

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
NO. 1:15-cv-00399**

SANDRA LITTLE COVINGTON, *et al.*,

PLAINTIFFS,

V.

THE STATE OF NORTH CAROLINA, *et al.*,

DEFENDANTS.

**PLAINTIFFS' POST-TRIAL  
REVISED PROPOSED FINDINGS  
OF FACT AND CONCLUSIONS  
OF LAW**

NOW COME Plaintiffs, by and through their undersigned counsel, and pursuant to the Court's request of the parties and minute entry dated April 15, 2016, submit the following post-trial, revised proposed findings of fact and conclusions of law.

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## **I. FINDINGS OF FACT PART I: THE 2011 REDISTRICTING PROCESS**

### **A. The Context Of The 2011 Redistricting In North Carolina.**

1. Following *Thornburg v. Gingles*, 478 U.S. 30 (1986), the General Assembly in 1992 enacted a redistricting plan creating sixteen majority-black single-member districts and one majority-black two-member district for the state house, and six majority-black senate districts. (D3000; D3001).
2. Between 1992 and 2010, the number of majority-black districts decreased by seven for the House and by six for the Senate, while the number of African-American legislators in the General Assembly steadily increased from 18 to 25 in that same period. (D3000; D3001).
3. The plans enacted by the General assembly in 1992, 2003, and 2009, and by the courts in 2002, were precleared by the U.S. Department of Justice under Section 5 of the Voting Rights Act. No lawsuit was filed challenging any of those plans on Section 2 grounds and no court found those plans in violation of Section 2 of the Voting Rights Act. (Sen. Dan Blue, Trial Tr. vol. I, 47:16-48:5).
4. Even as the number of majority-black districts was decreasing prior to 2011, the number of black legislators in the General Assembly steadily increased. Fifty-six times between 2006 and 2011, black candidates won election contests in state house and senate districts that were not majority-black, and twenty-two times those candidates were running in majority-white districts. (J1048-J1049).
5. Most of these elections involved candidates of different races in which the black candidate defeated the white candidate, some of whom were incumbents. *Id.*
6. While the legislative record did include studies showing that racially polarized voting is still present in some areas of North Carolina, no study examined whether the level of racially polarized voting in a particular area means that the white bloc vote usually defeats the candidate of choice of black voters. (Dr. Thomas Brunell, Trial Tr. vol. IV, 148:7-150:1).
7. The 2010 Census Redistricting Data as mandated by P.L. 97-141 was released for North Carolina in March, 2011. (Sen. Robert Rucho, Trial Tr. vol. IV, 6).
8. The 2010 Census showed an increase in North Carolina's total population, such that the ideal district size for a House District went from 67,078 in 2000 to 79,462 in 2010. Similarly, the ideal district size for a Senate District went from 160,968 in 2000 to 190,710 in 2010. (J1012-7; Rep. David Lewis, Trial Tr. vol. III, 129:3-13).

9. While the total population rose significantly, the total black voting age population percentage in the state grew only slightly, from 20.29% in 2000 to 21.18% in 2010.
10. Population growth was not equally distributed across the state. House and Senate Districts in Wake, Mecklenburg, and Union Counties were larger than the ideal district size and districts in the west and northeastern regions were smaller than the ideal district size.

**B. An Overview of The Challenged Districts and the Roles Played by Senator Rucho, Representative Lewis, and Thomas Hofeller in the Drawing of those Districts.**

11. Plaintiffs challenge Senate Districts (SD) 4, 5, 14, 20, 21, 28, 32, 38, and 40 on the grounds that they are racial gerrymanders not justified by the Voting Rights Act (VRA). One or more plaintiffs reside in each of these districts and therefore have standing to challenge them. (Second Stip. ¶¶ 35-65).
12. These Senate districts were enacted by the General Assembly on July 27, 2011. They were drawn by Thomas Hofeller under the direction of Senator Robert Rucho, Chair of the Senate Redistricting Committee. (Second Stip. ¶¶ 3, 16).
13. Plaintiffs also challenge House Districts (HD) 5, 7, 12, 21, 24, 29, 31, 32, 33, 38, 42, 43, 48, 57, 58, 60, 99, 102, and 107 on the grounds that they are racial gerrymanders not justified by the Voting Rights Act. One or more plaintiffs reside in each of these districts and therefore have standing to challenge them. (Second Stip. ¶¶ 35-65).
14. These House districts were enacted by the General Assembly on July 28, 2011. They were drawn by Dr. Hofeller under the direction of Rep. David Lewis, Chair of the House Redistricting Committee. (Second Stip. ¶¶ 3, 22; Rep. David Lewis Trial Tr. vol. III, 119:1-4).
15. Dr. Hofeller was retained in early 2011 by Ogletree Deakins and assigned by that law firm to draw Senate districts for Sen. Rucho and to draw House districts for Rep. Lewis. (7/22 House Comm. 33:9-17 (J1019-33)).
16. Sen. Rucho, Rep. Lewis, and Dr. Hofeller all agree that Dr. Hofeller was the chief architect of the challenged Senate and House districts. (Sen. Rucho, Trial Tr. vol. IV, 41:22-24). He was assisted by Dale Oldham, a South Carolina lawyer, and John Morgan, a Virginia demographer. (J1051-76).

17. Sen. Rucho and Rep. Lewis were the only members of the General Assembly who gave instructions to Hofeller. (Dr. Thomas Hofeller, Trial Tr. vol. IV, 216:2-5).
18. The instructions Sen. Rucho and Rep. Lewis gave Dr. Hofeller were not written or electronic. They were oral. (Rep. Lewis, Trial Tr. vol. III, 199:3-16; J1051-81).
19. Those oral instructions are reflected in three public statements issued by Rucho and Lewis on June 17, June 22, and July 12, 2011. (Rep. Lewis, Trial Tr. vol. III, 207:2-9; J1005 - J1007; J1051-81-82). They were drafted by Sen. Rucho, Rep. Lewis, and members of their staffs. (Rep. Lewis Trial Tr. vol. III, 206:15-18). These public statements “clearly delineated” the “entire criteria” used to draw the challenged districts. (7/21 Senate Comm. 9:2-7 (J1013-9)). They accurately informed North Carolinians of the instructions Sen. Rucho and Rep. Lewis gave to Dr. Hofeller. (Rep. Lewis Trial Tr. vol. III, 207:2-9). Sen. Rucho and Rep. Lewis echoed these instructions in Senate and House Committee meetings on July 21 and 22 and in debates on the floor of the Senate and House on July 25. (7/22 Senate Comm. 7-21 (J1013); 7/22 House Comm. 3-11 (J1018); 7/25 House 50-53 (J1020)).
20. The Senate and House Redistricting Committees did not themselves have any substantive role in the drawing of the challenged districts. Neither committee ever met with Dr. Hofeller, or adopted any criteria or issued any direction to him to use in drawing the challenged districts. (Rep. Lewis, Trial Tr. vol. III, 200:2-11). Dr. Hofeller did not attend any redistricting committee meetings; did not review any transcripts or notes of those committee meetings; did not meet with any African-American legislator; and did not confer with any citizens before drawing the maps. (J1051-87; Sen. Blue, Trial Tr. vol. I, 60:8-17; Dr. Hofeller, Trial Tr. vol. V, 88:23-89:16).
21. As Rep. Joe Hackney observed at a joint meeting of the redistricting committees on June 15, 2011: “We have been here since January. We don’t have any maps. We haven’t had any meaningful committee meetings. We have no criteria. It’s perfectly apparent that the maps are going to be drawn in secret by the majority.” (6/15 Joint Comm. 37:5-10 (J1022-37)).

## II. FINDINGS OF FACT PART II: THE PREDOMINANCE OF RACE IN DRAWING THE CHALLENGED DISTRICTS

### A. Sen. Rucho's and Rep. Lewis' Race-Based Instructions to Dr. Hofeller for Drawing the Challenged Districts and Their Reasons for Issuing those Instructions.

22. Sen. Rucho and Rep. Lewis gave Dr. Hofeller three instructions for drawing the challenged districts:
- i. First, the VRA districts should “be created before other legislative districts.” (June 17 public statement p. 1 (J1005-1)).
  - ii. Second, the challenged districts “must be created with a ‘Black Voting Age Population’ (BVAP), as reported by the Census, at the level of at least 50% plus one.” (June 17 public statement p. 2 (J1005-2)).<sup>1</sup>
  - iii. Third, the Senate and House plans should “include a sufficient number of majority African American districts to provide North Carolina’s African American citizens with a substantially proportional and equal opportunity to elect their preferred candidate of choice.” (June 17 public statement p. 3 (J1005-3)). *See also* Sen. Rucho, Trial Tr. vol. IV, 35:18-36:13; Rep. Lewis, Trial Tr. vol. III, 196:7-14.
23. In giving these instructions to Dr. Hofeller, Sen. Rucho and Rep. Lewis believed that the only districts that would provide a remedy for a potential Section 2 violation, or a defense to a potential Section 2 claim, were districts in which the black voting age population exceeded 50%. (Dr. Hofeller, Trial Tr. vol. V, 17-23). *See also* Dr. Hofeller, Trial Tr. vol. V, 105:7-106:8.
24. Sen. Rucho and Rep. Lewis also understood that while proportionality was not a requirement of the VRA, drawing majority African-American districts in numbers proportional to North Carolina’s African-American population would “insulate the state from any potential section 2 liability.” (Rep. Lewis, Trial Tr. vol. III, 196:7-11, 197:25-198:4). *See also* Rep. Lewis, Trial Tr. vol. III, 201 (Rep. Lewis told Dr. Hofeller to draw VRA districts “in numbers that would give you a defense to any Voting Rights Act claim.”).

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<sup>1</sup> Except as otherwise stated, the terms “BVAP,” “black voting age population,” and “TBVAP” as used in this document refer to the percentage of persons who identify themselves as “wholly or any part black.” (June 17 public statement, p. 2 (J1005-2)).

25. The “primary goal” Sen. Rucho and Rep. Lewis sought to achieve by these instructions was to draw “maps that will survive any possible legal challenge.” (July 12 public statement p. 1 (J1007-1)). *See also* 7/21 House Comm. 5:14-16 (J1018-5); 7/21 Senate Comm. 7:9-13 and 8:2-6 (J1013-7, 8); Rep. Lewis, Trial Tr. vol. III, 197:8-24, 211:6-24.
  26. As Rep. Lewis explained at the July 21 House Redistricting Committee meeting: “Now that it is apparent that these majority black districts can be drawn, any decision to draw a few selected districts at less than a majority level could be used as evidence of purposeful discrimination or in support of claims against the state under Section 2. Thus, in order to best protect the state from costly and unnecessary litigation, we have a legal obligation to draw these districts at true majority levels.” (7/21 House Comm. 10:4-12 (J1018-10)). *See also* 7/21 House Comm. 27:7-19 and 57:1-4 (J1018-27, 57).
  27. In Sen. Rucho’s and Rep. Lewis’ view there was “no principled reason not to draw all VRA districts at 50% or above when it is possible to do so.” (7/21 House Comm. 9:23 to 10:3 (J1018-9-10)). *See also* 7/21 Senate Comm. 20:3-6 (J1013-20). Similarly Rep. Lewis has said that the “guiding principle” used to draw the challenged districts was “the creation of districts more than 50% in numbers proportional to the State’s African American population.” (Second Lewis Dep. 49:17-24 (D.E. ## 74-1, p. 13; 102-1, p. 526)).
  28. Both Sen. Rucho and Rep. Lewis testified at trial that they applied the 50% +1 requirement as a “uniform standard” across the state, in Section 2 and Section 5 counties alike. Sen. Rucho further explained that, for example, he applied that mechanical target the same way in Mecklenburg County and Pitt County. (Sen. Rucho, Trial Tr. vol. IV, 33:14-16; Rep. David Lewis, Trial Tr. vol. III, 186:12-21).
- B. The Race-Based Process Dr. Hofeller Used to Implement Sen. Rucho’s and Rep. Lewis’ Race-Based Instructions for Drawing the Challenged Districts.**
29. Dr. Hofeller began work in early 2011. The process Dr. Hofeller used to draw the challenged Senate and House districts was identical. (Hofeller Dep. pp. 78:1-5; 128:23-25; 129:1-5 (D.E. ## 74-1, p. 8; 102-1, pp. 283, 294-95)). *See also* 7/27 House Comm. 5:21-24 (J1016-5).
  30. Consistent with his instructions from Sen. Rucho and Rep. Lewis, Dr. Hofeller’s first tasks included (1) calculating the number of seats in the House and Senate that would provide African American voters representation proportional to the African American percentage of the State’s voting age population and (2) identifying all areas in the state in which African American voters constituted

50% or more of the voting age population. (Hofeller Dep. pp. 79:5-10; 86:18-23 (D.E. ## 74-1, p. 8; 102-1, pp. 284, 288)); (Oldham Dep. p. 63:11-17 (D.E. ## 74-1, p. 14; 102-1, p. 636)).

31. Indeed, the first thing that Hofeller did was create a proportionality chart, determining the number of majority black districts in both the House and Senate that would be proportional to the black population in the state. He created this chart just after the release of the Census data on March 2, 2011. (Hofeller Dep. p. 80:4-25; 81:1 (D.E. ## 74-1, p. 8; 102-1. pp. 285-86); Dr. Hofeller, Trial Tr. vol. V, 89:17-91:16, 94).
32. The software Dr. Hofeller used to draw the challenged districts (Maptitude) contained a program that enabled him to identify the level of black voting age population in each census block in the state.
33. Using Maptitude, Dr. Hofeller grouped together voter tabulation districts (“VTD” is essentially synonymous with “precinct”) that in the aggregate hypothetically contained enough black voting age citizens to construct a Senate or House district with a black voting age population greater than 50%. Race was the sole factor used to draw the boundaries of these prototypical districts. They were drawn without regard for any traditional redistricting criteria. (First Hofeller Decl. ¶¶ 17-23 (D3029); Second Hofeller Decl. ¶¶ 10-25 (D3030)).
34. Dr. Hofeller then examined these areas in relation to clusters of counties he separately formed to comply with the Whole County Provision (WCP) as explained by the North Carolina Supreme Court in *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002). He then drew the boundaries of the challenged districts with a black voting age population greater than 50% within these county clusters. Dr. Hofeller testified the boundaries of these districts were “substantially based” on the “exemplar districts” that he drew based on race without regard for traditional redistricting principles. (First Hofeller Decl. ¶ 31 (D3029)). Rep. Lewis agrees. (Second Lewis Dep. p. 38:8-19 (D.E. ## 74-1, p. 13; 102-1, p. 520)).
35. The boundaries of these 50% plus districts were drawn within these clusters without regard for internal county boundaries within a cluster and without regard for precinct, town, and city boundaries. For example, in the Senate plan, in drawing SD 5 Dr. Hofeller divided 3 counties, 3 towns, and 40 precincts along racial lines in order to include a sufficient number of black voting age citizens to meet Sen. Rucho’s 50% plus instruction. *Infra* FOF ¶¶ 79, 81, 82 Similarly, for example, in the House plan, in drawing HD 48 Dr. Hofeller divided 4 counties, 5 towns and 31 precincts along racial lines in order to include a sufficient number of

black voting age citizens to meet Rep. Lewis' 50% plus instruction. *Infra* FOF ¶¶ 242, 244, 245.

36. Compliance with Sen. Rucho's and Rep. Lewis' 50% plus direction was not an easy task. Dr. Hofeller testified: "as you tried to lift the black voting-age population in the districts up above 50 percent, it became increasingly difficult to include territory in those districts which had the requisite number of African-American adults in them percentage-wise. So as you were reaching out to do that, it became more and more difficult, and that, in turn, governed the shapes of those districts." (Dr. Hofeller, Trial Tr. vol. V, 20:9-19). Dr. Hofeller also testified that "as you attempt to raise the minority percentage in some of these districts...it became increasingly difficult to find areas that had high percentages of African-Americans to raise that district up." (Dr. Hofeller, Trial Tr. vol. V, 32:17-21).
37. This "reaching out" to find African-Americans to assign to the challenged districts "governed the shapes of those districts." (Dr. Hofeller, Trial Tr. vol. V, 20:12-19).
38. Dr. Hofeller did not view the election results prepared by General Assembly staff before he drew the plans or before they were enacted. (Dr. Hofeller, Trial Tr. vol. V, 80:16-22).
39. Dr. Hofeller did not do any analysis to see whether candidates of choice of black voters were being elected in districts with less than 50% BVAP while drawing the VRA districts. Nor did he do any analysis of racially polarized voting in state legislative elections in North Carolina before drawing the VRA districts. (Dr. Hofeller, Trial Tr. vol. V, 80:23-82:20).

**C. Traditional Redistricting Criteria Were Ignored by Defendants in Drawing the Challenged Districts**

40. Under the North Carolina Constitution, as interpreted by Sen. Rucho and Rep. Lewis, the General Assembly could traverse the boundary of a county only in order to draw a district required to comply with the Voting Rights act or to meet one person, one vote requirements. (Dr. Hofeller, Trial Tr. vol. V, 24:23 to 25:2; Second Lewis Dep. pp 33:4 to 34:9 (D.E. # 74-1, p. 13; 102-1, pp. 518-19)).
41. Sen. Rucho and Rep. Lewis acknowledged that proportionality is not a requirement of the VRA. (Rep. Lewis, Trial Tr. vol. III, 196:12-14). Nevertheless, they traversed the boundaries of numerous counties, and assigned the citizens of those counties to districts on racial grounds, in order to achieve their proportionality goal. (Hofeller Trial Tr. vol. V, 24:23 to 25:2; Second Lewis Dep. 34:4-9 (D.E. # 74-1, p. 13, 102-1, p. 519)).

42. Sen. Rucho and Rep. Lewis also traversed the boundaries of numerous counties, and assigned the citizens of those counties to districts on racial grounds, based on their mistaken belief that all districts drawn to comply with the VRA had to contain a majority of African-American citizens of voting age regardless of the demonstrated ability of African Americans to elect their candidates of choice in those districts. At trial, Dr. Hofeller cited HD 12, 21, and 48 as examples of this practice. (Dr. Hofeller, Trial Tr. vol. V,18:4-9).
43. North Carolina law forbids the unnecessary splitting of precincts. N.C. Gen. Stat. § 163-132.1B(a) provides: “The State of North Carolina shall participate in the 2010 Census Redistricting Data Program...so that the State will...be able to revise districts at all levels without splitting precincts.” (P2028). On June 17, 2011, the same day that Sen. Rucho and Rep. Lewis released their first Senate and House maps containing hundreds of split precincts, the General Assembly enacted legislation requiring Guilford county to “minimize the dividing of precincts” in redrawing county commission lines. (S.L. 2011-172, Sec 2.1 (June 17, 2011) (P2029); Sen. Blue, Trial Tr. vol. I, 55:16-56:13).
44. Nevertheless, Sen. Rucho and Rep. Lewis did not instruct Dr. Hofeller to comply with this law when drawing the challenged districts. (Rep. Lewis, Trial Tr. vol. III, 203:18-20). As Rep. Lewis said at the July 22 House Redistricting Committee meeting, keeping precincts and VTDs whole “was not a consideration in the drafting of this plan.” (7/22 House Comm. 6: 2-7 (J1019-6)). Thus, Dr. Hofeller divided precincts along racial lines as needed in order to meet Sen. Rucho’s and Rep. Lewis’ directions to draw “true” majority black districts in numbers proportional to the state black voting age population. (Sen. Rucho, Trial Tr. vol. IV, 43:16-18).
45. Compactness is a traditional redistricting criterion that should be observed by the General Assembly in drawing legislative districts. *See Stephenson v. Bartlett*, 355 N.C. 354, 384, 562 S.E.2d 377, 397 (2002) (listing “compactness, contiguity and respect for political subdivisions” as “traditional redistricting criteria” upheld by the North Carolina Constitution).
46. Nevertheless, Sen. Rucho and Rep. Lewis did not instruct Dr. Hofeller to keep the challenged districts compact, and neither of them, nor the committees they chaired, ever adopted any definition of compactness to apply in drawing districts. (Rep. Lewis, Trial Tr. vol. III, 203:13-205:24; Sen. Rucho, Trial Tr. vol. IV, 40:1-41:21). Dr Hofeller testified that compactness was not a “primary” or even “secondary” criterion in drawing the challenged districts. (Dr. Hofeller, Trial Tr. vol. V, 97:16 -98:1).

47. Respect for the boundaries of political subdivisions is a traditional redistricting criterion that should be observed by the General Assembly in drawing legislative districts. *See Stephenson v Bartlett, supra.*
48. Nevertheless, Sen. Rucho and Rep. Lewis did not instruct Dr. Hofeller to preserve the boundaries of towns and cities when drawing the challenged districts. (Rep. Lewis, Trial Tr. vol. III, 202:1-4). Dr. Hofeller in fact divided towns and cities as necessary to meet Sen. Rucho's and Rep. Lewis' 50%-plus-one rule. *See infra* FOF 75, 82, 93, 101, 111, 122, 132, 145, 156, 165, 175, 184, 193, 206, 215, 226, 236, 245, 254, 272.
49. The preservation of communities of interest is a traditional redistricting criterion in North Carolina. *See Stephenson v Bartlett, supra.*
50. Nevertheless, Sen. Rucho and Rep. Lewis did not instruct Dr. Hofeller to preserve communities of interest when drawing the challenged districts, (Rep. Lewis, Trial Tr. vol. III, 202:5-8), and neither of them, nor the committees they chaired, ever adopted any definition of communities of interest to apply in drawing districts. (Rep. Lewis, Trial Tr. vol. III 202:22 to 203:17).

**D. The General Assembly Enacted the Race-Based Districts as Drawn by Dr. Hofeller without Substantial Modification.**

51. On June 17, Senator Rucho and Representative Lewis made public Senate and House maps drawn by Dr. Hofeller. These maps were drawn using the process described above. They met the three oral directions Sen. Rucho and Rep. Lewis had given Dr. Hofeller earlier. First, the maps were partial maps containing only VRA districts. Second, Dr. Hofeller assigned voters to these VRA districts so that more than 50% of the voting age population in each district was African American. Third, the plans provided "substantial proportionality for North Carolina's African American citizens." (June 17 public statement (J1005)).
52. The maps of SD 4, 5, 14, 20, 28, 38, and 40 as drawn by Dr. Hofeller and as first presented by Sen. Rucho on June 17, were enacted by the General Assembly on July 27 without any substantial modification to their location, shape, or level of black voting age population. (P2072-1-4, 6, 8-9).
53. Two challenged Senate districts were modified after June 17 and before enactment. *See* 7/21 Senate Comm. 16:3 to 17:6 (J1013-16-17).
54. SD 21 was modified by increasing the black voting age population from 51.05% to 51.53%, incorporating Hoke County into the district, and making the part of the

district in Cumberland County more irregular. (P2072-5; Sen. Rucho, Trial Tr. vol. IV, 44-45).

55. SD 32 was modified between June 17 and July 27 to increase the black voting age population from 39.32% to 42.53%. This change required splitting an additional 42 precincts and made the district's shape more irregular. (P2072-7; Sen. Rucho, Trial Tr. vol. IV, 37:6-39:19).
56. The maps of HD 5, 12, 21, 29, 31, 32, 33, 38, 42, 43, 48, 57, 58, 60, 99, 102, and 107, as drawn by Dr. Hofeller and as first presented by Rep. Lewis on June 17, were enacted by the General Assembly on July 28 without any material modification to their location, shape, or black voting age population. (P2022-10-12, 14-17; Rep. Lewis, Trial Tr. vol. III, 213:9-214:2).
57. Two challenged House districts were modified after June 17 and before enactment. *See* 7/21 House Comm. 6:19 to 7:9 (J1018-6-7).
58. HD 21 was moved out of part of Pender County into part of Duplin County and HD 24 was moved out of part of Beaufort County into part of Wilson County. These changes did not, however, reduce the black voting age population in these districts below 50%, reduce the number of split precincts, or make the boundaries of the districts more regular.<sup>2</sup> (P2022-12-13).

**E. When Sen. Rucho and Rep Lewis Released their Maps of the Challenged Districts on June 17, They told the Public and Other Legislators that the Race-Based Criteria Used to Draw the Challenged Districts Would Not Be Compromised.**

59. Five days after Sen. Rucho and Rep. Lewis released their maps of "VRA districts" and issued their first public statement, they released another public statement. In their June 22 public statement, they told other legislators and the public: "We would entertain any specific suggestions...to form the core of alternative majority black districts, provided the districts proposed provide black voters with a

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<sup>2</sup> A majority minority district in the southeast was eliminated because of opposition from local citizens but that did not keep Rep. Lewis from meeting his proportionality goal. As he explained at the July 21 meeting of the House redistricting Committee, the remaining districts "continue to provide black voters with substantially proportional and equal opportunity to elect their candidates of choice." 7/21 House Comm. p. 7:1-9 (J1018-7). Also, HD 23 was modified between June 17 and July 28 to create a district composed entirely of whole counties (Martin and Edgecombe). As a result, HD 23 is not challenged as a racial gerrymander in this litigation.

substantially proportional state-wide opportunity to elect candidates of their choice. Moreover, any such districts must comply with *Strickland v Bartlett*, and be drawn at a level that constitutes a true majority of black voting age population.” June 22 public statement p. 7 (J1006-7). Any alternative districts drawn under the conditions prescribed by Sen. Rucho and Rep. Lewis would look “rather grotesque.” (Sen. Blue, Trial Tr. vol. I, 85:18-20).

60. Similarly, at the July 21 meeting of the House Redistricting Committee, Rep. Lewis told his colleagues: “As we have defined before... we do indeed consider the construction of the VRA districts to have a higher precedent than the Stephenson formula for county combinations.” (7/21 House Comm. 36:25 to 37:5 (J1018-36-37)).

61. Consistent with their no-compromise position, Sen. Rucho and Rep. Lewis categorically rejected any plan that did not contain “true” majority black districts in numbers proportional to the State’s Black population. *See* 7/21 Senate Comm. 19:3 to 21:11 (J1013-19-21) and 7/21 House Comm. 8:15 to 9:22 (J1018-8-9). *See also* Rep. Lewis, Trial Tr. vol. III, 223:23 to 225:4 (draft AFRAM maps rejected because they did not comply with 50% and proportionality rules).

F. **The State’s Section 5 Submissions to the U.S. Department of Justice Confirm that the Enacted Senate and House Plans Met Sen. Rucho’s and Rep. Lewis’ Race-Based Goals.**

62. As then required by Section 5 of the Voting Rights Act, the State submitted the enacted Senate and House plans to the U.S. Department of Justice for preclearance. Confirming that the enacted Senate plan met Sen. Rucho’s 50% plus and proportionality directions to Dr. Hofeller, the State informed the Department of Justice of the following:

i. The 2011 Senate Plan increases minority voting strength as compared to the 2003 Senate Plan. Under the 2010 Census, the 2003 Senate Plan contained no districts with a TBVAP in excess of 50% and eight districts in which African-Americans constituted a TBVAP of over 40%. (Senate Submission, S27N, page 10 (J1023-10)).

ii. The 2011 Senate Plan, in contrast, includes nine districts in which African-Americans constitute a majority of the voting age population, and a tenth district with a TBVAP of 42.53%. Indeed, the 2011 Plan increases the TBVAP in all eight of the benchmark districts that had a TBVAP above 40%, and increases the TBVAP in seven of these districts to over 50%, while also adding two

additional majority black districts where the comparable districts in the benchmark plans had TBVAP percentages below 40%. Thus, in each of the eight previous districts with TBVAP over 40%, plus the two new majority black districts, the 2011 Plan not only preserves, but actually increases, the black population's ability to elect its candidate of choice. (Senate Submission, S27N, page 10 (J1023-10)).

63. Similarly confirming that the House plan met Rep. Lewis' 50% plus and proportionality directions to Dr. Hofeller, the State informed the Department of Justice:
  - i. The 2011 House Plan increases minority voting strength as compared to the 2009 House Plan. Under the 2010 Census, the 2009 House Plan contains ten House districts that have a majority TVBAP and eleven districts with a TVBAP of 39.99% to 50%. (House Submission H27N, page 10 (J1024-10)).
  - ii. The 2011 Plan, in contrast, includes twenty-three districts in which African Americans constitute a majority of the voting age population and two additional districts with a TBVAP of 40% to 50%. As a result, the number of districts above 50% TBVAP in the 2011 Plan is two higher than the number of districts above 39.99% TBVAP in the 2009 Plan. (And because the 2011 Plan also includes two districts between 40% and 50%, there are four more districts above 40% in the 2011 Plan compared to the benchmark plan.) Thus, the 2011 Plan not only preserves, but significantly increases, the minority population's ability to elect their candidates of choice. (House Submission H27N, page 10 (J1024-10)).
64. To cement these points, the State included the following declaration from Dr. Hofeller as a part of its Section 5 submission:
  - i. "the newly enacted 2011 redistricting plans for the N.C. General Assembly place African Americans of voting age in a far superior position to elect candidates of their choice than in the 2003 Senate and 2009 House plans." Senate submission S27N(o) (emphasis added).

**G. Dr. Arrington's Precinct Analysis Confirms the Predominance of Race in Drawing the Challenged Districts**

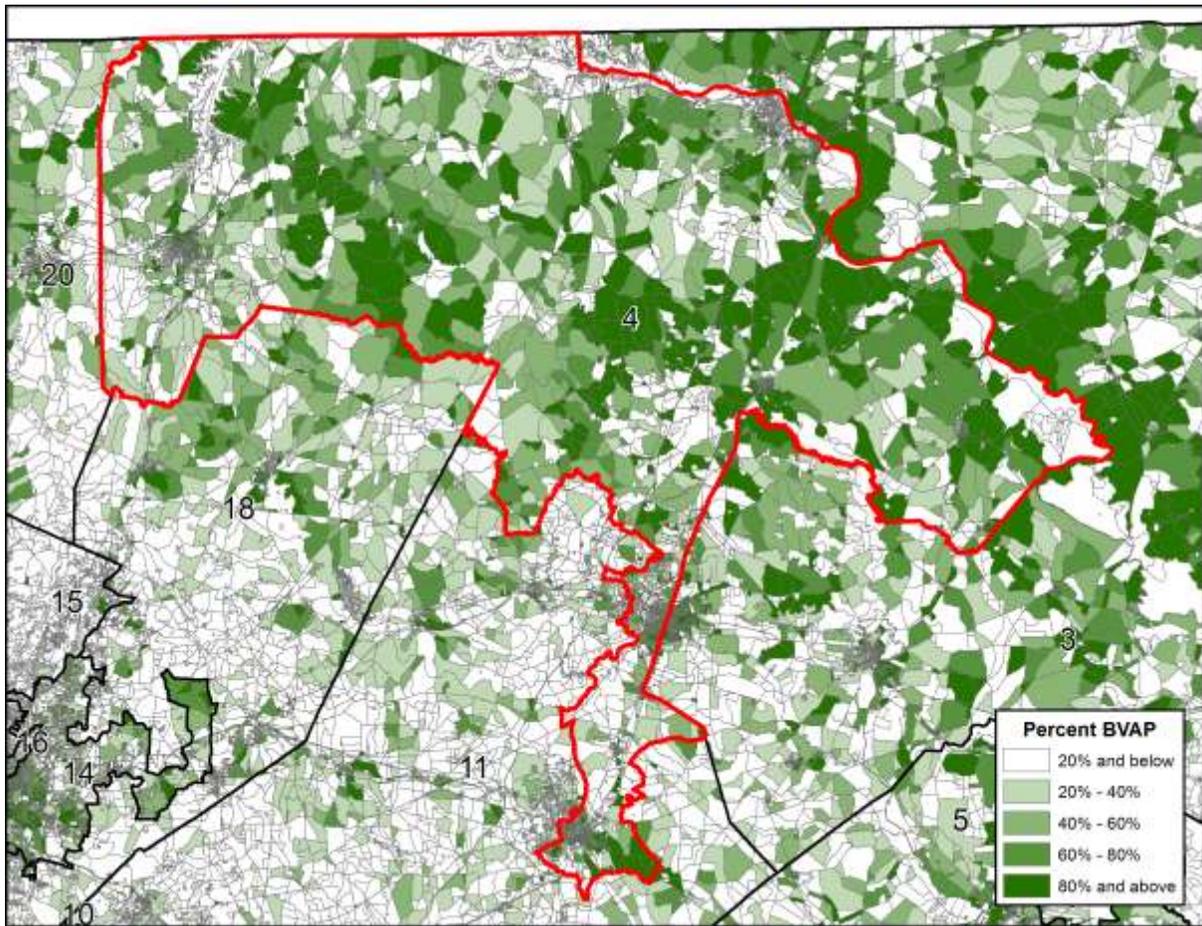
65. Expert analysis by Dr. Theodore Arrington proved that race was the predominant reason for the splitting of precincts in the challenged plans. (Dr. Theodore Arrington, Trial Tr. vol. I, 121:7-16).
66. Dr. Arrington testified that the Senate plan split 257 precincts, or 9.7% of all precincts in the state, and that the House plan split 395 precincts, or 14.7% of all the precincts in the state. (Dr. Arrington, Trial Tr. vol. I, 112:23-113:7; P2091-3; P2092-8).
67. Dr. Arrington's analysis of precincts split in the Senate plan showed that the Senate plan split precincts and assigned the white pieces of the split precinct to predominantly white districts and the black pieces to predominantly black districts. This assignment by race occurred to a statistically significant degree, meaning that it did not just happen by chance. (Dr. Arrington, Trial Tr. vol. I, 118-19:7-22; P2091-7, P2091-9; P2092-10).
68. Likewise, the House plan also split precincts and assigned the white pieces of the split precinct to predominantly white districts and the black pieces to predominantly black districts. Again, this assignment by race occurred to a statistically significant degree. (Dr. Arrington, Trial Tr. vol. I, 120:5-121:16; P2091-9-P2091-10; P29-092-10).
69. Precincts were also disproportionately split where black and white districts met, rather than where two predominantly black or two predominantly white districts met. Additionally, the precincts most likely to be split were racially-diverse ones—that is, not predominantly white or predominantly African-American precincts. (Dr. Arrington, Trial T. vol. I, 121:17-124:11; P2091-11; P2092-10-P2092-11).

**H. The Characteristics of the Challenged Senate Districts Confirm that Race, not Traditional Redistricting Criteria, Explains the Boundary of Each Challenged Senate District.**

**Senate District 4**

70. The black voting age population (any part black) in the 2003 version of SD 4, based on the 2000 census, was 49.14% and the black voting age population (any part black) in the 2003 version of SD 4, based on the 2010 census, was 49.70%. (Third Stip. ¶ 2).

71. In accordance with Sen. Rucho's directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 4 to 52.75%. (Third Stip. ¶ 3).
72. Based on the 2010 census, the 2003 version of SD 4 was under populated by 27,256 persons. Dr. Hofeller used race to correct this population deviation for SD 4 and meet Sen. Rucho's 50% plus instruction. As redrawn in 2011, SD 4 contains 20,577 more black persons than the 2003 version and 916 more white persons than the 2003 version. (Third Stip. ¶ 4).
73. Dr. Hofeller divided both Nash County and Wilson County along racial lines in order to reach Sen. Rucho's 50% plus directions for SD 4. The black voting age population in the part of Nash County in SD 4 is 51.03% and the black voting age population in the part of Nash in SD 11 is 25.78%. (Defendants' Answer to Amended Complaint (hereinafter "Answer") ¶ 75). The black voting age population in the part of Wilson County in SD 4 is 63.62% and the black voting age population in the part of Wilson in SD 11 is 24.10%. (Answer ¶ 77).
74. The 2011 version of SD 4 divides 2 precincts. Dr. Hofeller divided those precincts along racial lines in order to reach Sen. Rucho's 50% plus directions for SD 4. Of the 2,686 black voting age persons who reside in the 2 divided precincts in the 2011 version of SD 4, 2,207 (82.2%) were assigned to SD 4. (Third Stip. ¶¶ 5, 6).
75. Dr. Hofeller divided both the City of Wilson and the City of Rocky Mount along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 4. 11,401 of the 17,137 black voting age persons in the City of Wilson (66.53%) are assigned to SD 4 and the remaining 5,735 black voting age persons to SD 11. 12,364 of the 14,673 black voting age persons residing in the part of the City of Rocky Mount in Nash County (84.26%) are assigned to SD 4 and the remaining 2,309 black voting age persons are assigned to SD 11. (Third Stip. ¶¶ 7, 8).
76. Below is a map of SD 4 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 4. (Third Stip. ¶ 18).

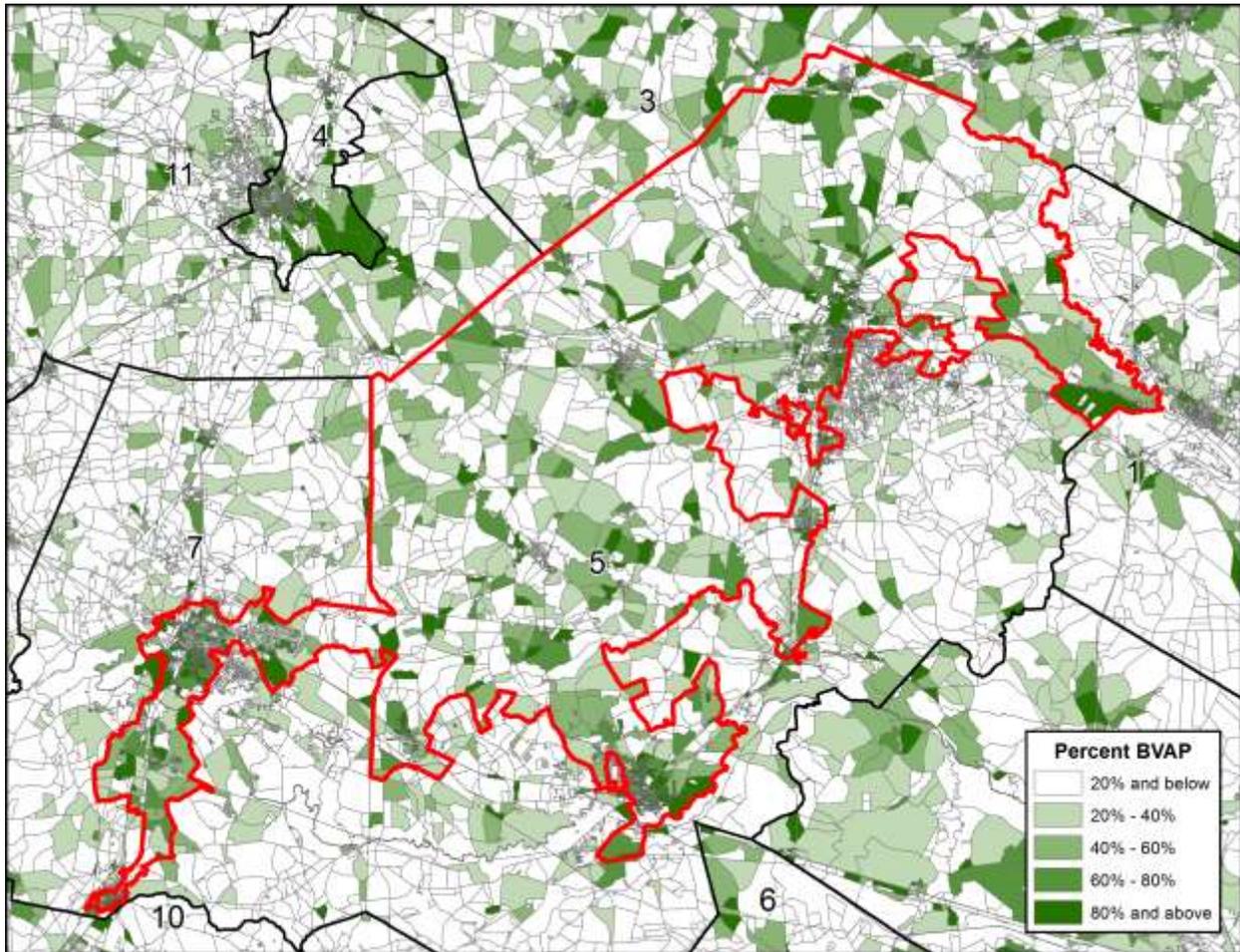


**Senate District 5**

77. The black voting age population (any part black) in the 2003 version of SD 5, based on the 2000 census, was 30.14%, and the black voting age population (any part black) in the 2003 version of SD 5, based on the 2010 census, was 30.99. (Third Stip. ¶ 20).
78. In accordance with Sen. Rucho’s directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 5 to 51.97%. (Third Stip. ¶ 21).
79. Dr. Hofeller divided Lenoir County, Pitt County and Wayne County along racial lines in order to meet Sen. Rucho’s 50% plus directions for SD 5. The black voting age population in the part of Lenoir County in SD 5 is 64.59% and the black voting age population in the part of Lenoir in SD 7 is 25.78%. (Answer ¶ 83). The black voting age population in the part of Pitt County in SD 5 is 64.59% and the black voting age population in the part of Pitt in SD 11 is 16.16%. (Answer ¶ 85). The black voting age population in the part of Wayne County in

SD 5 is 55.95% and the black voting age population in the part of Wayne in SD 11 is 16.17%. (Answer ¶ 87).

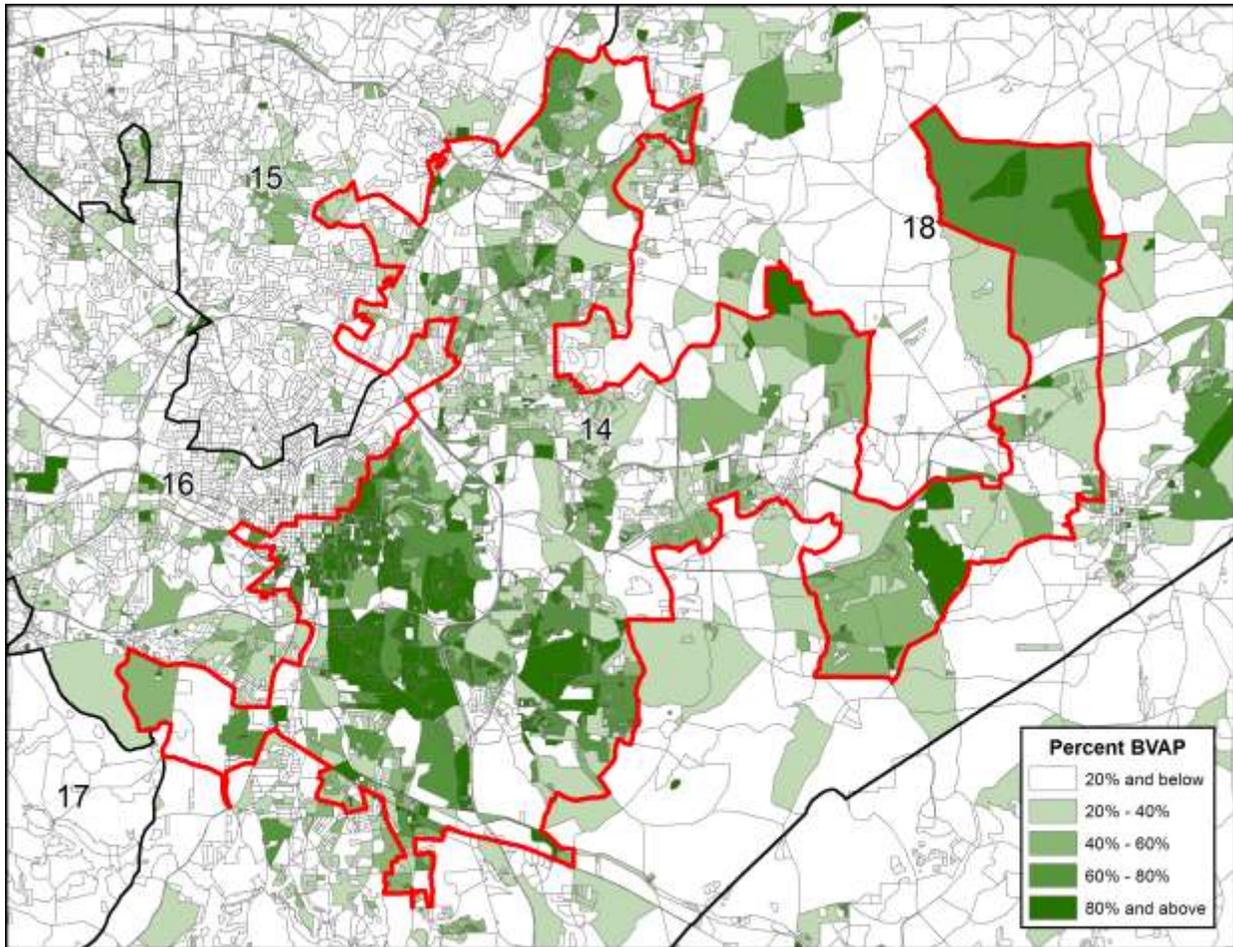
80. Based on the 2010 census, the 2003 version of SD 5 was under populated by 6,811 persons. Dr. Hofeller used race to correct this population deviation for SD 5 and meet Sen. Rucho's 50% plus instruction. As redrawn in 2011 SD 5 contains 38,181 more black persons than the 2003 version and 38,250 fewer white persons than the 2003 version. (Third Stip. ¶ 22).
81. SD 5 as drawn in 2011 divided 40 precincts. Dr. Hofeller divided these 40 precincts along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 5. Of the 43,084 black voting age persons who reside in the 40 divided precincts in the 2011 version of SD 5, 30,418 (70.6%) were assigned to SD 5. (Third Stip. ¶¶ 23, 24).
82. Dr. Hofeller divided the Cities of Goldsboro, Kinston, and Greenville along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 5. 13,565 of the 14,784 black voting age persons in the City of Goldsboro (91.75%) are assigned to SD 5 and the remaining 1,219 black voting age persons are assigned to SD 7; 10,200 of the 10,868 black voting age persons in the City of Kinston (93.85%) are assigned to SD 5 and the remaining 668 black voting age persons are assigned to SD 7; 17,510 of the 23,409 black voting age persons in the City of Greenville (74.80%) are assigned to SD 5 and the remainder to SD 7. (Third Stip. ¶¶ 25-27).
83. SD 5 is less compact than the benchmark district on 8 out of 8 compactness measures that Maptitude computes. (Anthony Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-1, 2).
84. In the 2011 version of SD 5, the district reaches an awkwardly-shaped appendage into Lenoir County, a county in which the district had not previously been, to grab Kinston and La Grange, both heavily black communities. The district became substantially less compact in order to do so. (Pridgen, Trial Tr. vol. I, 209:16-211:8).
85. Below is a map of SD 5 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 5. (Third Stip. ¶ 33).



**Senate District 14**

86. The black voting age population (any part black) in the 2003 version of SD 14, based on the 2000 census, was 41.01%, and the black voting age population (any part black) in the 2003 version of SD 14, based on the 2010 census, was 42.62%. (Third Stip. ¶ 35).
87. In accordance with Sen. Rucho’s directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 14 to 51.28%. (Third Stip. ¶ 36).
88. Based on the 2010 census, the 2003 version of SD 14 was overpopulated by 41,804 persons. Dr. Hofeller used race to correct this population deviation for SD 14 and meet Sen. Rucho’s 50% plus instruction. As redrawn in 2011, SD 14 contains 2,145 fewer black persons than the 2003 version and 38,040 fewer white persons than the 2003 version. (Third Stip. ¶ 37; Sen. Blue, Trial Tr. vol. I, 68:15-69:3).

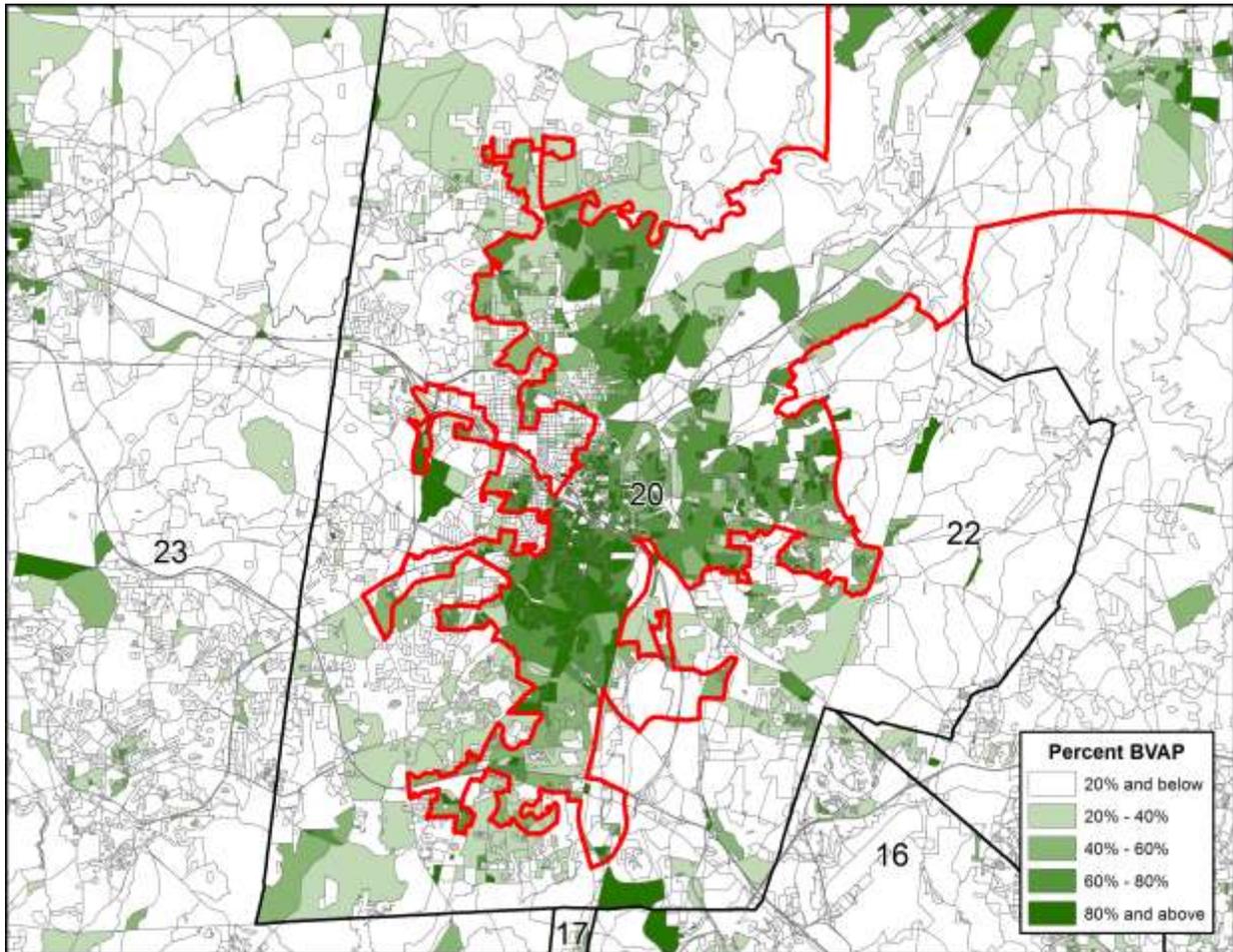
89. Five Senate districts are located in Wake County. Dr Hofeller assigned more black voting age citizens to SD 14 (69,779) than to the other four districts combined (67,592). (Answer ¶ 93).
90. The 2011 version of SD 14 divided 29 precincts. Dr. Hofeller divided those 29 precincts along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 14. Of the 36,179 black voting age persons who reside in the 29 divided precincts in the 2011 version of SD 14, 23,197 (64.1%) were assigned to SD 14. (Third Stip. ¶¶ 38, 39). Among the precincts divided by Dr. Hofeller on racial grounds, was the precinct in which Sen. Blue resides. (Sen. Blue, Trial Tr. vol. I, 54:16-21).
91. Approximately two-thirds of the precincts in SD 14 are split. (Sen. Blue, Trial Tr. vol. I, 54).
92. SD 14 is less compact than the benchmark district on 8 out of 8 compactness measures that Maptitude computes. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-1, 2).
93. Dr. Hofeller divided the City of Raleigh and the Town of Knightdale along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 14. 57,376 of the 87,669 black voting age persons in the part of the City of Raleigh in Wake County (65.44%) are assigned to SD 14 and the remaining 30,293 black voting age persons are divided among SD 15, 16 and 18; 2,931 of the 3,043 black voting age persons in the Town of Knightdale (96.31%) are assigned to SD 14 and the remaining 112 black voting age persons are assigned to SD 18. (Third Stip. ¶¶ 40, 41).
94. As Sen. Blue testified, the crab or claw-like shape of SD 14 reflects the efforts of the map drawer to bring black voters into SD 14 and separate out white voters from the district. (Sen. Dan Blue, Trial Tr. vol. I, 52:2-13).
95. Below is a map of SD 14 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 14. (Third Stip. ¶ 51).



**Senate District 20**

96. The black voting age population (any part black) in the 2003 version of SD 20, based on the 2000 census, was 44.5, and the black voting age population (any part black) in the 2003 version of SD 20, based on the 2010 census, was 44.64%. (Third Stip. ¶ 53).
97. In accordance with Sen. Rucho’s instructions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 20 to 51.04%. (Third Stip. ¶ 54).
98. Based on the 2010 census, the 2003 version of SD 20 was under populated by 9,086 persons. Dr. Hofeller used race to correct this population deviation for SD 20 and meet Sen. Rucho’s 50% plus instruction. As redrawn in 2011 SD 20 contains 15,008 more black persons than the 2003 version and 3,576 fewer white persons than the 2003 version. (Third Stip. ¶ 55).

99. Two Senate districts are located in Durham county. Dr. Hofeller assigned 62.29% of the Black voting age citizens in Durham county to SD 20. (Answer ¶ 100).
100. As reported on the NCGA redistricting website, SD 20 as drawn in 2011 divided 35 precincts. Dr. Hofeller divided those 35 precincts along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 20. Of the 46,744 black voting age persons who reside in the 35 divided precincts in the 2011 version of SD 20, 29,837 (63.8%) were assigned to SD 20. (Third Stip. ¶¶ 56, 57; Milo Pyne, Trial Tr. vol. II, 155:14-24).
101. Dr. Hofeller also divided the City of Durham along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 20. 54,690 of the 71,081 black voting age persons in the part of the City of Durham in Durham County (76.94%) are assigned to SD 20 and the remaining 16,391 black voting age persons are assigned to SD 22. (Third Stip. ¶ 58).
102. SD 20 is less compact than the benchmark district on 7 out of 8 compactness measures that Maptitude computes. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-1, 2).
103. Plaintiff Milo Pyne testified that housing patterns in Durham have become more integrated over the years. Mr. Pyne lives adjacent to a West End neighborhood, an area with a higher African-American population. His precinct was split along racial lines, and the areas with higher African-American populations were placed in SD 20. He also testified that the area south of his precinct, which was not made part of SD 20, is Southpoint mall, an area that has experienced recent population growth where the newer neighborhoods are "more of a mixed demographic character." Of the approximately 1,200 African-American voters in Mr. Pyne's precinct, all but 21 of them are in SD 20. (Milo Pyne, Trial Tr. vol. II, 162:2-6, 164:17-165:7).
104. The only commonality between Granville County and the parts of Durham that are included in SD 20 is race: Granville County is mainly agricultural, with some light industry, and Durham is marked by commercial and service industries, with a university economy. The parts of Durham in the district are not agricultural at all. (Rep. Larry Hall, Trial Tr. vol. II, 199:5-16).
105. Below is a map of SD 20 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 20. (Third Stip. ¶ 67).

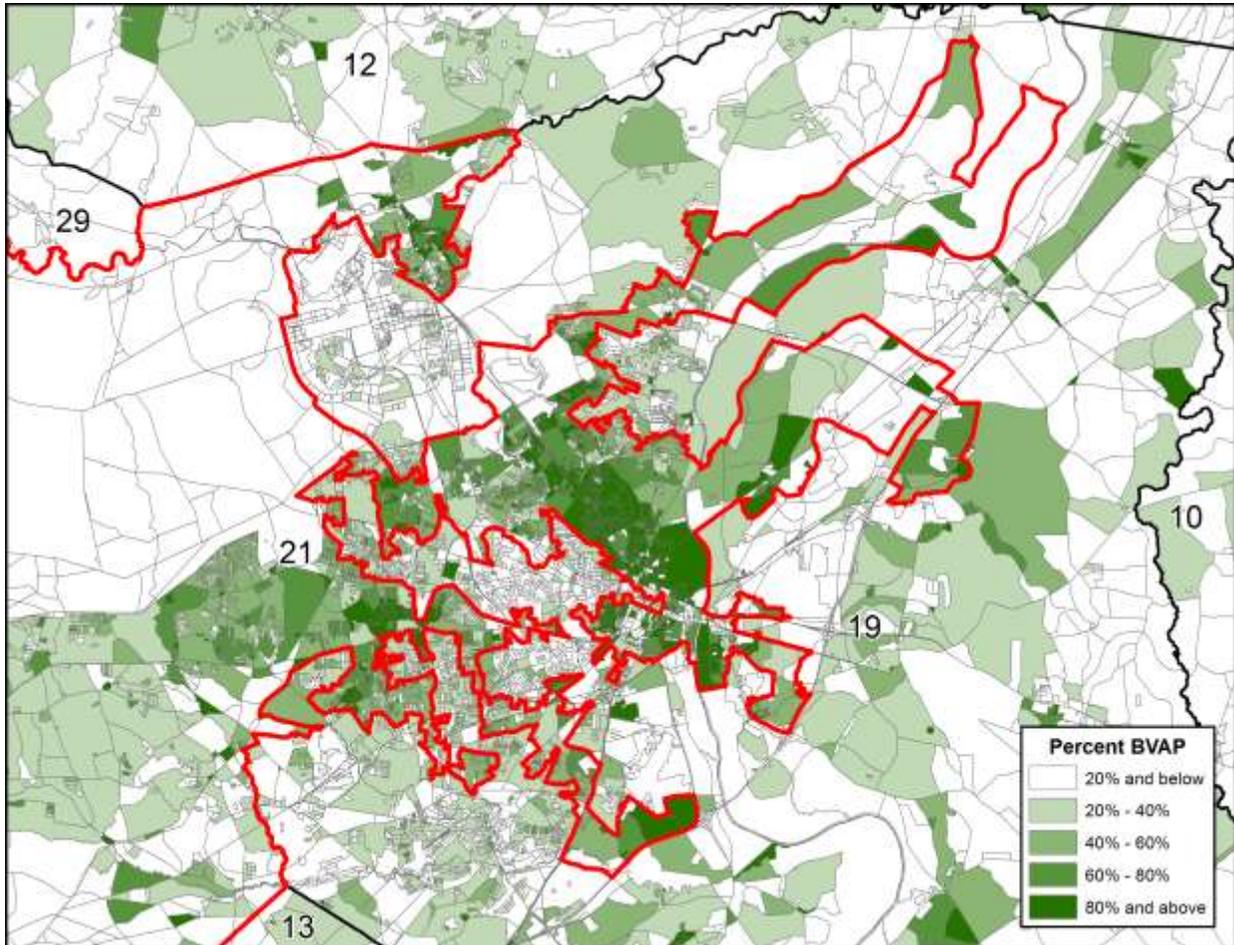


**Senate District 21**

106. The black voting age population (any part black) in the 2003 version of SD 21, based on the 2000 census, was 41.00%, and the black voting age population (any part black) in the 2003 version of SD 21, based on the 2010 census, was 44.93%. (Third Stip. ¶ 70).
107. In accordance with Sen. Rucho’s directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 21, based on the 2010 census to 51.53%. (Third Stip. ¶ 71).
108. Based on the 2010 census, the 2003 version of SD 21 was under populated by 25,593 persons. Dr. Hofeller used race to correct this population deviation for SD 21 and meet Sen. Rucho’s 50% plus instruction. As redrawn in 2011 SD 21 contains 20,286 more black persons than the 2003 version and 6,297 fewer white persons than the 2003 version. (Third Stip. ¶ 72).

109. Two Senate districts are located in Cumberland county. Dr. Hofeller assigned 65.07% of the black voting age citizens in Cumberland to SD 21. (Answer ¶ 111).
110. As reported on the NCGA redistricting website, SD 21 as drawn in 2011 divided 33 precincts. Dr. Hofeller divided those 33 precincts along racial lines in order to meet Sen. Rucho's 50% directions for SD 21. Of the 66,640 black voting age persons who reside in the 33 divided precincts in the 2011 version of SD 21, 40,213 (60.3%) were assigned to SD 21. (Third Stip. ¶¶ 73, 74; Dr. Eric Mansfield, Trial Tr. vol. II, 120:23-121:14).
111. Dr. Hofeller divided the City of Fayetteville and the Town of Spring Lake on racial grounds in order to meet Sen. Rucho's 50% plus directions for SD 21. 47,670 of the 63,138 black voting age persons in the City of Fayetteville (75.70%) are assigned to SD 21 and the remaining 15,468 black voting age persons are assigned to SD 19; 2,280 of the 3,267 black voting age persons in the Town of Spring Lake (69.87%) are assigned to SD 21; and the remaining 987 black voting age persons to SD 19. (Third Stip. ¶¶ 75, 76).
112. SD 21 is less compact than the benchmark district on 8 out of 8 compactness measures that Maptitude computes. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-1, 2).
113. SD 21 prior to the 2011 redistricting cycle was compact and only split one precinct; in the 2011 version, it split 33 precincts and became shaped like a "squid." The "squid" tentacles reach out to grab African American communities such as Hollywood Heights, Seabrook Hills and black neighborhoods along Bailey Lake Road, Graham Road, and South Reilly Road. White neighborhoods around the Gates 4 Golf and Country Club and on Rayconda Road—neighborhoods in close proximity to those black neighborhoods just described—are carved out of the district. (Sen. Eric Mansfield, Trial Tr. vol. II, 120:4-122:22; Covington, Trial Tr. vol. II, 99:8-100:15; P2108-4 (McNair Affidavit)).
114. As drawn in 2011, the district separates white voters from black voters, and suggests that only a black candidate can represent black voters and only a white candidate can represent white voters. In fact, the 2011 version of SD 21 removes three majority-white precincts that Senator Mansfield won over his white opponent in 2010 and replaced them with majority black precincts. Sen. Mansfield's own precinct, which is overwhelmingly Republican, is split in the 2011 plan to assign him to the majority-black district. (Sen. Mansfield, Trial Tr. vol. II, 120:23-132:19).
115. Below is a map of SD 21 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts.

This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 21. (Third Stip. ¶ 86).

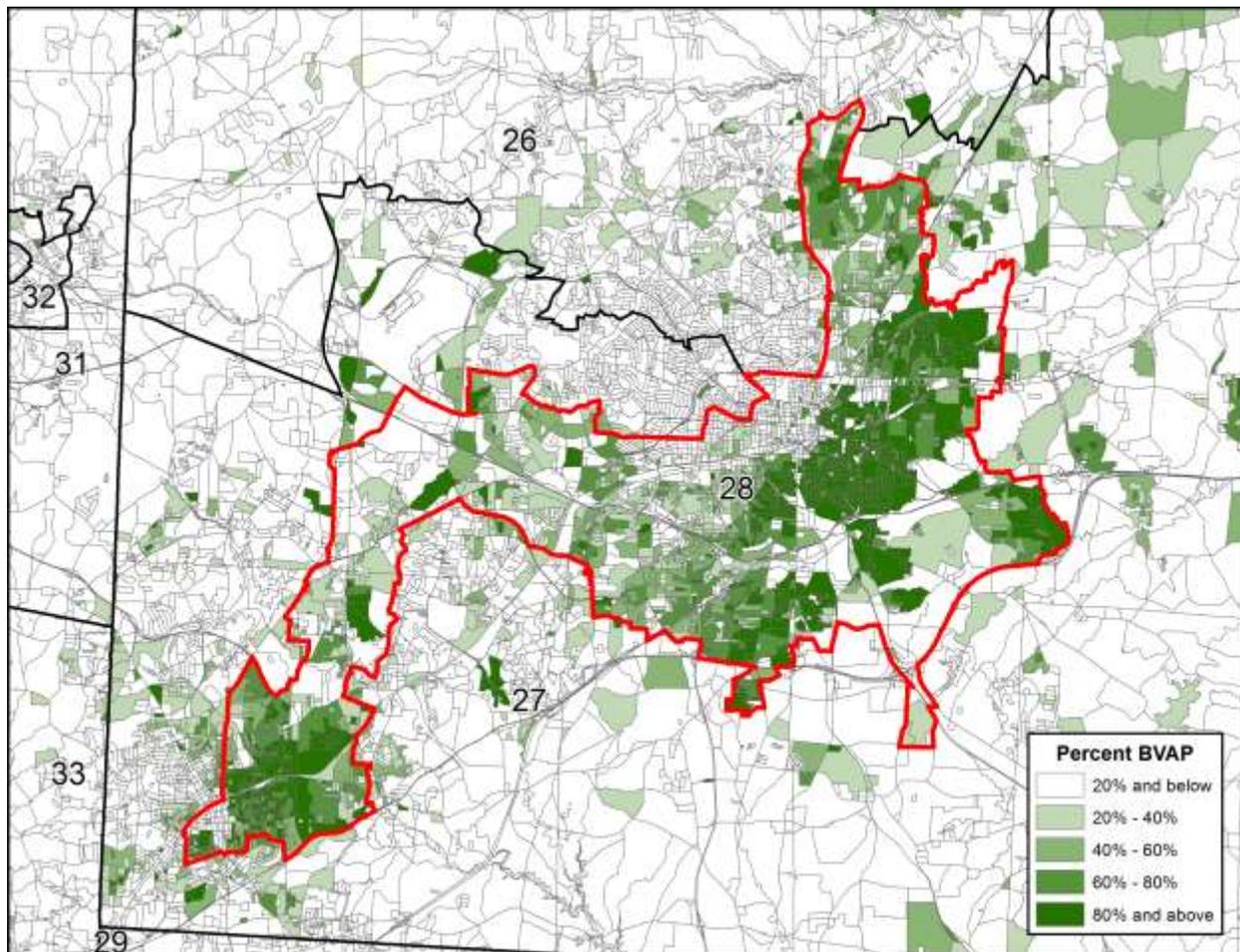


### Senate District 28

116. The black voting age population (any part black) in the 2003 version of SD 28, based on the 2000 census, was 44.18%, and the black voting age population (any part black) in the 2003 version of SD 28, based on the 2010 census, was 47.20%. (Third Stip. ¶ 88).
117. In accordance with Sen. Rucho's directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 28 to 56.49%. (Third Stip. ¶ 89).
118. Based on the 2010 census, the 2003 version of SD 28 was under populated by 13,673 persons. Dr. Hofeller used race to correct this population deviation for SD 28 and meet Sen. Rucho's 50% plus instruction. As redrawn in 2011 SD 28

contains 30,773 more black persons than the 2003 version and 12,508 fewer white persons than the 2003 version. (Third Stip. ¶ 90).

119. Three Senate districts are located in Guilford County. Dr. Hofeller assigned 82.45% of the black voting age citizens in Guilford to SD 28. (Third Stip. ¶¶ 93).
120. As reported on the NCGA redistricting website, SD 28 as drawn in 2011 divided 15 precincts. Dr. Hofeller divided those 15 precincts along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 28. Of the 17,966 black voting age persons who reside in the 15 divided precincts in the 2011 version of SD 28, 12,625 (70.4%) were assigned to SD 28. (Third Stip. ¶¶ 91, 92).
121. Yvonne Johnson testified that SD 28 was more compact in the prior plan. SD 28 now reaches down into High Point to pick up an African-American community. (Yvonne Johnson, Trial Tr. vol. I, 197:3-11).
122. Dr. Hofeller also divided the City of Greensboro and the City of High Point along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 28. 68,967 of the 83,647 black voting age persons in the City of Greensboro (82.45%) are assigned to SD 28 and the remaining 14,680 black voting age persons are divided between SD 26 and SD 27; 14,573 of the 24,173 black voting age persons in the part of the City of High Point in Guilford County (60.28%) are assigned to SD 28. (Third Stip. ¶¶ 93, 94).
123. SD 28 is less compact than the benchmark district on 5 out of 8 compactness measures that Maptitude computes. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-1, 2).
124. Below is a map of SD 28 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 28. (Third Stip. ¶¶ 103).

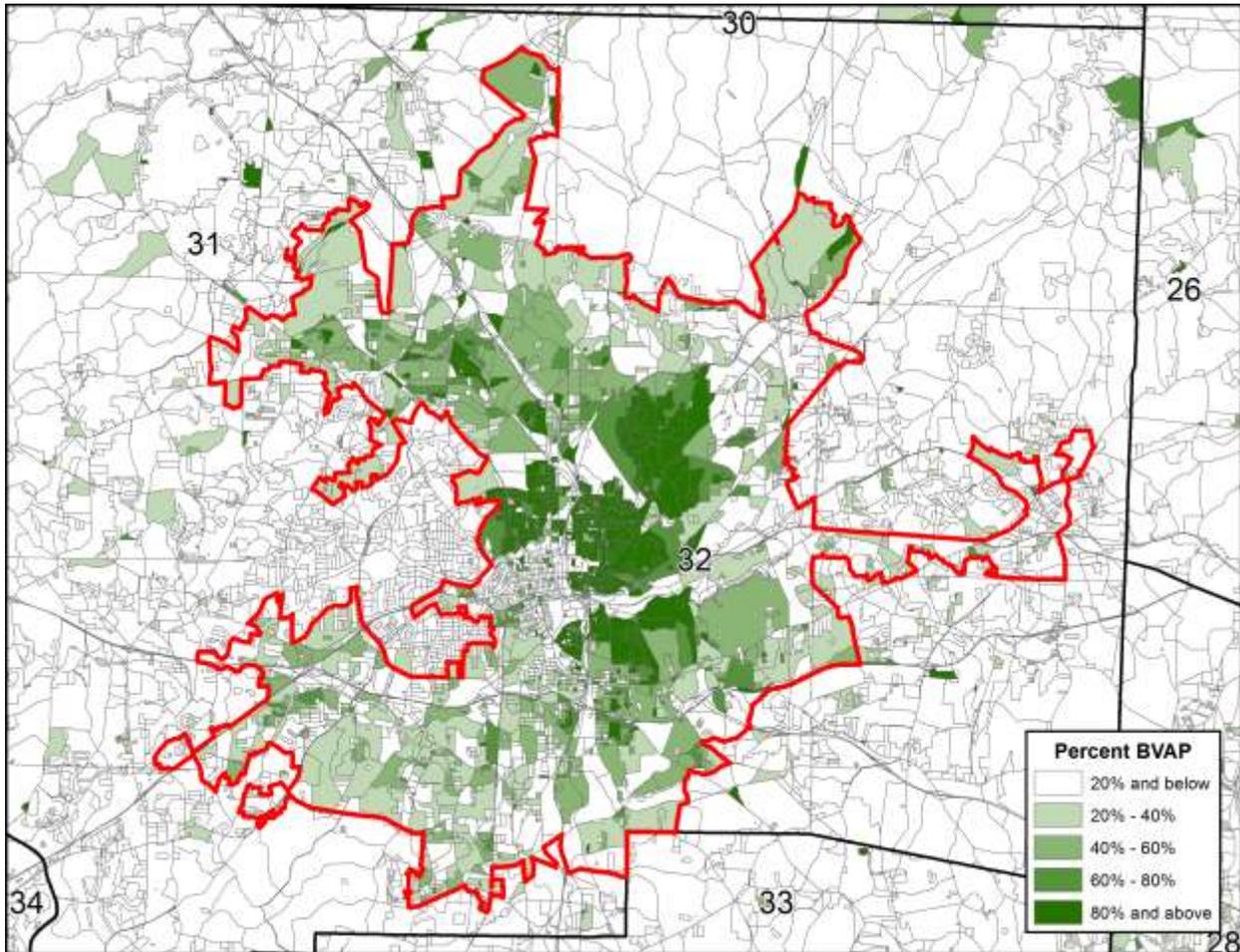


**Senate District 32**

125. As first drawn by Dr. Hofeller, the black voting age population in SD 32 was 39.32%. Sen. Rucho, however, later directed Dr. Hofeller to increase the black voting age population in that district in order that the black voting age population in the district would exceed the black voting age population in a district proposed by AFRAM on June 23, 2011. Dr. Hofeller complied with that direction and increased the black voting age population to 42.53%. (Third Stip. ¶ 107).
126. On the floor of the Senate on July 25, 2011, Sen. Rucho publicly acknowledged that he and Dr. Hofeller purposefully drew Senator Linda Garrou, a white senator, out of her district. Sen. Rucho stated, “we have also removed the white incumbent from the district who had previously defeated African-American primary challengers, and we think this will provide the minority community within the

district with a better opportunity to elect a candidate of their choice.” (7/25 Senate Tr. (J1015)). *See also* Sen. Rucho, Trial Tr. vol. IV, 54:2-55:19.

127. The precinct that Sen. Garrou lived in was split in order to remove her from the district. (Dickson Trial Tr. Vol. I, 164:4-165:12 (J1050-164-65); Dickson Tr. Ex. 31A, 31B (P2080, P2081)).
128. Sen. Linda Garrou was removed from Senate District 32 because of the color of her skin.
129. Dr. Hofeller testified that he redrew SD 32 because he was instructed to attempt to increase the black population to match districts proposed by AFRAM and the previous plan. (Dr. Hofeller, Trial Tr. vol. V, 21:22 to 22:3; 115).
130. There are two Senate districts in Forsyth County. Dr. Hofeller assigned 86.92% of the Black voting age citizens in Forsyth to SD 32. (Answer ¶ 114).
131. In order to comply with Sen. Rucho’s direction to increase the BVAP in SD 32, Dr. Hofeller had to divide a large number of precincts. As reported on the NCGA redistricting website, SD 32 as drawn in the first version of SD 32 only divided one precinct. The enacted version of SD 32, however, divided 43 precincts. Dr. Hofeller divided these 43 precincts along racial lines in order to meet Sen. Rucho’s direction. Of the 23,780 black voting age persons who reside in the 43 divided precincts in the 2011 version of SD 32, 18,903 (79.5%) were assigned to SD 32. (Third Stip. ¶¶ 109, 110; Sen. Rucho, Trial Tr. vol. IV, 37:6 to 39:1).
132. Dr. Hofeller also had to divide the City of Winston Salem along racial lines in order to comply with Sen. Rucho’s directions. According to the NCGA redistricting website, 56,528 of the 59,560 black voting age persons in the City of Winston Salem (94.27%) are assigned to SD 32 and the remaining 3,432 black voting age persons to SD 31. (Third Stip. ¶ 111).
133. SD 32 is less compact than the benchmark district on 7 out of 8 compactness measures that Maptitude computes. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-1, 2).
134. Below is a map of SD 32 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 32. (Third Stip. ¶ 119).



**Senate Districts 38 and 40 in Mecklenburg County**

- 135. Under the 2003 Senate plan, only one district located in Mecklenburg County had more than 40% black voting age population and no district had 50% black voting age population. In accordance with Sen. Rucho’s 50% plus goal and his proportionality goal, Dr. Hofeller drew two districts in Mecklenburg County in 2011 that had more than 50% black voting age population. (Third Stip. ¶¶ 443, 444).
- 136. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 version of SD 38, based on the 2000 census, was 47.69%, and the black voting age population (any part black) in the 2003 version of SD 38, based on the 2010 census, was 46.97%. (Third Stip. ¶ 121).
- 137. In accordance with Sen. Rucho’s directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 38, based on the 2010 census, to 52.51%. (Third Stip. ¶ 122).

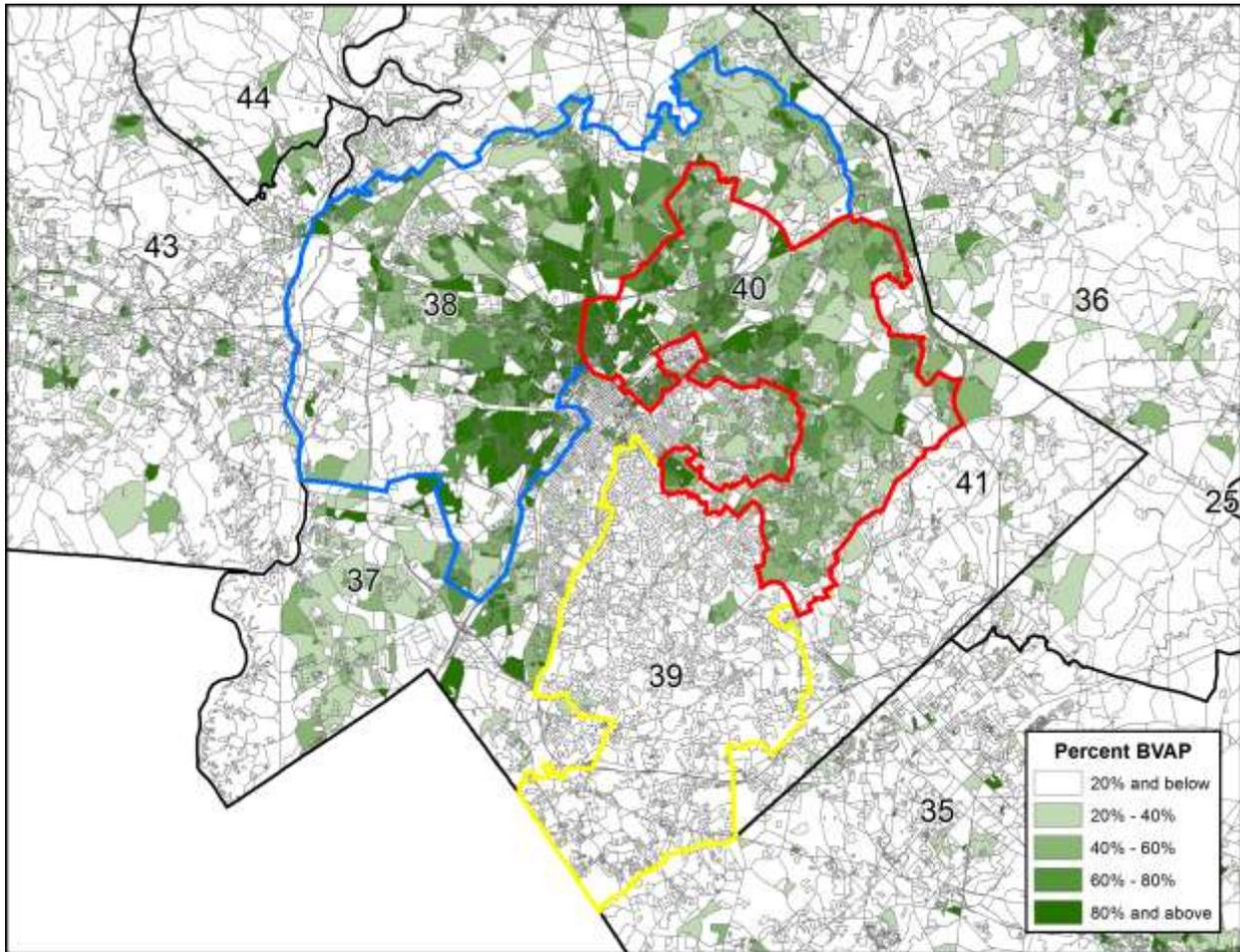
138. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 version of SD 40, based on the 2000 census, was 31.11%, and the black voting age population (any part black) in the 2003 version of SD 40, based on the 2010 census, was 35.43%. (Third Stip. ¶ 138).
139. In accordance with Sen. Rucho's directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 40, based on the 2010 census to 51.84%. (Third Stip. ¶ 139).
140. There are five Senate districts in Mecklenburg County. Dr. Hofeller assigned 142,499 black voting age citizens to SD 38 and 40 and 64,852 black voting age citizens to the other three districts. (Answer ¶ 135; Third Stip. ¶ 123).
141. Based on the 2010 census, the 2003 version of SD 38 was overpopulated by 47,572 persons. Dr. Hofeller used race to correct this population deviation for SD 38 and meet Sen. Rucho's 50% plus instruction. As redrawn in 2011 SD 38 contains 15,477 fewer black persons than the 2003 version and 31,521 fewer white persons than the 2003 version. (Third Stip. ¶ 140).
142. Based on the 2010 census, the 2003 version of SD 40 was overpopulated by 54,523 persons. Dr. Hofeller used race to correct this population deviation for SD 40 and meet Sen. Rucho's 50% plus instruction. As redrawn in 2011 SD 40 contains 10,592 more black persons than the 2003 version and 67,858 fewer white persons than the 2003 version. (Third Stip. ¶ 123).
143. As reported on the NCGA redistricting website, SD 38 as drawn in 2011 divided 8 precincts. Dr. Hofeller divided those 8 precincts along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 38. Of the 16,114 black voting age persons who reside in the 8 divided precincts in the 2011 version of SD 38, 14,400 (89.6%) were assigned to SD 38. (Third Stip. ¶¶ 124, 125).
144. As reported on the NCGA redistricting website, SD 40 as drawn in 2011 divided 16 precincts. Dr. Hofeller divided those 16 precincts along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 40. Of the 22,317 black voting age persons who reside in the 16 divided precincts in the 2011 version of SD 40, 16,116 (72.2%) were assigned to SD 40. (Third Stip. ¶¶ 141, 142).
145. Dr. Hofeller also divided the City of Charlotte on racial grounds in order to meet Sen. Rucho's 50% plus and proportionality directions. According to the NCGA redistricting website, 137,082 of the 188,349 black voting age persons in the City of Charlotte (72.78%) are assigned to SD 38 and 40 and the remaining 51,267 black voting age persons are divided among SD 37, 39 and 41. (Third Stip. ¶ 126).

146. SD 40 is less compact than the benchmark district on 5 out of 8 compactness measures that Maptitude computes. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-1, 2).
147. Former Sen. Dan Clodfelter testified that in 2011 he drew a Mecklenburg county map that was then incorporated into the plan offered by Sen. Nesbitt. (Sen. Dan Clodfelter, Trial Tr. vol. II, 50:6-23). That plan split no precincts, offered the same partisan balance as the enacted plan, and would have reliably elected African-American candidates of choice, even though two of the districts were less than 50% BVAP. (Sen. Clodfelter, Trial Tr. vol. II, 51:2-14).
148. In light of Sen. Clodfelter's alternative map, which would have achieved the same partisan result as the enacted Mecklenburg Senate districts, the only criterion Sen. Clodfelter could identify that explained the enacted Mecklenburg Senate districts was race. (Sen. Clodfelter, Trial Tr. vol. II, 53:17-54:13).
149. The demographics of the districts show that race better explains the boundaries of SD 38 and SD 40 than any other factor. (Sen. Clodfelter, Trial Tr. vol. II, 65:20-66:4).
  - i. As just one example, SD 38 for the first time no longer includes the Mount Moriah Baptist Church precinct because population growth in the area, including high-rise apartment buildings that were predominantly occupied by white individuals, had made the precinct a white precinct. Leaving that precinct in SD 38 would have made it a challenge for SD 38 to be over 50% BVAP. (Sen. Clodfelter, Trial Tr. vol. II, 57:18-58:9).
  - ii. As another example, the boundary between SD 38 and SD 41 does not follow the natural borders of precinct lines or roads because the line divides predominantly African-American neighborhoods from predominantly white neighborhoods. The precinct lines along the northern boundary of SD 38 were "crossed every time it's necessary to move" white voters out of SD 38 and black voters into SD 38. (Sen. Clodfelter, Trial Tr. vol. II, 59:8-60:3).
  - iii. SD 40 posed a greater challenge for obtaining the 50% plus goal; it required "meticulous surgery" to reach that goal. (Sen. Clodfelter, Trial Tr. vol. II, 59:1-64:2). Over time, SD 40 has had a lower BVAP than SD 38. (Sen. Clodfelter, Trial Tr. vol. II, 60). The precincts and neighborhoods in SD 40 are more mixed-race. (Sen. Clodfelter, Trial Tr. vol. II, 60:13). In order to reach 50% plus in SD 40, the map drawer had to connect the northern part of SD 41 and

the southern part of SD 41 by a cloverleaf on an interchange of Interstate 485, an area where no one lives. (Sen. Clodfelter, Trial Tr. vol. II, 62:13-19).

- iv. As another example, Sen. Rucho carved out precinct 30 from SD 40, even though the neighboring areas of Villa Heights and Belmont are in SD 40. Precinct 30 is the NODA, or North Davidson street, neighborhood. Over the last decade, NODA has transitioned from predominantly black to predominantly white, while Villa Heights and Belmont have remained overwhelmingly African-American. Sen. Clodfelter testified that “NODA, Belmont, Villa Heights, [and] Plaza Midwood typically were in the same district. They are a common core of closely connected neighborhoods. [NODA] just happens to be white.” (Sen. Clodfelter, Trial Tr. vol. II, 65:15-19).
- v. The “contortionate boundary drawing” in Mecklenburg county is a result of more integrated housing patterns. (Sen. Clodfelter, Trial Tr. vol. II, 69:19-25).

150. Below is a map of SD 38 and SD 40 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 38 and SD 40. (Third Stip. ¶ 136).

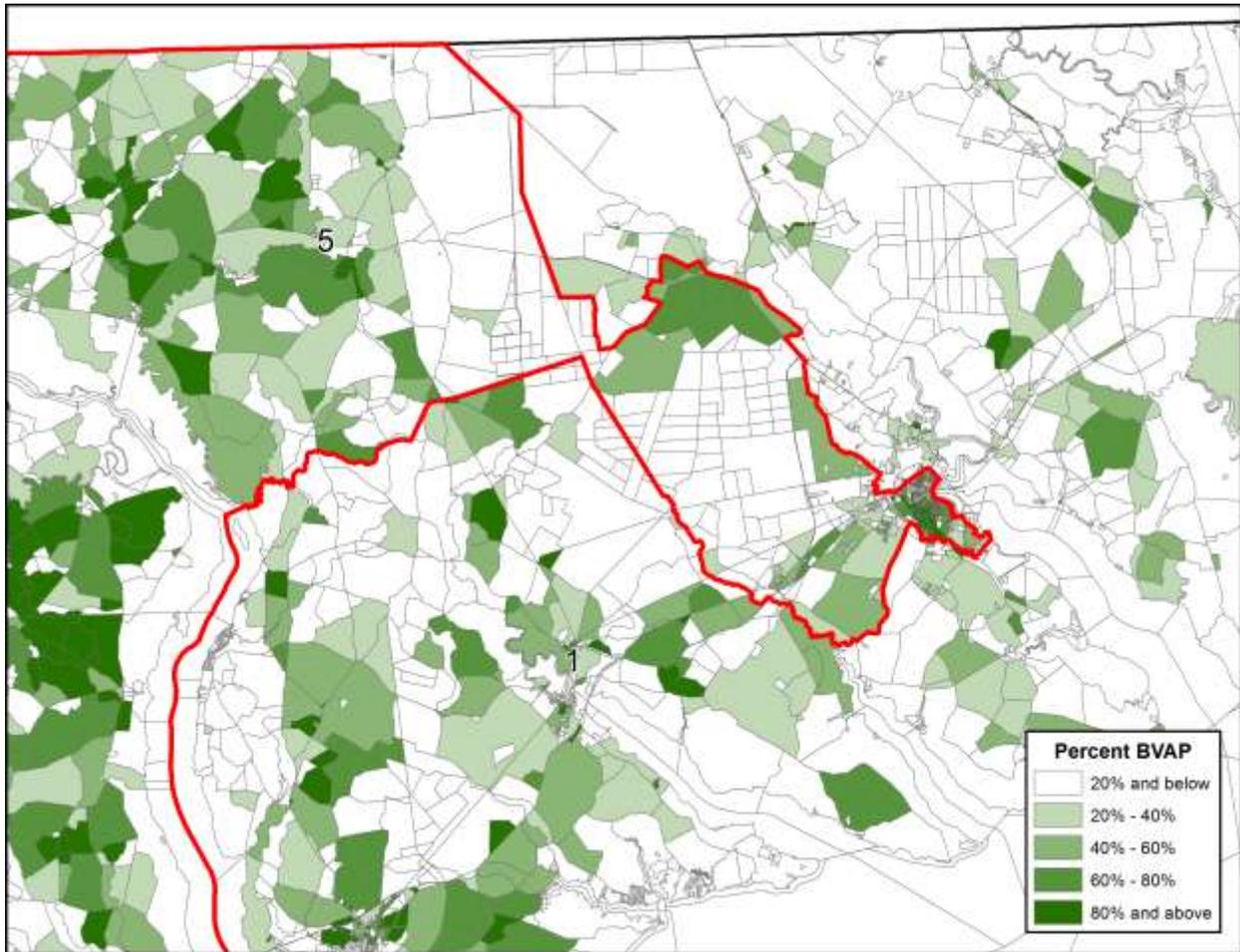


**I. The Characteristics of the Challenged House Districts Confirm that Race, not Traditional Redistricting Criteria, Explains the Boundary of Each Challenged House District.**

**House District 5**

151. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 5, based on the 2000 census, was 49.02%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 5, based on the 2010 census, was 48.87%. (Third Stip. ¶ 153).
152. In accordance with Rep. Lewis' directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 5, based on the 2010 census to 54.17%. (Third Stip. ¶ 154).
153. In order to draw HD 5 as a 50% plus district, Dr. Hofeller had to divide Pasquotank County between HD 5 and HD 1 along racial lines. The black voting age population in the part of Pasquotank County in HD 5 is 52.64% and the black

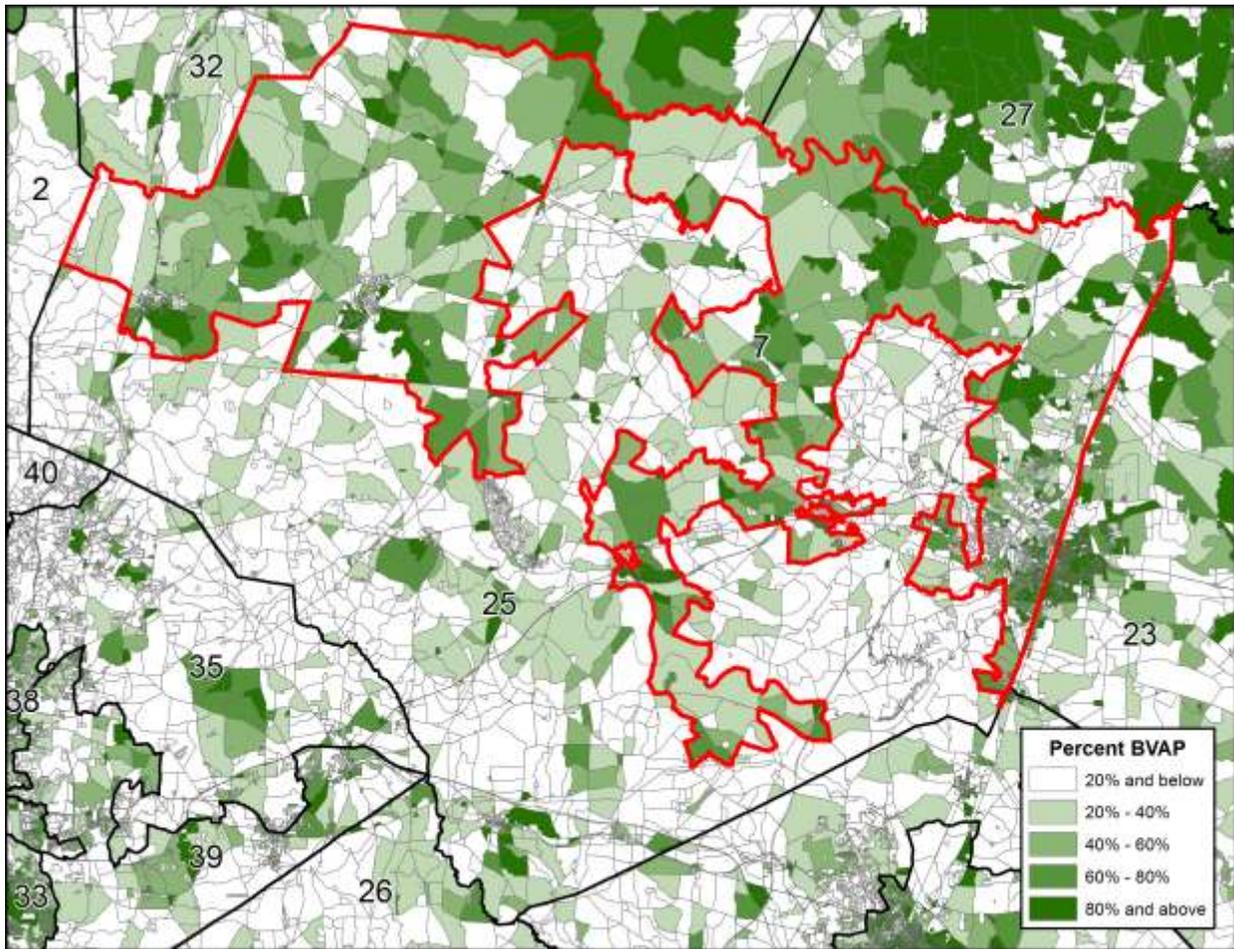
- voting age population in the part of Pasquotank in HD 1 is 17.30%. (Answer ¶ 145).
154. Based on the 2010 census, the 2003 and 2009 version of HD 5 was under populated by 7,861 persons. Dr. Hofeller used race to correct this population deviation and meet Rep. Lewis' 50% plus instruction. The 2011 version of HD 5 contains 9,362 more black persons than the 2003 and 2009 versions and 383 more white persons than the 2003 and 2009 versions. (Third Stip. ¶ 155).
  155. As reported on the NCGA redistricting website, HD 5 as drawn in 2002 divided no precincts, as drawn in 2003 and 2009 divided no precincts, and as drawn in 2011 divided 6 precincts. Dr. Hofeller divided these 6 precincts were divided along racial lines in order to meet Rep. Lewis' race based goals. Of the 5,378 black voting age persons who reside in the 6 divided precincts in the 2011 version of HD 5, 4,004 (74.5%) were assigned to HD 5. (Third Stip. ¶¶ 156, 157; Claude Dorsey Harris, Trial Tr. vol. II, 88:14-89:10).
  156. Dr. Hofeller also divided the City of Elizabeth City in Pasquotank County along racial lines in order to meet Rep. Lewis' race based goals. As reported on the NCGA redistricting website, 7,370 (94.74%) of the 7,779 black voting-age persons in the City of Elizabeth City are assigned to HD 5, and the remainder of 409 black voting-age persons are assigned to one other House district (HD 1). (Third Stip. ¶ 158; Harris, Trial Tr. vol. II, 88:14-89:10).
  157. HD 5 is less compact than the benchmark district on 8 out of 8 compactness measures that Maptitude computes. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-3, 5).
  158. Rep. Lewis acknowledged that Pasquotank County, and precincts in Elizabeth City, are split solely to increase the BVAP in HD 5 to over 50%. (Rep. Lewis, Trial Tr. vol. III, 214:10-215:9).
  159. The predominance of race in the line drawing is further demonstrated by the disregard for communities of interest. Elizabeth City is the economic and cultural center of the "finger counties." The district lines of HD 5 reach out to pull 95% of black voters in Elizabeth City into HD 5, out of a district with the other finger counties. (Harris, Trial Tr. vol. II, 86:8-22, 88:14-89:10)
  160. Below is a map of HD 5 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of HD 5. (Third Stip. ¶ 168).



**House District 7**

161. Dr. Hofeller drew HD 7 in accordance with Rep. Lewis’ direction to draw all districts drawn to comply with the VRA as majority Black district. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2011 version of HD 7, based on the 2010 census, is 50.67%. (Third Stip. ¶ 169).
  
162. To comply with Rep. Lewis’ 50% plus direction, Dr. Hofeller divided Nash County and Franklin County along racial lines. The black voting age population in the part of Nash County in HD 7 is 52.92% and the black voting age population in the part of Nash in HD 15 is 15.02%. (Answer ¶ 151). The black voting age population in the part of Franklin County in HD 7 is 45.07% and the black voting age population in the part of Franklin in HD 25 is 17.17%. (Answer ¶ 153).
  
163. As reported on the NCGA redistricting website, HD 7 as drawn in 2011 divided 22 precincts. To meet Rep. Lewis’ 50% plus directions, Dr. Hofeller divided those

- 22 precincts along racial lines. Of the 21,538 black voting age persons who reside in the 22 divided precincts in the 2011 version of HD 7, 17,898 (83.1%) were assigned to HD 7. (Third Stip. ¶¶ 170-71).
164. Sen. Angela Bryant testified that 22 of the 31 precincts in HD 7 were split, which made it “almost impossible to describe to constituents or to community groups” who was in the district. (Sen. Angela Bryant, Trial Tr. vol. II, 14:19-15:2).
165. Dr. Hofeller also had to divide the Towns of Castalia, Dortches, and Spring Hope and the City of Rocky Mount along racial lines in order to comply with Rep. Lewis 50% plus directions. As reported on the NCGA redistricting website, 70 (87.5%) of the 80 black voting-age persons in the Town of Castalia are assigned to HD 7, and the remainder of 10 black voting-age persons are assigned to one other House district (HD 25). As reported on the NCGA redistricting website, 130 (70.65%) of the 184 black voting-age persons in the city of Dortches are assigned to HD 7, and the remainder of 54 black voting-age persons are assigned to one other House district (HD 25). As reported on the NCGA redistricting website, 377 (76.63%) of the 492 black voting-age persons in the Town of Spring Hope are assigned to HD 7, and the remainder of 115 black voting-age persons are assigned to one other House district (HD 25). As reported on the NCGA redistricting website, 14,110 (96.16%) of the 14,673 black voting-age persons in the city of Rocky Mount in Nash County are assigned to HD 7, and the remainder of 563 black voting-age persons are assigned to one other House district (HD 25). (Third Stip. ¶¶ 172-75).
166. HD 7 is less compact than the benchmark district on 8 out of 8 compactness measures that Maptitude computes. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-3, 5).
167. Rep. Lewis acknowledged that race explains the contorted boundary between HD 7 and HD 25. (Rep. Lewis, Trial Tr. vol. III, 217:25-218:4).
168. The boundaries of HD 7 are so contorted that one can drive down Highway 65 and go in and out of the district five times before even entering the Franklin portion of the district. The boundaries also do not follow roads, leading to the district looking like a “monster’s hand.” (Sen. Bryant, Trial Tr. vol. II, 14:19-15:2, 18:3-16).
169. Below is a map of HD 7 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of HD 7. (Third Stip. ¶ 185).

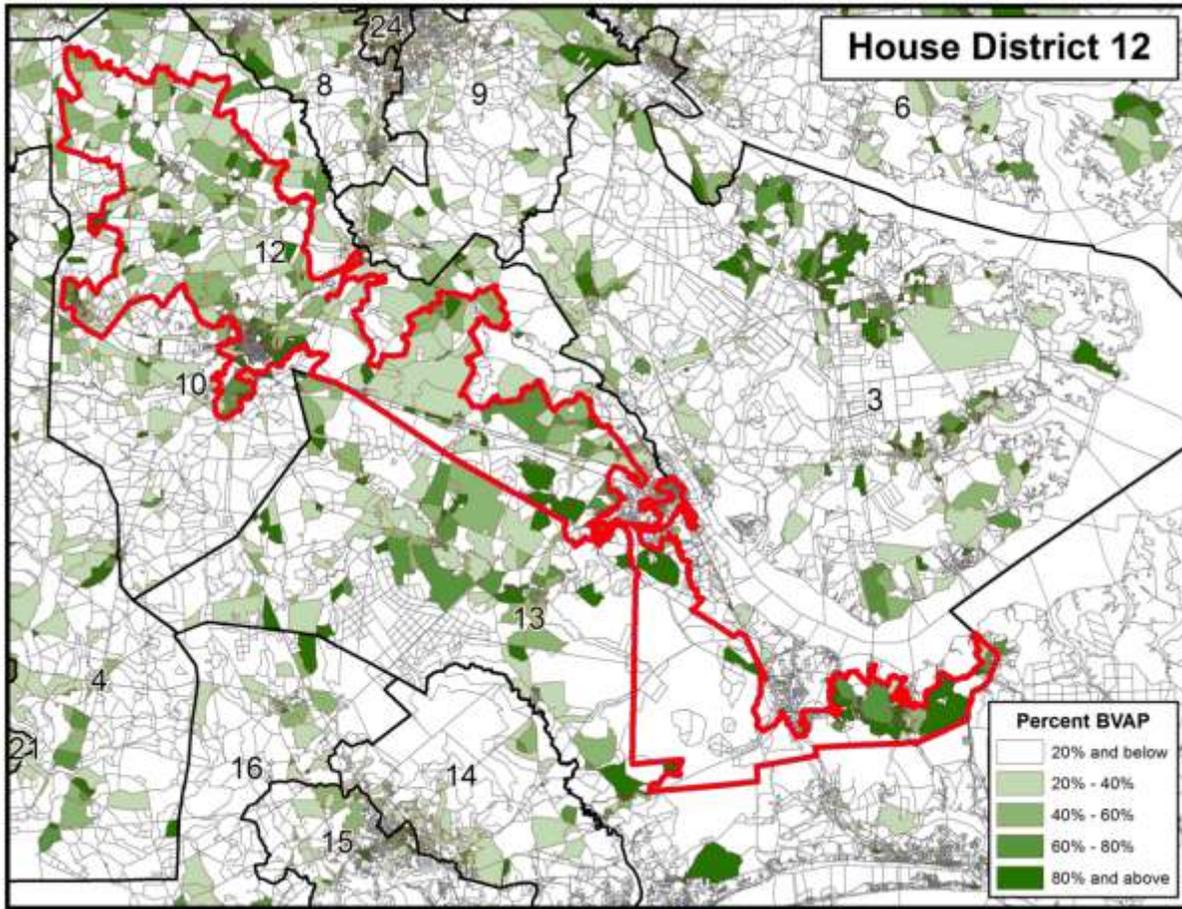


**House District 12**

- 170. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 12, based on the 2000 census, was 47.51% , and the black voting age population (any part black) in the 2003 and 2009 version of HD 12, based on the 2010 census, was 46.45%. (Third Stip. ¶ 187).
- 171. In accordance with Rep. Lewis’ directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 12, based on the 2010 census to 50.6%. (Third Stip. ¶ 188).
- 172. Dr. Hofeller had to divide Craven County, Lenoir County and Greene County along racial lines in order to meet Rep. Lewis’ 50% plus direction for HD 12. The black voting age population in the part of Craven County in HD 12 is 44.70%; the black voting age population in the part of Craven in HD 10 is 13.66%; and the part of Craven in HD 3 is 12.93%. (Answer ¶ 159). The black voting age population in the part of Lenoir County in HD 12 is 59.84% and the black voting age

population in the part of Lenoir in HD 10 is 15.74%. (Answer ¶ 161). The black voting age population in the part of Greene County in HD 12 is 42.52% and the black voting age population in the part of Greene in HD 10 is 24.29%. (Answer ¶ 163).

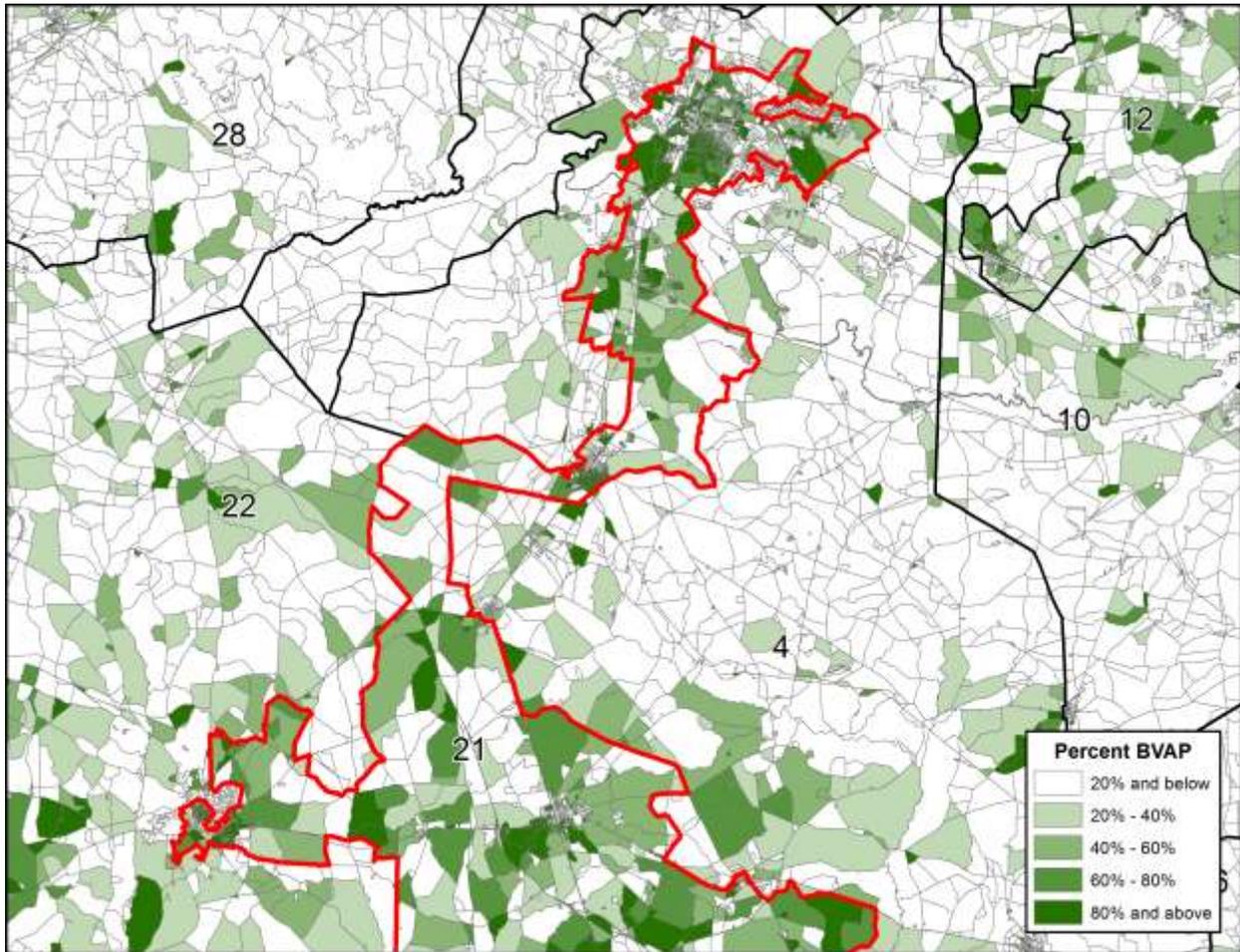
173. Based on the 2010 census, the 2003 version of HD 12 was under populated by 15,862 persons. Dr. Hofeller used race to correct this population deviation and meet Rep. Lewis' 50% plus instruction. As redrawn in 2011, HD 12 contains 8,784 more black persons than the 2003 and 2009 version and 2,994 more white persons than the 2003 and 2009 version. (Third Stip. ¶ 189).
174. As reported on the NCGA redistricting website, HD 12 as drawn in 2011 divided 34 precincts. Dr. Hofeller had to divide these 34 precincts along racial lines in order to meet Rep. Lewis 50% plus directions. Of the 25,174 black voting age persons who reside in the 34 divided precincts in the 2011 version of HD 12, 16,612 (65.99%) were assigned to HD 12. (Third Stip. ¶¶ 190-91).
175. Dr. Hofeller also had to divide the City of Kinston and the City of New Bern along racial lines in order to meet Rep. Lewis' 50% plus direction. 10,077 (92.72%) of the 10,868 black voting-age persons in the city of Kinston are assigned to HD 12, and the remainder of 791 black voting-age persons are assigned to one other House district (HD 10); 5,199 (72.70%) of the 7,151 black voting-age persons in the city of New Bern are assigned to HD 12, and the remainder of 1,952 black voting age persons. (Third Stip. ¶¶ 192-93).
176. HD 12 is less compact than the benchmark district on 6 out of 8 compactness measures that Maptitude computes. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-3, 5).
177. Plaintiff Revered Julian Pridgen testified that the lines of HD 12 were drawn to include areas with higher concentrations of African-Americans, including the communities of La Grange and Grifton. (Rev. Julian Pridgen, Trial Tr. vol. I, 212:12-23).
178. Below is a map of HD 12 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of HD 12. (Third Stip. ¶ 203).



**House District 21**

- 179. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 21, based on the 2000 census, was 48.35%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 21, based on the 2010 census, was 46.25%. (Third Stip. ¶ 205).
- 180. In accordance with Rep. Lewis directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 21, based on the 2010 census to 51.9%. (Third Stip. ¶ 206).
- 181. In order to met Rep. Lewis 50% plus direction, Dr. Hofeller had to divide Duplin County, Sampson County and Wayne County along racial lines. The black voting age population in the part of Duplin County in HD 21 is 45.75% and the black voting age population in the part of Duplin in HD 4 is 15.13%. (Answer ¶ 170). The black voting age population in the part of Sampson County in HD 21 is 53.71% and the black voting age population in the part of Sampson in HD 22 is

- 21.28%. (Answer ¶ 173). The black voting age population in the part of Wayne County in HD 21 is 54.08% and the black voting age population in the part of Wayne in HD 4 is 16.91%. (Answer ¶ 176).
182. Based on the 2010 census, the 2003 and 2009 version of HD 21 was under populated by 9,837 persons. Dr. Hofeller used race to correct this population deviation and meet Rep. Lewis' 50% plus instruction. As redrawn in 2011, HD 21 contains 11,217 more black persons than the 2003 and 2009 version and 1,848 more white persons than the 2003 and 2009 version. (Third Stip. ¶ 207).
183. As reported on the NCGA redistricting website, HD 21 as drawn in 2011 divided 25 precincts. Dr. Hofeller divided these precincts along racial lines in order to meet Rep. Lewis 50% plus directions. Of the 24,195 black voting age persons who reside in the 25 divided precincts in the 2011 version of HD 21, 14,652 (60.6%) were assigned to SD 4. (Third Stip. ¶¶ 208-209).
184. Dr. Hofeller also had to divide Clinton, Goldsboro and Warsaw along racial lines in order to meet Rep. Lewis 50% plus directions. (Albert Kirby, Trial Tr. vol. II, 145-46). As reported on the NCGA redistricting website, 1,920 (72.67%) of the 2,642 black voting-age persons in the city of Clinton are assigned to HD 21, and the remainder of 722 black voting-age persons are assigned to one other House district (HD 22). As reported on the NCGA redistricting website, 13,616 (92.10%) of the 14,784 black voting-age persons in the city of Goldsboro are assigned to HD 21, and the remainder of 1,168 black voting-age persons are assigned to one other House district (HD 21). As reported on the NCGA redistricting website, all of the 1,207 black voting-age persons in the Town of Warsaw are assigned to HD 21, and none are assigned to the other House district in Warsaw (HD 4). (Third Stip. ¶¶ 210-12).
185. HD 21 is less compact than the benchmark district on 6 out of 8 compactness measures that Maptitude computes. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-3, 5).
186. When compared to the pre-2011 version of the district, the 2011 version of the district looks like "an animal eating something," bringing in almost half of Duplin County and a larger part of Wayne County. The part of the district in Wayne County had to become larger in order to increase the BVAP in the district. (Kirby, Trial Tr., vol. II, 143:16-144:1, 152:6-10).
187. Below is a map of HD 21 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of HD 21. (Third Stip. ¶ 222).

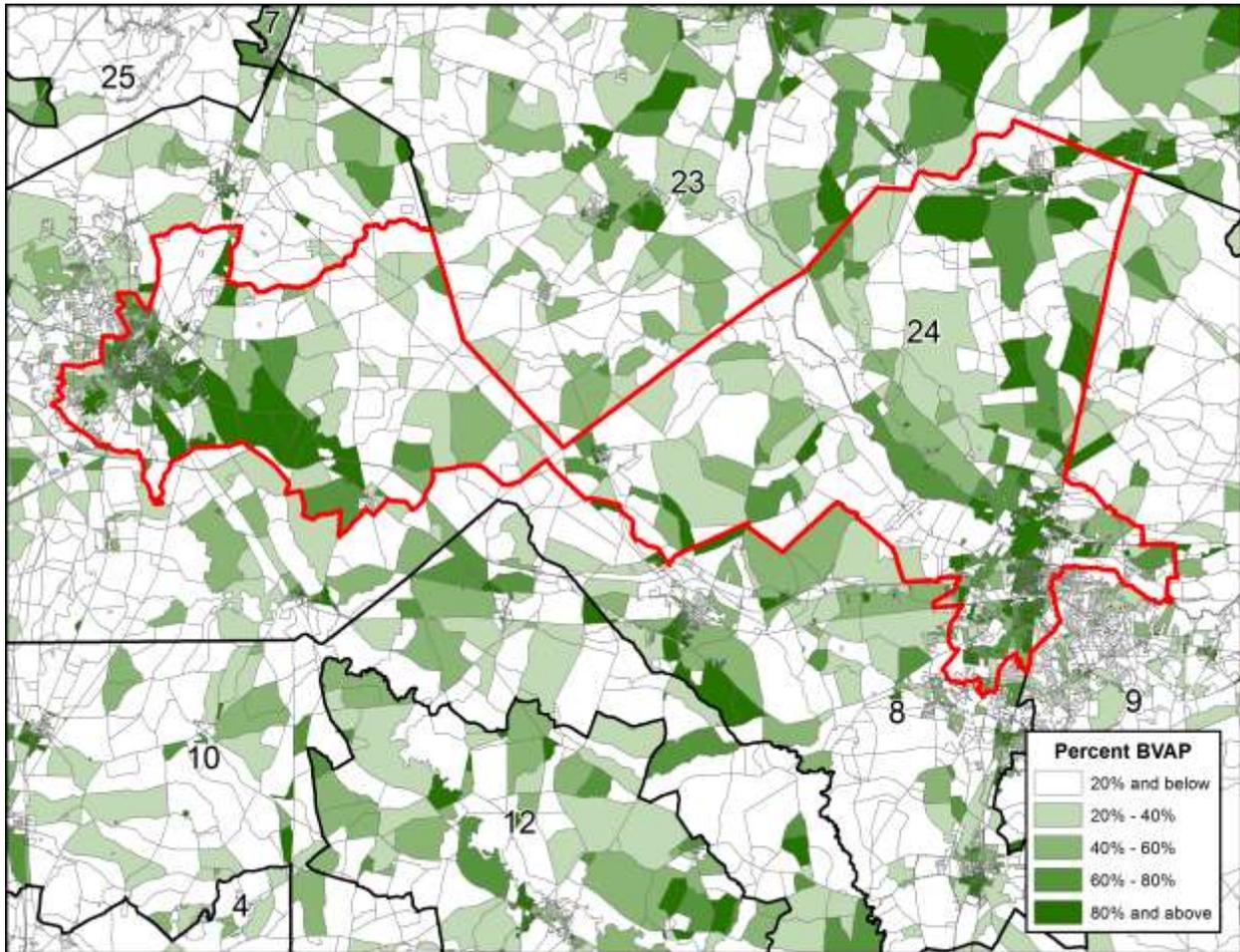


**House District 24**

- 188. As reported on the NCGA redistricting website, the black voting age population (single race) in the 2003 and 2009 version of HD 24, based on the 2000 census, was 54.76%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 24, based on the 2010 census, was 56.07%. (Third Stip. ¶ 224).
  
- 189. In accordance with Rep. Lewis’ instructions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 24, based on the 2010 census, to 57.33%. (Third Stip. ¶ 225).
  
- 190. Dr. Hofeller had to divide Pitt County and Wilson County along racial lines in order to meet Rep. Lewis’ 50% plus directions. The black voting age population in the part of Pitt County in HD 24 is 54.74% and the black voting age population in the part of Pitt in HD 8 is 34.13%. (Answer ¶ 183). The black voting age

population in the part of Wilson County in HD 24 is 61.58% and the black voting age population in the part of Wilson in HD 8 is 23.42%. (Answer ¶ 185).

191. Based on the 2010 census, the 2003 and 2009 version of HD 24 was under populated by 17,333 persons. Dr. Hofeller used race to fix this population deviation and meet Rep. Lewis' 50% plus instruction. As redrawn in 2011, HD 24 contains 13,586 more black persons than the 2003 and 2009 versions and 3,487 more white persons than the 2003 and 2009 versions. (Third Stip. ¶ 226).
192. As reported on the NCGA redistricting website, HD 24 as drawn in 2011 divided 12 precincts. Dr. Hofeller had to divide these precincts along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 11,510 black voting age persons who reside in the 12 divided precincts in the 2011 version of HD 24, 6,026 (52.35%) were assigned to HD 24. (Third Stip. ¶¶ 227-28).
193. Dr. Hofeller also had to divide the Cities of Greenville and Wilson along racial lines in order to meet Rep. Lewis' 50% plus directions. As reported on the NCGA redistricting website, 15,618 (58.28%) of the 23,409 black voting-age persons in the city of Greenville are assigned to HD 24, and the remainder of 7,791 black voting-age persons are assigned to two other House districts (HDs 8 and 9). As reported on the NCGA redistricting website, 12,755 (74.43%) of the 17,137 black voting-age persons in the city of Wilson are assigned to HD 24, and the remainder of 4,382 black voting-age persons are assigned to one other House district (HD 8). (Third Stip. ¶¶ 229-30).
194. Below is a map of HD 24 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of HD 24. (Third Stip. ¶ 240).

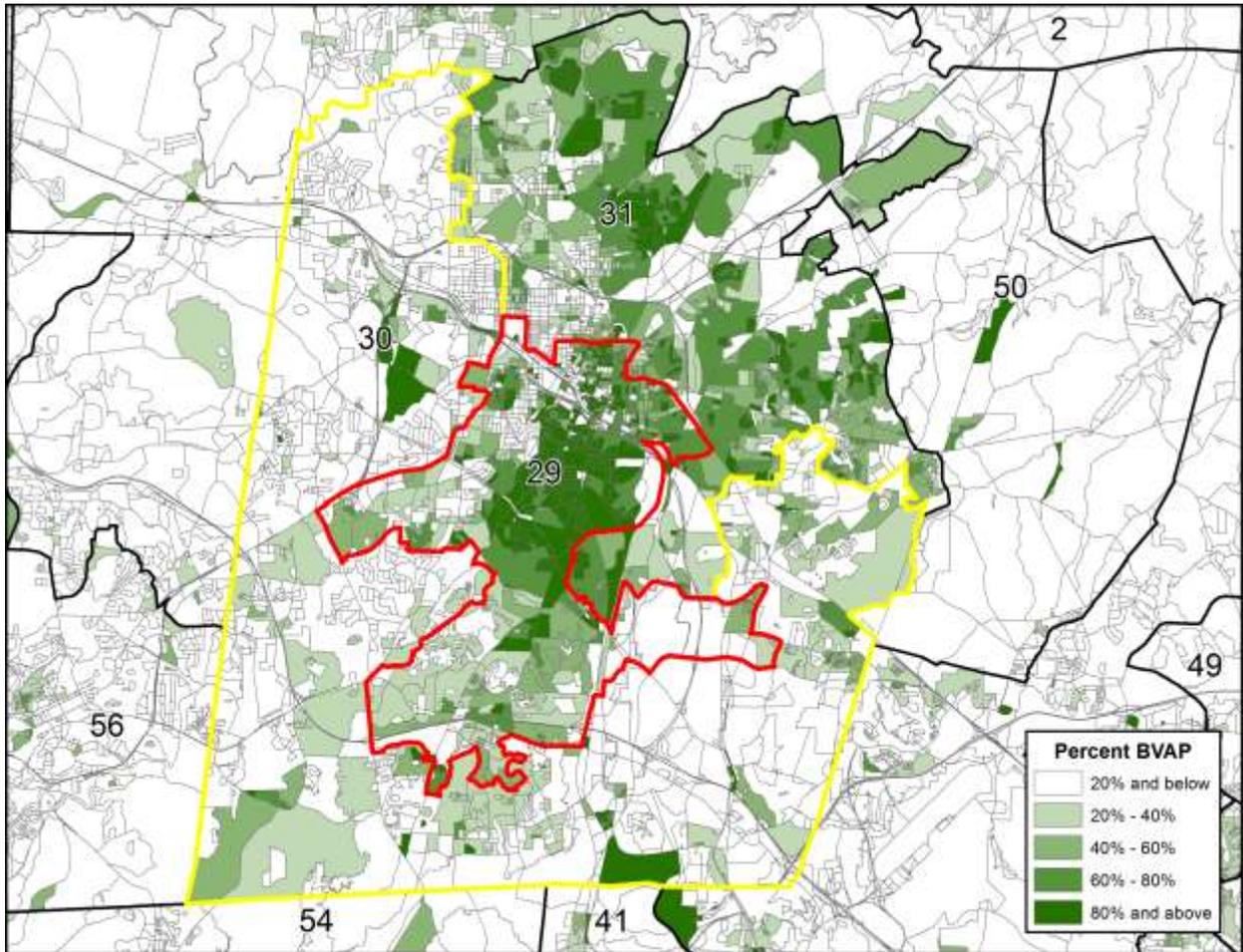


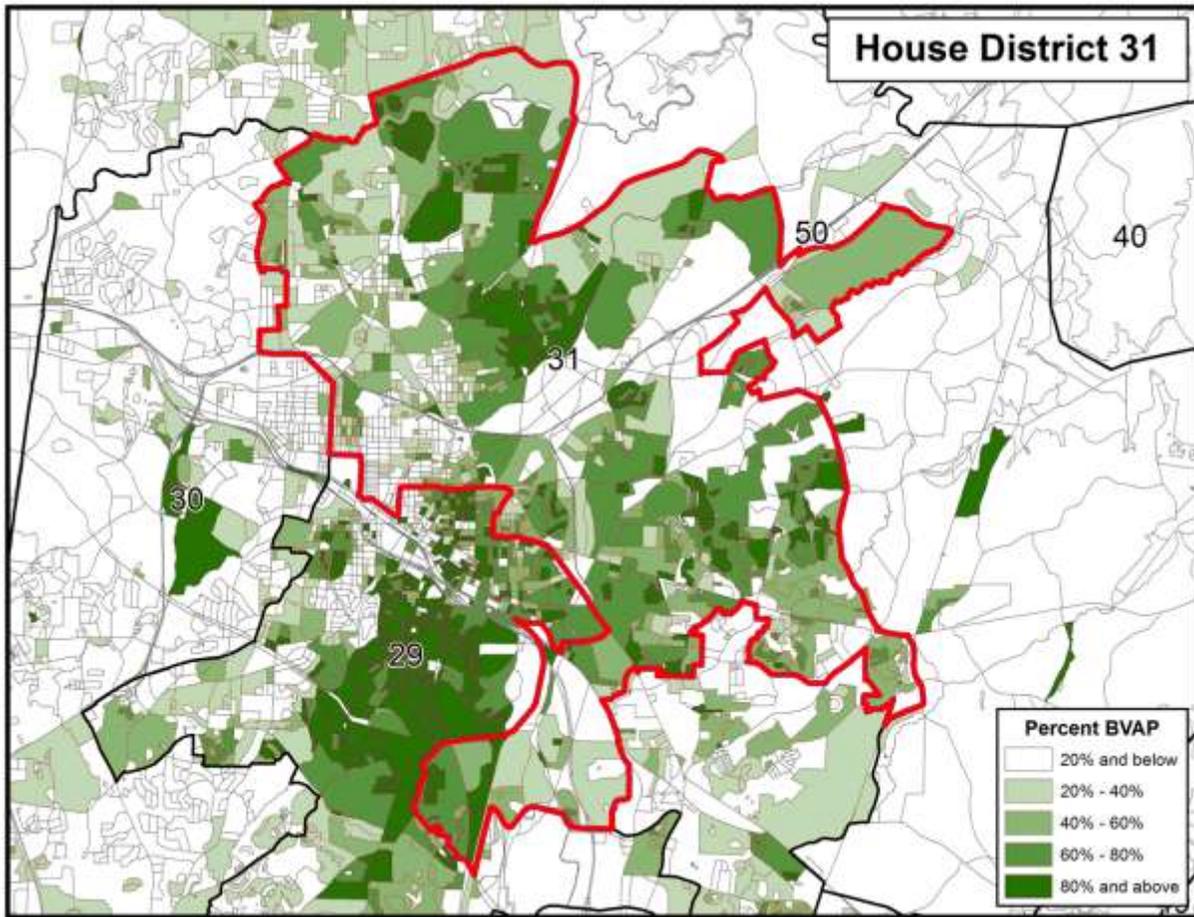
**House Districts 29 and 31 in Durham County**

195. As reported on the NCGA redistricting website, under the 2003 and 2009 House plans, only one district located in Durham County had more than 40% black voting age population and no district had 50% plus black voting age population. In accordance with Rep. Lewis 50% plus and proportionality directions, Dr. Hofeller drew two districts in Durham County with more than 50% black voting age population. (Third Stip. ¶¶ 449-50).
196. The black voting age population (any part black) in the 2003 and 2009 version of HD 29, based on the 2000 census, was 44.71%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 29, based on the 2010 census, was 39.99%. (Third Stip. ¶ 242).
197. In accordance with Rep. Lewis directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 29, based on the 2010 census, to 51.34%. (Third Stip. ¶ 243).

198. The black voting age population (any part black) in the 2003 and 2009 version of HD 31, based on the 2000 census, was 44.71%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 31, based on the 2010 census, was 47.23%. (Third Stip. ¶ 260).
199. In accordance with Rep. Lewis' directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 31, based on the 2010 census, to 51.81%. (Third Stip. ¶ 261).
200. Four House districts are located in Durham County in the 2011 plan. The Black voting age population in HD 29 (51.34%) and HD 31 (51.81%) is more than twice the Black voting age population in HD 30 (18.43%) and HD 50 (15.34%). (Answer ¶ 192).
201. Based on the 2010 census, the 2003 and 2009 version of HD 29 was under populated by 9,416 persons. Dr. Hofeller used race to fix this population deviation and meet Rep. Lewis' 50% plus instruction. As redrawn in 2011, HD 29 contains 13,286 more black persons than the 2003 and 2009 versions and 6,502 fewer white persons than the 2003 and 2009 versions. (Third Stip. ¶ 244).
202. Based on the 2010 census, the 2003 and 2009 version of HD 31 was over populated by 11,812 persons. Dr. Hofeller used race to fix this population deviation. As redrawn in 2011, HD 31 contains 2,596 fewer black persons than the 2003 and 2009 version and 9,097 fewer white persons than the 2003 and 2009 version. (Third Stip. ¶ 262).
203. As reported on the NCGA redistricting website, HD 29 as drawn in 2011 divided 14 precincts. Dr. Hofeller had to divide these precincts along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 21,292 black voting age persons who reside in the 14 divided precincts in the 2011 version of HD 29, 11,580 (54.39%) were assigned to HD 29. (Third Stip. ¶¶ 246-47; Rep. Hall, Trial Tr. vol. II, 187).
204. As reported on the NCGA redistricting website, HD 31 as drawn in 2011 divided 13 precincts. Dr. Hofeller had to divide these precincts along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 24,483 black voting age persons who reside in the 13 divided precincts in the 2011 version of HD 31, 13,735 (56.1%) were assigned to HD 31. (Third Stip. ¶¶ 264-65; Rep. Hall, Trial Tr. vol. II, 195).
205. Of the 33,761 black voting age persons who reside in the 21 divided precincts in Durham County, 25,315 (75%) were assigned to HD 29 or HD 31. (Third Stip. ¶ 265).

206. Dr. Hofeller also divided the City of Durham along racial lines in order to meet Rep. Lewis' 50% plus direction. According to the NCGA redistricting website, 58,868 (82.81%) of the 71,081 black voting age persons in the City of Durham are assigned to HD 29 and 31, and the remainder of Durham's black voting age persons are assigned to three other districts. (Third Stip. ¶ 248).
207. Rep. Larry Hall testified that areas of new development and growth with more integrated housing patterns were excluded from HD 29. (Rep. Larry Hall, Trial Tr. vol. II, 190:3-19).
- i. Specifically, Rep. Larry Hall explained how precincts 35, 53.1, 6, and 44 were divided on the basis of race, with the more heavily black areas added to HD 29, and the more white areas excluded from the district. This was done even when the areas were part of the same neighborhood or community. (Rep. Hall, Trial Tr. vol. II, 188:22-193:13).
  - ii. Likewise, precincts were split to add black population to HD 31. For example, precinct 30.1 was split, and the black households were added to HD 31, and the white households were taken out of the district. (Rep. Hall, Trial Tr. vol. II, 193:14-195:23).
208. HD 29 is less compact than the benchmark district on 4 out of 8 compactness measures that Maptitude computes, and HD 31 is less compact than the benchmark on 5 of the 8 compactness measures. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-3, 5).
209. Below are maps of HD 29 and HD 31 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. These maps accurately depict the predominance of race in the drawing of the 2011 version of HD 29 and HD 31. (Third Stip. ¶¶ 258, 275).

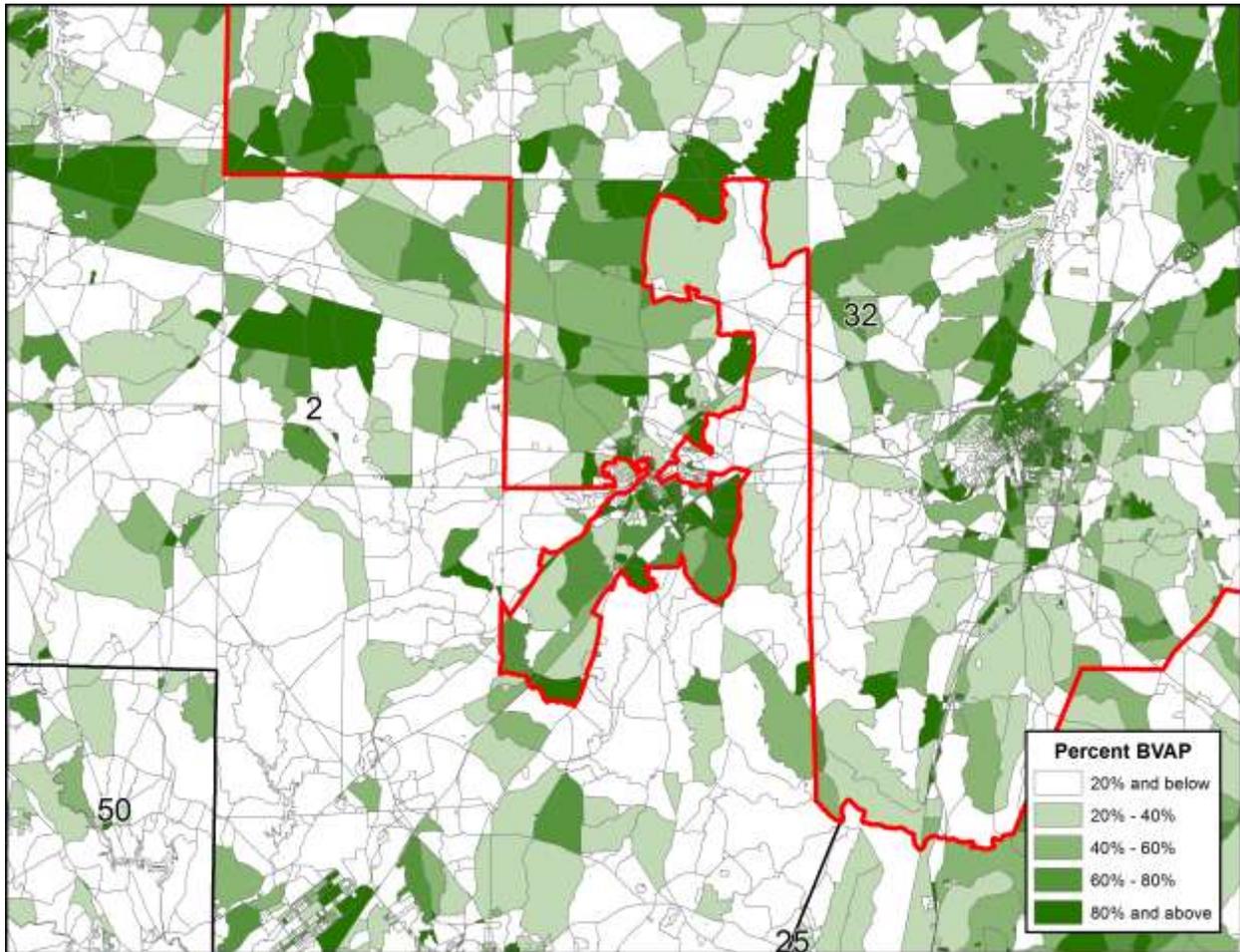




### House District 32

210. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 32, based on the 2000 census, was 36.22%, the black voting age population (any part black) in the 2003 and 2009 version of HD 32, based on the 2010 census, was 35.88%. (Third Stip. ¶ 277).
211. In accordance with Rep. Lewis' directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 32, based on the 2010 census, was 50.45%. (Third Stip. ¶¶ 278).
212. Dr. Hofeller had to divide Granville County along racial lines in order to meet Rep. Lewis' 50% plus directions. The black voting age population in the part of Granville County in HD 32 is 54.26% and the black voting age population in the part of Granville in HD 2 is 26.57%. (Answer ¶ 202).

213. Based on the 2010 census, the 2003 and 2009 version of HD 32 was over populated by 78 persons. Dr. Hofeller used race to fix this population deviation and meet Rep. Lewis' 50% plus instruction. As redrawn in 2011, HD 32 contains 14,346 more black persons than the 2003 and 2009 version and 11,147 fewer white persons than the 2003 and 2009 version. (Third Stip. ¶ 158).
214. As reported on the NCGA redistricting website, HD 32 as drawn in 2011 divided 5 precincts. Dr. Hofeller had to divide these precincts along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 4,299 black voting age persons who reside in the 5 divided precincts in the 2011 version of HD 32, 3,525 (82%) were assigned to HD 32. (Third Stip. ¶¶ 280-81).
215. Dr. Hofeller also had to divide the Town of Oxford along racial lines in order to meet Rep. Lewis' 50% plus directions. As reported on the NCGA redistricting website, 3,296 (92.92%) of the 3,547 black voting-age persons in the city of Oxford are assigned to HD 32. (Third Stip. ¶ 282).
216. HD 32 is less compact than the benchmark district on 6 out of 8 compactness measures that Maptitude computes. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-3, 5).
217. Below is a map of HD 32 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of HD 32. (Third Stip. ¶ 287).

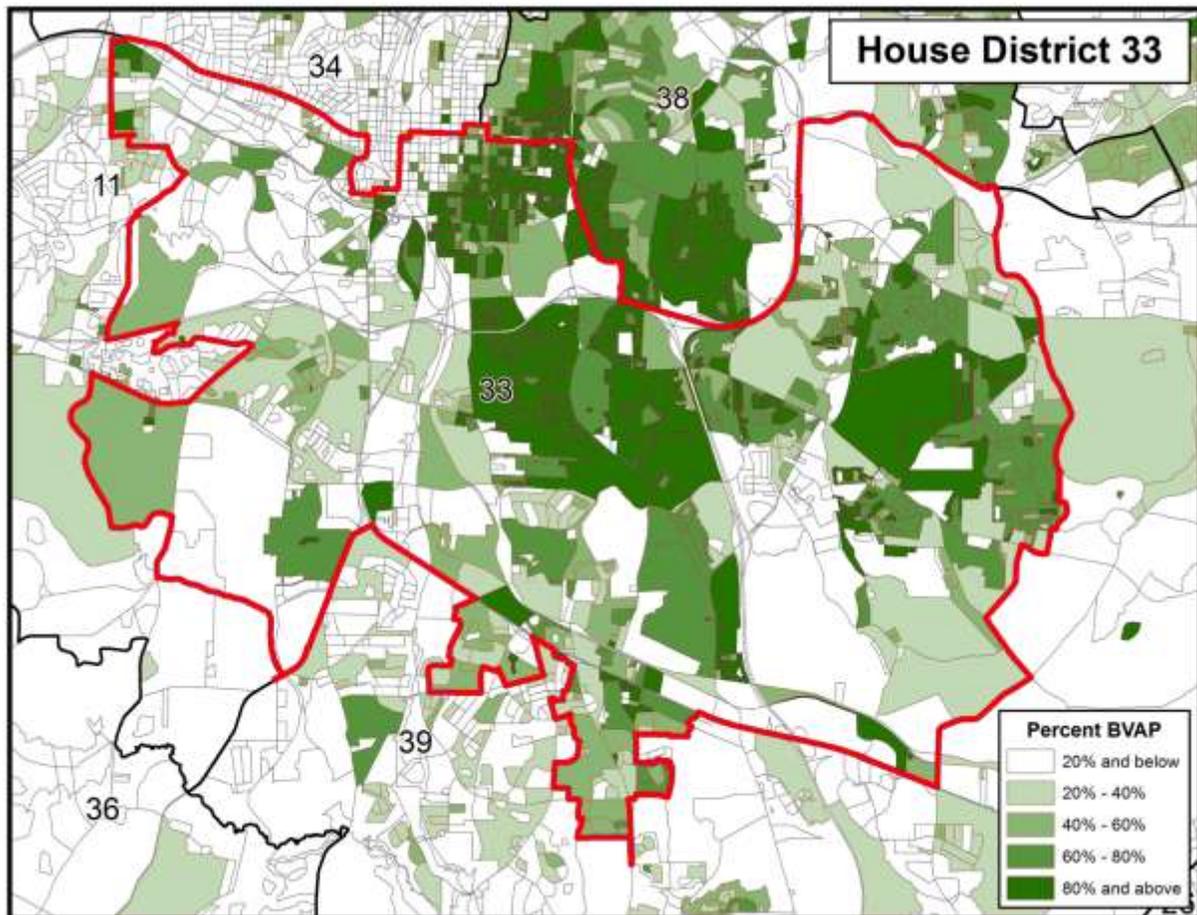


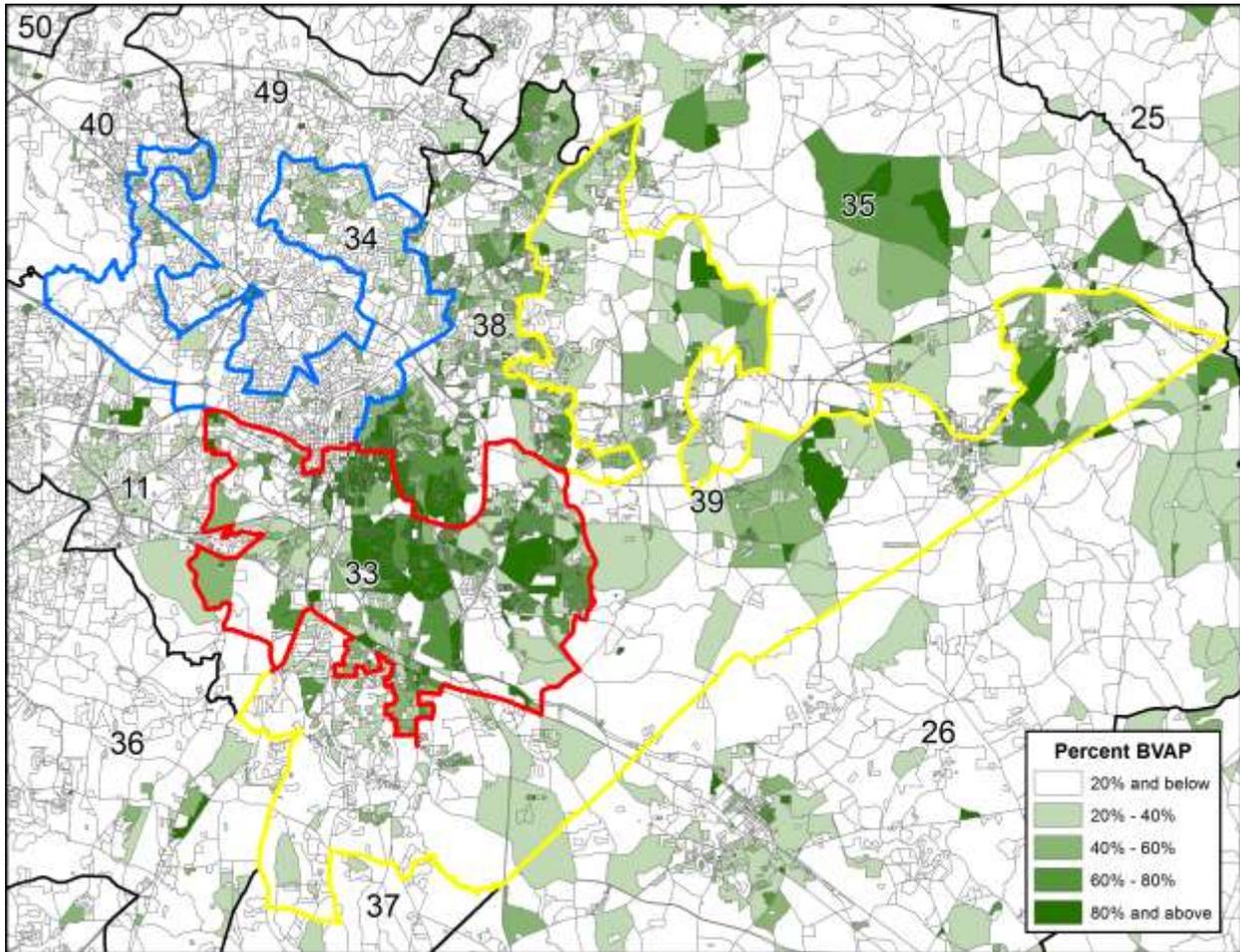
**House Districts 33 and 38 in Wake County**

218. As reported on the NCGA redistricting website, under the 2003 and 2009 House plans, only one district located in Wake County had more than 40% black voting age population and no district had 50% plus black voting age population. In accordance with Rep. Lewis’ directions, Dr. Hofeller drew two districts in the 2011 plan with more than 50% black voting age population. (Third Stip. ¶¶ 447-48; Sen. Blue, Trial Tr. vol. I, 75:19-21).
219. There are 11 House districts in Wake county in the 2011 plan. The black voting age population in HD 33 (51.42%) and HD 38 (51.37%) is three times larger than the black voting age population in the remaining eight districts. The black voting age population in HD 11 is 14.84%; in HD 34 is 17.03%; in HD 35 is 17.41%; in HD 36 is 7.74%; in HD 37 is 13.83%; in HD 40 is 9.76%; in HD 41 is 7.40%; and in HD 49 is 8.87%. (Answer ¶ 207).

220. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 38, based on the 2000 census, was 49.19%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 38, based on the 2010 census, was 51.74%. (Third Stip. ¶ 302).
221. In accordance with Rep. Lewis' directions, Dr. Hofeller drew the 2011 version of HD 33, based on the 2010 census, at 51.42% black voting age population (any part black). (Third Stip. ¶ 288).
222. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 38, based on the 2000 census, was 31.63%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 38, based on the 2010 census, was 27.96%. (Third Stip. ¶ 302).
223. In accordance with Rep. Lewis' directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 38, based on the 2010 census to 51.37%. (Third Stip. ¶ 303).
224. As reported on the NCGA redistricting website, HD 33 as drawn in 2011 divided 13 precincts. Dr. Hofeller had to divide these precincts along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 14,311 black voting age persons who reside in the 13 divided precincts in the 2011 version of HD 33, 9,179 (64.14%) were assigned to HD 33. (Third Stip. ¶¶ 289-90).
225. HD 38 as drawn in 2011 divided 13 precincts. Dr. Hofeller had to divide those precincts along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 23,297 black voting age persons who reside in the 13 divided precincts in the 2011 version of HD 38, 15,208 (65.28%) were assigned to HD 38. (Third Stip. ¶¶ 305-306).
226. Dr. Hofeller also had to divide the City of Raleigh along racial lines in order to meet Rep. Lewis 50% plus directions for HD 33 and 38. According to the NCGA redistricting website, 56,800 (66.81%) of the 87,699, black voting age persons in the City of Raleigh are assigned to HD 33 and 38, and the remainder of Raleigh's black voting age persons are assigned to 7 other districts. (Third Stip. ¶ 307).
227. Based on the 2010 census, the 2003 and 2009 version of HD 38 was over populated by 4,813 persons. Dr. Hofeller used race to fix this population deviation and to meet Rep. Lewis' 50% plus direction. As redrawn in 2011, HD 38 contains 19,027 more black persons than the 2003 and 2009 version and 24,294 fewer white persons than the 2003 and 2009 version. (Third Stip. ¶ 304).

228. HD 33 is less compact than the benchmark district on 6 out of 8 compactness measures that Maptitude computes. Likewise, HD 38 is also less compact than the benchmark on 6 out of the 8 compactness measures. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-3, 5).
229. Below are maps of HD 33 and 38 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. These maps accurately depict the predominance of race in the drawing of the 2011 version of HD 33 and HD 38. (Third Stip. ¶¶ 300, 312).

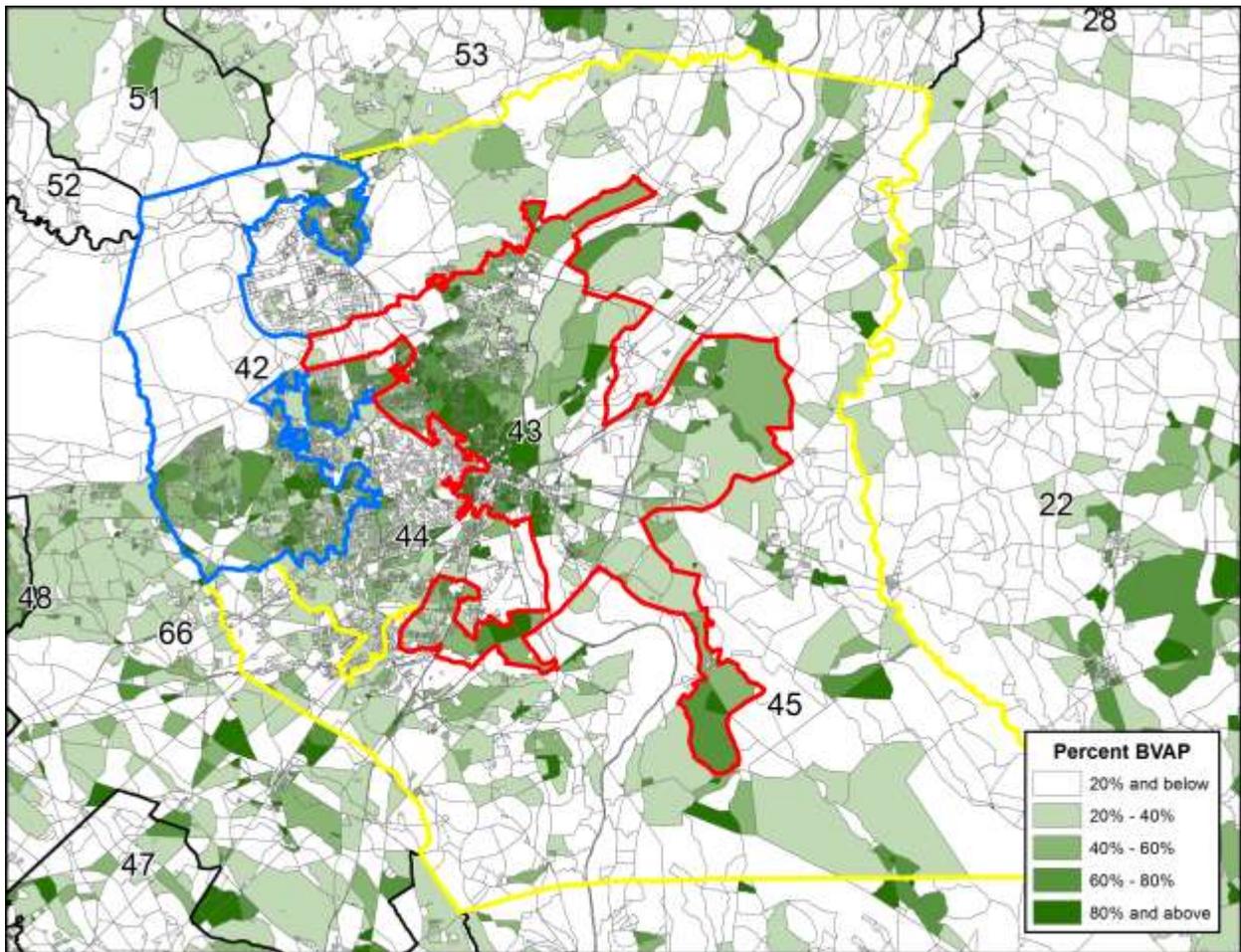


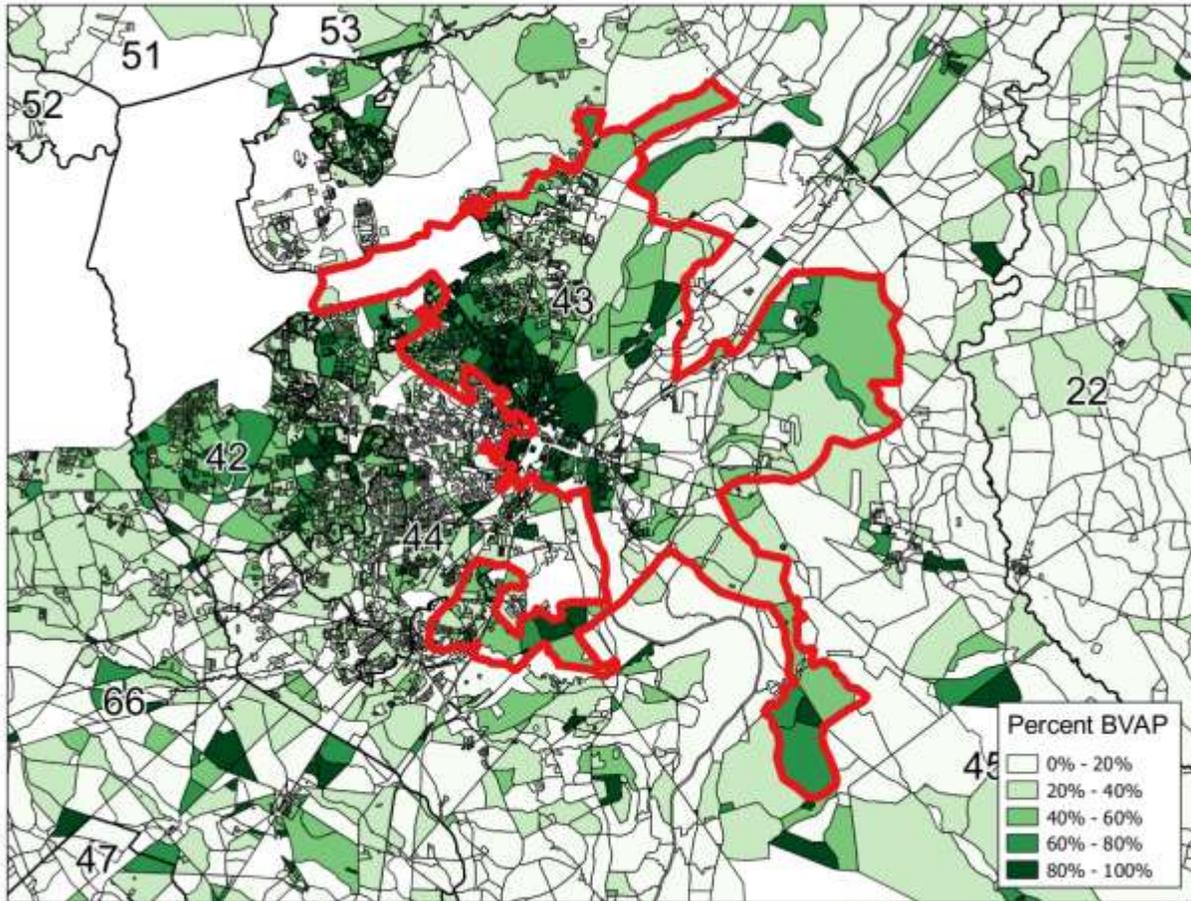


**House Districts 42 and 43 in Cumberland County**

230. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 42, based on the 2000 census, was 45.11%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 42, based on the 2010 census, was 47.94%. (Third Step. ¶ 314).
231. In accordance with Rep. Lewis’ directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 42, based on the 2010 census, to 52.56%. (Third Step. ¶ 315).
232. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 43, based on the 2000 census, was 48.69%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 43, based on the 2010 census, was 54.69%. (Third Step. ¶ 331).

233. In accordance with Rep. Lewis' directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 43, based on the 2010 census, to 51.45%. (Third Stip. ¶ 332).
234. Based on the 2010 census, the 2003 and 2009 version of HD 42 was under populated by 11,017 persons. Dr. Hofeller used race to fix this population deviation and meet Rep. Lewis' 50% plus instruction. As redrawn in 2011, HD 42 contains 9,681 more black persons than the 2003 and 2009 version and 137 fewer white persons than the 2003 and 2009 version. (Third Stip. ¶ 316).
235. There are 27 divided precincts in the 2011 House plan in Cumberland County. Dr. Hofeller divided these precincts along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 60,868 black voting age persons who reside in the 27 divided precincts in Cumberland County, 40,998 (67.4%) were assigned to HD 42 or HD 43. (Third Stip. ¶ 318).
236. Dr. Hofeller also had to divide the City of Fayetteville along racial lines in order to meet Rep. Lewis' 50% plus directions for HD 42 and 43. According to the NCGA redistricting website, 50,745 (80.37%) of the 63,138 black voting age persons in the City of Fayetteville are assigned to HD 42 and 43, and the remainder are assigned to two other districts. (Third Stip. ¶ 319).
237. Plaintiff Sandra Covington testified that she was removed from HD 44 to HD 42 simply because of her race. (Sandra Covington, Trial Tr. vol. II, 102:17-23).
238. HD 42 is less compact than the benchmark district on 5 out of 8 compactness measures that Maptitude computes. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-4, 6).
239. Below are maps of HD 42 and 43 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. These maps accurately depict the predominance of race in the drawing of the 2011 version of HD 42 and 43. (Third Stip. ¶¶ 329, 345).





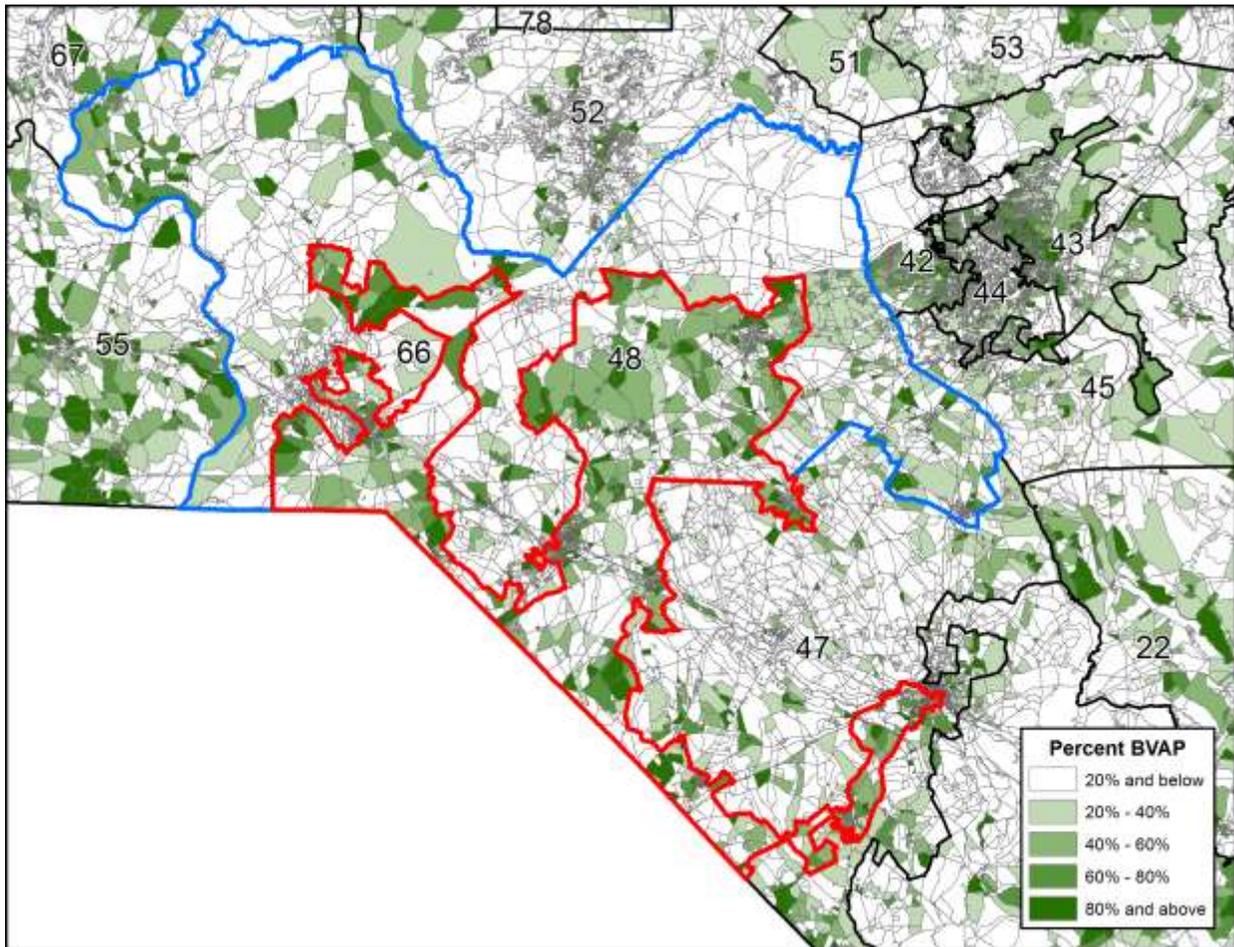
**House District 48**

- 240. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 48, based on the 2000 census, was 45.46%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 48, based on the 2010 census, was 45.56%. (Third Stip. ¶ 347).
- 241. In accordance with Rep. Lewis’ directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 48, based on the 2010 census to 51.27%. (Third Stip. ¶ 348).
- 242. In order to meet Rep. Lewis’ 50% plus directions for HD 48, Dr. Hofeller had to divide Hoke, Richmond, Robeson and Scotland Counties along racial lines. The black voting age population in the part of Hoke County in HD 48 is 45.51% and the black voting age population in the part of Hoke in HD 66 is 27.51%. (Answer ¶ 225). The black voting age population in the part of Richmond County in HD 48

is 50.91% and the black voting age population in the part of Richmond in HD 66 is 15.16 %. (Answer ¶ 227). The black voting age population in the part of Robeson County in HD 48 57.79%; the black voting age population in the part of Robeson in HD 47 is 17.36%; and the black voting age population in the part of Robeson in HD 66 is 29.53%. (Answer ¶ 229). The black voting age population in the part of Scotland County in HD 48 is 49.84% and the black voting age population in the part of Scotland in HD 66 is 16.62%. (Answer ¶ 231; Sen. Blue, Trial Tr. vol. I, 78:17-79:6).

243. Based on the 2010 census, the 2003 and 2009 version of HD 48 was under populated by 13,018 persons. Dr. Hofeller used race to fix this population deviation and meet Rep. Lewis' 50% plus instruction. As redrawn in 2011, HD 48 contains 12,908 more black persons than the 2003 and 2009 version and 6,751 more white persons than the 2003 and 2009 version. (Third Stip. ¶ 349).
244. As reported on the NCGA redistricting website, HD 48 as drawn in 2011 divided 31 precincts. Dr. Hofeller divided these 31 precincts divided along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 28,686 black voting age persons who reside in the 31 divided precincts in the 2011 version of HD 48, 22,352 (77.9%) were assigned to HD 48. (Third Stip. ¶¶ 350-51).
245. Dr. Hofeller also had to divide the Towns of Ellerbee, Fairmont, Hamlet, Laurinburg, and Rockingham along racial lines in order to meet Rep. Lewis' 50% plus directions. As reported on the NCGA redistricting website, 280 (95.24%) of the 294 black voting-age persons in the Town of Ellerbee are assigned to HD 48, and the remainder of 14 black voting-age persons are assigned to one other House district (HD 66); 1,095 (99.91%) of the 1,096 black voting-age persons in the Town of Fairmont are assigned to HD 48, and the remaining (one) black voting-age person is assigned to HD 47; 1,292 (78.88%) of the 1,638 black voting-age persons in the Town of Hamlet are assigned to HD 48, and the remainder of 346 black voting-age persons are assigned to one other House district (HD 66); 4,455 (85.87%) of the 5,188 black voting-age persons in the Town of Laurinburg are assigned to HD 48, and the remainder of 733 black voting-age persons are assigned to one other House district (HD 66); 1,592 (72.30%) of the 2,202 black voting-age persons in the Town of Rockingham are assigned to HD 48, and the remainder of 610 black voting-age persons are assigned to one other House district (HD 66). (Third Stip. ¶ 352-56).
246. HD 48 is less compact than the benchmark district on 4 out of 8 compactness measures that Maptitude computes. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-4, 6).

247. Below is a map of HD 48 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of HD 48. (Third Stip. ¶ 368).

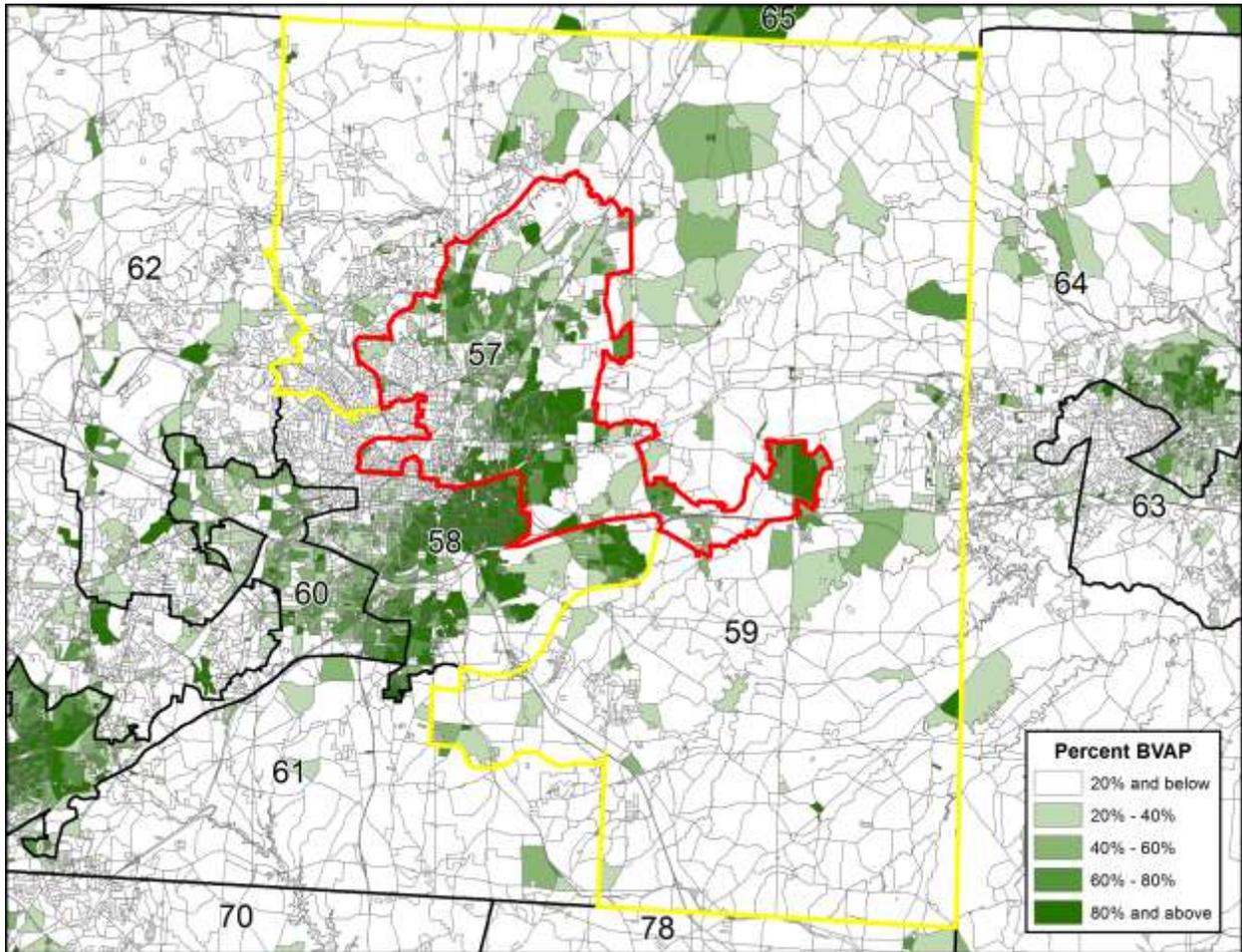


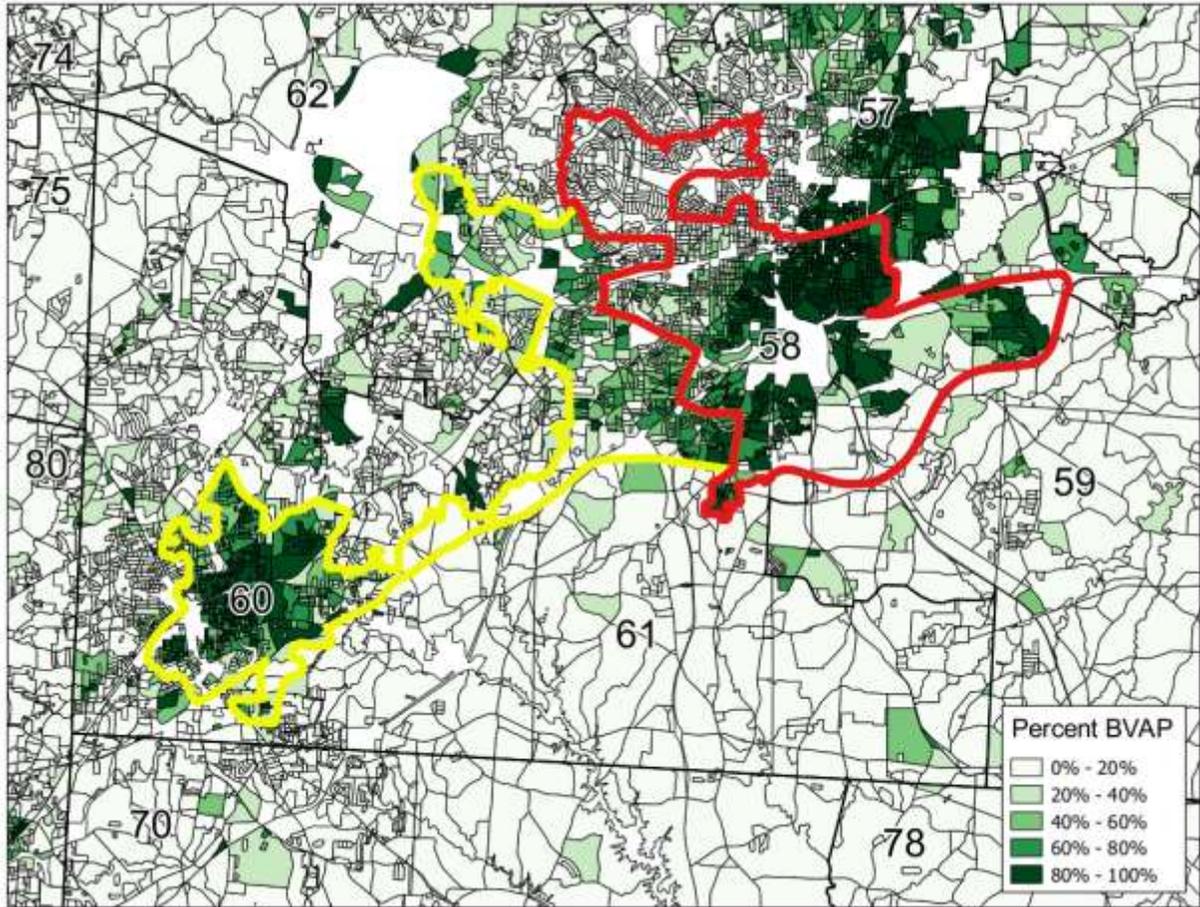
**HD 57, 58, and 60 in Guilford County**

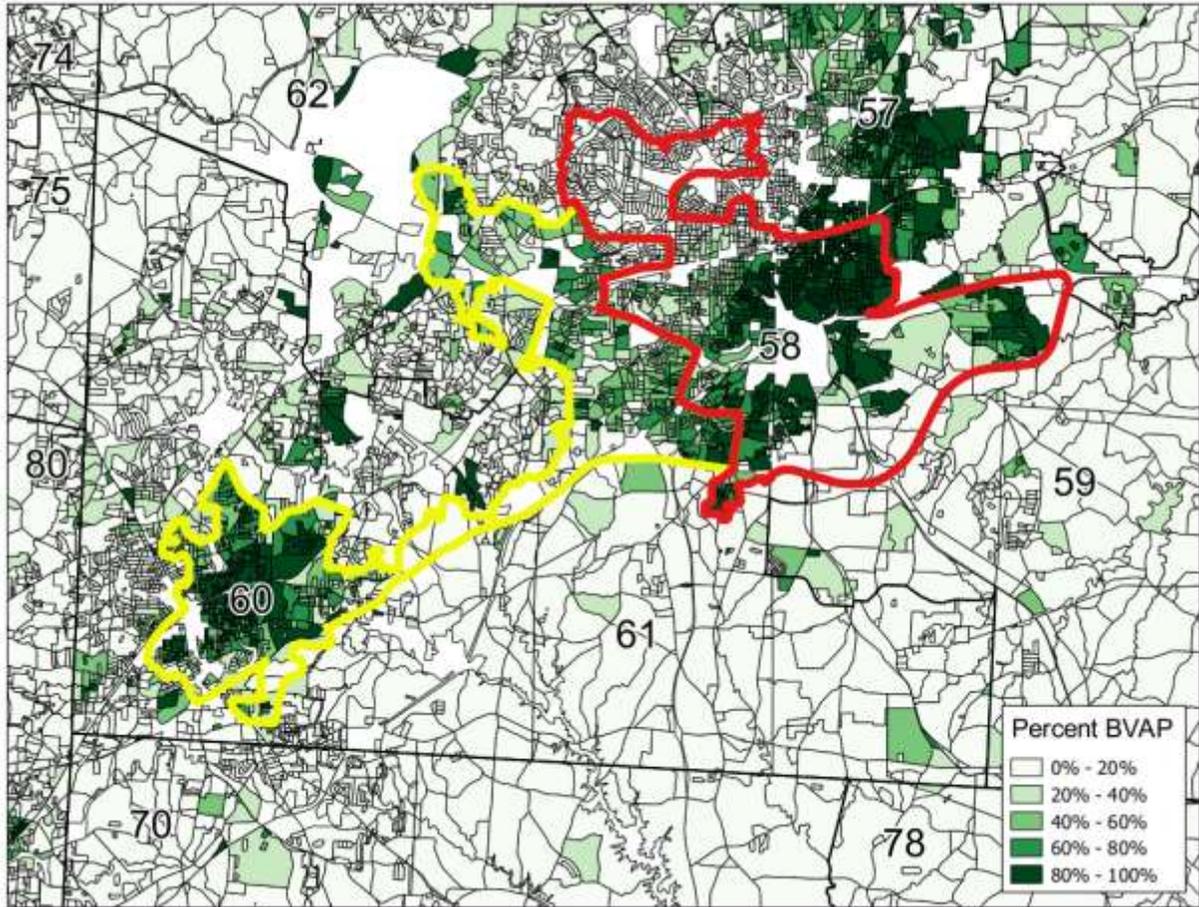
248. As reported on the NCGA redistricting website, under the 2003 and 2009 House plans, only two districts located in Guilford County had more than 40% black voting age population. In accordance with Rep. Lewis’ 50% plus and proportionality directions, Dr. Hofeller drew three districts in Guilford County in 2011 with more than 50% black voting age population. (Third Stip. ¶¶ 451-52).

249. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 57, based on the 2000 census, was 21.38%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 57, based on the 2010 census, was 29.93%. (Third Stip. ¶ 367).

250. To meet Rep. Lewis' 50% plus and proportionality directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 57, based on the 2010 census, was 50.69%. (Third Stip. ¶ 368).
251. There are six House districts in Guilford County in the 2011 plan. The Black voting age population in HD 57 (50.69%), HD 58 (51.11%), and HD 60 (51.36%), is three times larger than the black voting age population in the other Guilford House districts. The black voting age population in HD 59 is 13.58%; in HD 61 is 15.33%; and in HD 62 is 13.30%. (Answer ¶ 236).
252. Based on the 2010 census, the 2003 and 2009 version of HD 57 was under populated by 3,547 persons. Dr. Hofeller used race to fix this population deviation and meet Rep. Lewis' 50% plus and proportionality instructions. As redrawn in 2011, HD 57 contains 17,508 more black persons than the 2003 and 2009 version and 11,624 fewer white persons than the 2003 and 2009 version. (Third Stip. ¶ 370).
253. There are 37 divided precincts in Guilford County in the 2011 House plan. Dr. Hofeller divided these precincts along racial lines in order to meet Rep. Lewis' 50% plus and proportionality directions. Of the 33,673 black voting age persons who reside in the 37 divided precincts in Guilford County, 26,148 (77.7%) were assigned to HD 57, HD 58, or HD 60. (Third Stip. ¶¶ 371-72).
254. Dr. Hofeller also had to divide the City of Greensboro along racial lines in order to meet Rep. Lewis' 50% plus and proportionality directions. According to the NCGA redistricting website, 73,941 (88.39%) of the 83,647 black voting age persons in the City of Greensboro are assigned to HD 57, 58 and 60, and the remainder of Greensboro's black voting age persons are assigned to three other districts. (Third Stip. ¶ 373).
255. City Councilwoman Yvonne Johnson testified that the outward appendage of HD 57 on the eastern side of the district contains the town of Sedalia, a predominantly black community. (Johnson, Trial Tr. vol. I, 201:1-2).
256. HD 57 is less compact than the benchmark district on 8 out of 8 compactness measures that Maptitude computes. HD 58 is less compact than the benchmark on 6 of 8 measures, and HD 60 is less compact than the benchmark on 4 of 8 of the measures. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-4, 6).
257. Below are maps of HD 57, 58, and 60 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. These maps accurately depict the predominance of race in the drawing of the 2011 version of HD 57, 58, and 60. (Third Stip. ¶¶ 376, 388, 399).







**House Districts 99, 102, and 107 in Mecklenburg County**

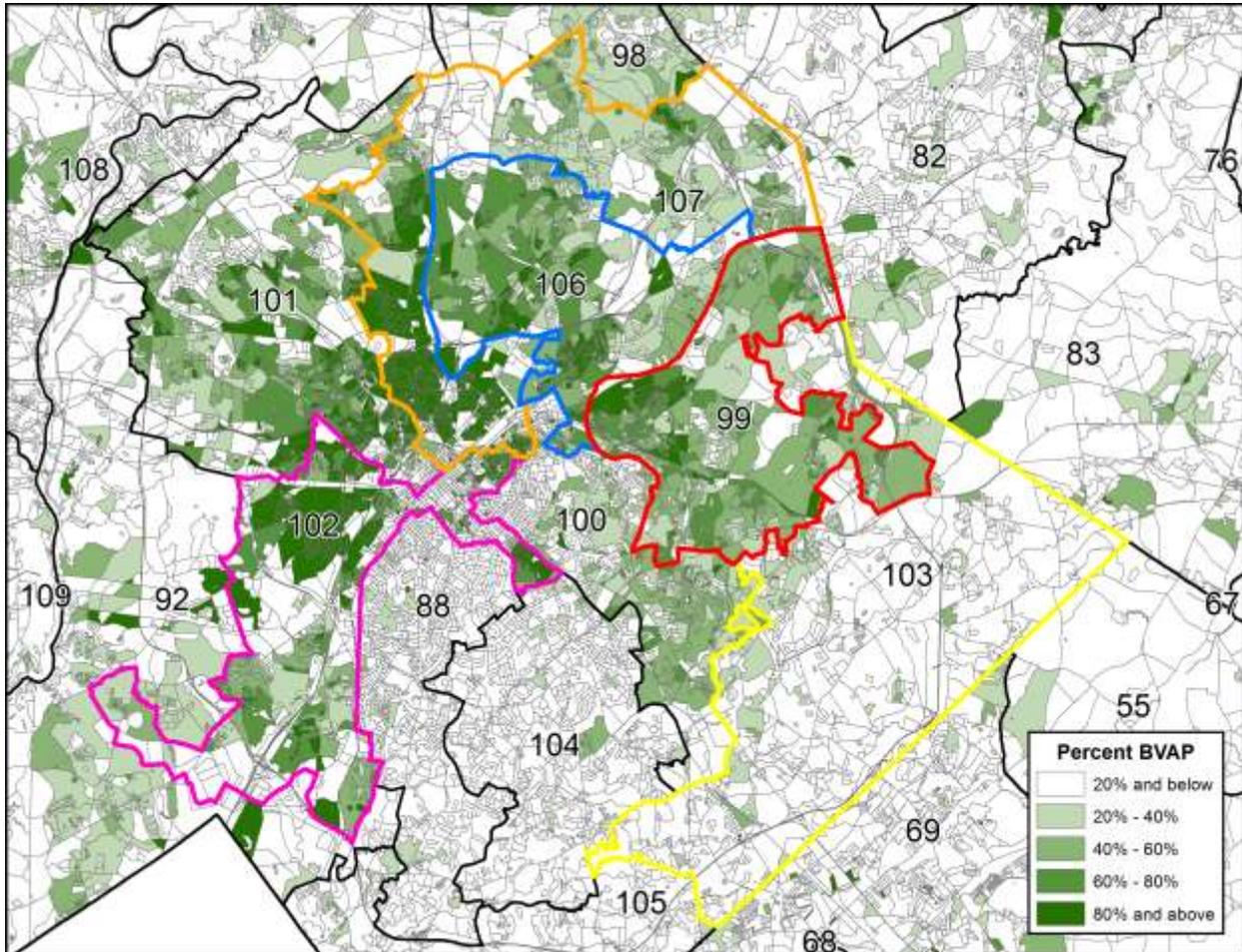
258. Prior to the 2011 redistricting process, Mecklenburg County had ten House districts wholly contained within the county. Of those ten districts, only one was a majority black district and only one was in the 40-50% black voting age population range. Three districts were in the 20-30% black voting age population range. After the 2010 census, Mecklenburg County had grown enough to warrant twelve House districts wholly contained within the county. The 2010 Census indicated that Mecklenburg County was 30.21% in black voting age population. In accordance with Rep. Lewis’ 50% plus and proportionality directions, Dr. Hofeller drew five districts in Mecklenburg County in 2011 with more than 50% black voting age population. (Third Stip. ¶¶ 453-54).
259. There are 11 House districts in Mecklenburg County in the 2011 plan. The black voting age population in HD 99 (54.65%), HD 101 (51.31%), HD 102 (53.53%), HD 106 (51.12%) and HD 107 (52.52%) is significantly larger than in the remaining six districts. The black voting age population in HD 92 is 18.18%; in

HD 100 is 32.01%, in HD 103 is 13.07%, in HD 104 is 8.17%, in HD 105 is 9.54%. (Answer ¶ 244).

260. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 99, based on the 2000 census, was 28.29%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 99, based on the 2010 census, to 41.26%. (Third Stip. ¶ 401).
261. As directed by Rep. Lewis, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 99, based on the 2010 census, to 54.65%. (Third Stip. ¶ 402).
262. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 102, based on the 2000 census, was 46.11%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 102, based on the 2010 census, was 42.74%. (Third Stip. ¶ 415).
263. As directed by Rep. Lewis, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 102, based on the 2010 census, to 53.53%. (Third Stip. ¶ 416).
264. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 107, based on the 2000 census, was 50.48%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 107, based on the 2010 census, was 47.14%. (Third Stip. ¶ 428).
265. As directed by Rep. Lewis, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 107, based on the 2010 census, to 52.52%. (Third Stip. ¶ 429).
266. Based on the 2010 census, the 2003 and 2009 version of HD 99 was over populated by 32,850 persons. Dr. Hofeller used race to fix that population deviation and meet Rep. Lewis' 50% plus and proportionality instructions. As redrawn in 2011, HD 99 contains 6,237 fewer black persons than the 2003 and 2009 version and 24,425 fewer white persons than the 2003 and 2009 version. (Third Stip. ¶ 403).
267. Based on the 2010 census, the 2003 and 2009 version of HD 102 was under populated by 10,148 persons. Dr. Hofeller used race to fix that population deviation and meet Rep. Lewis' 50% plus and proportionality instructions. As redrawn in 2011, HD 102 contains 11,556 more black persons than the 2003 and

- 2009 version and 6,041 fewer white persons than the 2003 and 2009 version. (Third Stip. ¶ 418).
268. Based on the 2010 census, the 2003 and 2009 version of HD 107 was over populated by 13,998 persons. Dr. Hofeller used race to fix that population deviation and meet Rep. Lewis' 50% plus and proportionality instructions. As redrawn in 2011, HD 107 contains 4,480 fewer black persons than the 2003 and 2009 version and 9,931 fewer white persons than the 2003 and 2009 version. (Third Stip. ¶ 430).
269. As reported on the NCGA redistricting website, HD 99 as drawn in 2011 divided 7 precincts. Dr. Hofeller divided these 7 precincts along racial grounds in order to meet Rep. Lewis' 50% plus and proportionality directions. Of the 11,271 black voting age persons who reside in the 7 divided precincts in the 2011 version of HD 99, 7,386 (65.5%) were assigned to HD 99. (Third Stip. ¶¶ 404-05).
270. As reported on the NCGA redistricting website, HD 102 as drawn in 2011 divided 13 precincts. Dr. Hofeller divided these 13 precincts along racial grounds in order to meet Rep. Lewis' 50% plus and proportionality directions. Of the 18,612 black voting age persons who reside in the 13 divided precincts in the 2011 version of HD 102, 11,622 (62.4%) were assigned to HD 102. (Third Stip. ¶¶ 419-20).
271. As reported on the NCGA redistricting website, HD 107 as drawn in 2011 divided 9 precincts. Dr. Hofeller divided those precincts along racial lines in order to meet Rep. Lewis' 50% plus and proportionality directions. Of the 18,772 black voting age persons who reside in the 9 divided precincts in the 2011 version of HD 107, 10,488 (55.7%) were assigned to HD 107. (Third Stip. ¶¶ 431-32).
272. Dr. Hofeller also divided the City of Charlotte along racial lines in order to meet Rep. Lewis' 50% plus and proportionality directions. According to the NCGA redistricting website, 145,040 (76.93% ) of the 188,529 black voting age persons in the City of Charlotte are assigned to HD 99, 101, 102, 106, and 107, and the remainder of Charlotte's black voting age persons are assigned to seven other districts. (Third Stip. ¶ 406).
273. HD 102 is less compact than the benchmark district on 8 out of 8 compactness measures that Maptitude computes. HD 107 is less compact than the benchmark on 4 of 8 compactness measures. (Fairfax, Trial Tr. vol. I, 174:7-176:9; Pl. Demon. C03-4, 6).
274. Below is a map of HD 99, 102, and 107 showing racial density by census block, shading which Dr. Hofeller acknowledged he displayed in Maptitude when drawing districts. These maps accurately depict the predominance of race in the

drawing of the 2011 version of HD 99, 102, and 107. (Third Stip. ¶¶ 414, 426, 442).



**J. Politics Does Not Explain the Boundaries of the Challenged Districts**

- 275. Sen. Rucho, Rep. Lewis, and Dr. Hofeller did not testify that politics explains the boundaries of the challenged districts.
- 276. In fact, Sen. Rucho and Rep. Lewis have denied that politics explains those boundaries. In response to criticism that the challenged districts were the product of an effort to obtain partisan advantage, Sen. Rucho and Rep. Lewis issued a public statement on June 22, 2011, rejecting that criticism on the grounds that the challenged districts were the product of compliance with the VRA rather than politics. (J1006-3).
- 277. Political advantage did result from application of the 50% and proportionality rules, but as Sen. Rucho and Rep. Lewis explained that advantage is simply a by-product of the application of those rules. In their June 22, 2011 public statement,

Sen. Rucho and Rep. Lewis said: “While districts that adjoin majority black districts may become more competitive for Republican candidates because of compliance with the VRA, such competitiveness results from compliance with the VRA.” (J1006-4).

278. Defendants’ reliance on the division of precincts to construct the challenged districts precludes any claim that politics, rather than race, explains the challenged districts. Dr. Arrington explained that reliable political data is kept only at the precinct level, not the census block (sub-precinct) level. Dr. Arrington is an experienced mapdrawer, and has used the software that Dr. Hofeller used—Maptitude. He explained how Maptitude’s disaggregation tool works, and that no experienced mapdrawer would rely on political data disaggregated to the census block level. Instead, he explained that the only accurate data on the census block level is racial data from the Census Bureau, and that based on the location and way precincts were split, the splitting of precincts was not based on partisan data. (Dr. Arrington, Trial Tr. vol. I, 113:16-115:25, 161:6-11; P2091-3-P2091-5; P2092-9)

**K. Compliance with the WCP Does Not Explain the Boundaries of the Challenged Districts.**

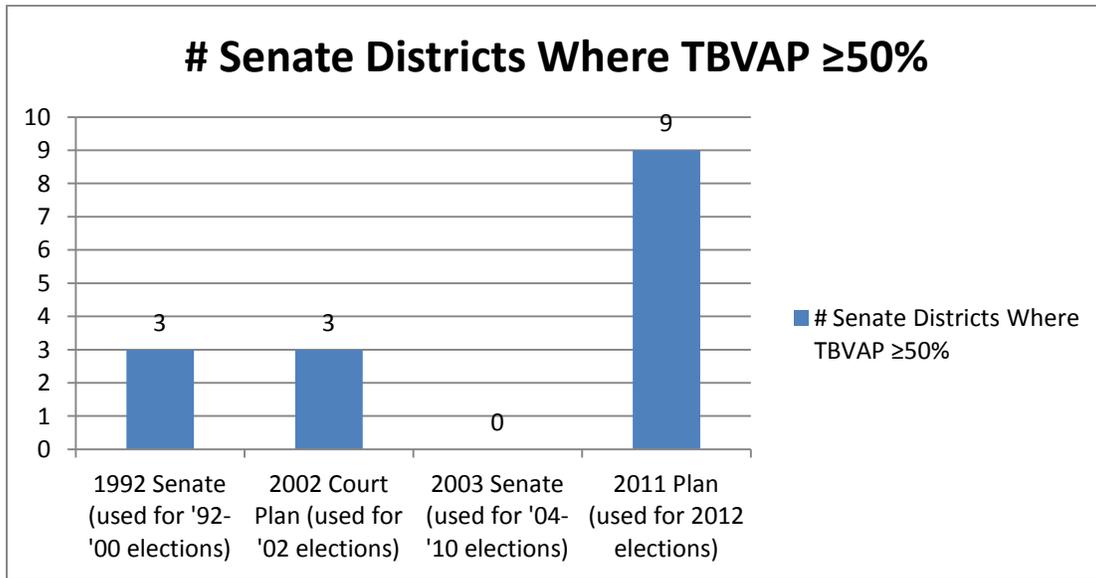
279. Sen. Rucho and Rep. Lewis agree that compliance with the WCP does not explain the boundaries of challenged districts located within a single county. (Second Lewis Dep. pp. 25:10-13 (D.E. ## 74-1, p. 16, 102-1, p. 514)). Those districts are SD 14, 28, 32, 38 and 40 and HD 29, 31,33, 38,42, 43, 57, 58, 60, 99, 102 and 107.
280. The other challenged districts (SD 4, 4, 20, and 21 and HD 5, 7, 12, 21, 24 and 48) are located in multiple counties and traverse the boundaries of one or more of those counties. Traversing the boundaries of those counties, however, was only permissible in Sen. Rucho’s and Rep. Lewis’ opinion when drawing a 50% plus district. See FOF 42-43, *supra*. As Dr. Hofeller explained, drawing “House Districts 12, 21 and 48 with a black population of below 50 percent would... have been in violation of the traversal rules established by the North Carolina Supreme Court.” (Dr. Hofeller, Trial Tr. vol. V, 18:4-9). Thus, by Defendants’ own testimony the traversal of county boundaries in the challenged districts is explained by the search for African-American citizens, and not by compliance with the WCP.
281. With regard to the boundaries drawn to separate a challenged district from an adjoining district within the same county, defendants do not contend, and could not logically contend, that the WCP required those boundaries. The WCP does not require that such lines be drawn in an irregular manner. Race is the only explanation for the highly irregular lines separating challenged districts from

adjoining districts in the same county. Dr. Hofeller, for example, acknowledged the line separating HD 5 and 7 in Nash County is explained by race. (Dr. Hofeller, Trial Tr. vol. V 34:16-22).

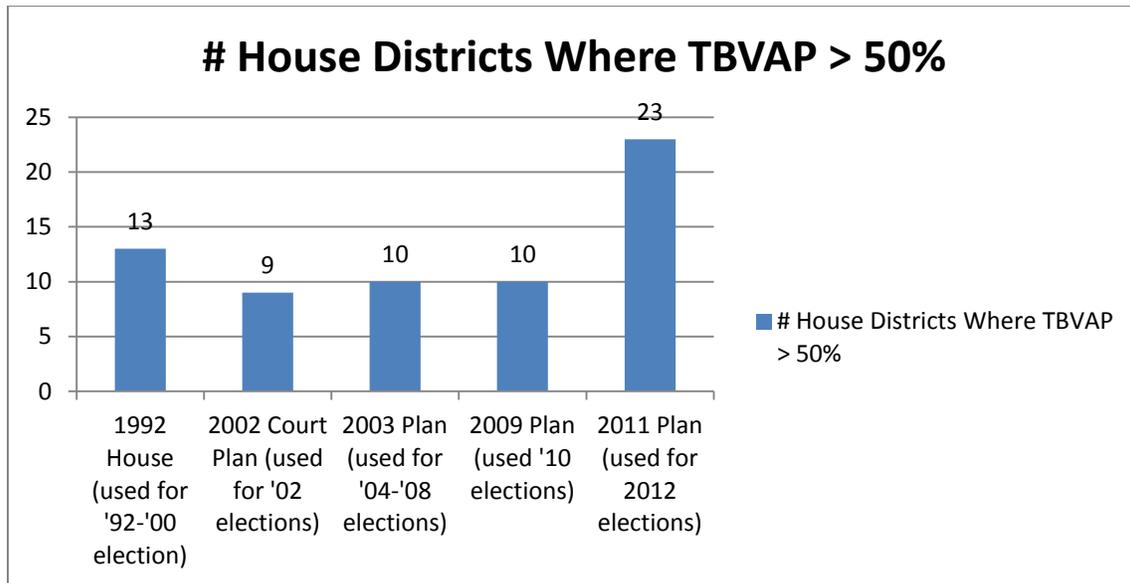
**III. FINDINGS OF FACT PART III: THE CHALLENGED DISTRICTS DO NOT SURVIVE STRICT SCRUTINY**

**A. The number of Majority Black Senate and House Districts In the 2011 Redistricting Plans Far Exceeds the Number of Such Districts in any other Redistricting Plan Ever Enacted by the General Assembly or Drawn by the Courts.**

282. The following chart compares the number of majority black Senate districts judged necessary by the General Assembly in 1992 and 2003, and the courts in 2002, to meet the State’s obligations under Sections 2 and 5 of the Voting Rights Act to the number of such districts judged necessary by Senator Rucho and Rep. Lewis to meet those obligations in 2011.



283. The following chart compares the number of majority black House districts judged necessary by the General Assembly in 1992, 2003 and 2009, and the courts in 2002, to meet the State’s obligations under Sections 2 and 5 of the Voting Rights Act compared to the number of such districts judged necessary by Senator Rucho and Rep. Lewis to meet those obligations in 2011.



284. The following chart lists each county in which a Senate district containing > 50% TBVAP was located (a) under the legislative plan used for the 1992-2000 election; (b) under the Court drawn plan used for the 2002 election; (c) under the legislative plan used for the 2004-2010 elections; and (d) under the challenged 2011 plan.

<u>County</u>	<u>1992</u>	<u>2002</u>	<u>2003</u>	<u>2011</u>
Bertie	1	1	0	1
Gates	1	1	0	0
Halifax	1	1	0	1
Hertford	1	1	0	1
Northampton	1	1	0	1
Vance	1	1	0	1
Warren	1	1	0	1
Edgecombe	1	1	0	1
Martin	1	1	0	1
Pitt	1	1	0	1
Washington	1	1	0	1
Wilson	1	0	0	1
Mecklenburg	1	1	0	2
Tyrell	0	1	0	1
Chowan	0	0	0	1
Nash	0	0	0	1
Greene	0	0	0	1
Lenoir	0	0	0	1
Wayne	0	0	0	1

<u>County</u>	<u>1992</u>	<u>2002</u>	<u>2003</u>	<u>2011</u>
Wake	0	0	0	1
Durham	0	0	0	1
Granville	0	0	0	1
Cumberland	0	0	0	1
Hoke	0	0	0	1
Guilford	0	0	0	1

285. Notably, the 2011 plan doubles the number of > 50% BVAP Senate districts in Mecklenburg County and adds a > 50% BVAP district in 11 counties for the first time, including Wake, Durham, Guilford and Cumberland counties.

286. The following chart lists each county in which a House district containing > 50% BVAP was located (a) under the legislative plans used for the 1992-2000 elections; (b) under the Court drawn plan used for the 2002 election; (c) under the legislative plan used for the 2004-2008 elections; (d) under the legislative plan used for the 2010 election; and (e) under the challenged 2011 plan.

<u>County</u>	<u>1992</u>	<u>2002</u>	<u>2003</u>	<u>2009</u>	<u>2011</u>
Bertie	1	1	0	0	1
Gates	1	0	0	0	1
Hertford	1	1	0	0	1
Northampton	1	1	1	1	1
Edgecombe	3	1	1	1	1
Greene	1	1	0	0	1
Martin	2	1	1	1	1
Pitt	1	1	1	1	1
Halifax	1	1	1	1	1
Nash	2	1	1	1	1
Guilford	2	2	2	2	3
Forsyth	1	1	1	1	0
Mecklenburg	2	1	2	2	5
Wake	1	0	0	0	2
Cumberland	0	0	0	0	2
Granville	1	1	0	0	1
Vance	1	1	1	1	1
Warren	1	1	1	1	1
Craven	1	0	0	0	1
Jones	1	0	0	0	0

<u>County</u>	<u>1992</u>	<u>2002</u>	<u>2003</u>	<u>2009</u>	<u>2011</u>
Lenoir	1	0	0	0	1
Pamlico	1	0	0	0	0
Brunswick	1	0	0	0	0
Columbus	1	0	0	0	0
New Hanover	1	0	0	0	0
Pender	1	0	0	0	0
Wilson	1	1	1	1	1
Pasquotank	0	0	0	0	1
Franklin	0	0	0	0	1
Duplin	0	0	0	0	1
Sampson	0	0	0	0	1
Wayne	0	0	0	0	1
Durham	0	0	0	0	2
Hoke	0	0	0	0	1
Richmond	0	0	0	0	1
Robeson	0	0	0	0	1
Scotland	0	0	0	0	1

287. Notably, the 2011 plan increases the number of > 50% BVAP districts in Mecklenburg from 2 to 5, in Guilford from 2 to 3, in Wake from 1 to 2, in Cumberland from 0 to 2, and in Durham from 0 to 2. It also creates a > 50% BVAP House district for the first time in 9 counties.

288. The following chart compares the number of Senate districts pre-cleared by the U.S. Department of Justice that contained BVAP 50% or greater and the number of pre-cleared districts that contained BVAP between 40 and 50% under the plans used for the 1992-2000 elections, the 2002 election, the 2006-2010 elections and under the 2011 challenged plan.

<b>State Senate Plan</b>	<b># Senate Districts Where TBVAP <math>\geq</math>50%</b>	<b># Senate Districts Where TBVAP <math>\geq</math>40% but &lt;50%</b>
1992 Senate ('92-'00)	3	2
2002 Court Plan ('02)	3	6
2003 Senate ('04-'10)	0	8
2011 Plan (Current)	9	1

<b>State Senate Plan</b>	<b># Senate Districts Where TBVAP ≥50%</b>	<b># Senate Districts Where TBVAP ≥40% but &lt;50%</b>
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289. The following chart compares the number of House districts pre-cleared by the U.S. Department of Justice that contained BVAP 50% or greater and the number of pre-cleared districts that contained BVAP from 40-50% under the plans used for the 1992-2000 elections, the 2002 election, the 2004-2008 election, the 2010 election and under the 2011 challenged plan.

<b>State House Plan</b>	<b># House Districts Where TBVAP ≥50%</b>	<b># House Districts Where TBVAP ≥40% but &lt;50%</b>
1992 House ('92-'00)	13	4
2002 Court Plan ('02)	9	13
2003 Plan ('04-'08)	10	11
2009 Plan ('10)	10	11
2011 Plan (Current)	23	2

**B. Sen. Rucho's and Rep. Lewis' 50% Plus Rule was Mechanically Applied Across the State to Draw the Challenged Senate and House Districts without Regard for Past Election Results or Differences in Voting Patterns.**

290. Early in the redistricting process, at the request of Senator Rucho, legislative staff at the General Assembly, led by Erika Churchill, compiled a list of general elections for legislative districts involving candidates of two races in the state of North Carolina from the years 2006 through 2010. (Erika Churchill, Trial Tr. vol. IV, 102, 104; J1048-49 (Churchill Dep. Exs. 82-83); P2038; P2042).

291. The data compiled by legislative staff included the race of all candidates, the district number, the winner and loser of the election, the margin of victory by percentage and not gross vote totals, and the racial demographics of the district in which the election was conducted under the 2000 Census. (J1048-49 (Churchill Dep Exs. 82-83)).

292. Ms. Churchill completed this project and submitted to Senator Rucho the data she collected on June 13 or 14 of 2011. (Churchill, Trial Tr. vol. IV, 124:1-5; P2045).

293. In some of these elections black candidates or the candidates of choice of black voters were unopposed. The fact that no white candidate chose to run against

- these African-American candidates in a district, particularly in districts below 50% TBVAP, demonstrates that those districts provided African-American voters the opportunity and ability to elect candidates of their choice. (Dr. Allan Lichtman, Trial Tr. vol. III, 33:5-34:11).
294. Dr. Hofeller did not view the election results prepared by General Assembly staff before he drew the plans or before they were enacted. (Dr. Thomas Hofeller, Trial Tr. vol. V, 80:16-22).
  295. Dr. Hofeller did not do any analysis to see whether candidates of choice of black voters were being elected in districts with less than 50% BVAP while drawing the VRA districts. Nor did he do any analysis of racially polarized voting in state legislative elections in North Carolina before drawing the VRA districts. (Dr. Hofeller, Trial Tr. vol. V, 80:23-82:20).
  296. On Tuesday, June 14, just three days before they publicly released their first map of the challenged districts, Sen. Rucho and Rep. Lewis received in the mail a racially polarized voting analysis from Thomas Brunell, a professor at a Texas University. (Rep. Lewis, Trial Tr. vol. III, 160). Dr. Brunell did not come to Raleigh to explain his report and no member of the General Assembly had any discussion with Dr. Brunell to discuss his report. (Dr. Brunell, Trial Tr. vol. IV, 147:10-48:6).
  297. This report addressed a single question: whether “a majority of white voters prefer a different candidate that (sic) the majority of voters from the protected minority.” (D3033).
  298. The report addressed this question for 51 counties. Dr. Brunell played no role in choosing the 51 counties to be examined—those counties were determined by Mr. Farr, counsel for Defendants. (Dr. Brunell, Trial Tr. vol. IV, 147:10-15).
  299. The metric Dr. Brunell used to answer this question was “the percentage of the vote President Obama received [in a county] when the percentage of voters in that county that are African American is zero.” (D3033). He also used the percentage of the vote the African American candidate for state Auditor received in a county in 2004 when the percentage of voters in that county is zero. (D3033).
  300. Dr. Brunell relied primarily on exogenous elections in his analysis, even though he acknowledged that endogenous elections can be more informative. He declined to use endogenous elections because it would be time-consuming and difficult to identify those endogenous elections. (Dr. Brunell, Trial Tr. vol. IV, 150:3-151:5).

301. Dr. Brunell has acknowledged that his studies of racially polarized voting patterns do not take into consideration whether that racially polarized voting is legally significant—that is, whether it causes the candidate favored by black voters to be usually defeated. He further acknowledged that determining whether or not the black-preferred candidates won was publicly available information and could be found “in seconds.” He ultimately acknowledged that African-American candidates won repeatedly in districts where he found racially polarized voting. (Dr. Brunell, Trial Tr. vol. IV, 148:19-149:12, 161:22 to 163:10; Brunell Dep. June 17, 2012 p. 122:6-17 (D.E. ## 74-1, p. 4; 102-1, p. 73).
302. Another of Defendants’ experts, Dr. Trey Hood, later acknowledged that one could find racially polarized voting without the third prong of Gingles being satisfied. (Dr. Trey Hood, Trial Tr. vol. IV, 199:2-200:22).
303. Dr. Brunell described his work as designed to supplement the report of Dr. Ray Block, but he never independently examined Dr. Block’s analysis to determine if was accurate. (Brunell, Trial Tr. vol. IV, 154:22-155:5).
304. Dr. Brunell concluded that there was “a considerable amount of white cross-over voting” in several counties. The score Dr. Brunell used to define a county as having “a considerable amount of white cross over voting” was 40. (D3033).
305. Four points are obvious on the face of Dr. Brunell’s report:
  - i. There is a wide range of racially polarized voting across the state. As measured by the results of the presidential election the range of white crossover voting varies from 59.4 in Durham to 10.4 in Bertie. As measured by the auditor’s election the range of white crossover voting varies from 54.3 in Gates to 20.1 in Cleveland.
  - ii. By Dr. Brunell’s measure there are 8 counties in which there is “a considerable amount of white crossover voting” as measured by either the 2008 presidential election or the 2004 state auditor election. They are Durham, Wake, Mecklenburg, Scotland, Pasquotank, Gates, Vance and Northampton.
  - iii. There are several counties with scores just short of Dr. Brunell’s measure for counties with “a considerable amount of white cross-over voting”. These include Guilford, Forsyth, and Cumberland.
  - iv. Dr. Brunell did not study 4 counties in which Sen. Rucho and Rep. Lewis applied their 50% plus or proportionality rules. They are Duplin, Scotland, Richmond, and Warren.

306. Equally obvious are several flaws in the manner in which Sen. Rucho and Rep. Lewis used the Brunell report.
- i. They applied their 50% plus rule across the state on a one size fits all basis without any regard for wide differences in racially polarized voting across the state.
  - ii. They drew 50% plus districts in several counties in which there is a considerable amount of white crossover voting. These districts include SD 38 and 40 and HD 99, 102 and 107 in Mecklenburg; SD 20 and HD 29 and 31 in Durham; and SD 14 and HD 33 and 38 in Wake.
  - iii. They used Dr. Brunell's report to justify 50% plus districts located, at least in part, in counties not studied by Dr. Brunell. They are HD 21 in Sampson and Duplin, HD 48 in Richmond, and SD 4 in Warren.
  - iv. They used Dr. Brunell's findings of statically significant racially polarized voting instead of the proper inquiry under the second and third prongs of Gingles: that is, whether racially polarized voting leads to the "usual defeat" of minority-preferred candidates.
307. Dr. Brunell subsequently acknowledged that the methodology he used in his June 14 report was flawed and his estimates were incorrect. (Dr. Brunell, Trial Tr. vol. IV, 153:3-23)
308. In Dr. Brunell's more recent report submitted to this Court, which was not available to the General Assembly, he opined that he was aware of no evidence that black voters could elect their candidates of choice in districts other than majority black or coalition districts. On cross examination at trial, Dr. Brunell acknowledged the numerous examples of black candidates winning in majority white districts. (Dr. Brunell, Trial Tr. vol. IV, 158:1-14).
309. Also in Dr. Brunell's more recent analyses, not available to the General Assembly, he acknowledges that while he assumes that the presence of Hispanic voters, in coalition districts with black voters, enabled black voters to have the opportunity to elect their candidate of choice, he has done no studies on Hispanic citizenship or turnout rates in North Carolina. He made the assumption that "Hispanics tend to vote for Democrats," without any actual study of Hispanic voting patterns in specific counties in North Carolina, and then assumed that Hispanic population in certain North Carolina counties had some positive effect on the ability of black voters to elect their candidates of choice. Dr. Brunell further admitted at trial that

his report was incorrect as to the turnout of black voters in recent North Carolina elections—he had opined that majority black districts were needed because black turnout was low. (Dr. Brunell, Trial Tr. vol. IV, 158:15-160:23; Brunell Dep. Dec. 31, 2015, 12:9-13:24, 58:23-59:19 (D.E. ## 74-1, pp. 5-6, 102-1, pp. 85-86, 125-26).

C. **A review of past election results in Each challenged district demonstrates that Defendants did not have any basis in fact for increasing the black voting age population in those Districts.**

310. The legislature had at its disposal all the data needed to do a “district effectiveness analysis,” which is a simple examination of past election results to determine whether minority voters have the opportunity and ability to elect the candidates of their choice without drawing majority black districts. A legislature does not need to hire an expert to do a district effectiveness analysis. (Lichtman Trial Tr. vol. III, 14:7-12, 19:3-20:6, 23).
311. Defendants’ own expert, Dr. Hood, created the district effectiveness analysis and said it is commonly used in the redistricting process. (Dr. Hood, Trial Tr. vol. IV, 186:2-187:4).
312. A simple district effectiveness analysis—which involves reviewing districts where the candidates of choice of black voters have been successful and the level of BVAP for those districts—would have quickly revealed the following:
  - i. Candidates of choice of black voters won 91% of the time in 40-49.9% BVAP House districts in 2008 and 2010. (Dr. Lichtman, Trial Tr. vol. III, 29:21-30:11).
  - ii. Candidates of choice of black voters won only 90% of the time in 50%+ BVAP House districts in 2008 and 2010. (Dr. Lichtman, Trial Tr. vol. III, 30:12-32:17).
  - iii. Candidates of choice of black voters won 88% of the time in 40-49.9% BVAP Senate districts in 2008 and 2010. (Dr. Lichtman, Trial Tr. vol. III, 33:2-22).
  - iv. Candidates of choice of black voters won 88% of the time in 50%+ BVAP Senate districts in 2008 and 2010. (Dr. Lichtman, Trial Tr. vol. III, 33:2-22).
313. Thus, with some basic arithmetic, it is easy to conclude that election results—that is the ability of black voters to elect their candidates of choice—are just as good, if

not better, in 40-49.9% BVAP districts when compared to 50%+ BVAP districts. Even Defendants' expert Dr. Hood conceded that the candidate of choice of black voters is not usually defeated in districts that are 40%+ in BVAP. (Dr. Lichtman, Trial Tr. vol. III, 25:7-26:2; Dr. Hood, Trial Tr. vol. IV, 199:9-17).

314. Election results in the challenged districts from 2002 to 2010 are reviewed below. These results demonstrate that Defendants did not have any reasonable basis for increasing the black voting age population in the challenged districts.

**SD 4**

315. The chart below lists election results in SD 4 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner (race)</b>
2002	52.52	77.44	Robert Holman (B)
2004	49.14	100	Robert Holman (B)
2006	49.14	69.67	Robert Holman (B)
2008	49.14	100	Edward Jones (B)
2010	49.14	82.41	Edward Jones (B)

Third Stip. ¶¶ 1, 2, 3, 9-15.

316. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
317. These two candidates of choice of African American voters have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
318. Moreover, 69.3% of the SD 4 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 49.70%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 16).
319. In the 2008 election for president, 65.96% of the SD 4 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the

time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 17).

**SD 5**

320. The chart below lists election results in SD 5 for the 2008 election.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2008	30.14	52.90	Don Davis (B)

Third Stip. ¶¶ 19, 20, 21, 28-30.

321. While SD 5, with a TBVAP in the 30% range, did not guarantee the election of an African-American candidate, an African American candidate did succeed in a contested election, indicating that black voters in the district had an opportunity to elect the candidate of their choice. (Third Stip. ¶ 28).

322. Moreover, 63.71% of the SD 5 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 30.14%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 31).

323. In the 2008 election for president, 62.15% of the SD 5 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was only 30.14% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 32).

**SD 14**

324. The chart below lists election results in SD 14 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	43.16	64.95	Vernon Malone (B)
2004	41.01	64.11	Vernon Malone (B)
2006	41.01	65.93	Vernon Malone (B)
2008	41.01	69.45	Vernon Malone (B)

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2010	41.01	65.92	Dan Blue (B)

Third Stip. ¶¶ 34, 36, 37, 42-48.

325. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
326. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African-American candidate. (Sen. Blue, Trial Tr. vol. I, at 51:22 to 52:1)
327. Moreover, 69.91% of the SD 14 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 41.01%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 49).
328. In the 2008 election for president, 78.07% of the SD 14 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 50).
329. The candidates of choice of African-American voters in Wake County had an extensive history of electoral success, in local and state-level elections. (Sen. Blue, Trial Tr. vol. I, 72:14-22, 74:11-75:9; P2106-3, 4 (Williams Affidavit)).
330. Sen. Blue and others informed legislative leaders that the 2011 plan for Wake County packed black voters into districts far beyond what was necessary to elect their candidate of choice. (Sen. Blue, Trial Tr. vol. I, 65:5-66:4)

### **SD 20**

331. The chart below lists election results in SD 20 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	46.87	89.30	Jeanne Lucas (B)
2004	44.58	91.62	Jeanne Lucas (B)

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2006	44.58	100	Jeanne Lucas (B)
2008	44.58	73.58	Floyd McKissick (B)
2010	44.58	73.11	Floyd McKissick (B)

Third Stip. ¶¶ 52, 53, 54, 59-65.

332. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
333. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
334. Moreover, 74.98% of the SD 20 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 44.58%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 66).
335. In the 2008 election for president, 75.58% of the SD 20 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 67).

### **SD 21**

336. The chart below lists election results in SD 21 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	43.19	66.66	Larry Shaw (B)
2004	41.00	62.90	Larry Shaw (B)
2006	41.00	61.65	Larry Shaw (B)
2008	41.00	100	Larry Shaw (B)

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2010	41.00	67.61	Eric Mansfield (B)

Third Stip. ¶¶ 52, 53, 54, 59-65.

337. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
338. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
339. Moreover, 64.60% of the SD 21 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 41.0%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 84).
340. In the 2008 election for president, 67.82% of the SD 21 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 85).

### **SD 28**

341. The chart below lists election results in SD 28 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	47.80	65.11	Katie Dorsett (B)
2004	44.18	100	Katie Dorsett (B)
2006	44.18	100	Katie Dorsett (B)
2008	44.18	100	Katie Dorsett (B)
*2010	44.18	47.38	Gladys Robinson (B)*

Third Stip. ¶¶ 87-89, 95-101.

\*\*Three way election: two black candidates received 60.85% of vote.

342. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
343. These two candidates of choice have almost always been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate. (J1050-145-49).
344. Moreover, 76.99% of the SD 28 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 44.18%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 102).
345. In the 2008 election for president, 67.82% of the SD 28 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 103).
346. African-American voters in Greensboro and Guilford County have an extensive history of electing their candidate of choice, even in districts that are not majority black. For example, Greensboro has elected African-American candidates to the mayor's office and at-large seats on City Council since 1993, even though the city is not majority black. African-American candidates have also won county-wide elections to the school board and clerk of court's office, again even though the county is not majority black. (Johnson, Trial Tr. vol. I, 192:19-195:2).

**SD 32**

347. The chart below lists election results in SD 32 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002*	40.47	100	Garrou (W)
2004	41.42	69.69	Garrou (W)
2006	41.42	100	Garrou (W)
2008	41.42	100	Garrou (W)

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2010**	41.42	65.37	Garrou (W)

Third Stip. ¶¶ 105-07, 114-16; NC SBOE website – election results.

\*Sen. Linda Garrou received 80.36% of the vote in a primary against a black opponent.

\*\*Sen. Linda Garrou received 81.43% of vote in a primary against black opponent.

348. Linda Garrou, a white candidate, was the candidate of choice of black voters in this district prior to the 2011 redistricting. (Dr. Lichtman Trial Tr. vol. III, 33; P2109-2, 3 (Wilson Affidavit)).
349. In the 2010 primary election, Linda Garrou had a black opponent and received 81.34% of the votes cast. (Third Stip. ¶ 114). This is evidence that she was the candidate preferred by black voters.
350. Moreover, 62.52% of the SD 32 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 41.42%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 117).
351. In the 2008 election for president, 69.35% of the SD 32 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 118).

### SD 38

352. The chart below lists election results in SD 38 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	50.67	100	Charlie Dannelly (B)
2004	47.69	100	Charlie Dannelly (B)
2006	47.69	100	Charlie Dannelly (B)

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2008	47.69	73.73	Charlie Dannelly (B)
2010	47.69	68.67	Charlie Dannelly (B)

Third Stip. ¶¶ 120-22, 127-33.

353. An African-American candidate, the candidate of choice of black voters, has been elected to office from this district when it was less than 50% TBVAP.
354. This candidate of choice has been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
355. Moreover, 67.14% of the SD 38 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 47.69%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 134).
356. In the 2008 election for president, 77.94% of the SD 38 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 135).
357. African-American voters in Mecklenburg County have enjoyed substantial success in electing their candidates of choice in local elections, in at-large elections or in districts that were not majority black. For example, Harold Cogdell was elected to city council in 2001 in a majority-white district. He also successfully ran countywide in 2008 and 2010 for county commission and won with cross-racial support. (Cogdell, Trial Tr. vol. II, 28:5-20, 29:23-30, 33:19-23).
358. Additionally, the first black candidate was elected to the Charlotte City Council in 2001, and from that point until 2009, there were six black council members elected, up to four at one time, and a black mayor, Anthony Foxx. (Cogdell, Trial Tr. vol. II, 34:11-24).

#### **SD 40**

359. The chart below lists election results in SD 40 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2004	31.11	84.11	Malcolm Graham (B)
2006	31.11	61.48	Malcolm Graham (B)
2008	31.11	66.96	Malcolm Graham (B)
2010	31.11	74.40	Malcolm Graham (B)

Third Stip. ¶¶ 137-39, 143-48.

360. In the years prior to the 2011 redistricting process, an African-American candidate, the candidate of choice of black voters, consistently has been elected to office from this district when it was only 31.11% TBVAP.
361. This candidate of choice has always been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
362. In 2004, Malcolm Graham unseated a well-established white incumbent in a district that was majority-white (only 34% BVAP), and where only 40% of the Democrats in that district were black. (Cogdell, Trial Tr. vol. II, 35:4-36:8; Sen. Clodfelter, Trial Tr. vol. II, 46:9-48:5).
363. Moreover, 71.66 % of the SD 40 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 31.11%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 149).
364. In the 2008 election for president, 80.11% of the SD 40 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 150).

### **HD 5**

365. The chart below lists election results in HD 5 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	57.28	85.98	Howard Hunter (B)
2004	49.02	87.88	Howard Hunter (B)
2006	49.02	64.27	Howard Hunter (B)
2008	49.02	100	Annie Mobley (B)
2010	49.02	58.99	Annie Mobley (B)

Third Stip. ¶¶ 153-55, 159-65.

366. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
367. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
368. Moreover, 70.15% of the HD 5 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 49.02%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 166).
369. In the 2008 election for president, 65.06% of the HD 5 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 167).

### **HD 7**

370. The chart below lists election results in HD 7 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	55.68	100	John Hall (B)
2004	56.03	100	John Hall (B)
2006	56.03	100	Edward Jones (B)

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2008	56.03	100	Angela Bryant (B)
2010	56.03	100	Angela Bryant (B)

Third Stip. ¶¶ 169, 176-82.

371. Three different African-American candidates have been elected to office from this district.
372. Although the general elections were uncontested, then-Representative Angela Bryant defeated a white challenger in the 2008 primary with 70% of the vote. (Sen. Bryant, Trial Tr. vol. II, 8:18-9:2)

### HD 12

373. The chart below lists election results in HD 12 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	47.48	85.72	William Wainwright (B)
2004	47.51	58.78	William Wainwright (B)
2006	47.51	66.28	William Wainwright (B)
2008	47.51	69.14	William Wainwright (B)
2010	47.51	60.21	William Wainwright (B)

Third Stip. ¶¶ 186-88, 194-200.

374. An African-American candidate, the candidate of choice of black voters, consistently has been elected to office from this district when it was less than 50% TBVAP.

375. That candidate has been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
376. Moreover, 61.21% of the HD 12 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 47.51%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 201).
377. In the 2008 election for president, 57.48% of the HD 12 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 202).
378. African-American candidates in Lenoir County have achieved substantial success in electing their candidates of choice because of significant levels of crossover voting in the county. For example, in Kinston, litigation arose over a proposed change to the method of electing city council members (from partisan to non-partisan) in large part because the Department of Justice determined that a significant number of white voters would cross over to vote for black Democrats. Additionally, black candidates have been elected countywide to the school board and to the sheriff's office, even though the county is not black. (Pridgen, Trial Tr. vol. I, 206:10-208:10).

### HD 21

379. The chart below lists election results in HD 21 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	48.72	100	Larry Bell (B)
2004	48.35	100	Larry Bell (B)
2006	48.35	100	Larry Bell (B)
2008	48.35	100	Larry Bell (B)
2010	48.35	65.69	Larry Bell (B)

Third Stip. ¶¶ 204-06, 213-19.

380. An African-American candidate, the candidate of choice of black voters, consistently has been elected to office from this district when it was less than 50% TBVAP.
381. That candidate has been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate. (Kirby, Trial Tr. vol. II, 144-45).
382. Moreover, 68.35% of the HD 21 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 48.35%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 220).
383. In the 2008 election for president, 63.71% of the HD 21 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 221).
384. African American candidates are elected on the local level, too, with support from white voters. Ed Carter was an African American elected mayor of Greenville when the city was overwhelmingly white. Ed Mason is a black school board member in Sampson County who receives overwhelming support from white voters. In Greenville and surrounding areas, race becomes insignificant in elections if the candidate understands the voters and knows and addresses what the voters want. (Kirby, Trial Tr., vol. II, 140:21-141:12, 142:5-143:8).
385. Likewise, African-American voters in this region sometimes prefer a white candidate over a black candidate. Mr. Carter, the former mayor of Greenville, ran for county commission in a majority black district, and he lost to a white candidate that black voters in the district really liked. Lew Starling is a white mayor in Clinton who receives 89% of the black vote. (Kirby, Trial Tr., vol. II, 141:1-7, 142:24-143:2).

**HD 24**

386. The chart below lists election results in HD 24 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	58.87	100	Jean Farmer – Butterfield (B)

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2004	54.76	100	Jean Farmer – Butterfield (B)
2006	54.76	100	Jean Farmer – Butterfield (B)
2008	54.76	100	Jean Farmer – Butterfield (B)
2010	54.76	64.84	Jean Farmer – Butterfield (B)

Third Stip. ¶¶ 223-24, 231-37.

387. An African-American candidate, the candidate of choice of black voters, consistently has been elected to office from this district.

388. That candidate has been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.

389. Moreover, 71.98% of the HD 24 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 54.76%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 220).

390. In the 2008 election for president, 72.94% of the HD 24 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was only 54.76% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 221).

### **HD 29**

391. The chart below lists election results in HD 29 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	44.44	100	Paul Miller (B)

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2004	44.71	100	Paul Miller (B)
2006	44.71	100	Larry Hall (B)
2008	44.71	90.73	Larry Hall (B)
2010	44.71	100	Larry Hall (B)

Third Stip. ¶¶ 241-43, 249-55.

392. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
393. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate. They have been elected even when facing white opponents. (Rep. Hall, Trial Tr. vol. II, 178:17-179:18, 185:6-16)
394. Indeed, cross-racial coalitions in elections are a prominent feature of Durham politics. Durham is a highly educated region, and campaigns and elections focus on issues rather than race. Community organizations and PACs make endorsements based on candidates' positions rather than race. Predominantly African American groups endorse white candidates, and predominantly white groups endorse black candidates. (Pyne, Trial Tr. vol. II, 160-162; Rep. Hall, Trial Tr. vol. II, 183-84)
395. Moreover, 82.93% of the HD 29 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 44.71%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 256).
396. In the 2008 election for president, 86.45% of the SD 4 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 257).
397. Section 2 liability has never been found in Durham in a Section 2 case, even in the *Gingles* case itself. (Rep. Hall, Trial Tr. vol. II, 183:11-18, 211:21-23).
398. Moreover, African American voters have enjoyed enormous success in electing their candidates of choice to local office, a fact that was mentioned repeatedly in

the legislative process. For example, not only has the county commission, school board and Durham city council had black members elected at large or from non-majority black districts, but those three boards have repeatedly had black majorities. Durham County has elected two African-American District Attorneys and a number of African-American judges. (Rep. Hall, Trial Tr. vol. II, 180:17-182:9).

**HD 31**

399. The chart below lists election results in HD 31 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	44.72	81.03	Mickey Michaux (B)
2004	44.71	85.97	Mickey Michaux (B)
2006	44.71	100	Mickey Michaux (B)
2008	44.71	75.50	Mickey Michaux (B)
2010	44.71	100	Mickey Michaux (B)

(RFA 259-61, 266-72 (Third Stip. ¶¶ 259-61, 266-72))

- 400. An African-American candidate consistently has been elected to office from this district when it was less than 50% TBVAP.
- 401. This candidate of choice has been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
- 402. Moreover, 77.12% of the HD 31 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 44.71%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 273).

403. In the 2008 election for president, 80.68% of the HD 31 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 274).

**HD 33**

404. The chart below lists election results in HD 31 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	49.19	65.88	Bernard Allen (B)
2004	49.97	92.21	Bernard Allen (B)
2006	49.97	100	Bernard Allen (B)
2008	49.97	100	Dan Blue (B)
2010	49.97	100	Rosa Gill (B)

Third Stip. ¶¶ 288, 291, 297.

405. Three different African-American candidates have been elected to office from this district when it was less than 50% TBVAP. A third was elected when the district was just above 50% TBVAP.

406. These candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.

407. Moreover, 76.23% of the HD 33 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 49.19%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 298).

408. In the 2008 election for president, 82.20% of the HD 33 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 299).

**HD 38**

409. The chart below lists election results in HD 38 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b><u>HD 38</u></b>			
<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	41.16	89.7	Deborah Ross (W)
2004	31.63	66.5	Deborah Ross (W)
2006	31.63	63.05	Deborah Ross (W)
2008	31.63	100	Deborah Ross (W)
2010	31.63	55.69	Deborah Ross (W)

Third Stip. ¶¶ 301-03, 308-09.

410. Deborah Ross, a white candidate, was the candidate of choice of black voters in this district prior to the 2011 redistricting.

411. In the 2006 Democratic primary, Rep. Ross had a black opponent. The black candidate received 105 votes to Rep. Ross' 2197 votes. This is evidence that she was the candidate preferred by black voters. (J1049-65).

412. Moreover, 71.4% of the HD 38 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 31.09%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 310).

413. In the 2008 election for president, 77.86% of the HD 38 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 311).

**HD 42**

414. The chart below lists election results in HD 42 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	43.69	100	Marvin Lucas (B)
2004	45.11	66.24	Marvin Lucas (B)
2006	45.11	100	Marvin Lucas (B)
2008	45.11	100	Marvin Lucas (B)
2010	45.11	100	Marvin Lucas (B)

Third Stip. ¶¶ 313-15, 320-26.

415. An African-American candidate consistently has been elected to office from this district when it was less than 50% TBVAP.
416. This candidate of choice has been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
417. Moreover, 63.24% of the HD 42 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 45.11%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 327).
418. In the 2008 election for president, 71.51% of the HD 42 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 328).
419. Likewise, in 2008, a white candidate for governor, Bev Perdue, had the strong support of black voters. (Covington, Trial Tr. vol. II, 95:4-14).

### **HD 43**

420. The chart below lists election results in HD 43 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	47.75	100	Mary McAllister (B)

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2004	48.69	100	Mary McAllister (B)
2006	48.69	100	Mary McAllister (B)
2008	48.69	99.31	Elmer Floyd (B)
2010	48.69	100	Elmer Floyd (B)

Third Stip. ¶¶ 330-32, 337-42.

421. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
422. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
423. Moreover, 65.12% of the HD 43 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 48.69%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 343).
424. In the 2008 election for president, 66.24% of the HD 43 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 344).

### **HD 48**

425. The chart below lists election results in HD 48 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	46.31	100	D.A. Bonner (B)
2004	45.46	100	Garland Pierce (B)
2006	45.46	100	Garland Pierce (B)
2008	45.46	100	Garland Pierce (B)

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2010	45.46	74.80	Garland Pierce (B)

Third Stip. ¶¶ 346-48, 357-63.

426. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
427. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
428. Moreover, 75.31% of the HD 48 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 45.46%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 364).
429. In the 2008 election for president, 66.29% of the HD 48 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 365).

### **HD 57**

430. The chart below lists election results in HD 57 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	8.02	84.40	Joanne Bowie (W)
2004	21.38	56.65	Pricey Harrison (W)
2006	21.38	63.05	Pricey Harrison (W)
2008	21.38	100	Pricey Harrison (W)
2010	21.38	55.69	Pricey Harrison (W)

Third Stip. ¶¶ 368-70.

431. Pricey Harrison, a white candidate, was the candidate of choice of black voters in this district prior to the 2011 redistricting. In fact, she has been endorsed by

prominent African-American organizations like the Simkins PAC, further indicating that she is the candidate of choice of black voters. (Johnson, Trial Tr. vol. I, 195, 200-01; J1050-143 (Wells testimony)).

432. Moreover, 70.04% of the HD 57 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 21.38%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 374).
433. In the 2008 election for president, 73.34% of the HD 57 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 375).
434. African-American voters in Greensboro and Guilford County have an extensive history of electing their candidate of choice, even in districts that are not majority black. For example, Greensboro has elected African-American candidates to the mayor’s office and at-large seats on City Council since 1993, even though the city is not majority black. African-American candidates have also won county-wide elections to the school board and clerk of court’s office, again even though the county is not majority black. (Johnson, Trial Tr. vol. I, 192:19-195:2); J1050-148-49).

**HD 58**

435. The chart below lists election results in HD 58 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	56.10	85.83	Alma Adams (B)
2004	53.35	65.73	Alma Adams (B)
2006	53.35	65.63	Alma Adams (B)
2008	53.35	72.63	Alma Adams (B)
2010	53.35	63.14	Alma Adams (B)

Third Stip. ¶¶ 377, 379-85.

436. An African-American candidate consistently has been elected to office from this district.
437. This candidate of choice has been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
438. Moreover, 74.66% of the HD 58 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 53.35%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 386).
439. In the 2008 election for president, 77.97% of the HD 58 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was only 53.35%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 387).

**HD 60**

440. The chart below lists election results in HD 60 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	56.94	83.80	Jones (B)
2004	50.59	100	Jones (B)
2006	50.59	60.52	Jones (B)
2008	50.59	100	Marcus Brandon (B)
2010	50.59	69.65	Marcus Brandon (B)

Third Stip. ¶¶ 389-96.

441. Two different African-American candidates have been elected to office from this district.
442. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.

443. Moreover, 71.60% of the HD 60 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 50.59%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 397).
444. In the 2008 election for president, 77.24% of the HD 60 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was only 50.59% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 398).

### HD 99

445. The chart below lists election results in HD 99 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	27.42	100	Drew Sanders (W)
2004	28.29	100	Drew Sanders (W)
2006	28.29	100	Drew Sanders (W)
2008	28.29	65.32	Nick Mackey (B)
2010	28.29	100	Rodney Moore (B)

Third Stip. ¶¶ 400-02, 407-11.

446. Two different African-American candidates have been elected to office from this district that was substantially less than 50% BVAP.
447. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
448. In 2008, Nick Mackey defeated a white candidate in this district, which was majority white. (Cogdell, Trial Tr. vol. II, 36:9-19).
449. Moreover, 72.07% of the HD 99 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 28.29%.

This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 412).

450. In the 2008 election for president, 80.25% of the HD 99 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was only 28.29% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 413).

**HD 102**

451. The chart below lists election results in HD 102 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

<b>Year</b>	<b>BVAP</b>	<b>% Vote</b>	<b>Winner</b>
2002	46.05	100	Becky Carney (W)
2004	46.11	100	Becky Carney (W)
2006	46.11	100	Becky Carney (W)
2008	46.11	100	Becky Carney (W)
2010	46.11	100	Becky Carney (W)

Third Stip. ¶¶ 415-17, 421-22.

452. Becky Carney, a white candidate, was the candidate of choice of black voters in this district prior to the 2011 redistricting. (P2107-3 (Love Affidavit)).
453. Moreover, 77.68% of the HD 102 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 46.11%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 424).
454. In the 2008 election for president, 83.80% of the HD 102 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 425).

**HD 107**

455. The chart below lists election results in HD 107 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

Year	BVAP	% Vote	Winner
2002	54.36	100	Pete Cunningham (B)
2004	50.48	100	Pete Cunningham (B)
2006	50.48	100	Pete Cunningham (B)
2008	50.48	75.62	Kelly Alexander (B)
2010	50.48	100	Kelly Alexander (B)

Third Stip. ¶¶ 427-29, 433-39.

456. Two different African-American candidates have been elected to office from this district.
457. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
458. Moreover, 69.17% of the HD 107 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was 56.48%. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 440).
459. In the 2008 election for president, 65.96% of the HD 107 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was 56.48% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. (Third Stip. ¶ 441).

**D. Election results under the 2011 Senate and House plans further confirm that Defendants packed African American citizens in districts far in excess of the levels sufficient to allow them a reasonable opportunity to elect their candidates of choice.**

460. The chart below lists the percentage of the vote received by African American candidates elected in 2012 and 2014 from Senate districts in which the black voting age population was greater than 50%.

<u>District</u>	<u>BVAP</u>	<u>Candidate</u>	<u>2012 % of Vote</u>	<u>2014 % of Vote</u>
SD 3	52.43	Smith-Ingram	*	100
SD 4	52.75	Bryant	72.32	65.5
SD 5	51.97	Davis	100	100
SD 14	51.28	Blue	100	100
SD 20	51.04	McKissick	100	100
SD 21	51.53	Clark	100	100
SD 28	56.49	Robinson	100	100
SD 38	52.51	Ford	80.21	79.71
SD 40	51.84	Waddell	84.11	100

\* White candidate won.

461. Notably, five of the eight black candidates in 2012 did not have an opponent and the other three received 72%, 80%, and 84% of the votes cast. In 2014, seven of the nine black candidates did not have an opponent and the other two black candidates received 65% and 80% of the votes cast.

462. The chart below lists the percentage of the vote received by African American candidates elected in 2012 and 2014 from House districts in which the black voting age population was greater than 50%.

<u>District</u>	<u>BVAP</u>	<u>Candidate</u>	<u>2012 % of Vote</u>	<u>2014 % of Vote</u>
HD 5	54.17	Mobley/Hunter	100	68.55
HD 7	50.67	Bryant/Richardson	100	100
HD 12	50.60	Graham	100	100
HD 21	51.90	Bell	100	100
HD 23	51.83	Willingham	*	100

<b><u>District</u></b>	<b><u>BVAP</u></b>	<b><u>Candidate</u></b>	<b><u>2012 % of Vote</u></b>	<b><u>2014 % of Vote</u></b>
HD 24	57.33	Farmer-Butterfield	100	100
HD 29	51.34	Hall	100	100
HD 31	51.81	Michaux	100	88.18
HD 32	50.45	Baskerville	100	100
HD 33	51.42	Gill	100	87.27
HD 38	51.37	Holley	87.68	79.90
HD 42	52.56	Lucas	77.45	100
HD 43	51.45	Floyd	69.58	100
HD 48	51.27	Pierce	100	100
HD 58	51.11	Adams/Johnson	79.86	100
HD 60	51.36	Brockman	100	100
HD 99	54.65	Moore	100	100
HD 101	51.31	Earle	100	100
HD 106	51.12	Cunningham	100	86.64
HD 107	52.52	Alexander	100	100

\* White candidate won.

463. Notably, 15 of the 19 black candidates in 2012 did not have an opponent and the other four received 69%, 77%, 79%, and 87% of the votes cast. In 2014, 15 of the 20 black candidates did not have an opponent and the other four black candidates received 68%, 79%, 86%, 87%, and 88% of the votes cast.

464. African American candidates also continued to be elected by wide margins in 2012 and 2014 from both Senate and House districts in which the black voting age population was well under 50%. Those districts and the results of the 2012 and 2014 elections in those districts are listed below.

**Black Candidates Elected From Districts Less Than 50% in  
2012 and 2014**

<b><u>District</u></b>	<b><u>BVAP</u></b>	<b><u>Candidate</u></b>	<b><u>2012 % of Vote</u></b>	<b><u>2014 % of Vote</u></b>
SD 23	12.81	Foushee	--	68.20
SD 32	42.53	Parmon	72.90	100
HD 54	17.98	Reives	--	56.19
HD 71	45.02	Terry	77.94	76.63
HD 72	45.44	Hanes	74.36	100

465. Notably, two of these black candidates were elected in districts where the black voting age population was 18% and less.

466. Defendants made no effort to draw compact districts in an attempt to narrowly tailor their use of race, in part because they mistakenly believed that the Voting Rights Act did not require compact geographic districts. (Rep. Lewis, Trial Tr. vol. III, 226:23-227:6).

**E. Broad Opposition to the Challenged Districts from Citizens, especially African-American Citizens, was Ignored by the General Assembly in Enacting the Challenged Districts.**

467. Sen. Rucho and Rep Lewis convened public hearings on June 23 to receive comments from citizens about their proposed VRA districts that had been released to the public on June 17.<sup>3</sup> NAACP representatives from New Hanover County, Guilford County, Hertford County, Wake County and Mecklenburg County told Sen. Rucho and Rep. Lewis:

“[T]he limited maps presented pack minority voters in a district at percentages higher than necessary to achieve fair representation.

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<sup>3</sup> There is no evidence that information citizens shared with Sen. Rucho and Rep. Lewis at numerous public hearings held prior to June 17 was used by Dr. Hofeller to draw the challenged districts. (Dr. Hofeller, Trial Tr. vol. V, 88:23 to 89:4).

They also disregard traditional redistricting principles such as compactness and communities of interest.

“We support fair redistricting for all, not a return to segregation and racial isolation.”

“The proposed districts go far beyond what is required by the Voting Rights act.” (J1008-12-13, 27-28, 49-50, 88-89, 121-122).

468. Another citizen from Charlotte said:

“In Mecklenburg county precincts are split. Entire neighborhoods are divided. Whole communities are disrupted. The premise that Republicans are using is an outdated one that whose voters won’t vote for an African American candidate.” J1008-23.

**F. Broad Opposition to the Challenged Districts from Legislators, Especially African American Legislators, was Ignored by the General Assembly in Enacting the Challenged Districts.**

469. On July 12, 2011, Sen. Rucho and Rep. Lewis released full Senate and House maps to the public. The full Senate plan was debated in the Senate Redistricting Committee and on the floor of the full Senate on July 21, 22, and 25, and the full House plan was debated in the House Redistricting Committee and on the floor of the full House on those same dates. (J1007; J1013; J1014; J1015; J1018; J1019; J1020).

470. Members of the General Assembly, especially African-American members, forcefully reiterated the concerns about the challenged districts that citizens had expressed at the June 23 public hearing.

471. Senator Dan Blue, an African-American legislator from Wake County said:

“I attended the public hearings as well, and I heard what the people of North Carolina said they desired in redistricting...Almost uniformly the black residents of North Carolina said, ‘We don’t want to be treated differently so that you gather all of us up and put us in these ghettoized districts so that we’re set apart from the rest of the state.’” (July 25 Senate debate, 95:14–96:2 (J1015-95-96)).

472. Senator Floyd McKissick, an African-American legislator from Durham County, said:

“...when it comes to all of the African-American districts that have been crafted, it’s a one-size-fits-all solution: 50 percent plus one. It doesn’t make a difference whether you came from an area that was racially polarized voting or whether you didn’t come from one of those areas. So in my mind, that one size fits all just doesn’t work. Furthermore, under Section 2 of the Voting Rights Act, you don’t have to get there. It’s not required as a matter of law.”

“...if you look at the district I’m in right now, over in Durham, I have about 44 percent in terms of the African-American voting age population.”

“And I might add, whenever I run for elected office, I end up with about 74, 75 percent of the vote. So I’m getting an awful lot of votes from people who are non-African-Americans, and that going back two decades, almost, to ‘93, when I first ran for City Council in Durham on an at-large basis against other white opponents that were in the race.” (July 25 Senate debate, 139:24-140:9; 138:10-13; 138:17-24 (J1015-139-40, 138)).

473. Senator Eric Mansfield, an African-American legislator from Cumberland County, said:

“...in my own private practice of medicine, over 60 percent of the people who walk in my office are not black, and yet they come in my office to get operated on and to bring their children to get operated on not because I’m black but because they believe I’m a competent physician. Yet here in this body, we’re doing things and you’re saying you’re helping me because you’re putting more people in my district who are black as if to say that I can only represent black people. And to me, that is the most offensive thing, that I was not elected because I was competent, I was not elected because I have great character, I was elected by black people only because I was black. Which then says that those people who voted for me only voted for me just because I was black, not because they thought I was actually a good representative. And what it says to the other members of my district who are not black, that they shouldn’t have voted for me because obviously I cannot represent them, which I know is not true.” (July 25 Senate debate, 164:9-165:5 (J1015-164-65)).

474. Senator Martin Nesbitt from Buncombe County said:

“I’ve heard the NAACP, I’ve heard voters from all over this state, I have heard all of the minority members of this Senate, speaking with one voice about the Rucho map, and it is falling on deaf ears. For the life of me, I can’t understand why that’s happening.”

“We have Senator Dannelly. We have Senator Blue. We have other members here, Senator McKissick, Senator Graham, who come from districts that aren’t 50 percent, that aren’t Section 5, and they’re doing just fine, and their population’s doing just fine, and you have gone in and messed with every single one of them, as if their voters didn’t elect the person of their choice. Well, of course they did.” (July 25 Senate debate, 171:13-18; 177:8-16. (J1015-171, 177)).

475. Senator Dan Clodfelter from Mecklenburg County said:

“The notion that Section 2 of the Voting Rights Act would require the creation of majority-minority districts in Mecklenburg County hangs entirely on the finding some 30 years ago in *Gingles v. Thornburg*. That case was decided 25 years ago. It was based on the 1981 redistricting. It was based on a set of facts from 30 years back in which there had been racial gerrymandering of Senate District 22 in Mecklenburg County. And upon that premise, and that premise alone, hangs the assumption in Rucho 2 that Section 2 of the Voting Rights Act requires the creation of majority- minority districts in Mecklenburg County. A lot, as you’ve heard other speakers say, has changed in the last 30 years.

In Charlotte, not the least of those changes have been that we’ve elected on two different occasions two different African-American mayors of the city of Charlotte, a city that has an African-American population of less than 30 percent, over that time period. We’ve been able to elect with very substantial crossover white voting, and in one case a majority of the white community voting for the African-American candidate who was elected.”

“It’s very hard to make a case of polarized racial voting in a county that exhibits those kinds of election contests.” (July 25 Senate debate, 180:20-181;19; 182:13-1 (J1015-180-81, 182)).

476. Senator Charlie Dannelly, an African-American legislator from Mecklenburg County, said:

“There’s an old saying that says, when it ain’t broke, don’t fix it. Of course, the last Census indicated that we have to do some fixing. And then, when we do fixing, we ought to take the simplest and fairest way to fix what needs fixing.

There are seven African-Americans in this body, except for one, who was in a three-way race in the last election but still won by 45 percent, and all of our districts presently, are under 50 percent. The rest of us won from 65 to 70-some-odd percent, by that margin. To me, that does not need fixing.” (July 25 Senate debate, 189:20-190:7 (J1015-189-90)).

477. Representative Marvin Lucas, an African-American legislator from Cumberland County said:

“Consider my current district, for example. It has traditionally been drawn with minority voting age population of less than 50 percent. I have run in that district six times. I won that district six times and never has the race even been close. Why would I need more minority age voters?

On that issue, I would say that this is analogous to giving unsolicited Medicaid to an upper income or middle class or a poor family. It appears not to be needed.” (July 25 House debate, 54:19-55:03 (J1020-54-55)).

478. Representative Grier Martin from Wake County said:

“Artificially packing African-Americans is certainly not required by federal law, and it is inconsistent with what the real people of North Carolina told us in hearings.” (July 25 House debate, 70:1-4 (J1020-70)).

479. Representative Joe Hackney from Orange County said:

“...the African-American community came out through the NAACP, through local African-American political leaders and said, we do not want this packing. Whether it’s a legal definition or whether it’s not a legal definition, you did not listen to what they had to say. Because your plan packs as many African-Americans as possible into majority-minority districts, thereby, lessening the influence of voters who are African-American in the adjoining districts.” (July 25 House debate, 93:7-16 (J1020-93)).

480. Representative Larry Womble, an African-American legislator from Forsyth County said:

“It seems as though that you’re trying to speak for the African-American community without consulting the African-American community. Let me say to you, thank you, but no thanks. Let me also say that you have not paid very much attention, if any, to what the African-American community, along with other organizations that try to speak for fairness and quality, not just in other areas of our life, but in -- also in the political life.” (July 25 House debate, 96:6-15 (J1020-96)).

481. Representative Kelly Alexander, an African-American legislator from Mecklenburg County said:

“In the vast majority of the minority districts we currently have in North Carolina, the black voting age population has been less than 50 percent, sometimes significantly below 50 percent. And yet, black candidates have been able to win. So 50 percent is not usually necessary. Higher percentages were necessary during the ‘80s when Gingles was litigated and decided, but not today.” (July 25 House debate, 105:9-16 (J1020-105)).

482. The views expressed by the African-American members of the General Assembly in committee and floor debates are reflected in their votes. They unanimously voted against both the Senate and House plans. (Sen. Blue, Trial Tr. vol. I, 64:9-11, 71:18-72:24, 79:20-80:2; Sen. Rucho Trial Tr. vol. IV, 48:10-17).

**G. Sen. Rucho’s 50% Plus Rule was Mechanically Applied Across the State to Increase the Black Voting Age Population to 50% and More in the Challenged Senate Districts without any Analysis.**

483. Challenged SD 4, 14, 20, 21, 28, 38 and 40 share four characteristics.

- i. They are all located in the same general area in which they were located for the 2003-2010 elections.
- ii. The black voting age population in those districts between 2003 and 2011 ranged from 31% to 49 %.
- iii. An African-American candidate was elected at each of the 28 elections in those 7 districts between 2003 and 2011.

- iv. Each African American candidate in each contested election in those districts over those years won by wide margins, ranging from a low of 61% of the total vote to a high of 91% of the total vote.

484. As Sen. Rucho explained in legislative meetings, his 50% rule was mechanically applied on an across-the-board basis without any factual analysis of past election results or voting patterns, without any regard for the views and experiences of African American citizens and legislators, and without the exercise of any judgment.

At the July 21 Senate Redistricting Committee meeting, Sen. Mansfield asked Sen. Rucho if he had any “proof” of the need for the increase in the voting age population in SD 21. Sen. Rucho responded, “we’re just following the law.” (7/21 Senate Comm. 41:5-19 (J1013-41)).

At that same meeting, Sen. Robinson asked Sen. Rucho to provide some “rationale” for the increase in the black voting age population in SD 28. Sen. Rucho responded, “Guilford is a Section 5 county.” 46:13-21 (J1013-46).

At the July 21 meeting, Sen. Stein asked what evidence Sen. Rucho relied on in making SD 14 “such an odd looking district.” Sen. Rucho responded, we were following “50% plus” and that’s the process we went through “in Wake County and in all the other counties on the map.” (7/21 Senate Comm. 72: 2-13 (J1013-72)).

**H. Rep. Lewis’ 50% Plus Rule Likewise was Mechanically Applied Across the State to Increase the Black Voting Age Population to 50% and More Without Any Analysis in the Challenged House Districts.**

485. Challenged HD 5, 12, 21, 29, 31, 33, 42, 43, 48, and 102 share four characteristics.
- i. They are all located in the same general area in which they were located for the 2003-2010 elections.
  - ii. The black voting age population in these districts between 2003 and 2011 was less than 50%, ranging from 44% to 49 %.
  - iii. An African-American candidate was elected at each of the 36 elections in those 9 districts between 2003 and 2011.

- iv. Each African-American candidate in each contested election in those districts over those years won by a wide margin, ranging from a low of 59% of the total vote to a high of 90%.

486. As Rep. Lewis explained in legislative meetings, his 50% rule was mechanically applied on an across-the-board basis without any factual analysis of past election results or voting patterns, without any regard for the views and experiences of African-American citizens and legislators, and without the exercise of any judgment.

At the July 21 House Redistricting Committee meeting, Rep. Lewis said, “now that it is apparent that these majority black districts can be drawn, any decision to draw a few selected districts at less than a majority level could be used as evidence of claims against the state under Section 2. Thus in order to best protect the State from costly and unnecessary litigation we have a legal obligation to draw these districts at true majority levels.” (7/21 House Comm. 10:4-12 (J1018-10)).

At the July 22 House Redistricting Committee meeting, Rep. Lucas said, “I have a little bit of problem trying to understand the need to increase” the black voting age population in HD 42. (7/21 House Comm. 7:14-22 (J1019-7)). Rep Lewis responded, the VRA districts that appear [in the House plan] were all drawn at the 50% plus level to “foreclose the possibility of any Section 2 lawsuit.” (7/21 House Comm. 8:13-17 (J1019-8)).

At the July 25 House floor debate, Rep Lewis said, “[t]he state is now obligated to draw majority black districts with true majority black voting age population. We have done so in all areas of the state because we believe it was necessary to do so to foreclose the possibility of litigation against the state under Section 2.” (7/25 House Debate 52:8-13 (J1020-52)).

At the July 27 House floor debate, Rep. Moore asked Rep Lewis whether the 50% plus “requirement exists regardless of the presence of racially polarized voting.” (7/27 House Debate 25:22-24 (J1016-25)). Rep Lewis responded, “We drew the majority minority districts to be true majority minority districts to forestall the possibility of legal challenge to them. So I suppose the short answer to your question is we drew all of them in compliance with the law as we understood it to be.” (7/27 House Debate 26: 1-6 (J1016-26)).

**I. Senator Rucho Mechanically Applied his Proportionality Rule in drawing the Challenged Senate Districts.**

487. SD 5 is a product of Sen. Rucho's proportionality goal. The districts in the 2003 plan in the area in which the 2011 version of SD 5 is located had black voting age populations from 20-30%.
488. At Sen. Rucho's direction Dr. Hofeller carved a highly irregular district from this area to create a district in which 52% of the voting age citizens are black.

**J. Rep. Lewis Mechanically Applied his Proportionality Rule in Drawing the Challenged House Districts.**

489. HD 32, 57, and 99 are products of Rep. Lewis' proportionality goal. The 2003 counterparts to these districts had black voting age populations of 36%, 21%, and 28%, respectively.
490. At Rep. Lewis' direction Dr. Hofeller carved highly irregular districts from these areas to create districts in all of which more than 50% of the voting age citizens are black.

**K. Rep. Lewis Mechanically Increased the Black Voting Age Population in challenged Districts that had been more than 50% BVAP without regard for Actual Election Results.**

491. Under the 2003 House plan, the black voting age population in HD 24 was 54.76% and in HD 60 was 50.59%. An African-American candidate was elected from HD 24 without opposition in at the 2004, 2006, and 2008 elections and received 65% of the vote at the 2010 election. An African American candidate was elected from HD 60 without opposition at the 2004 and 2008 elections and received 60% and 70% of the vote at the 2006 and 2010 elections.
492. Despite these election results, Rep. Lewis increased the black voting age population in HD 24 to 57.33% and in HD 60 to 51.36%.
493. Representative Marcus Brandon, the African-American legislator from HD 60, explained his opposition to Rep. Lewis' action on the floor of the House. He said:

“...these folks voted for me and they're Republican conservatives, most of them, and voted for me not because I was black and not because I was a Democrat or a Republican, they voted for me because they knew me. They knew that I was a drum major. They knew that I was the president of the school. They knew that I umpired their baseball teams. They knew that I drove their school

buses. And that trumped all of that.” (7/25 House debate 145:9-17 (Joint Trial Exhibit J1020-145)).

**L. Sen. Rucho and Rep. Lewis Mechanically Applied their 50% Plus Rule Without Regard for Whether the Counties Encompassed by the Challenged Senate and House Districts were Covered by Section 5 of the Voting Rights Act or Not.**

494. Some of the challenged Senate districts do not contain any counties covered by Section 5 of the Voting Rights Act (SD 14, 20, 32, 38, and 40), some contain only Section 5 counties (SD 5, 20, and 28) and one (SD 4) contains both covered and not covered counties.
495. Sen. Rucho applied the 50% plus rule to all the challenged Senate districts regardless of whether they contained or did not contain Section 5 covered counties. As he explained at trial, enhancing Section 5 preclearance was a “paramount” objective. (Sen. Rucho, Trial Tr. vol. III, 22:15-24).
496. The same pattern exists for the challenged House districts. Some do not contain any Section 5 covered counties (HD 29, 31, 33, 38, 99, 102, 107), some contain only covered counties (HD 42, 43, 57, 58, 60), and some (HD 21 and 32) contain both covered and not covered counties.
497. Rep. Lewis likewise applied the 50% plus rule to all the challenged House districts regardless of whether they contained or did not contain Section 5 covered counties. As he explained to the House redistricting committee on July 21, it was their “belief that when drawing...majority-minority districts...that those districts should be at least 50 percent plus one” and that it “was a prudent course of action” to draw all of the VRA districts at 50% plus one. (7/21 House Comm. 27-28 (J1018-27-28)).

**M. Defendants’ Mechanical Application of its 50% Plus and Proportionality Rules and the Absence of any Tailoring of the Districts to Meet the Requirements of either Section 2 or Section 5 of the Voting Rights Act is Documented in State’s Section 5 Submission to the US Department of Justice.**

498. In its Section 5 submission to the US Department of Justice, the State described the General Assembly’s reasons for enacting each of the challenged districts, whether located in a Section 5 county or not. Those descriptions document Defendants’ mechanical application of their race-based goals to draw the challenged districts and the absence of any effort to tailor the challenged districts to meet the requirements of the Voting Rights Act.

499. The State's submission without exception states that the General Assembly's goal for each challenged district that includes one or more counties covered by Section 5 was to provide black voters an increased opportunity to elect their preferred candidate (either through increasing the black voting age population or creating new districts). At no point in the submission does the State describe any effort to tailor the district to comply with the State's Section 5 obligation simply to avoid diminution in the ability of black citizens to elect their candidate of choice.
- i. For SD 4 the State simply informed USDOJ: "By changing the composition of the district and increasing the TBVAP" SD 4 "gives African American voters increased ability to elect their preferred candidate of choice." (Senate Submission, p. 13 (J1023-13)).
  - ii. For SD 5 the State simply informed USDOJ: "The 2011 version of SD 5 gives African American voters in Greene, Lenoir, Pitt and Wayne counties the increased ability to elect their preferred Senator of choice." (Senate Submission, p. 14 (J1023-14)).
  - iii. For SD 20 the State simply informed USDOJ: "The 2011 version of SD20 provides African American voters in Granville County the ability to elect their preferred candidate of choice" for the first time. (Senate Submission, p. 15 (J1023-15)).
  - iv. For SD 21 the State simply informed USDOJ: "African American voters in Hoke County will, for the first time, now have the ability to elect their preferred candidate of choice. (Senate Submission, p. 16 (J1023-16)).
  - v. For HD 5 the State simply informed USDOJ: "By increasing the Districts' TBVAP over 50% the 2011 plan preserves the African American community's ability to elect its candidate of choice in the district." (House Submission, p. 12 (J1024-12)).
  - vi. For HD 12 the State simply informed USDOJ: "the 2011 version of District 12 has been restored to majority black status." (House Submission, p. 15 (J1024-15)).
  - vii. For HD 21 the State simply informed USDOJ: "significant portions of Duplin County have been added to this district to restore its majority black status." (House Submission, p. 16 (J1024-16)).
  - viii. For HD 32 the State simply informed USDOJ: "The 2011 version of HD 32 is a new majority black district which replaces an influence

district. For the first time the 2011 version of District 32 will give African American voters the ability to elect their preferred candidate of choice.” (House submission, p. 14 (J1024-14)).

- ix. For HD 42 and 43 the State simply informed USDOJ: “The 2011 General Assembly re-established both District 42 and District 43 as majority TBVAP districts.” (House Submission, p. 16 (J1024-16)).
- x. For HD 48 the State simply informed USDOJ: The 2003 version of HD 48 “has a TBVAP of 45.56%. The 2011 version of District 48 has a TBVAP of 51.27%.” (House Submission, p. 17 (J1024-17)).
- xi. For HD 57, 58, and 60 the State simply informed USDOJ: “The General Assembly did not see the logic for providing a majority black district for two reasonably compact African American populations in Guilford County, but denying the same right to a third reasonably compact African American community. Therefore, the 2011 plan includes three majority black district within the county.” (House Submission, p. 18 (J1024-18)).

500. Similarly, for districts containing counties not covered by Section 5, the State’s Section 5 submission without exception explains that increasing the black voting age population in those districts was justified on the grounds that those counties were included in the *Gingles* litigation resolved in 1986.

- i. For SD 14 the State said: “Wake County is one of the locations in which the state was found liable under Section 2 of the VRA in the drawing of House and Senate districts. *See Gingles, supra.*” (Senate Submission, p. 17 (J1023-17)).
- ii. For SD 32 the State said: “Forsyth County is one of the locations in which the state was found liable under Section 2 of the VRA in the drawing of House and Senate districts. *See Gingles, supra.*” (Senate Submission, p. 17 (J1023-17)).
- iii. For SD 38 and 40 the State said: “Mecklenburg county is one of the counties in which the State has been found liable under Section 2 of the VRA in the drawing of House and Senate districts.” (Senate Submission, p. 18 (J1023-18)).
- iv. For HD 33 and 38 the State said: “Wake County, which is not covered by Section 5, was one of the counties in which the US Supreme Court found the state liable under Section 2 of the Voting

Rights Act with regard to legislative districts.” (House Submission, p. 18 (J1024-18)).

- v. HD 29 and 31 are located in Durham County. Durham was neither covered by Section 5 nor found liable in the *Gingles* litigation. Thus, the State offers no explanation to USDOJ for increasing the black voting age population in those districts. *See* House Submission, p. 19 (J1024-19).
- vi. For HD 99, 102, and 107 the State said: “Mecklenburg County is not covered by Section 5 but is a county in which the State has been found liable under Section 2 of the Voting Rights Act with regard to legislative districts. *See Gingles, supra.*” (House Submission, p. 20 (J1024-20)).

501. Significantly, there is no mention at any point in the State’s lengthy Section 5 submissions of any analysis that would justify increasing the black voting age population in districts, like the challenged districts, where black citizens were already electing their candidates of choice by wide margins in districts less than 50%. The Brunell report on which Defendants now attempt to defend the challenged districts is not mentioned by the State at any point in its Section 5 submission.

**N. Defendants’ Post Hoc Justifications for Drawing the Challenged Districts at more than 50% BVAP and in Numbers Proportional to the State’s Black Population are Unfounded.**

502. Defendants’ experts opinion that in 2011 North Carolina districts needed to be drawn as majority-black districts in order for black voters to have the opportunity to elect their candidates of choice are unsupported by the evidence, including the experts’ own testimony, and are inconsistent with the experts’ prior opinions. (D3035, at 2 (Brunell Declaration); D3036, at 3 (Hood report)).

503. Dr. Brunell’s claim that he was “aware of no evidence” that black voters would have the opportunity to elect their candidates of choice in anything other than a majority black district is belied by the election results in front of the legislature and easily available to him. At trial, Dr. Brunell admitted being unaware of those results. (D3035, at 2; Dr. Brunell, Trial Tr. vol. IV, 158:1-14, 163:14-23; J1048-49).

504. In his expert report Dr. Hood opined that he had “serious doubt on the ability of the black community to elect preferred candidates of choice where they comprise less than a majority of a district’s voting age population.” (D3036, p. 3).

However, Dr. Hood's testimony belies that claim and seriously undermines his credibility. At trial, Dr. Hood acknowledged that legally significant racially polarized voting requires proof that the minority community cannot elect its candidate of choice, and that the candidates of choice of African American voters in North Carolina are not usually defeated in districts that are at least 40% BVAP. (Dr. Hood, Trial Tr. vol. IV, 189:4-10, 199:9-17).

505. Dr. Hood's credibility in this case is further undermined by the fact that he recently opined in a Florida Section 2 case that plaintiffs in that case could not prove Section 2 liability because the candidates of choice of Latino voters (the plaintiffs in that case) were not usually defeated. (Dr. Hood, Trial Tr. vol. IV, 199:18-200:21).
506. Defendants have contended that Section 2 might still compel the drawing of majority black districts because the black candidates who have won in the challenged districts were well funded compared to their opponents. In fact, the evidence on which Defendants rely for this proposition, none of which was before the General Assembly during the 2011 redistricting, does not even show the relative campaign funding by candidates in particular elections. Erika Churchill gathered campaign finance reports for a two-year time period, during which there were primaries, second primaries, and general elections. Thus, this Court cannot make any accurate conclusions from this evidence about the amount of money that the various candidates spent in any given election, even if such information were relevant to the Section 2 analysis, which it is not. (Churchill, Trial Tr. vol. IV, 124:9-128:16). Moreover, even if the evidence did establish that an African-American candidate had more funding than the white opponent, that fact alone would not indicate that the African-American community could not usually elect its candidate of choice. Indeed, a logical inference would be the opposite.
507. Finally, Defendants' attempt to justify their uncompromising focus on race by claiming that Dr. Hofeller's drawing of the challenged districts was guided by districts contained in the maps submitted by the citizen group AFRAM. This claim is not credible for two distinct reasons. First, it is refuted by the redistricting chronology. The AFRAM maps were not provided to the General Assembly until June 23, 2011, six days after Sen. Rucho and Rep. Lewis released their maps of the challenged districts which were later enacted without significant change. (Dr. Hofeller, Trial Tr. vol. V, 95:3-4). Second, Sen. Rucho and Rep. Lewis publicly rejected the AFRAM maps as viable maps because the districts contained in those maps (a) were not drawn using a mechanical 50% BVAP rule and (b) were not drawn in numbers sufficient to achieve proportionality. (J1007). In other words, the AFRAM maps were rejected precisely because they did not sufficiently focus on race.

**O. Plaintiffs and Other Voters Were Harmed by the Unconstitutional Racial Gerrymandering of the Challenged Districts**

508. Plaintiffs and other witnesses testified regarding the harm they have endured as a result of the 2011 redistricting.
509. For example, Plaintiff Rev. Julian Pridgen, a resident of HD 12 and SD 5, testified that he was “appalled by those who came up with this idea to suggest they are doing us a favor” and that “if you put all the black folk in one area, you sanitize the other areas.” He testified it was “an emotional issue for a lot of us” and that packing black voters into a limited number of districts “has been an offense to many people, not just African-Americans.” (Pridgen, Trial Tr. vol. I, 213-15)
510. Sandra Covington, the lead plaintiff in this case, explained to the court how she liked, knew, and received responsive representation from her white Representative, Rick Glazier, prior to the 2011 redistricting. But because the legislative leaders assumed that she, as a black woman, could only be represented by a black representative, they moved her out of Glazier’s district and into a district represented by an African-American incumbent. She stated, “I was plucked out of my district and placed into another district simply because of my race.” She felt that she “was discriminated against because it was falsely assumed that black people would just vote for other black people and white people would only vote for white people.” (Covington, Trial Tr. vol. II, 101:1-102:23)
511. Plaintiff Bryan Perlmutter stated in deposition: “I am a resident of North Carolina and want to live in a state—I’m in a state that I’ve lived in my whole life—that represents what my peers and neighbors and co-workers, a state that reflects our values. And when districts break people up by race and in weird ways that separate people out it makes it hard to actualize those values and live in a democracy that is representative of the people living in it. (Perlmutter Dep., 213:6-215:7 (D.E. ## 74-1, p. 14; 102-1, p. 643)).
512. Split precincts and oddly-shaped district lines confuse voters, candidates and election administrators, and voters raised those concerns with legislative leaders before the plans were enacted. When district lines separate homes within the same neighborhoods, voter education efforts through the use of yard signs, door-to-door canvassing, and community forums are less effective. The splitting of precincts in Durham County, for instance, is complicated—small neighborhood streets that are only one to two blocks long are split down the middle. In some instances, this complicated precinct-splitting results in homes being split between districts. (Rep. Larry Hall, Trial Tr. vol. II, 186:24-187:24, 198:8-17, 212:6-19; Sen. Angela Bryant, Trial Tr. vol. II, 17:13-19:11; P2105-3 (Waddle Affidavit); P2104-2

(Stohler Affidavit); P2103-2, 3 (Patterson Affidavit); P2101-3, 4 (Fedrowitz Affidavit); P2102-2 (Attachment to Fedrowitz Affidavit)).

513. Former Senator Eric Mansfield testified about the harmful message conveyed by the challenged districts. He told his fellow Senators before the plans were adopted:

And the method in this line bothers me so much is because what you are saying is that the people who live right across street from me, which is 20 feet from my house, who are no longer in my district, I don't represent -- I cannot represent them. Not because I don't have good character, not because I am not competent, but basically because of color. And I have a serious problem with that reasoning.

(Sen. Eric Mansfield, Trial Tr. vol. II, 130:12-18).

#### IV. Conclusions Of Law

##### A. Plaintiffs Have Standing to Seek Relief for the Constitutional Injuries Defendants Have Inflicted on Them.

1. The Plaintiffs have established that they have standing to challenge the state legislative redistricting plan as a racial gerrymander that violates the Fourteenth Amendment to the United States Constitution. “Where a plaintiff resides in a racially gerrymandered district, the plaintiff has been denied equal treatment because of the legislature’s reliance on racial criteria and, therefore, has standing to challenge the legislature’s action.” *United States v. Hays*, 515 U.S. 737, 744-45(1995). In the instant case, at least one Plaintiff resides in each of the districts challenged in this litigation. (Second Stip. ¶¶ 35-65).
2. The “legislative power of the State,” N.C. Const. Art II, sec. 1, is exercised by the General Assembly on behalf of citizens through their representatives elected from districts drawn by the General Assembly. In 2011, the General Assembly assigned citizens to the Senate and House districts challenged by Plaintiffs based predominantly on the color of their skin. This legislative action reflected “the offensive and demeaning assumption that voters of a particular race, because of their race, ‘think alike, share the same political interests and will prefer the same candidates at the polls’” and thereby injured the plaintiffs. *Miller v. Johnson*, 515 U.S. 900, 911-12 (1995) (quoting *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (*Shaw I*)).
3. Laws that classify citizens based on race “are antithetical to the 14th Amendment whose central purpose was to eliminate racial discrimination emanating from official sources in the States.” *Shaw v. Hunt*, 517 U.S. 899, 907 (1996) (*Shaw II*); *Harris v. McCrory*, No. 13-949, 2016 U.S. Dist. LEXIS 14581, at \*1 (M.D.N.C. Feb. 5, 2016). “Racial gerrymandered districting schemes are no different, even when adopted for benign purposes” or when adopted based on a mistaken understanding of the law. *Harris*, 2016 U.S. Dist. LEXIS 14581, at \*2.
4. Legislative efforts to “to classify and separate voters by race” through redistricting plans injure voters by “reinforc[ing] racial stereotypes and threaten[ing] to undermine our system of representative democracy by signaling to elected officials that they represent a particular racial group rather than their constituency as a whole.” *Shaw I*, 509 U.S. at 650. Indeed, “[r]acial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters.” *Id.* at 657. Plaintiffs in this case demonstrated they suffered precisely this kind of harm, thereby giving them standing to bring these claims.

**B. This Court Should Not Abstain from Ruling.**

5. Federal courts have a duty to decide cases over which they have jurisdiction, regardless of whether parallel state proceedings exist: “Federal Courts, it was early and famously said, have ‘no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.’ Jurisdiction existing, this Court has cautioned, a federal court’s ‘obligation’ to hear and decide a case is ‘virtually unflagging.’ Parallel state-court proceedings do not detract from that obligation.” *Spring Commc ‘ns, Inc. v. Jacobs*, 134 S. Ct. 584, 590-91 (2013) (citations omitted).
6. Defendants’ contention that the Court should abstain in reliance on *Scott v. Germano*, 381 U.S. 407 (1965) (per curiam), and *Grove v. Emison*, 507 U.S. 25 (1993), is misplaced because in those cases, the states were actively working to remedy what had been determined to be unlawful redistricting plans. *Germano*, 381 U.S. at 408; *Grove*, 507 U.S. at 29-31.
7. Those cases make clear that deferral to state court proceedings is not appropriate to the extent that it appears that “the[] state branches will fail timely to perform [their] duty” to “adopt a constitutional plan.” In the instant situation, the North Carolina Supreme Court has ruled that no remedial action is required. It has twice upheld these redistricting plans in *Dickson*. While plaintiffs in that case will file a petition for writ of certiorari with the U.S. Supreme Court, there is no impending state action that would remedy the racial gerrymanders about which the Plaintiffs complain. As such, nothing in *Germano* or *Grove* suggests or demands that this Court should not satisfy its duty to decide this case.

**C. Res Judicata Does Not Apply Here.**

8. It is undisputed that none of the parties in the *Dickson* case are parties in this case. Nor have Defendants offered evidence that any of the plaintiffs in this action are in privity with any of the plaintiffs in *Dickson*. Thus, the ruling in *Dickson* does not have a preclusive effect on any of the plaintiffs in the instant case.
9. Defendants’ theories of *res judicata* and privity are inconsistent with state law standards on these issues. *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) (holding that a federal court must look first to state preclusion law in determining the preclusive effects of a state court judgment).
10. Under state law, *res judicata* and collateral estoppel only apply if the prior action involved the same parties or those in privity with the parties and the same issues. *King v. Grindstaff*, 284 N.C. 348, 356, 200 S.E. 2d 799, 805 (1973).

11. In the context of collateral estoppel and *res judicata*, the term privity indicates a mutual or successive relationship to the same property rights. *Moore v. Young*, 260 N.C. 654, 133 S.E. 2d 510 (1963). In the instant case, the parties in the two prior state court cases (*Dickson v. Rucho* and *NC NAACP v. North Carolina*) are not the same parties as Plaintiffs in the instant case, nor do the plaintiffs in both cases have a mutual or successive relationship to the same property rights. There is no evidence of privity in this case as understood under North Carolina law.
12. The state law exception to the general rule requiring shared identity or privity of parties, known as the *Lassiter* exception, is not met here. *Lassiter* holds that “a person who is not a party but who controls an action, individually or in cooperation with others, is bound by the adjudications of litigated matters as if he were a party **if** he has a proprietary interest or financial interest in the judgment or in the determination of a question of fact or a question of law with reference to the same subject matter, or transactions; if the other party has notice of his participation, the other party is equally bound.” *Thompson v. Lassiter*, 246 N.C. 34, 39, 97 S.E.2d 492, 496 (1957) (emphasis added); *see also Workman v. Rutherford Elec. Membership Corp.*, 170 N.C. App. 481, 491-92 (2005); *Smoky Mountain Enterprises, Inc. v. Rose*, 283 N.C. 373, 196 S.E.2d 189 (1973); *Williams v. Peabody*, 217 N.C. App. 1, 719 S.E.2d 88 (2011).
13. In determining whether the exception to privity exists, courts employ a three part test: ( 1) does a non-party to the original action, against whom *res judicata* is being asserted, exercise “control” of the original lawsuit and the present lawsuit; (2) does the non-party to the original action have “a proprietary interest or financial interest in the judgment;” and (3) does the non-party to the original action have an interest “in the determination of a question of fact or a question of law with reference to the same subject matter, or transactions?” *Lassiter*, 246 N.C. at 39, 97 S.E.2d at 496; *see also Peabody*, 217 N.C. App. at 10; 719 S.E.2d at 95. All three elements must be satisfied in order to establish the applicability of the *Lassiter* exception and therefore bar a second suit. *Peabody*, 217 N.C. App. at 14, 719 S.E.2d at 97-98.
14. In an attempt to meet this test, Defendants subpoenaed Scott Falmlen to testify at trial. Mr. Falmlen refuted Defendants’ claim. He testified that persons providing funds to support this litigation for the plaintiffs were informed and understood that the plaintiffs controlled the litigation. (Mr. Scott Falmlen, Trial Tr. vol. V, 149).
15. Defendants have failed to demonstrate that anyone other than the named plaintiffs in this case control the litigation as that term is interpreted in state law. *See Carolina Power & Light Co. v. Merrimack Mut. Fire Ins. Co. et al.* 238 N.C. 679, 693, 79 S.E.2d 167 (1953). Therefore, the *Lassiter* exception does not apply

**D. The Challenged Districts are Subject to Strict Scrutiny.**

16. “Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters[.]” *Shaw I*, 509 U.S. at 657. “Race-based districting by our state legislatures,” regardless of motive, “demands close judicial scrutiny.” *Id.*
17. An electoral district is subject to strict scrutiny when a plaintiff residing in the district proves that race was “the dominant and controlling” consideration in drawing the boundaries of the challenged district. “To make this showing, a plaintiff must prove that the legislature subordinated traditional race neutral redistricting principles . . . to racial considerations.” *Miller*, 515 U.S. at 916; *Harris*, 2016 U.S. Dist. LEXIS 14581, at \*18; *Shaw I*, 509 U.S. at 643; *see also Page v. Va. St. Bd. of Elections*, No. 3:13cv678, 2015 WL 3604029, at \*6 (E.D. Va. June 5, 2015). Traditional redistricting criteria “observe and advance neutral democratic values,” and therefore “are important to evaluate in a racial gerrymander claim because they are objective factors that may serve to defeat a claim that a district has been gerrymandered on racial lines. *Bethune Hill*, 2015 U.S. Dist. LEXIS 144511, at \*61 (*quoting Shaw I*, 509 U.S. at 647).
18. This burden may be carried “either through circumstantial evidence of a district’s shape and demographics or more direct evidence going to legislative purpose that race was the predominate factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Miller*, 515 U.S. at 916; *Page*, 2015 WL 3604029 at\* 17; *see also Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1267 (2015) (“ALBC”).
19. Direct evidence may include statements by legislative officials involved in drawing the redistricting plan and preclearance submissions submitted by the State to the Department of Justice. *Shaw I*, 509 U.S. at 645; *Page*, 2015 WL 3604029, at \*9; *Clark v. Putnam Cnty.*, 293 F.3d 1261, 1267-68, 1272 (11th Cir. 2002). Likewise, statements by legislators or their map drawers regarding the use and importance of race in drawing challenged district boundaries “are not only relevant but also often highly probative.” *Harris* at 18.
20. Other forms of evidence of evidence sufficient to establish that race predominated in the drawing of the district include maps demonstrating that oddly-shaped districts are not explained by geographic features or county or city lines, charts showing that black citizens in a community are disproportionately assigned to a challenged district and white citizens are disproportionately assigned to an adjoining district, the use of land bridges and other appendages to draw black citizens into a challenged district or to draw white citizens outside the district, and the division of precincts or voter tabulation districts (VTDs) along racial lines.

*Page*, 2015 WL 3604029, at \*17-18; *Harris*, 2016 U.S. Dist. LEXIS 14581, at \*18-20.

21. In cases where, as here, the legislature has prioritized the use of mechanical racial targets over traditional redistricting criteria, that decision “provides evidence that race motivated the drawing of particular lines.” *ALBC*, 135 S. Ct. at 1267. A district “necessarily is crafted because of race when a racial quota is the single filter through which all line-drawing decisions are made, and traditional redistricting principles are considered, if at all, solely insofar as they did not interfere with this quota.” *Harris*, 2016 U.S. Dist. LEXIS 14581, at \*20.
22. Importantly for this case, the use of a fixed, numerical racial threshold for drawing a challenged district is “highly suspicious,” *Harris*, 2016 U.S. Dist. LEXIS 14581, at \*28, because it operates “as a filter through which all line drawing decisions” must pass and renders “all traditional criteria . . . tainted by and subordinated to race.” *Id.* at \*32; *see also Bethune Hill v. Va. State Bd. Of Elec.*, No. 3:14-cv-852, 2015 U.S. Dist. LEXIS 144511, at \*35-36 (use of “racial floor” constitutes “significant evidence” of racial predominance because of “its impact on the creation of the district”).
23. Racial predominance must be proven on a district-by- district basis, *ALBC*, 135 S. Ct. at 1265, but “voters, of course, can present statewide evidence to prove racial gerrymandering in a particular district.” *Id.* at 1265; *see also Bethune-Hill*, 2015 U.S. Dist. LEXIS 144511, at \*118 (evidence that applies “across all districts” may be considered in evaluating a racial gerrymander claim in a particular district).
24. Where Plaintiffs submit sufficient direct evidence of racial predominance, they need not submit an illustrative remedial plan demonstrating that race better explains the boundaries of a challenged district than other non-racial factors. *See, e.g., Page*, 2015 WL 3604029, at \*7 n. 12; *see also Bush*, 517 U.S. at 969-70 (concluding that race predominated over political motives without considering an alternative plan); *Clark*, 293 F.3d at 1271 (same); *Miller*, 515 U.S. at 919 (same, as to other proffered justifications for challenged district).
25. A State’s use of race as a proxy for advancing political goals constitutes evidence of racial predominance. *Clark*, 293 F.3d at 1271-72; *Harris*, 2016 U.S. Dist. LEXIS 14581, at \*52.
26. The fact that a legislature considers other factors when drawing a district does not preclude a finding that race predominated. *Bush v. Vera*, 517 U.S. 952, 963 (1996); *Harris*, 2016 U.S. Dist. LEXIS 14581, at \*92. Race predominates when it is the most important criterion—“the criterion that, in the State’s view, could not be compromised.” *Shaw II*, 517 U.S. at 907.

27. The goal of drawing districts of equal population is a “background” redistricting principle and “is not one factor among others to be weighed against the use of race to determine whether race ‘predominates.’” *ALBC*, 135 S. Ct. at 1270.
28. Applying these principles to the facts, the Court finds that Plaintiffs have carried their burden of proving that race was the predominant factor used to draw each of the challenged Senate districts (SD 4, 5, 14, 20, 21, 28, 32, 38 and 50) and House districts (HD 5, 7, 12, 21, 24, 29, 31, 32, 33, 38, 42, 43, 57, 58, 60, 99, 102, and 107).
29. For these districts collectively, the evidence supporting this finding includes Sen. Rucho’s and Rep. Lewis’ instructions to Dr. Hofeller to mechanically apply their 50% plus one rule and their proportionality rule across the state in each challenged district, in urban and rural areas alike, without regard for traditional redistricting criteria. FOF Nos. 22-28, 33-37, 40-50, 58-60, 62-63, 67. These rules were applied without compromise, and alternative plans not meeting both rules were categorically rejected. FOF Nos. 59-61.
30. For each district separately, the evidence supporting this finding includes: that each challenged district separates citizens from adjoining districts on the basis of race; that each challenged district is formed from precincts divided on racial grounds; and that each challenged district is irregularly shaped. FOF Nos. 72-74, 79-81, 88-92, 98-100, 108-116, 118-120, 126-131, 140-144, 153-155, 162, 164, 172-174, 181-183, 190-192, 198-205, 212-214, 222-225, 234-235, 242-244, 251-253, 258-259, 266-271. In addition, many districts are formed from towns and cities divided on racial grounds. FOF Nos. 75, 82, 93, 101, 111, 122, 132, 145, 156, 165, 175, 184, 193, 206, 215, 226, 236, 245, 254, 272.
31. The predominance of race in the formation of each challenged district is illustrated by racial density maps that reveal that the appendages to each challenged district were created either to add disproportionate numbers of black citizens to the districts or to exclude disproportionate numbers of white citizens from the district. FOF Nos. 76, 85, 95, 105, 115, 124, 134, 150, 160, 169, 178, 187, 194, 209, 229, 239, 247, 257, 274.
32. The record unambiguously and clearly reflects that race was “the criterion that, in the State’s view, could not be compromised” when drawing these districts. *Shaw II*, 517 U.S. at 907.
33. It is not simply that Dr. Hofeller, Rep. Lewis, and Sen. Rucho were aware of race; race was the single most important factor they used to move voters in and out of the challenged districts. *See ALBC*, 135 S. Ct. at 1264; *Harris*, 2016 U.S. Dist. LEXIS 14581, at \*23-24.

E. **Under Strict Scrutiny, the Burden is on Defendants to Justify Each District Drawn Predominantly on the Basis of Race.**

34. Racial distinctions are “by their very nature odious to a free people[,] . . . contrary to our traditions,” and must be “subjected to the most rigid scrutiny.” *Fisher v. Univ. of Tex. at Austin*, 570 U.S. \_\_\_, 133 S. Ct. 2411, 2418 (2013).
35. The Supreme Court recently instructed that “judicial review must begin from the position that any official action that treats a person differently on account of his race or ethnic origin is inherently suspect. Strict scrutiny is a searching examination, and it is the government that bears the burden to prove ‘that the reasons for any [racial] classification [are] clearly identified and unquestionably legitimate.’” *Id.* at 2418-19 (internal citations omitted); *see also Harris*, 2016 U.S. Dist. 14581, at \*54 (finding Defendants failed to carry their burden to show the district was narrowly tailored to further a compelling governmental interest).
36. The burden is on Defendants to establish that that the challenged districts are narrowly tailored to meet their compelling interest in complying with the Voting Rights act, properly interpreted. To meet this burden, “the state must establish the ‘most exact connection between justification and classification.’” Page, 2015 WL 3604029, at \*41 (*quoting Parents v Seattle Sch. Dist.*, 551 US 701,720 (2007)).
37. Moreover, the state must establish this “exact connection” for each gerrymandered district separately. *ALBC*, 135 S. Ct. at 1265 (a racial gerrymander claim “applies district-by-district”).
38. The narrow tailoring inquiry is far more rigorous than a mere evaluation of “reasonableness” and includes no deference to the State. As the Supreme Court observed, “the history of racial classifications in this country suggests that blind judicial deference to legislative or executive pronouncements of necessity has no place in equal protection analysis.” *Richmond v. JA. Croson Co.*, 488 U.S. 469, 501 (1989). *See also San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16-17 (1973), in which the Court stated:

Strict scrutiny means that the State’s system is not entitled to the usual presumption of validity, that the State rather than the complainants must carry a ‘heavy burden of justification,’ that the State must demonstrate that its [racial classification] **has been structured with precision, and is tailored narrowly to serve legitimate objectives and that it has selected the ‘less drastic means’ for effectuating its objectives.**”

*Id.* (emphasis added).

39. Strict scrutiny principles did allow Defendants some “leeway” in determining the precise percent minority population required to comply with the Voting Rights Act. The Supreme Court observed in *Alabama*:

The law cannot lay a trap for an unwary legislature, condemning its redistricting plan as either (1) unconstitutional racial gerrymandering should the legislature *place a few too many* minority voters in a district or (2) retrogressive under Section 5 should the legislature *place a few too few*.

*Alabama*, 135 S. Ct. at 1273-74 (emphasis supplied). Thus, “[t]he law cannot insist that a state legislature, when redistricting determine precisely what minority population Section 5 demands.” *Id.*

40. In this case, however, Defendants’ mistake was not in placing “a few too many” black voters in the challenged districts. Their mistakes were rigidly applying the 50% rule and proportionality rule across the state, to separate voters into districts on the basis of race without regard for local conditions or past election results, using a hastily put together, flawed and incomplete racially polarized voting report. Strict scrutiny principles do not forgive these types of mistakes.

**F. Defendants Have Not Established the Voting Rights Act Compelled their Proportionality Rule**

41. Section 2 of the Voting Rights Act does not require a legislature to draw a number of majority-black districts proportional to the BVAP in the state. The text of the VRA itself states that “nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.” 42 U.S.C. § 1973(b).
42. Furthermore, the Supreme Court has held that neither Section 2 nor Section 5 of the Voting Rights Act requires proportionality between the percentage of African-Americans in the jurisdiction and the percentage of districts in which African Americans are a majority of the voting age population. *Johnson v. DeGrandy*, 512 U.S. 997, 1013-14 (1994); *Miller v. Johnson*, 515 U.S. 900, 910 (1995).
43. The *DeGrandy* court explicitly held that proportionality of the sort Defendants here assert as a compelling governmental interest is not a safe harbor: “[n]or does the presence of proportionality prove the absence of dilution. Proportionality is not a safe harbor for States; it does not immunize their election schemes from § 2 challenge,” *id.* at 1026 (O’Connor, J., concurring); “the presence of proportionality is not a safe harbor for States [and] does not immunize their election schemes from § 2 challenge,” *id.* at 1028 (Kennedy, J., concurring).

44. Additionally, the adoption of a statewide proportionality goal is inconsistent with a State's obligation to have a strong basis in evidence based on local voting patterns that a district is needed to comply with Section 2. *Gingles*, 478 U.S. at 56.
45. Just as racial balancing is never a compelling governmental interest, drawing electoral districts to meet a proportionality goal is not narrow tailoring. *Bakke*, 438 U.S. at 315-16. Defendants have employed precisely the kind of blunt use of racial quotas that the Supreme Court has rejected in the educational setting. In *Grutter*, the Court held that the state must avoid falling into a "quota" trap, 539 U.S. at 334, because equal protection requires "individualized assessments" conducted in a "flexible" and "nonmechanical" way. *Id.*
46. Quota traps are likewise unacceptable in the redistricting context. In *Miller v. Johnson*, because the Department of Justice had determined that it was possible to draw three majority-black congressional districts in Georgia following the 1990 Census, the Department set that number as a quota for the number of majority-black districts the state's enacted plan must contain in order to obtain preclearance under Section 5 of the VRA. *Miller*, 515 U.S. at 918. However, because the VRA "did not require three majority-black districts . . . Georgia's plan for that reason was not narrowly tailored to the goal of complying with the Act." *Id.* at 910 (internal citations omitted). Additionally, the plan "overstepped the requirements for section 5 compliance because it was designed to secure proportional representation for black voters in Georgia, not adhere to the VRA." *Miller v. Johnson*, 515 U.S. 900, 910 (1995).
47. The Court concludes that, the challenged districts are not justified by Defendants' proportionality rule.

**G. Defendants Have Not Established that the Challenged Districts Were Compelled by Section 2 of the Voting Rights Act.**

48. To prove that Section 2 required each of the VRA districts in their plans, Defendants must prove they had a substantial basis in evidence that minority voters "have less opportunity than other members of the electorate to . . . elect representatives of their choice," 42 U.S.C. § 1973(b), in the area of the state where each district is located. *Shaw v. Hunt*, 517 U.S. 899,917 (1996).
49. To establish a Section 2 violation, a plaintiff must prove three threshold factors: (1) that the minority group in question is "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) that the minority group is "politically cohesive"; and (3) that the majority votes "sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 478 U.S. at 50-51. These are necessary preconditions, and the absence of any one element is fatal to a Section 2 claim, even if other

conditions have been met. *Pender County v. Bartlett*, 361 N.C. 491, 499, 649 S.E.2d 364, 369 (2007), *aff'd sub nom. Bartlett v. Strickland*, 556 U.S. 1 (2009). Thus, Defendants must demonstrate a ‘strong basis in evidence’ for each of the threshold conditions for Section 2 liability. *See Harris*, 2016 U.S. Dist. LEXIS at \*61 n.10.

50. When race is the predominant factor in drawing a district, the burden of proving these preconditions falls on the defendants. *Pender County*, 361 N.C. at 496, 649 S.E.2d at 367; *Harris*, 2016 U.S. Dist. 14581, at \*56. This is an especially heavy burden in this case. Every African-American member of the House and Senate rejected Sen. Rucho’s and Rep. Lewis’ claim that the Voting Rights Act required increasing the black voting age population in the challenged districts. FOF 469-482. Their opposition was based on their own electoral experience in the districts at issue here, and is “significant” evidence that Sen. Rucho and Rep. Lewis were wrong. *Georgia v. Ashcroft* 539 U.S. 461, 484 (2003).
51. To show a strong basis in evidence for *Gingles*’ first prong, Defendants must demonstrate that a reasonably-compact majority-minority district can be drawn. Specifically, the first *Gingles* prong requires the Court to evaluate compactness in determining if a race-based district was drawn in a proper location. Defendants must show that the minority population and the resulting district are reasonably compact. If the remedial district is not compact, the party seeking to invoke Section 2 liability has not established its burden under the first prong of *Gingles*. *Gingles*, 478 U.S. at 51, n. 17. Lack of compactness is fatal to a Section 2 claim. *See Bartlett v. Strickland*, 556 U.S. 1, 47 (2009) (inability to draw a compact 50% black district fatal to the legislature’s purported Section 2 justification); *Gause v. Brunswick County*, 92 F.3d 1178 (4th Cir. 1996) (rejecting Section 2 claim where black population was not geographically compact); *Montano v. Suffolk County Legislature*, 268 F. Supp. 2d 243 (E.D. N.Y. 2003) (as voters had not shown that minority groups at issue were large and geographically compact enough to actually be a majority in a hypothetical single-member district, they had no likelihood of success on the merits of a voting dilution claim.).
52. To show a strong basis in evidence for *Gingles*’ third prong, Defendants must show that legally significant racially polarized voting exists by demonstrating that the white voting bloc usually defeats the minority bloc’s candidate of choice. *Gingles*, 478 U.S. at 48-49. A pattern of success among minority-preferred candidates defeats the third prong of *Gingles*. *Id.* at 77 (finding that the District Court erred in ignoring the significance of the sustained success black voters had experienced in Durham County). The existence of legally significant racially polarized voting must be precision-focused on the geographic area of the district. *See Gingles*, 478 U.S. at 59 n.28 (inquiry into “racially polarized voting” must be “district-specific”).

53. Under the third prong of *Gingles*, statistically significant racially polarized voting is different from legally significant racially polarized voting. A finding of statistically significant racially polarized voting only means that voting patterns correlate statistically to race. Dickson Trial Tr. Vol. II 377-79 (testimony of Lichtman) (J051-149-151). In contrast, legally significant racially polarized voting under *Gingles* occurs only when the white voting bloc usually defeats the minority bloc's candidate of choice. *Gingles*, 478 U.S. at 56. Thus, a mere showing of statistically significant racially polarized voting is insufficient to demonstrate a strong basis in evidence to satisfy the third prong of *Gingles*. *Abrams v. Johnson*, 521 U.S. 74, 92-93 (1997).
54. Statistically significant racially polarized voting can exist in areas where there is no Section 2 liability. *Johnson v. Mortham*, 926 F. Supp. 1460, 1476 (N.D. Fla. 1996) ("Even if racially polarized voting existed in northeast Florida specifically, or more generally throughout Florida, the ability of African-American voters to elect the candidate of their choice in congressional elections would vitiate any claim of Section 2 vote dilution."); *Vecinos de Barrio Uno v. City of Holyoke*, 960 F. Supp. 515, 526 (D. Mass. 1997) (*Valladolid v. National City*, 976 F.2d 1293 (9th Cir. 1992) ("With respect to the third requirement for the successful maintenance of a [Section 2] challenge . . . it is obvious that unless minority group members experience substantial difficulty electing representatives of their choice, they cannot prove that a challenged electoral mechanism impairs their ability 'to elect.'").
55. Defendants rely on the reports of Dr. Thomas Brunell and Dr. Block which found racially polarized voting in North Carolina wherever the white crossover vote fell under 50%. Based on consistent precedent, the Court concludes that Defendants cannot demonstrate a strong basis in evidence for the third prong of *Gingles* by merely showing the presence of statistically significant racially polarized voting in a particular geographic area. *Gingles*, 478 U.S. at 56; *Abrams v. Johnson*, 521 U.S. 74, 92-93 (1997); *Harris*, 2016 U.S. Dist. 14581, at \*59.
56. Rather, the Court concludes that racially polarized voting is only legally significant when data shows that the white voting bloc usually defeats the African-American candidate of choice. *Gingles*, 478 U.S. at 56.
57. Dr. Block's report does not provide a strong basis in evidence for third prong of *Gingles* because it does not show legally significant racially polarized voting in any of the challenged districts. *Id.*
58. Dr. Brunell's report also does not provide a strong basis in evidence for meeting the third prong of *Gingles* because the report shows no legally significant racially polarized voting in any of the challenged districts. *Id.* In fact, Dr. Brunell found white crossover voting sufficient to elect the candidate of choice in each of the

challenged districts at black voting age population levels of 40%. Dickson Trial Tr. vol. II, 386 (testimony of Lichtman) (J1051-158).

59. The Court further concludes that Dr. Block's and Dr. Brunell's reports cannot form a strong basis in evidence for a compelling state interest to draw majority-black districts, because of the sustained success of candidates of choice of black voters in legislative and countywide election in each of the geographic areas where the challenged majority-black districts were drawn. *Gingles*, 478 U.S. at 77; *Miller v. Johnson*, 515 U.S. at 921 ("Compliance with federal antidiscrimination laws cannot justify race-based districting where the challenged district was not reasonably necessary under a constitutional reading and application of those laws.").
60. The Court also concludes that Dr. Block's and Dr. Brunell's reports cannot form a strong basis in evidence for demonstrating narrow tailoring because they do not support a finding that the white voting bloc usually defeats the candidate of choice of black voters in each of the geographic areas where the challenged majority-black districts were drawn. *Gingles*, 478 U.S. at 77. Indeed, properly viewed, the report of Dr. Brunell shows the "general willingness of white voters to vote for black candidates" in each of the geographic areas where the challenged majority-black districts were drawn. *Abrams v. Johnson*, 521 U.S. 74, 93 (1997).
61. A state's narrow tailoring obligation must be based on the assessment of current, not past conditions. See *ALBC*, 135 S. Ct. at 1274; *Shelby County*, 133 S. Ct. at 2627 ("[A] statute's current burdens must be justified by current needs, and . . . must be sufficiently related to the problem it targets.") (internal quotations omitted).
62. In drafting its redistricting plans, the General Assembly failed to consider the extent to which black voters were currently able to elect the candidates of their choice, and instead uniformly increased the black voting age population in the challenged districts despite decades of increased participation by black voters and the repeated success of candidates of choice of black voters, even in election districts that were majority-white in voting age population.
63. Recently in *NC NAACP v. McCrory*, Case No. 1:13-cv-659, ECF No. 439, at \*233 (April 25, 2016) the court found that African-American voters had made such substantial progress in political participation in the last two decades that North Carolina could not have violated Section 2 of the Voting Rights Act by repealing same-day registration, out of precinct voting, and cutting early voting-mechanisms disproportionately used by black voters. The court noted: "By 1989, there were nineteen African Americans in the General Assembly, more than ever before. By 1991, the office of the Speaker of the House was held by Representative Dan Blue, an African American. Redistricting under his leadership resulted in new majority-

minority districts. These successes paralleled local success for African Americans. By 2001, 22% of the governor's appointees to state agencies and commissions were minorities, which matched the State's demographics." Furthermore, that court noted that it is "better to understand § 2(b) as an equal treatment requirement (which is how it reads) than as an equal-outcome command." The court added, "Section 2 does not guarantee minority voters an electoral advantage." *Id.* at \*324.

64. If such progress in political participation relieves the state of Section 2 liability for repeal of voting mechanisms disproportionately relied upon by black voters, then that progress refutes Defendants' decision to draw majority black districts everywhere possible in order to avoid Section 2 liability.
65. In sum, the Court concludes that the legislature did not have sufficient evidence before it to justify the State's unprecedented use of race, and did not produce sufficient evidence to establish that each of the districts was narrowly tailored to comply with Section 2 of the Voting Rights Act.

**H. Defendants Have Not Established that the Challenged Districts were Compelled by Section 5 of the Voting Rights Act.**

66. Defendants sought to "enhance" Section 5 preclearance by increasing the black voting age population in districts and by increasing the number of such districts, both in Section 5 and other counties alike.
67. These actions were not justified by Section 5, properly interpreted. As the Superior Court held in *Alabama*:

Section 5, which covered particular states and certain other jurisdictions, does not require a covered jurisdiction to maintain a particular numerical minority percentage. It requires the jurisdiction to maintain a minority's ability to elect a preferred candidate of choice. That is precisely what the language of the statute says.

135 S. Ct. at 1272.

68. Likewise, in *Shaw v. Reno*, the Court emphasized that strict scrutiny applied to districts designed to comply with the Voting Rights Act, stating, "A reapportionment plan would not be narrowly tailored to the goal of avoiding retrogression if the State went beyond what was reasonably necessary to avoid retrogression." *Shaw v. Reno*, 509 U.S. at 654-55. Thus, Section 5 can justify the State's use of race only to the extent necessary to avoid retrogression.
69. The Court concludes that Section 5 does not justify the challenged districts.

**I. The Challenged Districts Are Not Narrowly Tailored Because They Are Not Compact**

70. The shape of a challenged district, and in particular, the compactness of that district is not irrelevant to the narrow tailoring inquiry. *Bush v. Vera*, 517 U.S. at 957; *Shaw v. Hunt*, 517 U.S. at 916.
71. The Supreme Court has held that a district that is intentionally created as a majority-black district is not narrowly tailored if it is not compact. *Shaw v. Hunt*, 517 U.S. at 916; *Bush v. Vera*, 517 U.S. at 957. Specifically, the Court has explained that where “bizarrely shaped and far from compact” districts “reach[] out to grab small and apparently isolated minority communities,” these are district “characteristics [that] defeat any claim that the districts are narrowly tailored to serve the State’s interest in avoiding liability under § 2, because § 2 does not require a State to create, on predominantly racial lines, a district that is not ‘reasonably compact.’” *Bush v. Vera* 517 U.S. at 982; *see also Shaw v. Hunt*, 517 U.S. at 916, 918 (rejecting Section 2 defense for CD 12 on non-compactness grounds).
72. Non-compactness for purposes of the narrow tailoring inquiry can be ascertained by just visual inspection of the challenged district. *Shaw v. Hunt*, 517 U.S. at 916, 918 (noting that “[n]o one looking at District 12 could reasonably suggest that the district contains a “geographically compact” population of any race,” and thus, “District 12 is not narrowly tailored to the State’s asserted interest in complying with § 2 of the Voting Rights Act.”) (internal citations omitted).
73. The individual districts challenged here are not geographically compact, by visual or mathematical measure, and therefore they are not narrowly tailored to a compelling governmental interest.

**J. The Challenged Districts Are Not Narrowly Tailored Because They Pack Black Voters into the Districts at a Number Higher than Required by the VRA**

74. The essence of narrow tailoring in the redistricting context has been described with the following analogy: “just as a homicide defendant may not use excessive force to stop an aggressor, neither may a state burden the rights and interests of its citizens more than is reasonably necessary to further the compelling governmental interest advanced by the state.” *Hays v. Louisiana*, 839 F. Supp. 1188, 1206-07 (W.D. La. 1993), *appeal dismissed*, 18 F.3d 1319 (5th Cir. La. 1994).
75. Defendants increased the total black voting-age population in each of the Voting Rights Act districts far more than would be required for a “narrowly tailored”

remedy. *See, e.g., ALBC*, 135 S. Ct. at 1272; *Page*, 2015 U.S. Dist. LEXIS 73514, at \*53-\*56; *Harris*, 2016 U.S. Dist. LEXIS 14581, at \*64-\*66.

**K. Misunderstanding of the Voting Rights Act Does Not Rise to the Level of a Compelling Interest that Survives Strict Scrutiny.**

76. It is axiomatic that a state action taken and justified based on a misinterpretation of law cannot survive strict scrutiny. “Compliance with federal antidiscrimination laws cannot justify race based districting where the challenged district was not reasonably necessary under a constitutional reading and application of those laws.” *Miller*, 515 U.S. at 921; *see also Bethune Hill*, 2015 U.S. Dist. LEXIS 144511, at \*90 (a state’s compelling interest “must be in actual compliance with the standards articulated in federal antidiscrimination laws as interpreted by the federal courts”) (emphasis in original).
77. “If the state’s goal is actual compliance with a proper reading of a constitutional federal standard, then the interest is compelling.” *Id.* at \*92. However, the challenged districts here were constructed based on three separate misreadings of the state’s Voting Rights Act obligations:
- (a) Defendants repeatedly interpreted Section 5 to permit the state to enhance the black voting age population in covered counties in order to ensure preclearance. Section 5 opens no such door. “It prohibits only those diminutions of a minority group’s proportionate strength that strip the group within a district of its existing ability to elect its candidates of choice.” *ALBC*, 135 S. Ct. 13 72-73. Section 5 cannot be used to justify “substantial augmentation of the African-American population percentage” in the challenged districts. *Bush*, 517 U.S. at 983; *see also Page*, 2015 WL 3604029, at \*17; *Harris*, 2016 U.S. Dist. LEXIS 14581, at \*65.
  - (b) Defendants repeatedly justified the challenged districts on the grounds that Section 2 as interpreted in *Strickland* requires all districts drawn to comply with Section 2 to be drawn with a black voting age population greater than 50%. This is a gross misinterpretation of *Strickland*. 2016 U.S. Dist. LEXIS 14581, at \*61, n.10.
  - (c) Defendants also understood that proportionality provided the state a safe harbor from Section 2 liability, thus justifying their decision to increase the number of majority minority districts to match the State’s black voting age population. That position turns Section 2 on its head. The Supreme Court has been long been clear that “outright

racial balancing . . . is patently unconstitutional.” *Fisher*, 133 S. Ct. at 2419.

78. Further, the defendants did not draw the challenged districts to comply with their obligations under the Voting Rights Act, properly interpreted. Instead, as Sen. Rucho and Rep. Lewis repeatedly stated, the challenged districts in fact were drawn to insulate the State from Section 2 liability and to ensure preclearance under Section 5. “Defensive compliance” is not a compelling interest. This is because defensive compliance could often entail a violation of constitutional law itself: subordinating traditional neutral criteria and other districting criteria to racial considerations. *Bethune Hill* at 91. A state has no compelling interest “in avoiding meritless [Voting Rights Act] lawsuits,” *Shaw II*, 517 U.S. at 908 n.4.

L. **District Specific Conclusion of Law Regarding Strict Scrutiny.**

**House District 5**

79. HD 5 covers Gates, Hertford, Bertie and a piece of Pasquotank County. In choosing to draw HD 5 as a majority-black-voting-age-population district (“majority-BVAP district”), Defendants had no district-specific evidence of legally significant racially polarized voting (“RPV”) necessary to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
80. In fact, Dr. Block and Dr. Brunell’s reports show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Gates, Hertford, Bertie, and Pasquotank Counties. D3033, p. 2; D3033, p. 10, Table 2, p. 12-13, Table 3.
81. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in a district below 50% BVAP. The Court concludes that the state did not have a strong basis in evidence for redrawing the district as majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
82. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Thornburg v. Gingles*, 478 U.S. 30, 56 (1986). The sustained success of African-American preferred candidates in the counties that make up HD 5 defeat *Gingles*’ third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
83. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, HD 5 is not narrowly tailored to comply with a

compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 5 is unconstitutional.

### **House District 7**

84. HD 7 covers parts of Halifax and Nash Counties. In choosing to draw HD 7 as a majority-BY AP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
85. In fact, Dr. Block and Dr. Brunell's report show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Halifax and Nash counties. D3033, p. 2; D3033, p. 10, Table 2, pp. 12-13, Table 3.
86. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in the previous district. Additionally, the black candidate of choice was winning county-wide elections. The Court concludes that the state did not have a strong basis in evidence for drawing the district the way it did to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922. 96.
87. Likewise, there is no Section 2 liability when the white majority bloc is not usually defeating the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American preferred candidates in the counties that make up HD 7 defeat *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
88. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, HD 7 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 7 is unconstitutional.

### **House District 12**

89. HD 12 covers Greene, Lenoir, and Craven counties. In choosing to draw HD 12 as a majority-BY AP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
90. In fact, Dr. Block and Dr. Brunell's report show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Greene, Lenoir, and Craven counties. D3033, p. 2; D3033, p. 12-13, Table 3.

91. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in the previous district below that was below 50% BVAP. Additionally, the black candidate of choice was winning county-wide elections. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
92. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American preferred candidates in the counties that make up HD 12 defeat *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
93. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, HD 12 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 12 is unconstitutional.

### **House District 21**

94. HD 21 is located in Greene, Lenoir, and Craven Counties, which were covered jurisdictions under Section 5. In choosing to draw HD 21 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
95. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Greene, Lenoir, and Craven counties. D3033, p. 2; D3033, p. 12-13.
96. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in a district below 50% BVAP. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
97. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in the counties that make up HD 21 show Defendants lacked a strong basis in evidence for liability under

*Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.

98. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, HD 21 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 21 is unconstitutional.

#### **House District 24**

99. HD 24 covers Wilson and Pitt counties, which were jurisdictions covered by Section 5. In choosing to increase the BVAP in HD 24, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
100. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Wilson and Pitt counties. D3033, p. 2; D3033, p. 12-13, Table 3.
101. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in a district below 50% BVAP. Additionally, the candidates of choice of black voters consistently won county-wide races. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
102. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in the counties that make up HD 24 show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
103. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, HD 12 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 24 is unconstitutional.

#### **House Districts 29 and 31**

104. HD 29 and HD 31 are located wholly within Durham County. In choosing to draw HD 29 and 31 as majority--BVAP districts, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry

required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).

105. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district 20 with 40% BVAP in Durham County. D3033, p. 2; D3033, p. 12-13, Table 3.
106. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in a district below 50% BVAP. Additionally, the candidates of choice of black voters consistently won county-wide races. There is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American preferred candidates in the Durham County show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw majority-black districts to comply with federal law.
107. As the State used race in excess of what was necessary to comply with federal law and the districts are non-compact, HD 29 and HD 31 are not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House Districts 29 and 31 are unconstitutional.

### **House District 32**

108. HD 32 covers Warren, Vance, and Granville Counties. Vance and Granville were Section 5 covered jurisdictions. In choosing to draw HD 32 majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
109. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting in Warren, Vance, and Granville Counties. D3033, p. 2; D3033, p. 12-13, Table 3.
110. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
111. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.

112. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, HD 32 is not narrowly tailored to comply with a 21 compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 32 is unconstitutional.

### **House Districts 33 and 38**

113. HD 33 and HD 38 are located wholly within Wake County. In choosing to draw HD 33 and HD 38 as majority-BVAP districts, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
114. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Wake County. D3033, p. 2; D3033, p. 12-13, Table 3.
115. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in the previous district, that had below 50% BVAP. Additionally, the candidates of choice of black voters consistently won county-wide races. There is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American and African-American-preferred candidates in the Wake County show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw majority-black districts to comply with federal law.
116. As the State used race in excess of what was necessary to comply with federal law and the districts are non-compact, HD 33 and HD 38 are not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House Districts 33 and 38 are unconstitutional.

### **House District 42 and 43**

117. HDs 42 and 43 are located wholly within Cumberland County, a Section 5 covered jurisdiction. In choosing to draw HDs 42 and 43 as majority-BY AP districts, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
118. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting in Cumberland County. D3033, p. 2. D3033, p. 12-13, Table 3.

119. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidates of choice of black voters were winning by large margins in previous legislative districts that had below 50% BVAP. Additionally, candidates of choice of black voters won in county-wide elections. The Court concludes that the state did not have a strong basis in evidence for redrawing these districts at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
120. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in the counties that make up HD 42 and HD 43 show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw these majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
121. As the State used race in excess of what was necessary to comply with federal law and the districts are non-compact, HD 42 and HD 43 are not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 42 and House District 43 are unconstitutional.

#### **House District 48**

122. HD 48 is covers parts of Richmond, Scotland, Hoke, and Robeson counties. Scotland, Hoke, and Robeson counties were Section 5 covered jurisdictions. In choosing to draw HD 48 as a majority-BY AP district, Defendants had no district specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
123. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting in Richmond, Scotland, Hoke, and Robeson counties. D3033, p. 2; D3033, p. 12-13, Table 3.
124. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in previous legislative districts that had below 50% BVAP. Additionally, the candidates of choice of black voters consistently won county-wide races. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922. 23

125. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in the counties that make up HD 48 show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
126. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, HD 48 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 42 is unconstitutional.

### **House Districts 57, 58, and 60**

127. HD 57, HD 58, and HD 60 are located wholly within Guilford County, a county formerly covered under Section 5. In choosing to draw HD 57 as a majority BVAP district, in addition to HD 58 and HD 60, Defendants had no district specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
128. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting in Guilford County. D3033, p. 2; D3033, p. 12-13, Table 3.
129. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in previous versions of HD 57 that had below 50% BVAP. Additionally, candidates of choice of black voters won in county-wide elections. The Court concludes that the state did not have a strong basis in evidence for redrawing the districts at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
130. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates Guilford County show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
131. As the State used race in excess of what was necessary to comply with federal law and the districts are non-compact, HD 57, HD 58, and HD 60 are not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 57, House District 58, and House District 60 unconstitutional.

### **House Districts 99, 102, and 107**

132. HD 99, HD 102, and HD 107 are located wholly within Mecklenburg County. In choosing to draw House Districts 99, and 102 as majority-BVAP districts, and in choosing increase the BVAP in HD 107, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
133. Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in districts with 40% BVAP in Mecklenburg County. D3033, p. 2; D3033, p. 10, Table 2, p. 12-13, Table 3.
134. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in the previous districts that had below 50% BVAP. Additionally, the candidates of choice of black voters consistently won county-wide races. There is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in Mecklenburg County show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw majority-black districts to comply with federal law.
135. As the State used race in excess of what was necessary to comply with federal law and the districts are non-compact, HD 99, HD 102, and HD 107 are not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House Districts 99, 102, and 107 are unconstitutional.

### **Senate Districts**

#### **Senate District 4**

136. SD 4 is comprised of Vance, Warren and Halifax counties, and pieces of Nash and Wilson counties. Rucho Dep. Ex. 199. Vance, Halifax, Nash, and Wilson counties were jurisdictions covered under Section 5.
137. In choosing to draw SD 4 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).

138. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Vance, Warren and Halifax, Nash, and Wilson counties. D3033, p. 2; D3033, p. 12-13, Table 3.
139. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in previous legislative districts that had below 50% BVAP. Additionally, candidates of choice of black voters won in county-wide elections. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
140. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in the counties that make up SD 4 show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
141. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, SD 4 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that SD 4 is unconstitutional.

#### **Senate District 5**

142. SD 5 is comprised of Greene County and pieces of Wayne, Lenoir and Pitt counties. Rucho Dep. Ex. 199. These counties were jurisdictions covered under Section 5.
143. In choosing to draw SD 5 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
144. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Greene, Wayne, Lenoir and Pitt counties. D3033, p. 2; D3033, p. 12-13, Table 3.
145. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in previous legislative districts that had below 50% BVAP. Additionally, candidates of choice of black voters won in county-wide elections. The Court

concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.

146. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The success of the African-American-preferred candidate in the counties that make up SD 5 show that black voters had the opportunity to elect the candidate of their choice and Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
147. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, SD 5 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that SD 5 is unconstitutional.

#### **Senate District 14**

148. SD 14 is located wholly within Wake County. J1001.
149. In choosing to draw SD 14 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
150. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Wake County. D3033, p. 2; D3033, p. 12-13, Table 3.
151. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large 27 margins in previous legislative districts that had below 50% BVAP. Additionally, candidates of choice of black voters won in county-wide elections.
152. There is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in Wake County show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
153. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, SD 14 is not narrowly tailored to comply with a

compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that SD 14 is unconstitutional. Senate District 20

154. SD 20 is comprised of Granville County and a piece of Durham County. Rucho Dep. Ex. 199. Granville County was a jurisdiction covered by Section 5.
155. In choosing to draw SD 20 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
156. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Granville and Durham counties. D3033, p. 2. D3033, p. 12-13, Table 3.
157. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in previous legislative districts that had below 50% BVAP. Additionally, candidates of choice of black voters had, for decades, consistently won in countywide elections. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
158. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American preferred candidates in the counties that make up SD 20 show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. In fact, the Court in *Gingles* found that in 28 1986, voting in Durham County was not sufficiently racially polarized in order to warrant a Section 2 remedy. *Id.* Based on all this evidence, there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
159. As the State used race in great excess of what was necessary to comply with federal law and the district is grossly non-compact, SD 5 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that SD 20 is unconstitutional.

### **Senate District 21**

160. SD 21 is comprised of Hoke County and pieces of Cumberland County. Rucho Dep. Ex. 199. These counties were jurisdictions covered under Section 5.
161. In choosing to draw SD 21 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the

intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).

162. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Hoke and Cumberland counties. D3033, p. 2; D3033, p. 12-13, Table 3.
163. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in previous legislative districts that had below 50% BVAP. Additionally, candidates of choice of black voters won in county-wide elections. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
164. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in the counties that make up SD 21 show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
165. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, SD 21 is not narrowly tailored to comply with a 29 compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that SD 21 is unconstitutional.

#### **Senate District 28**

166. SD 28 is located wholly within Guilford County. Rucho Dep. Ex. 199. Guilford County was a jurisdiction covered under Section 5.
167. In choosing to draw SD 5 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
168. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Guilford County. D3033, p. 2; D3033, p. 10, Table 2, p. 12-13, Table 3.

169. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in previous legislative districts that had below 50% BVAP. Additionally, candidates of choice of black voters won in county-wide elections. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
170. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in Guilford County shows Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655. 180.
171. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, SD 28 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that SD 28 is unconstitutional.

### **Senate District 32**

172. SD 32 is located wholly within Forsyth County, and drawn to be 42.53%o TBVAP. (Third Stip. ¶ 107; J1001). Forsyth County was not a covered jurisdiction under Section 5. (Sen. Rucho Trial Tr. vol. IV, 21:4-7).
173. In choosing to increase the BVAP in SD 32, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*, *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
174. Case law warns against assuming that white candidates cannot be the candidate of choice for black voters. *Askew v. City of Rome*, 127 F.3d 1355, 1378 (11th Cir. 1997) (noting that “the court will not automatically assume that the black community can only be satisfied by black candidates.”). *See also Johnson v. DeGrandy*, 512 U.S. 997, 1027, 114 S. Ct. 2647, 2665, 129 L. Ed. 2d 775, 801 (1994) (Kennedy, J., concurring) (“The assumption that majority-minority districts elect only minority representatives, or that majority-white districts elect only white representatives, is false as an empirical matter. And on a more fundamental level, the assumptions reflect “the demeaning notion that members of the defined racial groups ascribe to certain “minority views” that must be different from those of other citizens’.”) Analysis by Dr. Lichtman found Sen. Garrou to be the candidate of choice of black voters in District 32. Dickson Trial Tr. Vol. II 407-08 (testimony of Lichtman) (J11051-407-08).

175. Under the Section 2 liability defense taken by Defendants, SD 32 is not a district designed to avoid Section 2 liability. (Def. Tr. Br. at 9). Thus, the use of race was not justified by the Voting Rights Act.
176. Defendants have not produced any evidence that the use of race in SD 32 furthered any compelling state interest, or that the non-compact district was narrowly tailored to serve any such interest. *Shaw v. Reno*, 509 U.S. at 643. The Court concludes that SD 32 is unconstitutional.

### **Senate Districts 38 and 40**

177. SD 38 and SD 40 are located wholly within Mecklenburg County. In choosing to draw SD 38 and SD 40 as majority-BVAP districts, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local 30 inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
178. Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Mecklenburg County. D3033, p. 2. D3033, p. 10, Table 2, p. 12-13, Table 3.
179. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in the previous districts that had below 50% BVAP. Additionally, the candidates of choice of black voters consistently won county-wide races. There is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American preferred candidates in the Mecklenburg County show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw majority-black districts to comply with federal law.
180. As the State used race in excess of what was necessary to comply with federal law and the districts are non-compact, Senate Districts 38 and 40 are not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that Senate Districts 38 and 40 are unconstitutional.

**Based on the foregoing Findings of Fact and Conclusions of Law,** the Court

should:

(a) Declare that Senate Districts 4, 5, 14, 20, 21, 28, 32, 38, and 40 and House Districts 5, 7, 12, 21, 24, 29, 31, 32, 33, 38, 48, 57, 58, 60, 99, 102, and 107 violate Plaintiffs' rights secured by the Fourteenth Amendment to the United States Constitution because each of those districts is a racial gerrymander not justified by any compelling governmental interest nor narrowly tailored to serve a compelling interest;

(b) Enjoin Defendants from using those Districts to elect Plaintiffs' representatives to the North Carolina General Assembly at the 2016 general election and all subsequent elections; and

(c) Award Plaintiffs such other relief as may be appropriate including fees and costs.

**Further,** Defendants' Motions to Abstain and to Dismiss based on *res judicata* should be denied.

Respectfully submitted, this the 6th day of May, 2016.

POYNER SPRUILL LLP

SOUTHERN COALITION FOR SOCIAL  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this date I have electronically filed the foregoing **PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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This the 6th day of May, 2016.

/s/ Edwin M. Speas, Jr. \_\_\_\_\_  
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