2). See Exhibit 2, Statement of Senator Robinson regarding her proposed amendment for Senate Districts in Guilford County. *Id.* p. 18:2-20:19; *Id.* p. 32:11-35:10 (Sen. Blue Statement in support of Senator Robinson amendment); *Id.* p. 38:8-17; *Id.* p. 43:20-28 (Sen. Blue states that racial data was requested from staff and made available yesterday); *Id.* pp. 45:17-46:6 (Sen. McKissick discusses his analysis to determine black VAP for proposed districts); *Id.* pp. 52:20-53:9 (Sen.

McKissick submits data on black voting age population); *Id.* pp. 122:21-123:11 (Sen. Blue stating that now the Senate Democrats had produced stat packs showing the racial makeup of the districts that Republican will have to tell the Court how they addressed discrimination).

Following the publication of racial information regarding the proposed Senate plan, Senate President *Pro Tem* Phil Berger summarized the racial data and explained the history of the General Assembly's use of race to draw districts in 2011, and the impact of the decision in *Covington*. Transcript of Proceedings, 8/28/17, Senate Floor Debate (Ex. 3) pp. 49:3-53:10. More specifically, Sen. Berger explained that race could not be used as a criterion for *drawing* the districts in 2017 because of the absence of evidence showing legally significant RPV. *Id.* pp. 51:5-52:11. But Senator Berger clarified that while race was not used to draw the districts, a review of the racial data requested and placed into the record by Democratic Senators demonstrated that 2017 "ability to elect" districts included in the 2017 Senate Plan would protect the State from claims of racial vote dilution. More specifically, Senator Berger stated:

I've also reviewed the data Senator McKissick requested and is placed on the members' dashboards. In the nine districts the Court ruled where [sic] racial gerrymanders, only the Guilford County District as the Court predicted could incidentally occur when using traditional districting principles. In this case following Greensboro's municipal boundaries continues to have a black voting age population over 50 percent and it has fallen from 56.5 percent to 50.5 percent. The other eight previously unconstitutional districts now have black voting age population ranging from 32.9 percent to 48.5 percent.

While the 2011 Plan may have no districts with black voting age populations between 26.5 percent and 43 percent, the new map has five new districts that fit into that range including one new district with a black voting age population of over 40 percent and two new districts with a black voting age population over 30 percent. This is important because the expert reports which you can see on your dashboards submitted by Alan Lichtman on behalf of the Democrats and plaintiffs in the *Covington* and *Harris* cases define all those districts having the quote, "Ability to elect a candidate who is the preferred choice of a cohesively voting minority community."

So while race was not used to draw the plan, I believe it fully remedies the racial gerrymander in the previous plan while avoiding any new potential claims of black vote under Section 2 of the Voting Rights Act.

Id. p. 53:6-54:15¹

House Legislative Proceedings

In relevant part, the proceedings before the House were identical to those in the Senate. The Chair of the House Redistricting Committee, Rep. Lewis, stated that race was not “a criteria *in drawing districts*” House Redistricting Committee Transcript (Ex. 4) (8/25/17), p. 15:11-17; *see also* pp. 20:11-20; 28:14-18. Democratic members immediately criticized Rep. Lewis for not considering race. *Id.* pp. 19:24-20:10; 20:25-21:3; 21:21-22:3; 27:22-28:13. Minority Leader Jackson admitted that race was used to draw districts in the *Covington* plaintiffs’ proposed map Jackson eventually offered as an amendment to the proposed House Plan. *Id.* He also advised that central staff could produce racial data for his proposed amendment and that he had requested that staff produce racial data on the map proposed by the Republican leaders. *Id.* p. 68:21-70:11.

Three days later, Rep. Michaux and Rep. Jackson both openly criticized the Republican leadership for not considering race. House Floor Debate Transcript (Ex. 5) (8/28/17, p. 42:18-21; 50:2-52:2. Rep. Jackson admitted once again that Democratic members had asked staff to provide racial data for the districts included in the Leadership’s Proposed House Plan.

Finally, on August 30, 2017, Rep. Lewis, during consideration of the proposed Senate Plan, noted that the racial statistics concerning the 2017 House Plan that were requested by Democratic members had been published on the website for the House Select Committee on Redistricting.

¹ Tellingly, while plaintiffs filed with the Court the first part of Senator Berger’s statement as Exhibit B to their motion, they conveniently omitted the portion of Senator Berger’s statement explaining how the 2017 Plans protect the State from vote dilution claims – the exact type of testimony they contend should be excluded because it allegedly was never considered, discussed, or argued by the Legislative Defendants or their counsel.

Rep. Lewis, like Senator Berger, stated that he had reviewed the racial information requested by Democratic Senators and believed that the districts included in the 2017 House Plan would protect the State from claims that the 2017 House Plan illegally diluted the voting strength of minority voters. Transcript of Proceedings (Ex. 6) (8/30/17) p. 11:14-12:23. Like Senator Berger, Rep. Lewis also noted that his opinion regarding the absence of racial vote dilution in the 2017 House Plan was supported by expert reports submitted by the *Covington* plaintiffs to the federal court, which were also included in the legislative record. *Id.*

In summary, what the legislative record clearly shows is that Republican leaders stated that they did not use race to draw the 2017 districts. Thereafter, Democratic members requested the publication of racial statistics for the 2017 Senate and House Plans. This information was available to all members of the General Assembly before the plans were ratified. Sen. Berger and Rep. Lewis then studied those statistics and offered their opinions that both plans included ability to elect (or crossover) districts that would protect the State from vote dilution claims, and that their opinions were supported by the *Covington* plaintiffs' expert witness.

2018 Elections

During the House debate, Minority Leader Jackson argued that the 2017 proposed House Plan “racially gerrymanders so that you can lessen the opportunities of African American voters to have their voices heard in more districts because that could in turn create more democratic districts.” Ex. 5, p. 48:5-11. Rep. Jackson’s candid statement reveals the true motivations for this case – a desire by the plaintiffs to have the Court usurp the constitutional authority of the General Assembly by ordering the State to intentionally draw “more democratic districts” using race to do so. But, Rep. Jackson’s statement is clearly wrong to the extent he intended it to relate to the issue of racial vote dilution. We will show at trial that under the 2017 maps, as modified by the Supreme

Court, 26 African Americans were elected to the House in 2018 and 10 African Americans were elected to the Senate. The Legislative Defendants believe that the number of African American members elected under the allegedly gerrymandered 2017 Plan is the highest in the history of the General Assembly. Many of these members were elected in a district with at least 38.37% BVAP, a benchmark used by the North Carolina Supreme Court to define the percentages of black voting population needed to establish a crossover district. *Strickland v. Pender County*, 649 S.E.2d 364, 367 (N.C. 2007). However, also of note is the fact that two African American candidates were defeated in the 2018 General Election in eastern North Carolina House districts that included a BVAP in excess of 38%. (House District 1 and House District 12).

Argument

JUDICIAL ESTOPPEL DOES NOT APPLY BECAUSE THE LEGISLATIVE DEFENDANTS HAVE NOT CHANGED THEIR POSITION AND NEVER STATED THAT RACE WAS NOT CONSIDERED DURING THE REDISTRICTING PROCESS

Judicial estoppel “protects the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment.” *Powell v. City of Newton*, 703 S.E.2d 723, 728 (N.C. 2010). “Broadly speaking, judicial estoppel prevents a party from acting in a way that is inconsistent with its earlier position before the Court.” *Id.* It is “limited to assertions of fact in civil proceedings” While many factors can affect the court’s decision whether to invoke the doctrine, three frequently considered aspects are whether:

- (1) The party’s subsequent position is ‘clearly inconsistent with its earlier position’;
- (2) judicial acceptance of a party’s position might threaten judicial integrity because a court has previously accepted that party’s earlier inconsistent position;
- (3) The party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair deterrent to the opposing party as a result.

Id., citing *Whitacre P’ship v. Biosignia*, 358 N.C. 1, 28-29, 591 S.E.2d 870, 888-89 (2004)

None of these factors are prevent in this case.

First, there is no evidence that the pertinent positions being advanced by the Legislative Defendants in this case are different from the same positions advanced by them in *Covington*. Attached to Plaintiffs' motion as Exhibit C is a Notice of Filing made by the Legislative Defendants in the *Covington* case. That document recites the legislative history starting with public hearings held on August 4, 2017, running through final ratification of the House and Senate Plans on August 31, 2017 and includes the transcripts of those hearings. Plaintiffs' Exhibit C pp. 6-9.

Plaintiffs either misunderstand, or are conflating, arguments made in *Covington* to dispute plaintiffs' contention that the 2017 districts remained as racial gerrymanders, with arguments related to whether the 2017 Plans were subject to a claim for vote dilution. Plaintiffs in *Covington* never argued that the 2011 Plans or the 2017 Plans violated Section 2 of the VRA or otherwise illegally diluted the votes of minority voters. But Plaintiffs cannot dispute that the Legislative Defendants filed transcripts of legislative proceedings showing that Democratic members requested racial information concerning the 2017 Plans and that this information was made available to all members. *See* Plaintiffs' Motion, Ex. C, p. 3.

Furthermore, these transcripts filed with the *Covington* Court include the statements cited above by Sen. Berger and Rep. Lewis expressly stating that they had reviewed the racial statistics requested by the Democratic members – information that neither of them had requested or previously reviewed – and offered their opinion that based upon these statistics, any argument advanced during the debates that the Republican leaders had discriminated against African Americans by diluting their vote was meritless.

Moreover, during the hearing in *Covington* counsel for the Legislative Defendants explained to the *Covington* Court that racial statistics had been published and considered by the legislature after the plans were drawn but before the plans were ratified, and that these statistics demonstrate that the 2017 Plans did not dilute minority voting strength. *See* Exhibit 7, Transcript of Proceedings in *Covington v. North Carolina* (10/15/17) p. 87.²

As this evidence demonstrates, the position of the Legislative Defendants in this case on these two distinct issues (was race used to draw districts and did the legislature consider race and voting rights issues before the plans were ratified) is identical to their representations during the legislative process and to the Court in *Covington*. There has been no change of positions. Race was not used as a criterion to draw the 2017 districts, but racial statistics were published before the plans were ratified. These statistics showed the presence of crossover districts that could protect the State from vote dilution claims. Nothing whatsoever in the *Covington* case can even be remotely construed as a representation by the Legislative Defendants that racial statistics for the 2017 Plans were not considered by the General Assembly after the plans were drawn – because the legislative record indisputably shows that such statistics were requested by Democratic members and then considered by the entire General Assembly before the plans were ratified.

Next, there is zero evidence that the Court in *Covington* accepted any representation by the Legislative Defendants that race was never considered before the plans were ratified. As shown by Exhibit C to Plaintiffs' motion, the only denial regarding the use of race made by the Legislative Defendants in *Covington* was that race was not considered by the General Assembly in the drawing of districts. Clearly, the *Covington* Court did not accept this representation – a requirement for

² Not surprisingly, the reaction of the Court to this statement by defendants' counsel was that vote dilution claims were not before the Court. *Id.* p. 88.

application of judicial estoppel – because it found several of the 2017 districts to be illegal racial gerrymanders. Nowhere is there any indication that the *Covington* Court “accepted” the Legislative Defendants’ “representation” that race was never considered before the plans were ratified, because no such representation was ever made. In addition, any such alleged representation is completely inconsistent with the legislative record filed in *Covington* or the argument by counsel, both of which show that the legislature did consider racial statistics after the proposed plans were presented to the General Assembly.

Finally, even assuming the Legislative Defendants had told the *Covington* Court that no racial information was published or considered by the legislature after the plans were proposed but before they were ratified, Plaintiffs have utterly failed to explain how any such imaginary representation has given the Legislative Defendants an unfair advantage or worked a detriment to the plaintiffs. This case is about alleged partisan gerrymandering – not racial gerrymandering. Whatever factual representations that might have been made by the Legislative Defendants in a racial gerrymandering case has no relevance to whether the 2017 Plans constitute an illegal partisan gerrymander.

It is obvious that part of Plaintiffs’ litigation strategy is to try this case in the national media and to do so by reckless and false accusations against the Legislative Defendants. Plaintiffs have resorted to this strategy because they have no coherent theory or criteria that the General Assembly should have followed in drawing districts. Plaintiffs’ baseless accusations will not assist this Court with its duty under North Carolina law to explain any ruling against the 2017 Plans since:

Every order or judgment declaring unconstitutional or otherwise invalid, in whole or in part and for any reason, any act of the General Assembly that apportions or redistricts state legislative . . . districts, shall state separately and with specificity the court’s conclusions of law in that declaration, and shall, with specific reference to the findings of fact and conclusions of law,

identify every defect found by the court, both as to the plan as a whole and as to individual districts.

N.C. Gen. Stat. § 120-2.3

Moreover, the Court has to give the General Assembly an opportunity to remedy the defects identified by the Court before the Court may impose its own plan. N.C. Gen. Stat. § 120-2.4 This Court cannot declare any district illegal unless it finds with specificity the criteria violated by the General Assembly and then gives the legislature directions on how to fix any violation. The Court cannot give directions to the General Assembly about how it should draw a map or adopt a map of its own if either alternative would result in the elimination of performing crossover districts. *Bartlett, supra*. The Court should deny this motion and ensure that it fully understands how plaintiffs intend to use race to further their political goals through partisan litigation.

Conclusion

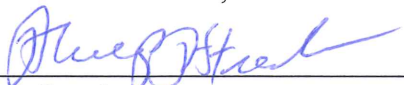
For the foregoing reasons, Plaintiffs' motion to exclude evidence or testimony concerning the Voting Rights Act or vote dilution should be denied.

This the 1st day of July, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing in the above titled action upon all other parties to this cause by:

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

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Exhibit 1

NORTH CAROLINA GENERAL ASSEMBLY
SENATE COMMITTEE ON REDISTRICTING

TRANSCRIPT OF THE PROCEEDINGS
AUGUST 24, 2017 SESSION

In Raleigh, North Carolina
Thursday, August 24, 2017
Reported by Rebecca P. Scott

Worley Reporting
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Raleigh, NC 27624
919-870-8070

1 throwing us a curve? Since you're not on the
2 Committee, I should have caught that. I think
3 Senator Harrington made the same motion at the same
4 time.

5 SEN. TILLMAN: I heard her.

6 SEN. BROWN: So Senator Harrington makes
7 that motion. All in favor?

8 (Voice vote.)

9 SEN. BROWN: Any opposed? All right.
10 The motion carries. Senator Hise?

11 SEN. HISE: Thank you. I think all
12 members should have in front of them an overall
13 copy of the map as well as the stat-pack from the
14 Committee available for the map of the
15 redistricting. I'm going to take a few minutes and
16 go over the criteria of the Committee and a bit on
17 how the maps that are presented meet the criteria
18 that the committees for both the House and the
19 Senate established for drawing maps.

20 To begin with, I will begin with equal
21 population. The committees were required to use
22 the 2010 federal decennial Census data as the sole
23 basis of population for drawing legislative
24 districts in these plans. The number of persons in
25 each legislative district shall comply with the

1 plus or minus five percent population deviation
2 standard established in Stephenson versus Bartlett.

3 You'll see from the first page of the
4 stat-pack the total population for all 50 Senate
5 Districts under the 2010 Census. The most
6 overpopulated district is by 4.94 percent, Senate
7 District 8, which is composed of Bladen, Brunswick,
8 and Pender Counties in whole and a part of New
9 Hanover County. This district was not redrawn in
10 this process and was not affected by the court
11 order.

12 The most underpopulated district --
13 underpopulated district is Senate District 3. It
14 is underpopulated at negative 4.55 percent. It is
15 a district in the northeast which is composed of
16 whole counties including Vance, Warren,
17 Northampton, Bertie, Martin, and Beaufort Counties.
18 That is a six-county pod that under the Stephenson
19 decision would meet that criteria.

20 Contiguity, the second standard.
21 Legislative districts shall be comprised of
22 contiguous territory. Contiguity by water would be
23 sufficient. You will find that the legislative
24 districts -- you will find that the legislative
25 districts are meeting that legal criteria, and all

1 the districts are contiguous within the process.

2 Next county groupings and traverses. The
3 Committee shall draw legislative districts within
4 county groupings as required by Stephenson v.
5 Bartlett. Within county groupings shall not be --
6 within county groupings shall not be traversed
7 except as authorized by Stephenson I, Stephenson
8 II, Dickson I, and Dickson II. The rules for
9 county groupings were established in Stephenson I
10 and have been affirmed in later cases. The map
11 follows the county grouping formula listed several
12 weeks ago.

13 We have not received as a committee any
14 more optimal or alternative group plans. The map
15 does not traverse any county. More than once is
16 prohibited by Stephenson I, and though it requires
17 the formula announced -- does not require the
18 maximizing of keeping counties whole, you will see
19 that the map presented keeps 88 counties whole of
20 the 100 counties in North Carolina.

21 Just to briefly clarify on that, as the
22 hierarchy determined in the Stephenson's decision,
23 we must create all one-county groupings. There
24 existed only one, and that would have been in
25 Mecklenburg that was coming to the Senate. Then we

1 must create all possible two-county groupings, then
2 all possible three-county groupings. You cannot
3 sacrifice creating a three-county grouping for
4 later sacrificing having more four-county
5 groupings. So it is required for the smallest
6 number of counties to be formed within a district.

7 Standard number 4, compactness. The
8 Committee shall make reasonable efforts to draw
9 legislative districts in the 2017 House and Senate
10 plans that improve the compactness of current
11 districts. We established two guides for use for
12 determining that. The Reock dispersion and
13 Pol sby-Popper scores which dealt with the
14 parameter. And so coming in, we set -- the
15 committee adopted as a guide for compactness
16 minimal score drawings for those.

17 For the Reock score, it was -- we have no
18 district lower than the .15 minimum threshold, and
19 then the---

20 SEN. BROWN: A lot of P's.

21 SEN. HISE: ---Pol sby-Popper score, the
22 minimum threshold adopted by the Committee of .05.
23 None of the districts you will find adopting this
24 were below those minimum standards. And this plan
25 improves on the compactness of the 2011 Senate plan

1 and fares historically well against any Senate
2 plans adopted by the legislature over the last few
3 decades.

4 Criteria number 5, fewer split precincts.
5 The Committee shall make reasonable efforts to draw
6 legislative district plans that split fewer
7 precincts than the current legislative
8 redistricting plans. Following public input urging
9 this Committee to split fewer precincts in the
10 drawing of these plans, the Committee chose to
11 adopt this as criteria.

12 The 2011 Senate plan split 257 precincts.
13 The plan you have before you now splits only nine
14 precincts. Two of those splits were retained in
15 New Hanover County because those districts were not
16 redrawn. Two splits are made to avoid the double-
17 bunking of incumbents. The other splits were
18 either made in a place that does not divide a
19 population so that while the precinct may be split
20 for compactness, there is no population in one side
21 or other of that division, or to follow a new
22 precinct line that has been established since 2011.

23 Criteria number 6, municipal boundaries.
24 The Committee may consider municipal boundaries
25 when drawing legislative districts in these plans.

1 Multiple members of the public asked the committee
2 to consider not dividing municipalities where
3 possible, and the Committee adopted that criteria.
4 This plan splits just 25 municipalities in North
5 Carolina in populations -- in places where there is
6 population or the city does not cross a county
7 line.

8 By any measure, the plan splits far fewer
9 counties than the one adopted in 2011. It fares
10 historically well against all Senate plans adopted
11 by the General Assembly over the last two decades,
12 especially in light of the annexation done by
13 municipalities over that time frame and does not
14 always follow -- that does not always follow county
15 boundaries.

16 Number 7, incumbency protection.
17 Reasonable efforts and political considerations may
18 be used to avoid pairing incumbent members of the
19 House or Senate with another incumbent in the
20 legislative districts in the 2017 House and Senate
21 plans. The Committee may make reasonable efforts
22 to ensure voters have a reasonable opportunity to
23 select -- to elect nonpaired incumbents of each
24 party to a district in the 2017 Senate plans. The
25 Committee adopted criteria pledging to make

1 reasonable efforts not to double-bunk incumbents.

2 The map does double-bunk eight members.
3 Three pairs of Republicans and one cross-party
4 pair. Senator Randleman and Senator Ballard
5 were -- were double-bunked by necessity within
6 their county grouping. Senator Krawiec and
7 incoming Senator Barrett were potentially
8 double-bunked by the necessity with their county
9 groups.

10 Senator Alexander and Senator Barefoot
11 were double-bunked in Wake County, but Senator
12 Barefoot has already announced that he does not
13 intend to seek reelection. And Senator Smith-
14 Ingram and Senator Cook were double-bunked by
15 necessity as well within their county groups.

16 Criteria number 8, election data.
17 Political considerations and election data may be
18 used in the drawing of legislative districts in the
19 2017 House and Senate plans. For this purpose, we
20 selected ten races from 2010 to 2016. The 2010 US
21 Senate race, 2012 Presidential, Governor, and
22 Lieutenant Governor race, the 2014 Senate race, and
23 the 2016 President, US Senate, Governor, Lieutenant
24 Governor, and Attorney General races. So you
25 should have information on each of those in your

1 stat-pack.

2 Criteria number 9, no consideration of
3 racial data. Data identifying the race of
4 individuals or voters shall not be used in the
5 drawing of legislative districts in the 2017 House
6 and Senate maps. In the drawing of these maps in
7 the Senate, we did not consider race of individuals
8 in the drawing of the maps or the assignment of
9 voters to a particular district.

10 In 2011, 40 counties in the state were
11 under the preclearance standards under Section 5 of
12 the Voting Rights Act. In the intervening time,
13 that preclearance from the Justice Department has
14 been lifted by a Supreme Court decision. It will
15 not be incumbent upon this General Assembly to seek
16 preclearance for these plans.

17 In the drawing of the current legislative
18 districts, the General Assembly conducted an
19 unprecedented effort to reach out to interested
20 parties, receive public input, receive expert
21 testimony, and hear from members of the body about
22 legally relevant evidence regarding the drawing of
23 districts under the Voting Rights Act.

24 Despite a voluminous record that was
25 established by the General Assembly during the 2011

1 redi stricting process, the three-judge panel in the
2 Covington case said that this did not constitute
3 substantial evidence that would justify using race
4 to draw districts in compliance with the
5 requirements of the Voting Rights Act. Therefore,
6 we do not believe it is appropriate, given this
7 Court's order in this case, for the Committee to
8 consider race when drawing districts.

9 We have asked on multiple occasions and
10 will continue to ask this Committee for any legal
11 significant evidence of racially polarized voting
12 that this Committee should consider in this
13 process. We have received none to date, but we
14 remain open to receiving that information from any
15 members who wish to submit such.

16 Members have in front of us now -- that
17 is the picture of the maps as they currently exist.
18 Obviously, you have a larger version sitting in
19 front of you. With that being said, I will open up
20 for any discussions. I would reiterate that if we
21 could please receive any amendments that you would
22 have to expedite this process.

23 SEN. BROWN: All right. Questions for
24 Senator Hi se? Senator Clark?

25 SEN. CLARK: Thank you, Mr. Chairman.

1 that, Senator Clark. Other questions? Senator
2 Blue?

3 SEN. BLUE: So a question, yes, Senator
4 Hise. The criteria said you may use, so it is your
5 statement that you used this compactness standard
6 on all the districts?

7 SEN. HISE: All of the districts meet the
8 .05 and .15 levels of the two tests.

9 SEN. BLUE: I'm sorry. I didn't
10 understand that.

11 SEN. HISE: All of the districts in the
12 Senate are above the standards of .05 or .15
13 established by the test.

14 SEN. BROWN: Follow-up, Senator Blue?

15 SEN. BLUE: Yeah. Did you at any point
16 in drawing these districts, or the map drawer,
17 determine what the Court was looking for when it
18 said that certain districts were racially
19 discriminatory and how you would cure that remedy?

20 SEN. HISE: What we have received, and I
21 would state it in this manner, is that we received
22 from the Courts that race was overutilized in the
23 drawing of districts, standards that we had
24 previously presented, as well as having a target
25 race. So we have in this case, given the changes

1 in the Voting Rights Act or others, we have not
2 drawn this with any consideration of race. So,
3 therefore, we did not overutilized race in the
4 drawing of the maps.

5 SEN. BROWN: Follow-up?

6 SEN. BLUE: Follow-up. So it's your
7 considered opinion that the Court did not want you
8 to look at race in order to cure what it had
9 determined to be a racially discriminatory scheme?

10 SEN. HISE: In my determination, the
11 Court said that we had overutilized race
12 previously. In this version of the maps, we did
13 not utilize race at all.

14 SEN. BLUE: Follow-up?

15 SEN. BROWN: Follow-up.

16 SEN. BLUE: I just want to make sure.
17 It's your interpretation of the Court's opinion
18 that you don't need to use race in order to
19 determine that you've remedied a violation that
20 they said was based on race?

21 SEN. HISE: I would again say that the
22 Court had determined previously that we
23 overutilized race. That was the finding of the
24 Court, and their remedy in redrawing it to us is
25 that at this point, we have not utilized race at

1 all.

2 SEN. BROWN: Senator Blue?

3 SEN. BLUE: Since my district in Wake
4 County was one of those that the Court determined
5 you used race to too great of a degree, did you
6 look any way at all in simply reducing the racial
7 percentage of the existing districts as a cure for
8 the gerrymander rather than radically changing
9 districts?

10 SEN. HISE: We did not -- we did look at
11 any statistics regarding race in the development of
12 these maps.

13 SEN. BROWN: Follow-up?

14 SEN. BLUE: In formulating the plan to
15 draw new districts to cure the gerrymanders, what
16 made you determine to totally reconstitute several
17 of the existing districts?

18 SEN. HISE: We were given by the Courts,
19 I believe, nine districts in the Senate in which we
20 had overutilized race. We were also given
21 directive by the Courts as a whole that -- against
22 setting a particular target for race in that
23 process, and so the remedy that the Committee
24 adopted to deal with that was to not consider race
25 at all. Therefore, it would not be claimed that we

1 ask that you support the amendment.

2 SEN. BROWN: All right. Any more
3 questions on the amendment? If not, I'm going to
4 ask you to raise your hand so that we can get a
5 count on the vote. So all those in favor of the
6 amendment, please raise their hand.

7 (Show of hands vote.)

8 SEN. BROWN: All right. I have 13 in
9 favor and none against, so the amendment passes.

10 Next, Senator Blue, I think you have one
11 for Wake County -- an amendment?

12 SEN. BLUE: I do.

13 SEN. BROWN: Okay. You're recognized,
14 Senator Blue. Let's get it passed out first,
15 Senator Blue.

16 (Pause.)

17 SEN. BROWN: Okay. I think everybody's
18 got a copy. Senator Blue, you're recognized.

19 SEN. BLUE: Thank you, Mr. Chairman.
20 What this amendment does -- I was trying to find --
21 yeah, AMT30 does, it switches precincts, and all of
22 these, by the way, are whole precincts. That's one
23 of the reasons -- or entire VTDS -- that's one of
24 the reasons you get some of the jagged edges.
25 There are no split precincts in it.

1 But what it does, it simply switches
2 precincts between the proposed District 15 for
3 Senator Chaudhuri and 14, which is my current
4 district, and it basically restores most of my
5 current district to its current form. And since
6 Senator Chaudhuri's district is new -- his old
7 district would have gone south and west, but now
8 that's occupied by 16. It does not affect any of
9 the other three districts in Wake County. It is
10 just those two.

11 And part of the reason is it's aimed at
12 fixing the gerrymander, I think, as it was defined
13 in Wake County, but it keeps the historic areas of
14 the African-American community together in the same
15 district. It unites the communities of interest.
16 It does not substantially change the performance,
17 as you have calculated it, in either of these
18 districts and has no effect on the remaining
19 districts.

20 SEN. BROWN: All right. Questions for
21 Senator Blue? Senator Bishop?

22 SEN. BISHOP: Thank you, Mr. Chairman.
23 Senator Blue, in the course of -- you know, all
24 this is new to me, but in the course of hearing the
25 majority's proposals, I've heard a lot about

1 SEN. BLUE: Sure.

2 SEN. BISHOP: So you made reference to
3 historically black areas, and -- but you said
4 you're not really using race. It's hard for me --
5 and as you know, some of that is current discussion
6 we've had in here so far and what the criteria have
7 been. Could you reconcile those for me?

8 SEN. BLUE: In what regard?

9 SEN. BISHOP: I got the last comment, but
10 the fact that you've made comments about in looking
11 at this, you were interested in historically black
12 areas, but you haven't -- when I said "Did you use
13 race," you said, "Not really," and I just wanted to
14 see if I can get clarity on that.

15 SEN. BLUE: I used it to the extent that
16 I know the characteristics of the precincts. I can
17 pretty call them up, but I know the characteristics
18 of the ones in the proposed 16 as well because I've
19 worked extensively in these areas. And inside the
20 beltline in southeast Raleigh historically is an
21 African-American area. It's going through
22 tremendous justification now, not just
23 justification, but the housing patterns in it are
24 changing and it's becoming much more integrated.

25 But historically these communities are

1 related to those that I've added it back to just
2 outside the beltline. For example, probably one of
3 the biggest churches in the county is outside the
4 beltline but most of their parishioners come from
5 inside the beltline. And so it's things like that.
6 But, yeah, I'm very familiar with the racial makeup
7 of this district. I'm familiar with the racial
8 makeup of all of the districts in this map.

9 And I think that when we go to the reason
10 that we're here is to correct the racial
11 gerrymander, and when we draw that district like
12 this, it basically brings the percentage down, but
13 it still unites communities of interest and it
14 abides by pretty much, as best I can tell, all the
15 other criteria that we were using.

16 Yeah, I mean I know what the racial
17 component is, and I know that it does not exceed 40
18 percent and it does not exceed 50 percent, and
19 that's how I put it together.

20 SEN. BISHOP: Follow-up?

21 SEN. BROWN: Follow-up.

22 SEN. BISHOP: So are you able to say that
23 you don't consider this -- the districts in this
24 map to be a racial gerrymander?

25 SEN. BLUE: Oh, absolutely, this is not a

1 balance at the numbers that you believe to be
2 acceptable?

3 SEN. BLUE: The first consideration was
4 to fix the racial gerrymander, and in order to fix
5 the racial gerrymander, I knew that you had to take
6 these districts far lower than they were with black
7 population because these districts had already
8 demonstrated that they could elect minorities
9 without -- first, you don't want to use race. I
10 mean, frankly, that's what we're all trying to get
11 away from.

12 You don't want to use race, and so what
13 you're trying to do is use it the least amount
14 possible, and that's why I say it's got to be in
15 narrowly tailored remedy, and in election laws, the
16 narrowly tailored remedy is to use the smallest
17 percentage based on race that you can use so that
18 you keep coming down and you don't have to have
19 racial discussions when you do redistricting.

20 So you can say that you're not
21 considering race, but you haven't done the analysis
22 that you've got to do, you haven't addressed the
23 issue that the Court told us we've got to deal with
24 in redrawing these districts because you can't say
25 that you have fixed the racial gerrymander if you

1 can't say that you looked at what the racial makeup
2 of these districts are.

3 SEN. BROWN: Senator Bishop?

4 SEN. BISHOP: So are the statistics here
5 that reflect your analysis of what those racial
6 targets are for the districts so that we can -- the
7 Committee can have whatever information it needs in
8 order to pass this amendment?

9 SEN. BLUE: All of the backup is
10 available. I don't know if it's been passed out.
11 But there are no targets, Senator Bishop, in the
12 sense that, yeah, you go to X percent and Y
13 percent. My target was to draw districts and our
14 consultant was instructed to draw districts that
15 would be compliant with the Court's ruling, one
16 that does not have a racial gerrymander and you
17 can't argue that the percentages of the black vote
18 in these districts are put there solely because --
19 that's not the predominant reason that they're in
20 these districts.

21 It went back, for the most part, to
22 districts the way they existed in 2009 and took
23 away from them because all of these districts have
24 increased in population. The reason that my
25 district in Wake County was so big in 2011, it was

Exhibit 2

GENERAL ASSEMBLY OF NORTH CAROLINA
2017 LEGISLATIVE SESSION, SENATE FLOOR

SENATE BILL 691 SECOND READING

FRIDAY, AUGUST 25, 2017

Reported by:

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1 is recognized to explain the amendment.

2 SENATOR ROBINSON. Thank you,
3 Mr. President.

4 Ladies and gentlemen, you have before
5 you on the dashboard an amendment for the way
6 Guilford County, specifically Senate
7 Districts 27, 28, and I believe 26 is in there
8 somewhere, are drawn.

9 The approach to this was to develop
10 districts that comply foremost with the state and
11 federal law, particularly remedying the
12 constitutional flaws that were found by the Court
13 in the present districts we have. The Court
14 specifically found that the violations included
15 Senate District 28 which takes in part of
16 Guilford County. And you can see that because
17 every reference that you have heard about shape,
18 different from what Senator Hise said yesterday
19 in committee that there were no comments about
20 shape, but in the comments in Guilford County, it
21 was specifically about shape. And Senate
22 District 28 is the one that was pointed out in
23 terms of why the shape.

24 The proposal here remedies that
25 violation and includes due consideration of the

1 factors adopted by the Redistricting Committee.
2 This mapping proposal is more compact than the
3 original map in 2011 that was invalidated by the
4 Court as well as the proposal for the county that
5 was just released by your Republican majority.

6 What seems to be the driving
7 consideration, however, of your map in this
8 county cluster is the maintenance of incumbents
9 in their own districts. Your map also split more
10 precincts, one of which was 3 which was a high
11 voting precinct that's African American mostly.

12 The placement of incumbents in this
13 county makes for a possible conflict of
14 considerations like compactness. This amendment,
15 however, maintains each incumbent in a single
16 district, but it achieves a more normal shape.

17 Senate District 28, Guilford County,
18 invalidated, in the Court's opinion, has a more
19 compact shape under this amendment both in
20 comparison to the 2011 map where we are currently
21 serving and in the one you proposed. To
22 accommodate the concern of keeping incumbents
23 separated, however, sacrifices were made for
24 compactness. Rather than wrap around almost the
25 entirety of my district, Senate District 28,

1 which your map does, as this map has a more
2 normal shape. This map addresses racial
3 gerrymandering as required by the Courts.

4 While this committee -- your
5 Redistricting Committee takes a surprising view
6 that race should not be a consideration, we think
7 it's noteworthy that this version of Senate 28
8 drawn here has a black voting age population that
9 is lower than both the original 2011
10 unconstitutional plan and the Republican
11 proposal.

12 According to the State's measures, the
13 BVP is approximately 45 percent of this map as
14 opposed to yours which was 50.52 percent. And in
15 response to the overwhelming views expressed
16 during public hearings, the districts were drawn
17 with the goal of creating competitive districts.
18 The voters have a chance to select their
19 candidates and the outcome is not preordained.

20 There are many ways to have achieved a
21 more compact plan in Guilford that is both fair
22 to the voters and consistent with constitutional
23 standards. Unfortunately, your map simply
24 attempts to nuck and tuck your way to legality.
25 That is not a good strategy to achieve court

1 For those reasons that it fails to
2 follow the criteria established by the committee,
3 I would ask that you reject the amendment.

4 PRESIDENT PT BERGER: Further
5 discussion or debate.

6 Senator Blue, for what purpose do you
7 rise?

8 SENATOR BLUE: For a statement.

9 PRESIDENT PT BERGER: You have the
10 floor.

11 SENATOR BLUE: Thank you,
12 Mr. President.

13 I would just like to refocus our
14 attention on two things relating to this
15 particular district. In the Courts' decision,
16 both at the -- after the United States Supreme
17 Court ruled on these districts, the three-judge
18 panel, consisting of two District Court judges
19 and a Court of Appeals judge, said that this
20 body, once redistricting was done, would inform
21 the Court as to any district where the BVAP,
22 meaning black voter age population, exceeded
23 50 percent.

24 Now, in order to answer the Court's
25 question, you've got to look and see whether any

1 of these nine districts exceed 50 percent BVAP.
2 And that's common sense. The Court says tell me
3 on any of the districts that you do why it went
4 beyond 50 percent.

5 This district goes beyond 50 percent
6 black population, black BVAP, as I understand it.
7 And so the Court is going to require in the
8 submission that you explain why that is. And if
9 you tell the Court, well, lady and gentlemen of
10 the Court, I don't know that it went beyond
11 50 percent because I didn't look at race in
12 determining how to cure what you told me had to
13 cure. We're going to look sort of strange saying
14 that. Now, maybe the Court will believe it,
15 maybe there's some explanation, but the Court is
16 also going to look at the fact that the fellow
17 who drew this district drew the unconstitutional
18 district in 2011.

19 And although, as we get older our
20 memories aren't what they are when we were
21 younger, and maybe his has changed tremendously
22 over six years, but I'm sure that if I were
23 redoing the job, I would go back and look at my
24 notes and I'd go back and look at why I did
25 things the way that I did them, especially since

1 the Court is going to want to know how.

2 If you look at the map of 2011 and you
3 superimpose on it the map of 2017 that is before
4 you now, this amendment, a third grader, or even
5 a three-year-old, can tell you that they're very
6 similar in outline. And so if the same person
7 drew them, the Court is going to imply that it
8 was the same intent in the way that you drew it,
9 and so now you explain to me why it's like this,
10 why isn't that a reasonable conclusion.

11 And I'm just being honest with you in
12 the way that you would approach somebody who told
13 you. The design of the map in 2011 in this
14 district looks eerily close to the design of the
15 map in 2017.

16 So what Senator Robinson was trying to
17 do in changing the 1st, taking it below 50
18 percent, so that unless something called it to
19 the Court's attention in another way, it didn't
20 have to be explained further.

21 What we've tried to do is give you some
22 indication as to how you cure these gerrymanders.
23 Not trying to gain partisan advantage, not trying
24 to gain racial advantage, but at the end of the
25 day, it is a Court, the third branch of

1 government, which interprets what we do and what
2 laws do across the country that tells us what
3 they want to see in order to determine that this
4 problem that they've identified has been fixed.

5 All Senator Robinson has tried to do is
6 fix it, and so the BVAP goes from 50 point
7 whatever it is in the Senate plan down to 45, I
8 think you said, in this plan. And that's simply
9 saying that this is how we propose that you fix
10 the gerrymander.

11 Oddly enough, oddly enough, in the
12 Alabama case which gave rise to all of this
13 litigation that went to the Supreme Court, in the
14 Court's opinion, when it went back to the
15 three-judge court in Alabama -- one member of
16 whom, by the way, was one of the top three
17 contenders to be appointed to the U.S. Supreme
18 Court by President Trump. When it went back to
19 the Alabama three-judge panel, Federal Court, the
20 reason that they determined that there weren't
21 gerrymanders or that some of them had been fixed
22 is because the members representing some of those
23 districts had agreed that this is a reasonable
24 percentage for this plurality black district.

25 I keep saying again that the magic of

1 have stated what the percentage of the black
2 voting age population is in a particular
3 district. And as you're aware, the committee as
4 a whole has not seen that information and others,
5 and I would ask simply what is your source for
6 that information and are you planning to submit
7 that at some point?

8 SENATOR BLUE: Thank you for that
9 question, Senator Hise. I thought that it was
10 part of the stat pack that had been submitted
11 with these plans. It should have been. Because
12 in order for them to analyze the districts the
13 way they analyzed them, you had to know what the
14 racial data was. And it's an attempt on the part
15 of these members to address the particular racial
16 gerrymander.

17 So, yes, race was looked at in these --
18 the only way I could determine that there was --
19 that the racial gerrymander in Wake County has
20 been fixed is in looking at what the Court said
21 was a racial gerrymander. In Wake County, the
22 Court said that it was a racial gerrymander when
23 the African American percentage in the district
24 that I represent exceeded 41 percent because that
25 had never been necessary. When the 2003

1 want to aspire to, and so that's why they are so
2 sensitive with the way you determine that you've
3 got to use race in developing these districts,
4 and that's what the case is, would at least teach
5 me, and if you read the cases especially through
6 the South that have developed over the last five
7 or six years, I think that that's a fair
8 statement of it.

9 PRESIDENT PT BERGER: Senator Hise, for
10 what purpose do you rise?

11 SENATOR HISE: Follow up.

12 PRESIDENT PT BERGER: Senator Blue, do
13 you yield for a follow-up question?

14 SENATOR BLUE: Yes, sir. And I
15 apologize. I didn't mean to go as long as I did.

16 PRESIDENT PT BERGER: He yields.

17 SENATOR HISE: And that's why I was
18 going to try to bring you back to the original
19 question.

20 So you have requested the racial data
21 from our staff and are planning to submit that?

22 SENATOR BLUE: Yes, sir. They have --
23 they have prepared it. I know that it was
24 available yesterday. They have it and can make
25 it available. They can submit it to the -- to

1 SENATOR HISE: -- for a layer, and I
2 think it's a layer for Maptitude as well.

3 PRESIDENT PT BERGER: Follow up.

4 SENATOR BRYANT: I just want to make a
5 comment to say thank you, and that will help the
6 community members who have had trouble making
7 that county correlation. Thank you.

8 PRESIDENT PT BERGER: Further
9 discussion or debate on Amendment 3.

10 SENATOR MCKISSICK: Mr. President.

11 PRESIDENT PT BERGER: Senator
12 McKissick, for what purpose do you rise?

13 SENATOR MCKISSICK: Speak on the
14 amendment.

15 PRESIDENT PT BERGER: You have the
16 floor.

17 SENATOR MCKISSICK: First I would like
18 to thank Senator Robinson for sending forth this
19 amendment. I think it represents a fair, legal
20 and competitive plan for Guilford County, and
21 that's what it's all about, something where
22 voters are provided options when it comes to
23 choices.

24 And I think the committee, when it
25 first established criteria, failed to include

1 race as a consideration. By failing to include
2 race as a consideration, it made it impossible
3 without doing detailed independent analysis,
4 which we have certainly done, to determine the
5 black voting age population in these various
6 districts.

7 When you are looking at a case that was
8 based upon an unconstitutional racial
9 gerrymandering, it is impossible to come up with
10 a cure without considering race or by doing it in
11 a vacuum.

12 In this particular case you've got a
13 district that was and still remains a
14 majority-minority district. That is something
15 that the Court will scrutinize very, very
16 closely. That could have been avoided had race
17 been one of the variables that was being
18 considered.

19 The other thing that you failed to do
20 was to write the various priorities in criteria
21 that you established. You know, it's hard for me
22 to know whether splitting municipalities is more
23 important than incumbency. It's hard for me to
24 know whether compactness is more important than
25 the other variables. If you would establish and

1 Senator Robinson, for what purpose do
2 you rise?

3 SENATOR ROBINSON: Thank you,
4 Mr. President. To make a comment. I'd like
5 to -- after some consultation with Senator Hise
6 and Blue, I would like to withdraw the amendment.

7 PRESIDENT PT BERGER: The sponsor of
8 the amendment requests withdrawal of the
9 amendment, and the amendment is withdrawn.

10 So we are back on the bill, Senate
11 Bill 691. Further discussion or debate.

12 Senator Hise, for what purpose do you
13 rise?

14 SENATOR HISE: See if Senator McKissick
15 will yield for a question.

16 PRESIDENT PT BERGER: Senator
17 McKissick, do you yield?

18 SENATOR MCKISSICK: Yes.

19 PRESIDENT PT BERGER: He yields.

20 SENATOR HISE: Senator McKissick, I
21 believe that you had -- in the interim there have
22 been some data submitted regarding the districts
23 at your request. I was wondering if you would
24 explain what that data is.

25 SENATOR MCKISSICK: Sure. Data that's

1 been presented is certainly what I call a
2 complete stat pack dealing with the Mecklenburg
3 County amendment that was introduced yesterday in
4 committee as well as the Guilford County
5 amendment that was entered in committee
6 yesterday. It's identical to the Guilford County
7 amendment that was considered and entered into
8 the record today and is withdrawn by Senator
9 Robinson.

10 It should provide good comparative data
11 and analysis, including black voting age
12 population as well as the more traditional data
13 that would be included in this type of stat pack,
14 including performance with certain select races
15 that were used as benchmarks, some of which I
16 referred to earlier in my comments related to the
17 discussion in Guilford County.

18 PRESIDENT PT BERGER: Further
19 discussion or debate on Senate Bill 691.

20 Senator Bishop, for what purpose do you
21 rise?

22 SENATOR BISHOP: To ask a question of
23 Senator McKissick.

24 PRESIDENT PT BERGER: Senator
25 McKissick, do you yield?

1 PRESIDENT PT BERGER: Further
2 discussion or debate on Amendment 6. Hearing
3 none, the question before the Senate is the
4 passage of Amendment 6 to Senate Bill 691. All
5 in favor of the amendment will vote "aye"; all
6 opposed will vote "no." Five seconds will be
7 allowed for the voting. The clerk will record
8 the vote.

9 Tillman "aye"; Bryant "aye"; McKissick
10 "aye"; Ford "aye."

11 44 having voted in the affirmative and
12 none in the negative, Amendment 6 passes and the
13 bill is back before you.

14 Further discussion or debate on Senate
15 Bill 691.

16 Senator Blue, for what purpose do you
17 rise?

18 SENATOR BLUE: To debate the bill.

19 PRESIDENT PT BERGER: You have the
20 floor.

21 SENATOR BLUE: Thank you,
22 Mr. President.

23 And I just want to make a very few
24 observations because I think that we ought to
25 seize upon teaching moments. We've been through

1 this process. The Court says that we have
2 discriminatory districts, nine of them in the
3 Senate, and they're discriminatory because of the
4 racial makeup and what was done to create the
5 racial makeup in those districts.

6 I'm hoping that having passed out these
7 stat packs that show what the racial makeup is of
8 the districts that you've now created will enable
9 you to tell the Court how you've addressed the
10 discrimination that they found in the original
11 maps that you passed here.

12 I don't see how it can when you haven't
13 considered race in solving the racial problems in
14 the map. I mean, it just is anti-intuitive that
15 you can fix a problem without addressing the
16 problem. And that's what we've done here.

17 And it might be that you're sending a
18 message to this three-judge panel that you don't
19 take judicial orders very seriously, and that --
20 that is not a message that I want to be a part of
21 it, not because I'm a member of the legislature
22 but because I highly respect this third and
23 co-equal branch of government because it's what's
24 made this country, the whole concept of judicial
25 review what it is, and so I hope that that's not

Exhibit 3

NC Senate Session Hearing

NORTH CAROLINA SENATE SESSION

NORTH CAROLINA GENERAL ASSEMBLY

TRANSCRIPT OF THE PROCEEDINGS

In Raleigh, North Carolina
Monday, August 28, 2017, 5:00 p.m.

PREPARED BY: Karen Roche
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1 debate?

2 Senator Berger, for what purpose do you arise?

3 SEN. BERGER: Thank you, Mr. President. To
4 speak on the bill.

5 SEN. PATE: You have the floor.

6 SEN. BERGER: Thank you. Members of the Senate,
7 I hear Democrats complain that they're not competitive
8 in State Senate elections under the proposed maps
9 because Republicans gerrymander the districts. Liberals
10 in the media and academia have picked up on this theme
11 and run with it. But in the publicly understood sense
12 of the word, it is not truly a gerrymander.

13 Back in 2001, my first year serving in the
14 Senate, I was one of only 15 Republicans elected to
15 serve in this body. In a year North Carolina voted for
16 George Bush for President by 13 points over the
17 Democratic candidate Al Gore -- 56 percent to 43
18 percent.

19 The Democrats promptly embarked on a
20 redistricting scheme for the State Senate that was by
21 any measure a severe gerrymander intended to preserve
22 that 35-15 partisan advantage. That map known as NC
23 Senate Plan 1C divided -- divided 51 counties. Smaller
24 counties like Sampson and Iredell were chopped up
25 between four Senate districts each. One western North

1 Carolina district stretched and wound across pieces of
2 nine counties running from the Georgia border up through
3 Asheville and into McDowell County.

4 This fracturing and severe gerrymandering of
5 counties was a relatively recent occurrence. In fact,
6 prior to 1982, no county had ever been divided to form a
7 State Senate district in North Carolina.

8 The requirements that Senate districts be made
9 up of whole counties dates back in different forms to
10 our state's original 1776 constitution which allotted
11 one senator to every whole county. It was not until
12 1981 the U.S. Department of Justice decision that the
13 North Carolina Constitution provision requiring counties
14 be kept whole in drawing legislative districts violated
15 the Voting Rights Act that our state began to see the
16 sort of grossly gerrymandered districts like you see in
17 the 2001 NC Senate Plan 1C.

18 These sorts of grotesque districts would
19 probably still be the norm in North Carolina and,
20 frankly, the Democratic party would probably still
21 control the State Senate if not for a man from Beaufort
22 County named Ashley Stephenson. Ashley passed away in
23 2009. In 2001 Ashley Stephenson filed a lawsuit asking
24 the state courts to enforce the whole county provisions
25 of the state constitution. He argued that the state did

1 not have a binary choice between either the whole county
2 provision of the North Carolina Constitution and the
3 Voting Rights Act, that, in fact, the state constitution
4 and federal law could be harmonized.

5 In the landmark 2002 Stephenson decision, the
6 State Supreme Court agreed with him and laid out a
7 specific method to keep counties whole while complying
8 with federal law. The system for drawing legislative
9 districts laid out in the Stephenson decision requiring
10 districts to comply with the Voting Rights Act --
11 required the districts to comply with the Voting Rights
12 Act have roughly equal population, elect a single
13 senator instead of multiple senators, and most
14 importantly, create a process for grouping and keeping
15 counties whole. They are the strongest
16 anti-gerrymandering provisions for a legislature in the
17 entire country. And the results of the decision are
18 eminently evident.

19 The court ordered 2002 State Senate map
20 following the Stephenson decision divided just 16
21 counties as opposed to 51. The 2003 State Senate map,
22 again, adopted by the Democrats to comply with the
23 Stephenson decision, divided only 12 counties. The 2011
24 State Senate map adopted by this body divided 19
25 counties, and the proposed 2017 State Senate map before

1 you today divides just 12 counties. When map drawers
2 divide between 10 and 20 counties, they simply cannot
3 create the sort of redistricting mischief that they can
4 when they divide 50-plus counties and they force
5 decisions based on traditional redistricting principles
6 over political considerations. For example, I ended up
7 doubled-bunked and had a primary against former Senate
8 Republican Leader Bob Shaw in the 2002 map.

9 I've heard people argue that this proposed
10 Senate map is a political gerrymander. It is not. But
11 the argument goes something like Republicans and
12 Democrats should both get about the same number of seats
13 in the State Senate because Pat McCrory and Roy Cooper
14 tied at 49 percent of the vote in the governor's race.
15 This ignores a couple of things. One, we are not a
16 European country with proportional representation.
17 That's not our system. If we were, the libertarian, Lon
18 Cecil, who got 2 percent of the vote for governor, would
19 be breaking all ties between McCrory and Cooper.

20 Number two, while the governor's race was a tie,
21 in 2016 Republican candidates for the State Senate got
22 almost 500,000 more votes than Democratic candidates.

23 But something else has been happening that folks
24 arguing against this map haven't spoken about much. A
25 North Carolina Democrat as a distinct political

1 personage and candidate type from a national Democrat
2 has all but disappeared.

3 Think about this. Back in the 1990s and early
4 2000s Democrats won on average between 50 and 55
5 counties in competitive statewide races in North
6 Carolina. In 1992 that number was right at 56. '96 it
7 was 54. 2000 it was 56. Since 2010 Democrats have
8 averaged between 30 and 35 wins in competitive statewide
9 races. 30 to 35 county wins. In 2012 it was 36. In
10 2014 it was 32. In 2016 it was 31.

11 Consider the number of counties Democrats won in
12 governor's races since 1992. Jim Hunt in 1992 won 69
13 counties. Jim Hunt in 1996 won 73 counties. Mike
14 Easley in 2000 won 65. Mike Easley in 2004 won 70. Bev
15 Perdue in 2008 won 60 counties. Walter Dalton in 2012
16 won 23 Counties. Roy Cooper in 2016 won 28.

17 So just to compare, Jim Hunt lost just 27
18 counties in 1996. Roy Cooper won just 28 counties in
19 2016. And Roy Cooper had actually won 63 counties in
20 his competitive 2000 attorney general's race. Roy
21 Cooper won 28 counties in his competitive 2016
22 governor's race. That is not gerrymander. It's
23 happened all across the state.

24 Let's just take a few more obvious county
25 examples. In the west, Madison County, historically

1 Democrats won Madison County in a slew of statewide
2 races. In 2000 they won the governor, lieutenant
3 governor, attorney general, superintendent of public
4 instruction, labor and auditor races. In 2002 they won
5 the U.S. Senate race. In 2004 they won superintendent,
6 public instruction, labor, secretary of agriculture,
7 auditor, lieutenant governor and governor. In 2008 they
8 won treasurer, superintendent, labor, agriculture,
9 auditor, insurance, governor and U.S. Senate. In 2016
10 Democrats did not carry Madison in a single statewide
11 race. President Trump won 60 percent. Senator Burr won
12 57 percent. Statewide Republican candidates averaged at
13 least 55 percent in Madison County.

14 Another example, Allegheny County. Democrats
15 won Allegheny County in every competitive statewide race
16 except the race for president in 2000. And Mike Easley
17 won the county with nearly 58 percent in 2004. In 2016
18 Hillary Clinton won 24 percent. Deborah Ross won 25 --
19 26 percent when she ran. Roy Cooper won 31 percent and
20 Josh Stein took 34 percent of the votes in Allegheny
21 County.

22 Rutherford County, Republicans averaged about 70
23 percent in Rutherford County in 2016. President Trump
24 won 72 percent. Lieutenant Governor Forest, 71; Buck
25 Newton, 70. Roy Cooper outperformed most of the other

1 Democrats on the ticket by winning just 32 percent of
2 the vote in Rutherford County.

3 In the Piedmont - Person County, Democrats won
4 Person County in the overwhelming majority of statewide
5 races 2000, 2004 and 2008. Roy Cooper, Bev Perdue, Mike
6 Easley, each one with 57 percent in 2000. In 2016
7 Elaine Marshall was the only Democrat who carried the
8 county. Clinton and Ross won just 40 percent. Cooper
9 won 43 percent.

10 In my home county of Rockingham in the 1990s and
11 2000s, Republicans rarely won in Rockingham County. It
12 went for Jim Hunt twice, Beverly Perdue twice, Mike
13 Easley twice, Roy Cooper in his 2002 race for attorney
14 general. In 2016 Democrats averaged 38 percent in
15 Rockingham County. In the two most prominent races,
16 they won. Roy Cooper and Josh Stein won 39 percent each
17 in Rockingham County.

18 In the east, Columbus County. In 2016 Columbus
19 County went 60 percent for Trump, 59 percent of Senator
20 Burg and Pat McCrory. It went 58 percent for Lieutenant
21 Governor Forest, 55 percent for Superintendent Johnson,
22 56 percent for Treasurer Folwell. In 2008, just eight
23 years before, Bev Perdue won 65 percent in Columbus
24 County. Walter Dawson, 63 percent. In 2004 Democrats
25 averaged over 63 percent in competitive statewide races

1 in Columbus. In 2000 they averaged 68 percent. Many
2 cleared 70 percent. In Roy Cooper's 2000 race for
3 attorney general, he won 67 percent in Columbus County.
4 In the 2006 race for governor, he won less than 40
5 percent there.

6 Sampson County -- Democrats carried Sampson
7 County in seven of the eight most competitive statewide
8 races in 2000. They won the county in six of the eight
9 most competitive in 2004. Since 2008 only one Democrat
10 has won the county. Roy Cooper lost by 17 points -- 58
11 to 41 in 2016.

12 Robeson County, Democrats averaged 73 percent of
13 Robeson County in 2000, 68 percent in 2004, 67 percent
14 in 2008. In 2016 they lost the three top-of-the-ticket
15 statewide races in Robeson County.

16 Terrell County, in 2000 Democrats won every
17 competitive statewide race in Terrell County and their
18 candidates averaged 71 percent. Roy Cooper won 74
19 percent; Mike Easley, 73 percent; Beverly Perdue, 74
20 percent. In 2004 Democrats won every competitive
21 statewide race except for president averaging 62
22 percent. In the 2016 cycle, Democrats averaged 48
23 percent and Governor Cooper performed 33 points worse --
24 41 percent -- in 2016 than he did in 2001.

25 Democrats are only competing in 20 to 30

1 Counties in North Carolina. That might be a viable
2 strategy for squeaking out a close win in the occasional
3 statewide race, but you cannot build a legislative
4 majority in a state with 100 counties when you only
5 compete in a quarter of them.

6 Do we really think all of these county shifts,
7 these seat changes in a decade's time are the result of
8 gerrymandering? Of course not. Gerrymandering didn't
9 do that. Democrats did that. It's why Republicans were
10 able to take the majority in State Senate in 2010 with a
11 map drawn by the Democrats.

12 Granted, this trend isn't exclusive to North
13 Carolina. Nationally Democrats have lost over 900
14 legislative seats since 2010, not to mention the U.S.
15 House of Representatives, the U.S. Senate and the White
16 House. A News & Observer headline two days after the
17 2010 midterms that wiped Democrats out of the U.S.
18 House, in that headline the head of the Democratic
19 party -- National Democratic Party, quote, "Voices
20 regrets but signals no change of course."

21 And the losses continued in 2012, 2014 and 2016.
22 The nonpartisan Cook Political Report says maybe 17
23 percent of the Democratic parties problems nationally
24 are the result of new district lines. Something else
25 clearly happened while Democrats were blaming

1 gerrymandering for putting and keeping them on the back
2 row.

3 When I first ran for State Senate, many of the
4 Democrats in this chamber and many of the Democrats
5 running, shared the cultural values of North Carolina's
6 moderate to conservative voters. They were
7 pro-education, but many were also pro-business, pro-gun
8 and pro-life.

9 But today, North Carolina Democrats, just like
10 the National Democrats align with the powerful special
11 interests like big national labor unions, far left
12 environmentalists and the abortion lobby. It used to be
13 that a North Carolina Democrat wouldn't be seen with a
14 National Democratic presidential candidate like Michael
15 Dukakis, Walter Mondale, John Kerry. Nowadays they rush
16 to get endorsements from former President Obama and
17 Hilary Clinton. It used to be North Carolina Democrats
18 campaigned all over rural North Carolina. In 2016 that
19 wasn't the case.

20 It's easy to understand why gerrymandering has
21 been the bogeyman since they were swept out of power in
22 2010. It's easier to blame the maps, blame a process,
23 blame anything, really, than it is to take
24 responsibility for losing touch with the politics of
25 voters in 75 of North Carolina's 100 counties.

1 But here's the hard truth. The Democratic party
2 could be competitive in legislative elections all over
3 the state if it competed in all 100 counties instead of
4 only 30. There are more registered Democratic voters
5 than Republican voters in 27 of the proposed districts.
6 But if you're going to be competitive in legislative
7 elections across the state, you're going to have bring
8 back the North Carolina Democrat as a distinct political
9 type separate from the national Democrat.

10 And the North Carolina Constitution requires
11 legislative districts to be constructed out of whole
12 counties. So unless you think the county lines in our
13 state have been gerrymandered, it's pretty clear this is
14 not a political gerrymander. And if the North Carolina
15 Democratic party struggles to elect Republican senators
16 under this map, it isn't because of the way the lines
17 were drawn, but the platform that parties' candidates
18 are running on.

19 But we're not here today because of a political
20 gerrymandering claim. We're here to adopt a new
21 legislative redistricting plan because the U.S. Supreme
22 Court struck down the 2011 State Senate map ruling that
23 nine of the districts including the map were racial
24 gerrymanders. I think it is very important that we
25 acknowledge this. The District Court ruled and the

1 Supreme Court affirmed that the 2011 map was racial
2 gerrymander.

3 In 2011 the legislature made a decision based on
4 a U.S. Supreme Court decision in the Strickland case to
5 draw the minority district required by the Voting Rights
6 Act with African-American voting populations of at least
7 50 percent. The Trial Court ruled that interpretation
8 of the Strickland decision was, quote, "an error of
9 law." And while the court acknowledged that, quote, "In
10 reaching this conclusion, we make no finding that the
11 General Assembly acted in bad faith or with
12 discriminatory intent in drawing the challenge of the
13 districts which were pre-cleared by the Justice
14 Department pursuant to Section 5 of the Voting Rights
15 Act," end of quote. The court's ruling must be
16 respected and the error of law that resulted in racial
17 gerrymanders must be corrected.

18 The U.S. Supreme Court has set several new
19 precedents since the last body adopted legislative
20 district maps. Most consequentially, the Supreme Court
21 rendered Section 5 of the Voting Rights Act inoperative
22 in Shelby County versus Holder. The Shelby County
23 decision is important to understand how we are seeking
24 to comply with the court's order.

25 To simplify, prior to Shelby County, North

1 Carolina's redistricting plans were subject to Section 5
2 preclearance by the United States Justice Department.
3 The burden fell on the state to prove the proposed maps
4 did not unfairly limit the opportunity of minority
5 groups to elect candidates of their race.

6 Today, post-Shelby County, North Carolina's
7 redistricting plans are not subject to Justice
8 Department preclearance and the burden of proving that a
9 plan limits a minority group's opportunity to elect a
10 candidate of their choice rests with a plaintiff in a
11 court challenge.

12 Senator Blue spoke Friday in detail about the
13 Gingles factors that would allow the legislature to
14 consider race in drawing a district. One, that they
15 geographically compact minority community exists for
16 which a majority/minority district can be drawn, two,
17 that the minority community votes cohesively, and three,
18 that the white majority typically votes together in
19 sufficient numbers to block the minority community from
20 electing a candidate of their choice. I won't expand on
21 Senator Blue's comments on the first two Gingles
22 criteria but do want to elaborate on the third criteria.

23 In 2011 the legislature commissioned two expert
24 studies on racially polarized voting in North Carolina
25 to support the decision to draw districts with

1 African-American populations of 50 percent. To my
2 knowledge, these were the most complete and exhaustive
3 studies ever entered into the record during a
4 redistricting process.

5 In the Covington decision striking down the 2011
6 legislative maps, the court cited those legislative
7 decisions as critical to determining the plan was a
8 racial gerrymander. The court determined the expert
9 reports did not -- did not sufficiently prove racially
10 polarized voting to prove the third Gingles factor was
11 present and justified drawing 50 percent minority
12 districts. Quote, "Contrary to defendant's contentions,
13 the Block and Brunell reports do not establish a strong
14 basis in evidence for Gingles third factor in any
15 potential district."

16 And in light of the 2014 Alabama Legislative
17 Black Caucus versus Alabama Ruling, the court strongly
18 objected to that legislature's decision to adopt -- I'm
19 sorry -- strongly objected to the legislature's decision
20 to adopt a 50 percent target to draw true minority/
21 majority districts. Quote, "In light of Alabama, we are
22 mindful that a legislature's policy of prioritizing
23 mechanical racial targets above all other districting
24 criteria (save one-person, one-vote) provides
25 particularly strong evidence of racial predominance."

1 We have carefully considered the court's order
2 in Covington. Given the court's rejection of the 2011
3 expert reports, we do not believe we can develop a
4 strong enough basis in evidence that the third Gingles
5 factor is present to justify drawing districts on the
6 basis of race. Nor, in spite of repeated requests by
7 the redistricting committees have the public, plaintiffs
8 in the Covington litigation, or members of this body
9 presented evidence that the proposed map should be
10 changed because the third Gingles factor is present and
11 unaddressed.

12 So I strongly believe we have complied with the
13 courts admonishment with that. Again, in quoting, "If
14 during redistricting the general assembly had followed
15 traditional districting criteria and in doing so, drawn
16 districts that incidentally contained majority black
17 populations, race would not have predominated in drawing
18 those districts," end of quote.

19 With the information available to them, Senator
20 Hise and the redistricting committee adopted nine
21 criteria to use in drawing this proposed map. Some of
22 the map drawing principles are inviable and must be
23 followed like equal population contiguity and the North
24 Carolina constitutional requirements on county grouping.
25 And because we cannot prove the third Gingles factor,

1 not using racial election data, incumbency protection
2 and municipal boundaries are secondary and occasionally
3 internally contradictory considerations. They must be
4 harmonized with each other while complying with the
5 inviable criteria.

6 I believe that this redistricting plan put
7 forward by Senator Hise's committee successfully
8 harmonized the criteria adopted. This map is not a
9 racial gerrymander and fully complies with both the
10 court order and tradition redistricting principles.

11 I've also reviewed the data Senator McKissick
12 requested and is placed on the members' dashboards. In
13 the nine districts the court ruled where racial
14 gerrymanders only the Guilford County District as the
15 court predicted could incidentally occur when using
16 traditional districting principles. In this case
17 following Greensboro's municipal boundary continues to
18 have a black voting age population over 50 percent and
19 it has fallen from 56.5 percent to 50.5. The other
20 eight previously unconstitutional districts now have
21 black voting age populations ranging from 32.9 percent
22 to 48.5 percent.

23 While the 2011 map had no districts with black
24 voting age populations between 26.5 percent and 43
25 percent, the new map has five new districts that fall in

1 that range including one new district with a black
2 voting age population of over 40 percent and two new
3 districts with a black voting age populations over 30
4 percent.

5 This is important because the expert reports
6 which you can see on your dashboards submitted by Alan
7 Lichtman on behalf of the Democrats and plaintiffs in
8 the Covington and Harris cases define all those
9 districts as having the, quote, "Ability to elect a
10 candidate who is the preferred choice of a cohesively
11 voting minority community."

12 So while race was not used to draw this plan, I
13 believe it fully remedies the racial gerrymander in the
14 previous map while avoiding any new potential claims of
15 both dilution under Section 2 of the Voting Rights Act.

16 In closing I'll say again, this map is not a
17 racial gerrymander. This map is not a political
18 gerrymander either. It complies with state and federal
19 law. It remedies defects the court found in the
20 previous map. It splits fewer counties. It divides far
21 fewer precincts. I urge you to vote for the bill.

22 SEN. PATE: Is there further discussion or
23 debate?

24 Hearing none, the question before the Senate is
25 the passage of Senate Bill 691 on its third reading.

Exhibit 4

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE COMMITTEE ON REDISTRICTING

TRANSCRIPT OF THE PROCEEDINGS

In Raleigh, North Carolina
Friday, August 25, 2017
Reported by Robbie W. Worley

Worley Reporting
P.O. Box 99169
Raleigh, NC 27624
919-870-8070

1 proceedings are the subject of Court record, or a
2 record that could be potentially before the Court.
3 We have a court reporter. And so if all members --
4 thank you for the gentleman's reminder. If all
5 members would please state your name when you are
6 asking your question or making a comment. So with
7 that, Chairman Lewis is recognized.

8 REP. LEWIS: Thank you, Mr. Chairman.
9 I'm David Lewis, the senior Chair of the House
10 Select Committee on Redistricting. I represent
11 Harnett County. I want to welcome all the members
12 and guests that are here today. Before I begin
13 with presenting the 2017 House Redistricting Plan
14 A, I want to go over some facts with this
15 Committee.

16 After being ordered to do so by the
17 Court, I, on behalf of the -- with authority
18 designated by the speaker, produced a map within 14
19 business days -- 19 total calendar days. We had
20 sought and proposed to the Court a longer period of
21 time which would allow for more public input and,
22 hopefully, more participation in this process. The
23 Court -- I say this with the utmost respect --
24 chose, instead, to give us a deadline of September
25 the 1st. In no way is that -- is this being

1 critical of the Court. This is stating for the
2 record that the plan that I proposed publicly,
3 which would have included a series of three
4 statewide public hearing sessions, simply could not
5 be met under the time frame that we were asked to
6 act under by the Court.

7 I would like to also echo some of
8 Chairman Dollar's comments. I will continue in
9 every way I can to make this discourse as positive
10 as it can be. I do think that there have been some
11 erroneously-stated information regarding why we are
12 here today. We are here today, based on my
13 understanding of the Covington Court finding, that
14 without substantial evidence -- without sufficient
15 evidence, I should say, that race was a predominant
16 factor in drawing 19 House seats. We were ordered
17 to recreate the map in areas affected by those 19
18 seats by September the 1st. At no time did the
19 Court reference that anyone was packed into any
20 district. At no time did the Court reference that
21 there was any bad intent on the part of this
22 legislature in the 2011 process.

23 Today I sincerely hope that this
24 Committee, through free and open debate, will be
25 able to set an example of how positive political

1 discourse and disagreement can and should be dealt
2 with in this country and in our state. Mr.
3 Chairman, with that, I'll move into a presentation
4 on the proposed Committee substitute.

5 First of all, I'd like to talk about the
6 criteria that was used in the production of this
7 map. The Committee -- this Committee adopted the
8 criteria of equal population. The equal population
9 means that one person, one vote. People's votes
10 should count equally as much as they can. And by
11 that, I mean the Court did give us a window to work
12 in of plus or minus five percent. So the ideal
13 population for a House district, as was stated in
14 the earlier Committee meeting, is 79,462 people.
15 You are allowed to go plus or minus that percentage
16 by no more than five percent. So equal population
17 was the first criteria adopted by this Committee.
18 It was the criteria that was used in preparing this
19 map.

20 We've discussed further, in regards to
21 equal population, that a -- a error -- a margin of
22 plus or minus five percent is arranged and -- or is
23 allowed for under the law. I would point out, in
24 disclosure, that the largest House Districts, or
25 those with the most people, are House Districts 10,

1 21, 22 and 51. Those are 300 -- or excuse me,
2 3,972 people over the ideal county -- over the
3 ideal district size.

4 I would state again that, as explained to
5 this Committee, there is a mandatory county
6 grouping optimization formula that's required under
7 the Stephenson decision. The smallest House
8 District in the plan is actually House District
9 109. It is 3,945 people below the ideal
10 population, but I would point out that that was an
11 unchanged House seat.

12 I'll -- I'll pause for just a moment to
13 say, as we discussed in this Committee in an
14 earlier presentation, the -- there were -- there
15 were areas of the state in which the county
16 groupings did not have to be changed to comply with
17 this Court order. We did not change those county
18 groupings. If you all recall, there was a map
19 distributed to you the first time we met jointly
20 with the Senate that showed areas. I believe those
21 areas were in green, to refresh your memory. Those
22 areas were not changed or touched by this map.
23 This is simply a visual illustration of some of the
24 districts. Again, House District 109 is unchanged
25 in this plan, but it is the plan so I wanted to

1 share it with you.

2 Contiguity; Legislative Districts shall
3 be comprised of continuous territory. This simply
4 means, in my understanding, that you can't start a
5 district here, run another district here and
6 continue it somewhere else. They need to be
7 contiguous. Contiguity by water is sufficient.
8 This is an over -- this is a picture of the plan.
9 There are areas primarily, and almost exclusively,
10 in the eastern part of our state where great bodies
11 of water are encompassed or surrounded by our
12 counties. The barrier islands of our state, one of
13 the greatest treasures that we have, create
14 situations in which counties include these
15 tremendous bodies of water.

16 This Committee further adopted that we
17 would comply, as we're required to, by the county
18 grouping and traversal rule. It means that the
19 county -- that the Committee would draw legislative
20 districts within county -- within county groupings
21 as required by Stephenson versus Bartlett and in
22 other court cases. And within the county
23 groupings, counties like -- county lines should not
24 be traversed into except as authorized by the
25 Courts in Stephenson and the subsequent cases.

1 I put this back up only as a reminder.
2 This was presented in greater detail to the
3 Committee. You will notice that the purple color
4 is a county in which, if you take the ideal
5 population of 79,462 and divide it into the 2010
6 decennial -- the 2010 decennial census numbers, you
7 are able to draw a whole number of seats. In
8 certain examples, for instance in Lincoln County
9 which was not -- not a changed county, their
10 population is 80,000 people. That's within the
11 plus or minus five percent; Lincoln County gets one
12 seat. The counties that are one, that are kept
13 whole in this, are illustrated in purple.

14 We were then required to go through and
15 group counties in the smallest possible number of
16 county groups. We were -- we had to optimize the
17 number of two-county groups, shown in red on this
18 map and also bordered by the darker black lines,
19 illustrate what the two-county groups are. In the
20 canary yellow color, shows the three-county groups.
21 That means when we were -- when we could combine no
22 more two-county groups, we then sought to combine
23 three-county groups. The canary -- the canary
24 yellow shows the three-county groups. The brighter
25 yellow shows the four-county groups. When we could

1 no longer combine three counties and make whole
2 House seats, we had to combine four counties. The
3 lime green color shows a five-county group. The
4 darker green or Kelly green color shows a
5 six-county group, and the blue color is a
6 seven-county grouping.

7 I think we've spent pretty good time
8 talking about this, but I did want to state it
9 again for the record and so it could be more fully
10 understood by the Committee. I would point out
11 that I do believe the Committee's criteria on
12 county groupings and traversals was, in fact, met.
13 I would point out, for reference, that the number
14 of split counties in the 2001 House plan was 60, in
15 the 2009 plan it was 46, in the 2011 plan, known as
16 Lewis-Dollar-Dockham, were 49 split counties. In
17 the 2017 House Plan A that you have before you,
18 there are 40.

19 Compactness; the Committees shall make
20 reasonable effort to draw legislative districts in
21 the 2017 House and Senate plan that improve the
22 compactness of -- of the current districts. In
23 doing so the Committee may use, as a guide, the
24 Reock dispersion and the Polsby-Popper scores as
25 identified by the people that invented that

1 particular score -- those particular scores. I
2 would point out that the map that I present to you
3 today complies with that criteria. The criteria
4 minimum for Reock is 0.15. The minimum compactness
5 found in this plan for Reock is 0.2. The maximum
6 is 0.7. The mean is 0.41 and the standard
7 deviation is 0.09. I say all that to say that we
8 were able to comply with this Committee's criteria
9 in regard to the Reock score.

10 In regard to the Polsby-Popper score, the
11 minimum criteria is 0.05 -- excuse me, yes, the
12 criteria minimum is 0.05, the minimum district on
13 this plan is at 0.2. The maximum is at 0.71. The
14 mean is 0.31 and the standard deviation is 0.11. I
15 say all that to say again, that based on the
16 compactness criteria defined in the Polsby-Popper
17 test, this map is compact. I'll be happy to go
18 into greater detail on compactness. I will simply
19 say that based on the -- and I will submit this for
20 the record -- based on a comparison of reports with
21 prior enacted plans, this is a compact plan.

22 One of the Committee's goals was to have
23 fewer split precincts. The total number of split
24 precincts, or split VTD's in this plan, as drawn,
25 is 19. It's important -- it's important to point

1 out that there are 49 total splits, but those
2 additional splits, between 19 and 49, occur in
3 areas of the plan that were not impacted by the
4 regrouping -- the new county optimization formula.
5 What that means is, what we drew splits only 19
6 precincts. If you compare that with the 2011 plan,
7 the Lewis-Dollar-Dockham 4 plan, there were 395
8 split precincts. The 2009 House plan split 285.
9 2001 House plan, as best we can tell, split 103. I
10 would point out for the record, in total
11 transparency, one of the -- there is one additional
12 split VTD in Cumberland County. It -- it's a --
13 it's on the base, the Army base, there are no
14 people that live there, it makes the map look
15 more -- more compact.

16 We wanted to respect municipal --
17 municipal boundaries. The Committee adopted the
18 criteria of municipal boundaries. We said that we
19 may consider municipal boundaries when drawing
20 legislative districts in 2017 House and Senate
21 plan. Again, I think this plan meets that goal.
22 The 2009 House plan split 123 municipalities. The
23 2011 house plan, Lewis-Dollar-Dockham, split 144.
24 This plan splits 78.

25 An additional criteria that was adopted

1 by this Committee is incumbency protection. It
2 reads, "reasonable efforts and political
3 considerations may be used to avoid pairing -- to
4 avoid pairing incumbent members of the House or
5 Senate with another incumbent in legislative
6 districts drawn in the 2017 House and Senate plans.
7 The Committee may make reasonable efforts to ensure
8 voters have a reasonable opportunity to elect
9 non-paired incumbents of either party to a district
10 in the 2017 House and Senate plans." Again, this
11 plan meets that criteria.

12 The 2017 House Plan A pairs eight
13 representatives. Six of those are paired together
14 by the county grouping formula. There is one pair
15 of Republican legislators that are grouped and
16 there are two opposite party pairings. Again,
17 these were caused by the county grouping formula.
18 I will state, for the record, that we absolutely
19 sought to avoid pairing incumbents in the -- in the
20 preparing of this map. The only discretionary
21 double-bunking in this plan is of two Republican
22 representatives. This was necessary to create
23 districts that are reasonably compact and to avoid
24 opposite party double-bunking.

25 Election data; political consideration.

1 Election results data may be used in the drawing of
2 the legislative districts in the 2017 House and
3 Senate plans. As I stated for the record, the last
4 time this Committee met, the following 10 races
5 were used as a guide in meeting this criteria of
6 the map. They are 2010 US Senate, 2012 President,
7 2012 Governor, 2012 Lieutenant Governor, 2014
8 United States Senate, 2016 President, 2016 United
9 States Senate, 2016 Governor, 2016 Lieutenant
10 Governor, 2016 Attorney General.

11 A criteria that was adopted by this
12 Committee involved no consideration of racial data.
13 Again, as I said in my opening remarks, the
14 consideration of race, the Court made clear that we
15 had not created a substantial enough record to
16 justify race as the factor or as a criteria in
17 drawing the districts, and therefore, it was not
18 used.

19 Mr. Chairman, if I may? A couple of the
20 members had asked the difference between the
21 original House map that was released and the
22 amended House map that was released. I'd like to,
23 with your permission, just get that on the record
24 as well and --

25 REP. DOLLAR: The gentleman's recognized

1 Representative Michaux. I believe you're referring
2 to the Covington Plaintiff's map, and I want to
3 state, first of all, that I appreciate the
4 submission of that map. I believe it came in at
5 2:05 on Tuesday and I can assure you that I did
6 consider the map very thoroughly. We evaluated the
7 ideas that they had. There were many areas of the
8 state where the Covington map was similar to what
9 was drawn by this Committee. There were areas of
10 the state where we don't feel the Covington map met
11 the criteria, but the short answer is yes. I
12 reviewed it very -- very thoroughly and appreciate
13 its submission.

14 REP. DOLLAR: Gentleman's recognized.

15 REP. MICHAUX: I -- I guess --
16 Representative Michaux again. I guess my question,
17 did you incorporate any of the suggestions made by
18 the Plaintiff's counsel in this -- in -- in
19 these -- in the new maps that you drew?

20 REP. LEWIS: No, sir. Not to my
21 knowledge.

22 REP. MICHAUX: Follow-up.

23 REP. DOLLAR: Gentleman's recognized.

24 REP. MICHAUX: You indicated that based
25 on the criteria that this Committee passed on a

1 divided vote, that race was not used in making a
2 determination. On the decision handed down by the
3 three-panel court and by the United States Supreme
4 Court, indicated that racial gerrymandering had
5 occurred, which was unconstitutional. Can you tell
6 me whether or not the matter of racial
7 gerrymandering has been corrected by the maps that
8 you -- the map that you have now drawn? And can
9 you give me the statistics that show that that
10 matter has been corrected?

11 REP. LEWIS: Thank you for the question.
12 It's my understanding that the Covington Court
13 ruled that this Committee had not -- or the
14 Committee in 2011 had not established a sufficient
15 record to justify the use of race in drawing
16 legislative districts, therefore race was not a
17 criterion that was used. There was no racial data
18 reviewed in the preparation of this map, and I can
19 provide you only the statistics that we have
20 already provided which were used in drawing this
21 map.

22 REP. MI CHAUX: Further follow-up,
23 Representative Michaux again.

24 REP. DOLLAR: Gentleman's recognized.

25 REP. MI CHAUX: So you cannot give me any

1 statistic, any racial statistics, on the maps that
2 you now have before this body for us to approve; is
3 that correct?

4 REP. LEWIS: As race was not a criteria,
5 that is absolutely correct. I would point out, I
6 think, to the gentleman's larger question, though,
7 it's my understanding that the Court said that
8 without sufficient evidence, the General Assembly
9 had drawn maps where race was the predominant
10 factor. I'm aware of no additional data, that has
11 been submitted to this Committee or to me for
12 review, that would indicate that anybody else has
13 developed a more -- that anyone has submitted any
14 additional evidence that race should be considered.
15 Therefore, it was not considered in the drawing of
16 this map. And I do believe that by not considering
17 race, that does correct the deficiency found by the
18 Court.

19 REP. DOLLAR: Representative Jackson is
20 recognized.

21 REP. JACKSON: Thank you, Mr. Chairman.
22 On Page 151 of the Covington opinion, it lays out
23 the testimony that was received by the defendants
24 about racially polarized voting and the history and
25 locations of VRA districts by prior general

1 assemblies. And then it goes on to say this should
2 be considered during legislative redistricting.
3 And I would ask, was that considered?

4 REP. LEWIS: Mr. Chairman, would the
5 gentleman mind if I looked at -- if I got the
6 material he was referencing from staff?

7 REP. JACKSON: It's on Page 151, starting
8 with the second and third paragraph.

9 REP. LEWIS: Representative Jackson,
10 apparently my staff tried to use Westlaw so our
11 pages aren't lining up, but I can tell you that
12 race was not used in the drawing of this map which
13 I think is the -- the answer that you were trying
14 to ask. I apologize for not having the exact case
15 in front of me.

16 REP. JACKSON: Mr. Chairman, follow-up?

17 REP. DOLLAR: Gentleman is recognized for
18 a follow-up.

19 REP. JACKSON: Okay. And on page 164 of
20 the Court's conclusion it reads "Section 2 of the
21 Voting Rights Act continues to play an important
22 role in redistricting. And legislators must
23 undertake a district-specific analysis to identify
24 and cure potential Section 2 violations." So I
25 would ask, did the map drawers undertake a

1 don't -- I don't have that -- that information at
2 hand.

3 REP. MICHAUX: May I follow up again?

4 REP. DOLLAR: Follow-up.

5 REP. MICHAUX: My -- I have information,
6 and I have not been able to personally check it out
7 and you can, you know, but I -- my understanding
8 that under the maps that you have submitted with
9 the changes you've made that Republican
10 representation will increase by four and the
11 Democratic representation will decrease by four.
12 Is that correct?

13 REP. LEWIS: Well, Representative, thank
14 you for the question. I don't have that
15 information. I will tell you that the stat packs
16 that were -- there were stat packs passed out that
17 illustrate every -- the 10 races that we've already
18 discussed. You could infer different things from
19 that; I don't think they paint as clear a picture
20 as what you are saying.

21 REP. DOLLAR: Gentleman's recognized.

22 REP. MICHAUX: Let me go to one other
23 question, and this is on black voting age
24 population. Do you have any information on any of
25 the districts that you have created under the map

1 that is under consideration that show the black
2 voting age population of any of the districts at
3 all?

4 REP. DOLLAR: Representative Michaux,
5 thank you for the question. I do not have any of
6 that information. Certainly you could request that
7 of central staff.

8 REP. MICHAUX: One follow-up?

9 REP. DOLLAR: Gentleman is recognized.

10 REP. MICHAUX: Was that information used
11 in drawing these district -- black voting age
12 population statistics used in drawing these
13 districts that you submit for our approval?

14 REP. LEWIS: No, sir. And if I could
15 expand on that answer, it's my reading of the
16 Covington case that a district-specific analysis is
17 required in order to use race. We are not using
18 race in the construction of this map. We do not
19 have information that says it would be required to
20 be used. If you have that information, I'm
21 certainly willing to review it, but at this time we
22 have not received any additional information that
23 indicates that race should be used, which is our
24 understanding of the Covington Court's Order.

25 REP. DOLLAR: Gentleman wish to be

1 REP. STEVENS: Do you know how that
2 differed from the criteria that this Committee used
3 at all, if it did?

4 REP. JACKSON: Well, I -- I -- she -- and
5 if you have not seen her letter, I can certainly
6 get you a copy of it. I believe I do have it in my
7 large paper folder here. She -- she noted some of
8 the things that I went over today. One was
9 changing districts that didn't need to be changed.
10 One was some differences with the whole county
11 provision and the Greene, Wayne, Johnston, Harnett,
12 Lee, Sampson, Bladen cluster and the Rowan,
13 Cabarrus, Stanly, Montgomery, Richmond cluster.
14 And then she talks about the racial gerrymandering
15 issue as well.

16 REP. STEVENS: Follow-up?

17 REP. SZOKA: Follow-up.

18 REP. STEVENS: So did she in -- did they,
19 in fact, include racial data as a consideration in
20 drawing the Covington map?

21 REP. JACKSON: Representative Stevens,
22 I'm not sure if that is listed in the letter, but
23 to my knowledge, the -- the racial data was
24 considered in the drawing of their map; yes, ma'am.

25 REP. STEVENS: And -- and have --

1 REP. SZOKA: Follow up?

2 REP. STEVENS: Follow-up. And have you
3 also listed or considered that racial data and
4 posted it to the website?

5 REP. SZOKA: Representative Jackson?

6 REP. JACKSON: I want to make sure you're
7 clear; they sent what's called, I believe, a
8 shapefile, which is something that we can use to
9 recreate the map that they drew. The data that you
10 have before you is the data that has been created
11 by staff, and it is in the same format as all the
12 other amendments that you have requested.

13 However, if you request of staff, they
14 can do you racial data based upon any amendment, as
15 well as the PCS, the original proposal and this one
16 as well. But I think what they've handed out is
17 what you've used on every other map you've drawn,
18 so that they remain consistent. But it does exist
19 in the computer and can be pulled for you.

20 REP. STEVENS: Follow-up?

21 REP. SZOKA: Follow-up.

22 REP. STEVENS: Who requested the racial
23 data? Was that you or was that the Covington
24 Plaintiffs?

25 REP. JACKSON: Well, again, I -- it -- I

1 believe the Covington Plaintiffs considered it,
2 but, again, they did not send us data. As far as
3 what I have requested, I requested racial data on
4 your original map that was released Saturday. I
5 requested and received that data. Other members, I
6 am aware, have requested racial data on other maps.
7 And maybe the same map more than once and have seen
8 posted in different areas, have been e-mailed to
9 members' accounts and things of that nature. The
10 only thing I requested was the racial data, I
11 believe, for the original map.

12 REP. STEVENS: Follow-ups?

13 REP. SZOKA: Follow-up.

14 REP. STEVENS: Representative Jackson,
15 are you aware on the Reock score that the mean
16 score in Covington is 42 where it's only 41 in the
17 House plan? And the standard deviation in
18 Covington is 10 -- is .10, where the standard
19 deviation of the House plan's only .09?

20 REP. JACKSON: No, I am not familiar with
21 the compactness scores of any area in the proposal
22 I listed other than in Wake County. Originally, I
23 had planned to run a Wake County amendment, a
24 Mecklenburg County amendment and a statewide
25 amendment. But it -- just like all of your

Exhibit 5

NORTH CAROLINA HOUSE OF REPRESENTATIVES SESSION

NORTH CAROLINA GENERAL ASSEMBLY

TRANSCRIPT OF THE PROCEEDINGS

In Raleigh, North Carolina
Monday, August 28, 2017, 1:30 p.m.

PREPARED BY: Regina Toppins

RUFFIN CONSULTING, INC.

DIRECT DIAL: 252-243-9000

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1 REPRESENTATIVE LEWIS: Representative
2 Michaux, I'm not sure I completely understand what
3 you're asking. I have acknowledged that the court
4 ruled that 19 of the state House districts were racial
5 gerrymanders without the necessary supporting the
6 information from the court. I mean that the court
7 says the legislature did not have enough information
8 to use race in the drawing of the maps. No additional
9 information has been presented to me or to the
10 Redistricting Committee to refute the court,
11 therefore, we did not use race in drawing this map.

12 REPRESENTATIVE MICHAUX: One follow-up
13 question.

14 SPEAKER MOORE: Does the gentleman yield to
15 additional questions?

16 REPRESENTATIVE LEWIS: I do.

17 SPEAKER MOORE: He yields.

18 REPRESENTATIVE MICHAUX: How do you, then,
19 correct, how do you correct a racially predominantly
20 drawn district without including race in order to
21 correct that predominance?

22 REPRESENTATIVE LEWIS: Thank you for the
23 question.

24 It's my understanding that the ruling of the
25 court was that we did not have enough evidence to

1 SPEAKER MOORE: The gentleman from Wake,
2 Representative Jackson, is recognized to debate the
3 bill.

4 REPRESENTATIVE JACKSON: Thank you, Mr.
5 Speaker.

6 Ladies and gentlemen, I apologize in
7 advance. My comments are probably about 10 minutes
8 long. So, I tried to summarize them as best I could.

9 I want you to know that I do rise to oppose
10 this redistricting plan today and I wanted to start
11 with the issue of race, which I believe is at the
12 heart of this plan and very much, unfortunately, part
13 of the national public debate in recent months.

14 A lot of hate was on display a few weeks ago
15 in Charlottesville, and I think the comments we heard
16 at the public hearing last week were in large part a
17 response to what happened in Charlottesville. So,
18 from the beginning I want to state publicly and
19 clearly and for the record that I do not think your
20 plan is racial gerrymandered because my colleagues in
21 this body are racist. No one in this body deserves to
22 be called some of the names we heard that night or in
23 some of the public comments that I have personally
24 received. But today is the anniversary of Dr. Martin
25 Luther King, Jr.'s I Have a Dream speech, and we have,

1 in fact, come a long way, but I do not believe we are
2 at the point in this country, in the south or even in
3 this state where you can no longer consider race in
4 these type of decisions.

5 I do believe your plan is still a racial
6 gerrymander, just as the plan from 2011 was found to
7 be. I believe your plan racially gerrymanders so that
8 you can lessen the opportunities of African-American
9 voters to have their voices heard in more districts
10 because that could in turn create more democratic
11 districts. That is at the core of your supermajority.

12 The plan that we are passing today is every
13 bit as constitutionally flawed as the one in 2011.
14 House democrats have pointed out some of the flaws on
15 the floor and in committee. The Covington plaintiffs
16 have done so through written correspondence to the
17 chairs and submission to alternative map. You have
18 not made the necessary changes, but I'm going to point
19 them out one final time.

20 First, there was the process you've known
21 since June 5th that your maps were unconstitutional
22 and needed to be redrawn and we did nothing. Governor
23 Cooper attempted to call us into special session on
24 June 7th; again we did nothing. Finally, you acted
25 laying out a long, drawn out timetable for public

1 input and hearings. It sounded great except that it
2 was now August. And remember last time you tried to
3 schedule filing in December and that's a long process
4 and prevents us from recruiting candidates. That's
5 not a problem for your side with so many incumbents
6 and maps to consult, but the court figured this out
7 and rightly called you out on it.

8 So that foot-dragging process led to an
9 evening of one public hearing conducted in probably
10 one of the most bizarre fashions I've ever seen. As
11 best I can tell, what input we did receive through the
12 hearing or the online process was not used in any
13 meaningful way. I have no doubt that the maps we see
14 today have existed in some basic form for sometime,
15 after all, the clusters were drawn last year around
16 this time, yet they were released on a Saturday, but
17 just as pictures with no data. It took another couple
18 of days to get the data we all know existed.

19 The second flaw in the plan before us today
20 is the alleged non-use of racial data. Nine Supreme
21 Court justices, who rarely agree on anything, struck
22 down your maps as a racial gerrymander. Some argued
23 that the court did not find such a racial gerrymander,
24 only that you considered race without the proper
25 factual findings or that the law has somehow changed

1 since 2011. In my opinion that just isn't accurate.

2 The Federal courts have referred to the 2011
3 plan as a racial gerrymander at least seven different
4 times in two separate court orders requiring you to
5 re-draw these 19 unconstitutional House districts.
6 Three federal judges issued an order instructing you
7 on how to fix your map, including specific language
8 directing the use of racial data. You are refusing to
9 do so. You're pretending that the Voting Rights Act
10 no longer exists.

11 You can look at page 151 of the court's
12 opinion. There the court talks about the history of
13 the prior Voting Rights Act districts in North
14 Carolina and racially pulverized voting. The court
15 says, "We would not dispute that some of the
16 information is relevant and should be considered
17 during a legislative redistricting."

18 Should be considered, that's what the court
19 says. We didn't consider it. In the court's
20 conclusion, "Section II of the Voting Rights Acts
21 continues to play an important role in redistricting,
22 and legislatures must undertake a district specific
23 analysis to identify and cure potential Section II
24 violations."

25 Again, note the magic words, legislatures

1 must. Again, we have not done that.

2 The maps before us today have stack packs
3 with no racial data in them. You claim that means a
4 racial gerrymander is impossible, yet the lines were
5 drawn by the same expert who drew the maps in 2011.
6 They used racial data so extensively as to be found
7 unconstitutional. Dr. Hoffler spent months taking a
8 scaffold to the North Carolina map and finding pockets
9 of African-American voters to create 50% plus
10 districts all across the state. He spent many more
11 years helping the state answer pleadings, discovery
12 requests, giving depositions and expert testimony.
13 How do you instruct him now not to use what he knows
14 all so well? It would be like telling Dale Jr. not to
15 look at his speedometer. It's pointless. He still
16 knows how fast he's going when he's in that car.

17 And you see it in the maps. You see racial
18 gerrymanders that have not been cured. They live on,
19 refusing to die like a character in The Walking Dead.
20 If not, why do the districts look so similar to the
21 ones last time?

22 What's more, you even refused to even check
23 on the back end to make sure you have identified and
24 cured potential Section II violations. The court has
25 told you to do so, but you have refused. I'd ask that

1 you not cry foul if and when the court calls you to
2 task on it. Everyone has warned you.

3 The third flaw I see is the unfortunate
4 error of violating the whole county provision of the
5 North Carolina Constitution. Your map splits more
6 counties than the map I presented at committee. There
7 are no unnecessary county traversals. Why not fix
8 them now?

9 The fourth flaw also relates to the North
10 Carolina Constitution. Unlike Georgia and other
11 states, we cannot redistrict mid-decade without a
12 court ordering us to do so. You abide by this
13 constitutional rule by not redrawing areas like
14 Alamance or New Hanover or Burke County, yet you
15 violate the rule in Wake and Mecklenburg County.

16 It is possible and constitutionally required
17 to leave districts unchanged that do not touch
18 unconstitutional districts when the cluster is
19 unchanged, yet you refuse to do so for reasons of
20 politics.

21 There's no legal universe with your
22 political reasons can trump the North Carolina
23 Constitution. It's as clear as day. Article II,
24 Section 5 says, "When established, the House districts
25 in the apportionment of their representatives shall

Exhibit 6

NORTH CAROLINA HOUSE OF REPRESENTATIVES SESSION

NORTH CAROLINA GENERAL ASSEMBLY

TRANSCRIPT OF THE PROCEEDINGS

In Raleigh, North Carolina
Wednesday, August 30, 2017, 2:00 p.m.

PREPARED BY: Regina Toppins

RUFFIN CONSULTING, INC.

DIRECT DIAL: 252-243-9000

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1 thanks, y'all.

2 Senate Bill 691, the Clerk will read.

3 HOUSE CLERK: Senate Bill 691, a bill to
4 enact to realign the districts of election of the
5 North Carolina Senate. General Assembly of North
6 Carolina annex.

7 SPEAKER MOORE: The gentleman from Harnett,
8 Representative Lewis, is recognized to address the
9 bill.

10 REPRESENTATIVE LEWIS: Mr. Speaker, may I
11 make a request to the Chair?

12 SPEAKER MOORE: The gentleman may state his
13 request.

14 REPRESENTATIVE LEWIS: Mr. Speaker, may I
15 have staff on the floor to aid me?

16 SPEAKER MOORE: The gentleman is permitted
17 to have staff on the floor.

18 REPRESENTATIVE LEWIS: Thank you, Mr.
19 Speaker.

20 SPEAKER MOORE: And any other members who
21 wish to have staff on the floor, the permission is
22 extended as well.

23 The gentlemen has the floor.

24 REPRESENTATIVE LEWIS: Thank you, Mr.
25 Speaker.

1 Mr. Speaker and Members, the Senate map
2 complies with state and federal law, it adheres to
3 traditional districting principles and it remedies
4 defects the court found in the previous map. It
5 splits fewer counties and divides far fewer precincts
6 and fewer municipalities than previous plans for this
7 body.

8 The only members double bunked are those
9 forced by the county grouping formula, and that is
10 exclusively to the detriment of the majority party in
11 this map. It fully cures the defects found by the
12 Covington Court, and, for the record, I will note that
13 this statement also applies to the House map.

14 At multiple points during the House debate,
15 in committee and on the floor, members of the
16 Democratic Party revealed that they had requested and
17 received a statistical package that included the race
18 for the 2017 House Redistricting Plan and they
19 accepted amendment to Wake County that was passed
20 yesterday. In addition, an Associated Press reporter
21 has apparently also seen these statistics provided by
22 the minority party. This data has already been
23 released for the proposed Senate plan via request from
24 Senator Floyd McKissick of Durham.

25 So that there wasn't an asymmetry of

1 information, yesterday morning I asked for central
2 staff to prepare the full statistical package for the
3 House plan as it passed on the House floor yesterday
4 and posted to the House Select Committee on
5 Redistricting's website. It has been posted there
6 since yesterday just before the Senate committee
7 considered our plan.

8 To be clear, race was not used in drawing of
9 the map, and I did not request or see this information
10 for the House plan until yesterday after the House
11 plan passed this chamber. Since yesterday I have
12 reviewed this data for our plan and believe it fully
13 remedies the racial issues the court identified in the
14 previous map. It also avoids any theoretical vote
15 delusion claims under Section II of the Voting Rights
16 Act.

17 An additional expert -- pardon me. An
18 additional report from the democratic plaintiff
19 expert, Dr. Alan Lichman, has been entered into the
20 Senate record, and I believe the report is relevant to
21 our plans as well. Further, I believe our map
22 complies with traditional redistricting principles
23 outlined by the court.

24 Members, to get back to the map before us
25 today, I believe the Senate map complies with the

Exhibit 7

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

3 SANDRA LITTLE COVINGTON, et al.,) CASE NO. 1:15CV399

4 Plaintiffs,)

5 V.)

6 STATE OF NORTH CAROLINA, et al.,) Greensboro, North Carolina

7 Defendants.)

8 October 15, 2017

9 10:05 a.m.

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TRANSCRIPT OF THE **MOTIONS HEARING**
BEFORE THE HONORABLE THOMAS D. SCHROEDER
THE HONORABLE CATHERINE C. EAGLES
UNITED STATES DISTRICT JUDGES
and
THE HONORABLE JAMES A. WYNN
UNITED STATES FOURTH CIRCUIT JUDGE

APPEARANCES:

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Official Court Reporter

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1 **MR. STRACH:** We've offered the legislative record,
2 which is very extensive. It's over 2,000 pages. That's -- we
3 thought --

4 **JUDGE EAGLES:** But nobody is under oath in that.
5 Nobody is explaining how you drew these districts specifically
6 in response to their challenges, correct, to their objections?

7 **MR. STRACH:** Well, Your Honor, generally, the Courts
8 look at the legislative record, and the legislative record is
9 extensive. There is no reason to bring anybody else in. And,
10 in fact, it's our position that anything outside the
11 legislative record is not relevant anyway under the Supreme
12 Court precedent on this.

13 So the Court certainly has enough information in the
14 legislative record to know that any assertion that racial data
15 was used predominantly to draw these districts is simply just
16 rank speculation.

17 **JUDGE SCHROEDER:** How do you respond to the
18 Plaintiffs' argument that, well, the districts do have some
19 similarities? They would say striking similarities to the ones
20 that were struck down.

21 **MR. STRACH:** We would disagree with that. To the
22 extent there are similarities or anything that's irregular
23 about them, that's driven by the shape of the precincts
24 themselves. House District 21 is a great example. There is an
25 irregular shape as it comes down into Sampson County, but

1 that's because the whole precinct was selected; whereas,
2 before, that precinct might have been lopped off, it wasn't
3 this time.

4 In addition, when you look at the criterion as a
5 whole and you're drawing districts using political data to make
6 sure incumbents can have a chance at winning their election,
7 these are the districts that you come up with. This is what
8 you get.

9 What I would say is that the Plaintiffs here are now,
10 Your Honors, conflating the vote dilution with gerrymandering
11 and racial sorting. What the Plaintiffs want the General
12 Assembly to have done is looked at race on the front end in
13 order to prevent alleged vote dilution, but the General
14 Assembly concluded that there's not enough district-specific
15 evidence of legally sufficient racially polarized voting, and
16 none was submitted during the process. So they concluded we're
17 not going to look at race at all.

18 Now, as the Court knows from the legislative record,
19 once the districts were drawn, racial data was present, and the
20 legislature was able to look at that on the back end, and the
21 legislators themselves asked the question: Hey, do you have
22 any district-specific evidence that there's a racial issue,
23 there's a vote dilution issue in any of these districts? No
24 one come forward with any evidence. So the legislature kept
25 the districts the way they were.

1 So we believe that the legislature did exactly what
2 this Court would contemplate and certainly was contemplated in
3 its order, which is not allow race to predominate, but then
4 ensure on the back end that if you --

5 **JUDGE WYNN:** But help with that vote dilution.
6 That's -- I don't see that as being the issue we're dealing
7 with here.

8 **MR. STRACH:** It's not.

9 **JUDGE WYNN:** We're dealing with the issue of whether
10 this constitutional violation has been cured.

11 **MR. STRACH:** I agree.

12 **JUDGE WYNN:** And when you bring a map -- if you bring
13 a map -- let's say you brought us the same map, and you had
14 every argument you have right now. Does that -- I mean, how do
15 we ignore looking at what we see, and, that is, a district that
16 looks virtually like the one that we said was unconstitutional
17 and when you have the same map drawer, the same legislature,
18 and, yet, it looks the same?

19 **MR. STRACH:** Your Honor, I disagree. We didn't bring
20 the same map to you. We --

21 **JUDGE WYNN:** Well, I'm not saying the entire map, but
22 I'm saying the districts that are being challenged, at least
23 one or two of them that looked pretty close.

24 **MR. STRACH:** I disagree. I disagree. I strongly
25 disagree. These districts look a lot different than the way